AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 85 Monday,
No. 105 June 1, 2020

Pages 32977–33526

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 85 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

Contents

Federal Register

Vol. 85, No. 105

Monday, June 1, 2020

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Food Safety and Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Credit and User Fee Accounts, 33079–33080
Pest Reporting and Asian Longhorn Beetle Program, 33080–33081

Centers for Disease Control and Prevention
NOTICES
Meetings, 33159

Centers for Medicare & Medicaid Services
NOTICES
Medicare and Medicaid Programs:
Application From the Joint Commission for Continued Approval of Its Home Health Agency Accreditation Program; Correction, 33159

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Title V State Sexual Risk Avoidance Education Program, 33159–33160

Civil Rights Commission
NOTICES
Meetings:
Connecticut Advisory Committee, 33084–33085
Michigan Advisory Committee, 33085
New Hampshire Advisory Committee, 33084

Coast Guard
NOTICES
Request for Applications for Membership:
National Commercial Fishing Safety Advisory Committee, 33174–33175

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Generic Clearance Improving Customer Experience, 33085–33087

Community Living Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
University Centers of Excellence in Developmental Disabilities Education, Research and Service Annual Report, 33160–33162

Comptroller of the Currency
RULES
Interagency Policy Statement on Allowances for Credit Losses, 32991–33004
Regulatory Capital Rule:
Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks From the Supplementary Leverage Ratio for Depository Institutions, 32980–32990
NOTICES
Interagency Guidance on Credit Risk Review Systems, 33278–33287

Consumer Product Safety Commission
RULES
Children's Toys and Child Care Articles:
Determinations Regarding ASTM F963 Elements and Phthalates for Unfinished Manufactured Fibers, 33015–33020

Defense Department
See Engineers Corps

Defense Nuclear Facilities Safety Board
NOTICES
Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the Defense Nuclear Facilities Safety Board, 33140–33141

Education Department
RULES
State Vocational Rehabilitation Services Program, 33021
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Budget Information Non–Construction Programs Form and Instructions, 33149
Vocational Rehabilitation Financial Report, 33148–33149
Written Application for the Independent Living Services for Older Individuals Who Are Blind Program, 33141
Application for New Awards:
State Tribal Education Partnership Grants to Tribal Educational Agencies, 33141–33148

Energy Department
See Federal Energy Regulatory Commission
RULES
Financial Assistance Regulations—Deviation Authority, 32977–32980
PROPOSED RULES
Energy Conservation Program:
Test Procedure for Illuminated Exit Signs, 33036–33043

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
New York New Jersey Harbor and Tributaries Coastal Storm Risk Management Feasibility Study; Withdrawal, 33139–33140

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Iowa; State Implementation Plan and Operating Permits Program, 33023–33026
Kentucky; Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard, 33021–33023
Hazardous Waste Management System:
Florida, 33026–33027
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Missouri; Restriction of Emission of Lead From Specific Lead Smelter-Refinery Installations, 33049–33052
Utah; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards, 33052–33059
Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities, 33059–33060
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33151–33152
Certain New Chemicals:
Receipt and Status Information for April 2020, 33152–33157

Equal Employment Opportunity Commission
PROPOSED RULES
Official Time in Federal Sector Cases Before the Commission, 33049

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
Airbus SAS Airplanes, 33046–33049
Pratt and Whitney Turbofan Engines, 33043–33045

Federal Communications Commission
NOTICES
Wireless Telecommunications Bureau Seeks Comment on Joint Petition for Stay of 3.7–4.2 GHz Band, 33157–33158

Federal Deposit Insurance Corporation
RULES
Interagency Policy Statement on Allowances for Credit Losses, 32991–33004
Regulatory Capital Rule:
Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks From the Supplementary Leverage Ratio for Depository Institutions, 32980–32990
NOTICES
Interagency Guidance on Credit Risk Review Systems, 33278–33287

Federal Emergency Management Agency
NOTICES
Final Flood Hazard Determinations, 33175–33177
Flood Hazard Determinations; Changes, 33178–33185
Flood Hazard Determinations; Proposals, 33177–33178, 33185–33188
Flood Hazard Determinations; Proposals:
Hays County, Texas and Incorporated Areas; Withdrawal, 33175

Federal Energy Regulatory Commission
NOTICES
Application:
SV Hydro, LLC, 33150–33151
Combined Filings, 33149–33150

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
California; Rescission, 33271–33272

Federal Maritime Commission
NOTICES
Agreements Filed, 33158

Federal Motor Carrier Safety Administration
RULES
Hours of Service of Drivers, 33396–33452
NOTICES
Controlled Substances and Alcohol Use and Testing:
Motion Picture Compliance Solutions Application for Exemption From the Drug and Alcohol Clearinghouse Pre-Employment Full-Query, 33274–33276
Marking of Commercial Motor Vehicles; Exemption Application:
Adirondack Trailways, Pine Hill Trailways, and New York Trailways, 33272–33274

Federal Reserve System
RULES
Interagency Policy Statement on Allowances for Credit Losses, 32991–33004
Regulatory Capital Rule:
Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks From the Supplementary Leverage Ratio for Depository Institutions, 32980–32990
NOTICES
Interagency Guidance on Credit Risk Review Systems, 33278–33287

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Species:
Removing San Benito Evening-Primrose (Camissonia benitensis) From the Federal List, 33060–33078
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Sea Lamprey Control Program, 33192–33193
Service Concessions, 33193–33195

Food and Drug Administration
NOTICES
Approval of Product Under Voucher:
Rare Pediatric Disease Priority Review Voucher, 33163
Establishment of a Public Docket:
Approved Drug Products With Therapeutic Equivalence Evaluations (the ''Orange Book''), 33165–33167
Listing of Patent Information in the Orange Book, 33169–33173
Guidance:
Orange Book—Questions and Answers, 33167–33169
Proprietary Names for New Animal Drugs, 33162–33163
Rare Disease Clinical Trial Networks, 33163–33165

Food and Nutrition Service
NOTICES
Meetings:
2020 Dietary Guidelines Advisory Committee, 33081–33082

Food Safety and Inspection Service
PROPOSED RULES
Elimination of the Requirement to Defibrinate Livestock Blood Saved as an Edible Product, 33031–33034
Inspection of Yak and Other Bovidae, Cervidae, and Camelidae Species, 33034–33036

Foreign-Trade Zones Board
NOTICES
Approval for Production Authority:
MTD Consumer Group Inc., Foreign-Trade Zone 158, Verona, MS, 33087
Approval of Subzone Status:
Mitsubishi Electric Automotive America, Inc., Maysville, KY, 33087
Proposed Production Activity:
Rauch North America, Inc., Foreign-Trade Zone 277, Western Maricopa County, AZ, 33087–33088

Forest Service
NOTICES
Meetings:
Collaborative Forest Restoration Program Technical Advisory Pane, 33082–33083
Requests for Nominations:
Pacific Northwest National Scenic Trail Advisory Council, 33083–33084

General Services Administration
NOTICES
Meetings:
Office of Federal High-Performance Buildings; Green Building Advisory Committee, 33158–33159

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Community Living Administration
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Meetings:
Advisory Commission on Childhood Vaccines; Cancellation, 33174

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Conditional Commitment/Direct Endorsement Statement of Appraised Value, 33191
HUD-Owned Good Neighbor Next Door Program, 33188
Mortgage Record Change, 33188–33189
The Outcomes Evaluation of the Choice Neighborhoods Program, 33189–33191

Interior Department
See Fish and Wildlife Service

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Advance Notification of Sunset Review, 33119
Ceramic Tile From the People's Republic of China, 33089–33117, 33119–33121
Initiation of Five-Year (Sunset) Reviews, 33088–33089
Determinations of Sales at Less Than Fair Value:
Certain Glass Containers From the People's Republic of China, 33117–33119

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Synthetic Roofing Underlayment Products and Components Thereof, 33198–33199
Steel Nails From Korea, Malaysia, Oman, Taiwan, and Vietnam, 33195–33198

Justice Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Whistleblower Protection for Federal Bureau of Investigation Employees, 33199

Labor Department
See Occupational Safety and Health Administration
See Workers Compensation Programs Office

Maritime Administration
NOTICES
Requested Administrative Waiver of the Coastwise Trade Laws:
Vessel DISCO (Sailboat), 33277

National Aeronautics and Space Administration
NOTICES
Meetings:
Heliophysics Advisory Committee, 33202–33203

National Credit Union Administration
RULES
Interagency Policy Statement on Allowances for Credit Losses, 32991–33004
NOTICES
Interagency Guidance on Credit Risk Review Systems, 33278–33287

National Endowment for the Humanities
NOTICES
Meetings:
National Council on the Humanities, 33203

National Foundation on the Arts and the Humanities
See National Endowment for the Humanities

National Institute of Standards and Technology
NOTICES
Meetings:
Board of Overseers of the Malcolm Baldrige National Quality Award and Judges Panel of the Malcolm Baldrige National Quality Award, 33121

Judges Panel of the Malcolm Baldrige National Quality Award, 33121–33122

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Northeastern United States:
Atlantic Sea Scallop Fishery; Extend Portions of the Fishing Year 2019 Scallop Carryover Provisions, 33027–33030
NOTICES
Environmental Impact Statements; Availability, etc.:
Draft Management Plan for the Proposed Connecticut National Estuarine Research Reserve, 33123–33124
Meetings:
New England Fishery Management Council, 33122–33123, 33139
Permanent Advisory Committee To Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission, 33123
Takes of Marine Mammals Incidental to Specified Activities:
Floating Dry Dock Project at Naval Base San Diego, CA, 33129–33139
Renewal of U.S. Navy Target and Missile Launch Activities on San Nicolas Island, 33124–33129

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Medical Clearance Process for Deployment to the Polar Regions, 33203–33204

Nuclear Regulatory Commission
NOTICES
Environmental Assessments; Availability, etc.:
Exelon Generation Company, LLC; Calvert Cliffs Nuclear Power Plant Independent Spent Fuel Storage Installation, 33204–33205
Meetings; Sunshine Act, 33204

Occupational Safety and Health Administration
NOTICES
Meetings:
Advisory Committee on Construction Safety and Health, 33199–33200
United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals, 33200–33201

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Refund of Retirement Deductions (Civil Service Retirement System) and Current/Former Spouses Notification of Application for Refund of Retirement Deductions Under Civil Service Retirement System, 33206–33207
Civil Service Retirement System/Federal Employees Retirement System Documentation in Support of Disability Retirement Application, 33205–33206

Postal Regulatory Commission
NOTICES
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, 33207
New Postal Products, 33207–33208

Postal Service
NOTICES
International Product Change:
Global Expedited Package Services—Non-Published Rates, 33211
Priority Mail Express International, Priority Mail International and First-Class Package International Service Agreement, 33208
Privacy Act; Systems of Records, 33208–33211

Securities and Exchange Commission
RULES
Recordkeeping and Reporting Requirements:
Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Correction, 33020–33021
Securities Offering Reform for Closed-End Investment Companies, 33290–33394
NOTICES
Order Under the Securities Exchange Act Extending Temporary Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder, 33234–33235
Program for Allocation of Regulatory Responsibilities;
Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., et al., 33239–33249
Self-Regulatory Organizations; Proposed Rule Changes:
BOX Exchange, LLC, 33258–33271, 33454–33491
Financial Industry Regulatory Authority, Inc., 33212–33221
ICE Clear Credit, LLC, 33221–33223
Nasdaq BX, Inc, 33235–33239
Nasdaq GEMX, LLC, 33224–33231
Nasdaq ISE, LLC, 33231–33234
New York Stock Exchange, LLC, 33252–33255
NYSE American, LLC, 33249–33252
NYSE Arca, Inc., 33255–33258

Small Business Administration
RULES
Business Loan Program Temporary Changes; Paycheck Protection Program:
Requirements—Loan Forgiveness, 33004–33010
SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, 33010–33015

State Department
NOTICES
Charter Renewal:
Defense Trade Advisory Group, 33271
Meetings:
Advisory Committee on International Postal and Delivery Services, 33271

Surface Transportation Board
NOTICES
Release of Waybill Data, 33271

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Maritime Administration
RULES
Tribal Transportation Self–Governance Program, 33494–33525

Treasury Department
See Comptroller of the Currency

Veterans Affairs Department
NOTICES
Meetings:
National Academic Affiliations Council, 33287–33288

Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Longshore and Harbor Workers Compensation Act Pre-Hearing Statement, 33201–33202

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 33290–33394

Part III
Transportation Department, Federal Motor Carrier Safety Administration, 33396–33452

Part IV
Securities and Exchange Commission, 33454–33491

Part V
Transportation Department, 33494–33525

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

2 CFR
910 32977

9 CFR
Proposed Rules:
310 33031
352 33034

10 CFR
Proposed Rules:
431 33036

12 CFR
3 32980
6 32980
30 32991
208 (2 documents) 32980, 32991
217 32980
324 32980
364 32991
741 32991

13 CFR
120 (2 documents) 33004, 33010

14 CFR
Proposed Rules:
39 (2 documents) 33043, 33046

16 CFR
1253 33015

17 CFR
229 33290
230 33290
232 33290
239 33290
240 (2 documents) 33020, 33290
243 33290
249 33290
270 33290
274 33290

29 CFR
Proposed Rules:
1614 33049

34 CFR
361 33021

40 CFR
52 (2 documents) 33021, 33023
70 33023
271 33026
Proposed Rules:
52 (2 documents) 33049, 33052
180 33059

49 CFR
29 33494
385 33396
395 33396

50 CFR
648 33027
Proposed Rules:
17 33060

Rules and Regulations

Federal Register
Vol. 85, No. 105
Monday, June 1, 2020

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

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

DEPARTMENT OF ENERGY

2 CFR Part 910

RIN 1991–AC15

Financial Assistance Regulations—Deviation Authority

AGENCY: Office of Acquisition Management, Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy (DOE) publishes this interim final rule to amend DOE's Financial Assistance Regulations to authorize deviations, when necessary to achieve program objectives; necessary to conserve public funds; otherwise essential to the public interest; or necessary to achieve equity.

DATES:

Effective date: This rulemaking is effective as of June 1, 2020.

Comment date: Written comments must be received on or before close of business July 31, 2020.

ADDRESSES: You may submit comments, identified by ''*DOE Financial Assistance Regulations—Deviation Authority and RIN 1991–AC15,*'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email to: DEARrulemaking@hq.doe.gov*. Include Financial Assistance Regulations—Deviation Authority and RIN 1991–AC15 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Mr. John Harris, U.S. Department of Energy, Office of Acquisition Management, at (202) 287–1471 or by email at *John.Harris@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Analysis
III. Procedural Requirements
A. Review Under Executive Orders 12866 and 13563
B. Review Under Executive Orders 13771 and 13777
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 12988
G. Review Under Executive Order 13132
H. Review Under the Unfunded Mandates Reform Act of 1995
I. Review Under the Treasury and General Government Appropriations Act, 1999
J. Review Under Executive Order 13211
K. Review Under the Treasury and General Government Appropriations Act, 2001
L. Congressional Notification
M. The Administrative Procedure Act
N. Approval by the Office of the Secretary of Energy

I. Background

The purpose of this interim final rule is to amend DOE's Financial Assistance Regulations at 2 CFR part 910, to add deviation authority to provide the Director for the Office of Acquisition Management, for DOE actions, and the Deputy Associate Administrator for the Office of Acquisition and Project Management for the National Nuclear Security Administration (NNSA), for NNSA actions, or designee the authority to authorize deviations, when (1) necessary to achieve program objectives; (2) necessary to conserve public funds; (3) otherwise essential to the public interest; or (4) necessary to achieve equity. This interim final rule will reinstate deviation authority in 2 CFR part 910 to give DOE the authority to deviate from its financial assistance regulations. This deviation authority was originally in 10 CFR 600.4 but was not carried over in 2 CFR part 910 when DOE amended its Financial Assistance Regulations by adopting the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as provided in OMB Guidance in 2 CFR part 200. 79 FR 75867, 76024 (Dec. 19, 2014). In addition to adopting these requirements in its regulations, DOE amended its regulations to supplement the OMB Guidance. DOE did not, however, include in its supplementary amendments authority for the Department to deviate or approve exceptions to its regulations in 2 CFR part 910.

Previous to the adoption and addition of the regulations above, DOE had the authority to deviate from its financial assistance regulations. See 10 CFR 600.4(c)(2)(i) and (ii).

II. Section-by-Section Analysis

DOE proposes to amend Chapter 9 of Title 2 of the Code of Federal Regulations as set forth below:

Subpart B is amended to add § 910.133 to part 910, adding deviation authority to provide the Director for the Office of Acquisition Management, for DOE actions, and the Deputy Associate Administrator for the Office of Acquisition and Project Management for NNSA, for NNSA actions, or designee the authority to authorize deviations, when (1) necessary to achieve program objectives; (2) necessary to conserve public funds; (3) otherwise essential to the public interest; or (4) necessary to achieve equity. This deviation authority was originally in 10 CFR 600.4 but was not carried over in 2 CFR part 910.

In drafting the rule, DOE is reinstating deviation authority that was originally in 10 CFR 600.4 but was not carried over in 2 CFR part 910 to give DOE/NNSA authority to approve a deviation when the conditions above have been met and as authorized by the designated officials. Deviation authority is different than the exemption authority set forth at 2 CFR 200.102 because it covers only agency-specific regulations.

III. Procedural Requirements

A. Review Under Executive Orders 12866 and 13563

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' That order stated that the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The order stated that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' The order required the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of the Information Quality Act, or the guidance issued pursuant to that Act, particularly those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE concludes that this interim final rule is consistent with the directives set forth in these Executive orders. This interim final rule reinstates DOE's authority under 2 CFR part 910 to deviate from its financial assistance regulations under specified circumstances as was originally provided under 10 CFR 600.4.

C. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this interim final rule.

D. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR part 1320 appendix A.1) (PRA), DOE reviewed this interim final rule and determined that there are no new collections of information contained therein. DOE's associated information collection has been approved under OMB Control No. 1910–4100.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this interim final rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA). Specifically, DOE has determined that this interim final rule is covered under the categorical exclusion found in DOE's NEPA regulations at paragraphs A5 and A6 of Appendix A to Subpart D, 10 CFR part 1021. Categorical exclusion A5 applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Categorical exclusion A6 applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under Executive Order 13132

Executive Order 13132, (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.

On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined this interim final rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits,

and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*. UMRA sections 202 and 205 do not apply to this action because they apply only to rules for which a general notice of proposed rulemaking is published. Nevertheless, DOE has determined that this interim final rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rulemaking will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 13211.

Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order, (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution and use. This interim final rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this interim final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this interim final rule prior to its effective date. The report will state that it has been determined that this interim final rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

M. The Administrative Procedure Act

In accordance with 5 U.S.C. 553(b), the Administrative Procedure Act, DOE generally publishes a rule in a proposed form and solicits public comment on it before issuing the rule in final. This rulemaking, as a matter relating to grants, is exempt from the requirement to publish a notice of proposed rulemaking under 5 U.S.C. 553(a)(2).

DOE, however, is publishing this rule as an interim final rule and allowing for public comments sixty (60) days after date of publication in the **Federal Register**.

N. Approval by the Office of the Secretary of Energy

Issuance of this interim final rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 2 CFR Part 910

Accounting, Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on May 4, 2020, by S. Keith Hamilton, Deputy Associate Administrator for Acquisition and Project Management and Senior Procurement Executive, National Nuclear Security Administration, pursuant to delegated authority from the Administrator, National Nuclear Security Administration, and John R. Bashista, Director, Office of Acquisition Management and Senior Procurement Executive, Department of Energy, pursuant to delegated authority from the Secretary of Energy. These documents with the original signature and date are maintained by DOE/NNSA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 13, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set out in the preamble, DOE amends chapter 9 of title 2 of the Code of Federal Regulations as follows:

PART 910—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 910 continues to read as follows:

Authority: 42 U.S.C. 7101, *et seq.;* 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.;* 2 CFR part 200.

■ 2. Subpart B is amended by adding § 910.133 to read as follows:

§ 910.133 Deviation authority.

(a) *General.* (1) A deviation is the use of any policy, procedure, form, standard, term, or condition which varies from a requirement of this part, or the waiver of any such requirement, unless such use or waiver is authorized or precluded by Federal statute. The use of optional or discretionary provisions of this part, including special restrictive conditions used in accordance with § 910.372, exceptions under 2 CFR 200.102, and the waiver of the cost sharing requirements in § 910.130 are

not deviations. Awards to foreign entities are not subject to this section.

(2) A single-case deviation is a deviation which applies to one financial assistance transaction and one applicant, recipient, or subrecipient only.

(3) A class deviation is a deviation which applies to more than one financial assistance transaction, applicant, recipient, or subrecipient.

(b) *Conditions for approval.* The DOE/NNSA officials specified in paragraph (c) of this section may authorize a deviation only upon a written determination that the deviation is—

(1) Necessary to achieve program objectives;

(2) Necessary to conserve public funds;

(3) Otherwise essential to the public interest; or

(4) Necessary to achieve equity.

(c) *Approval procedures.* (1) A deviation request must be in writing and must be submitted to the responsible DOE/NNSA Contracting Officer. An applicant for a subaward or a subrecipient shall submit any such request through the recipient.

(2) Except as provided in paragraph (c)(3) of this section—

(i) A single-case deviation may be authorized by the responsible HCA.

(ii) A class deviation may be authorized by the Director, Office of Acquisition Management, for DOE actions, and the Deputy Associate Administrator for the Office of Acquisition and Project Management for NNSA, for NNSA actions, or designee.

(3) Whenever the approval of OMB, other Federal agency, or other DOE/NNSA office is required to authorize a deviation, the proposed deviation must be submitted to the Director, Office of Acquisition Management, for DOE actions, and the Deputy Associate Administrator for the Office of Acquisition and Project Management for NNSA, for NNSA actions, or designee for concurrence prior to submission to the authorizing official.

(d) *Notice.* Whenever a request for a class deviation is approved, DOE/NNSA will identify this class deviation (as applicable) in the Notice of Funding Opportunity(s) that may be affected.

(e) *Subawards.* A recipient may use a deviation in a subaward only with the prior written approval of a DOE/NNSA Contracting Officer.

[FR Doc. 2020–10577 Filed 5–29–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3 and 6

[Docket No. OCC–2020–0013]

RIN 1557–AE85

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 217

[Regulations H and Q; Docket No. R–1718]

RIN 7100–AF91

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AF44

Regulatory Capital Rule: Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks From the Supplementary Leverage Ratio for Depository Institutions

AGENCY: Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule and request for comment.

SUMMARY: In light of recent disruptions in economic conditions caused by the coronavirus disease 2019 and strains in U.S. financial markets, the OCC, the Board, and the FDIC (together, the agencies) are issuing an interim final rule that temporarily revises the supplementary leverage ratio calculation for depository institutions. Under the interim final rule, any depository institution subsidiary of a U.S. global systemically important bank holding company or any depository institution subject to Category II or Category III capital standards may elect to exclude temporarily U.S. Treasury securities and deposits at Federal Reserve Banks from the supplementary leverage ratio denominator. Additionally, under this interim final rule, any depository institution making this election must request approval from its primary Federal banking regulator prior to making certain capital distributions so long as the exclusion is in effect. The interim final rule is effective as of the date of **Federal Register** publication and will remain in effect through March 31, 2021. The agencies are adopting this interim final rule to allow depository institutions that elect to opt into this treatment additional flexibility to act as financial intermediaries during this period of financial disruption. The tier 1 leverage ratio is not affected by this interim final rule.

DATES:

Effective date: This rule is effective on June 1, 2020.

Comment date: Comments on the interim final rule must be received no later than July 16, 2020.

ADDRESSES:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rule: Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks from the Supplementary Leverage Ratio'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC–2020–0013'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments. *Regulations.gov Beta:* Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0013'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com*.

- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street, SW, suite 3E–218, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0013'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC–2020–0013'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0013'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com*.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1718; RIN 7100–AF91, by any of the following methods:

• Agency website: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx*.

• Email: *regs.comments@federalreserve.gov*. Include docket and RIN numbers in the subject line of the message.

• FAX: (202) 452–3819 or (202) 452–3102.

• Mail: Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684.

FDIC: You may submit comments, identified by RIN 3064–AF44, by any of the following methods:

• *Agency website: https://www.fdic.gov/regulations/laws/federal*. Follow instructions for submitting comments on the Agency website.

• *Email: Comments@FDIC.gov*. Include ''RIN 3064–AF44'' on the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/RIN 3064–AF44, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m. All comments received must include the agency name (FDIC) and RIN 3064–AF44 and will be posted without change to *https://www.fdic.gov/regulations/laws/federal,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Director, or Venus Fan, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; or Carl Kaminski, Special Counsel, or Chris Rafferty, Senior Attorney, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Anna Lee Hewko, Associate Director, (202) 530–6360; Constance Horsley, Deputy Associate Director, (202) 452–5239; Elizabeth MacDonald, Manager, (202) 475–6316; Sviatlana Phelan, Lead Financial Institution Policy Analyst, (202) 912–4306; or Christopher Appel, Senior Financial Institution Policy Analyst II, (202) 973–6862, Division of Supervision and Regulation; Benjamin McDonough, Assistant General Counsel, (202) 452–2036; Mark Buresh, Senior Counsel, (202) 452–5270; Andrew Hartlage, Counsel, (202) 452–6483; Jonah Kind, Senior Attorney, (202) 452–2045; or Jasmin Keskinen, Legal Assistant, (202) 475–6650, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Benedetto Bosco, Chief, Capital Policy Section, *bbosco@fdic.gov;* Noah Cuttler, Senior Policy Analyst, *ncuttler@fdic.gov; regulatorycapital@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel, *mphillips@fdic.gov;* Catherine Wood, Counsel, *cawood@fdic.gov;* Francis Kuo, Counsel, *fkuo@fdic.gov;* Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. The Interim Final Rule
III. Impact Assessment
IV. Technical Amendments
V. Administrative Law Matters
A. Administrative Procedure Act
B. Congressional Review Act
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Riegle Community Development and Regulatory Improvement Act of 1994
F. Use of Plain Language
G. Unfunded Mandates Act

I. Background

The spread of the coronavirus disease 2019 (COVID–19) has significantly and adversely affected global financial markets, including depository institutions' role as financial intermediaries. In particular,

disruptions in financial markets, and the resulting flight to liquid assets by market participants, have caused depository institutions' balance sheets to expand to accommodate inflows of deposits. This balance sheet expansion has contributed to depository institutions making substantial deposits in their accounts at Federal Reserve Banks (deposits at Federal Reserve Banks). In addition, customer draws on credit lines and depository institutions' holdings of significant amounts of U.S. Treasury securities (Treasuries) have contributed to balance sheet expansion. These trends are expected to continue temporarily while depository institutions and their customers respond to disruptions in the financial markets.

For a depository institution subsidiary of a U.S. global systemically important bank holding company (GSIB), or a depository institution subject to the Category II or Category III capital standards, the agencies' regulatory capital rule (capital rule) requires a minimum supplementary leverage ratio of 3 percent, measured as the ratio of a depository institution's tier 1 capital to its total leverage exposure.[1] Total leverage exposure, the denominator of the supplementary leverage ratio, includes certain off-balance sheet exposures in addition to on-balance sheet assets.

GSIB depository institution subsidiaries also are subject to enhanced supplementary leverage ratio (eSLR) standards established by the agencies in 2014.[2] Under the eSLR standards, GSIB depository institution subsidiaries must maintain a 6-percent supplementary leverage ratio to be considered ''well capitalized'' under the prompt corrective action (PCA) framework of each agency.

In contrast to the risk-based capital requirements in the capital rule, a leverage ratio does not differentiate the amount of capital required by the type of exposure. Rather, a leverage ratio places an upper bound on depository institution leverage. A leverage ratio protects against underestimating risk and serves to complement the risk-based capital requirements. Under the supplementary leverage ratio, depository institutions include all on-balance sheet assets, including Treasuries and deposits at Federal Reserve Banks, in their total leverage exposure calculation.[3]

II. The Interim Final Rule

The ability of depository institutions to hold certain assets, most notably deposits at a Federal Reserve Bank and Treasuries, is essential to market functioning, financial intermediation, and funding market activity, particularly in periods of financial uncertainty. In response to volatility and market strains, the Federal Reserve has taken a number of actions to support market functioning and the flow of credit to the economy. The response to COVID–19 has notably increased the size of the Federal Reserve's balance sheet and resulted in a large increase in the amount of reserves in the banking system. The agencies anticipate that the Federal Reserve's balance sheet may continue to expand in the near term, as customer deposits continue to expand, and recently announced facilities to support the flow of credit to households and businesses begin or continue operations. In addition, market participants have liquidated a high volume of assets, and customers have drawn down credit lines and deposited the cash proceeds with depository institutions in recent weeks, further increasing the size of depository institutions' balance sheets. Absent any adjustments to the supplementary leverage ratio, the resulting increase in the size of depository institutions' balance sheets may cause a sudden and significant increase in the regulatory capital needed to meet a depository institution's leverage ratio requirement.[4] This is particularly the case for many of the depository institutions subject to the supplementary leverage ratio, which are significant participants in financial intermediation services, including as clearing banks for dealers in the open market operations of the Federal Open Market Committee and as major custodians of securities.

In order to facilitate depository institutions' significant increase in reserve balances resulting from the Federal Reserve's asset purchases and the establishment of various programs to support the flow of credit to the economy, as well as the need to continue to accept exceptionally high levels of customer deposits, the agencies are issuing this interim final rule to provide depository institutions subject to the supplementary leverage ratio (qualifying depository institutions) the ability to exclude temporarily Treasuries and deposits at Federal Reserve Banks from total leverage exposure through March 31, 2021. For example, depository institutions would be able to exclude temporarily on-balance sheet Treasuries that they hold, including Treasuries that they have borrowed and re-pledged in a repo-style transaction, provided such Treasuries are included in the depository institution's total leverage exposure prior to the effect of the exclusion.[5]

Under the interim final rule, a depository institution that opts into this treatment (electing depository institution) would be required to obtain prior approval of distributions from its primary Federal banking regulator. An electing depository institution must notify its primary Federal banking regulator of its election within 30 days after the interim final rule is effective.[6] The primary Federal banking regulator will consider a notice received from a qualifying depository institution more than 30 days after the effective date of the interim final rule on a case-by-case basis. The election will not affect the electing depository institution's ability to pay distributions already declared or to declare distributions for payment in the second quarter of 2020. The prior

[1] *See* 84 FR 59230 (Nov. 1, 2019). Banking organizations that are subject to Category II standards include those with (1) at least $700 billion in total consolidated assets or (2) at least $75 billion in cross-jurisdictional activity and at least $100 billion in total consolidated assets. Banking organizations that are subject to Category III standards include those with (1) at least $250 billion in average total consolidated assets or (2) at least $100 billion in average total consolidated assets and at least $75 billion in average total nonbank assets, average weighted short-term wholesale funding; or average off-balance sheet exposure. *See* 12 CFR 217.2.

[2] *See* 79 FR 24528 (May 1, 2014). The eSLR standards, as adopted in 2014, applied to U.S. top-tier bank holding companies with consolidated assets over $700 billion or more than $10 trillion in assets under custody, and depository institution subsidiaries of holding companies that meet those thresholds. The Board subsequently revised its capital rule so that the applicability of the eSLR standards is to bank holding companies identified as U.S. GSIBs and their depository institution subsidiaries. *See* 80 FR 49082 (August 14, 2015). The banking organizations currently subject to the eSLR standards are the same under either applicability standard.

[3] The agencies recently issued a final rule, effective April 1, 2020, which implements section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), 12 U.S.C. 1831o note, by amending the capital rule to allow a banking organization that qualifies as a custodial banking organization to exclude from total leverage exposure deposits at qualifying central banks, subject to limits (402 rule). 85 FR 4569 (January 27, 2020).

[4] The Board recently issued an interim final rule to revise, on a temporary basis for bank holding companies, savings and loan holding companies, and U.S. intermediate holding companies of foreign banking organizations, the calculation of total leverage exposure, the denominator of the supplementary leverage ratio in the Board's capital rule, to exclude Treasuries and deposits at Federal Reserve Banks. The exclusion will remain in effect until March 31, 2021. 85 FR 20578 (April 14, 2020).

[5] This scope is consistent with the Board's recent interim final rule to revise the supplementary leverage ratio. *See supra* note 4.

[6] An FDIC supervised institution must provide this notice in writing to the appropriate FDIC regional director of the FDIC Division of Risk Management Supervision.

approval requirement applies to distributions to be paid beginning in the third quarter of 2020. The interim final rule will terminate after March 31, 2021.

For purposes of reporting the supplementary leverage ratio as of June 30, 2020, an electing depository institution may reflect the exclusion of Treasuries and deposits at Federal Reserve Banks from total leverage exposure as if this interim final rule had been in effect for the entire second quarter of 2020. Because the supplementary leverage ratio is calculated as an average over the quarter, this will have the effect of maximizing the effect of the exclusion starting in the second quarter of 2020. The agencies are not making similar adjustments to risk-based capital ratios because Treasuries and deposits at Federal Reserve Banks are risk-weighted at zero percent.

Under the interim final rule, beginning in the third quarter of 2020, an electing depository institution will be required to obtain approval from its primary Federal banking regulator before making a distribution [7] or creating an obligation to make such a distribution so long as the temporary exclusion is in effect. The primary Federal banking regulator will endeavor to respond within 14 days to the request with an approval, disapproval, or request for additional information. This prior-approval requirement will help support the objective of the interim final rule to strengthen the ability of electing depository institutions to continue taking deposits, lending, and conducting other financial intermediation activities during this period of stress.

When evaluating any such request, the primary Federal banking regulator will consider all relevant factors, including whether any distribution would be contrary to safety and soundness and limitations on distributions in the existing rules applicable to the electing depository institution.[8] Factors that the primary Federal banking regulator will take into account include the depository institution's current earnings and forecasts, the nature, purpose, and extent of the request, and the particular circumstances giving rise to the request.[9] For example, the primary Federal banking regulator may consider the expected future capital needs of the depository institution and its ability to meet capital requirements after the temporary relief provided under this interim final rule expires. The requirement that a depository institution request approval for distributions is not intended to prohibit electing depository institutions from paying dividends in all cases. Rather, the primary Federal banking regulator will evaluate each request to ensure that the electing depository institution will be able to continue supporting the economy by lending and accepting deposits consistent with the goal of this interim final rule.

The interim final rule revises the measure of total leverage exposure on a temporary basis for electing depository institutions for the limited purposes of the agencies' capital rule. Depository institutions subject to supplementary leverage ratio requirements report their supplementary leverage ratios on the Consolidated Reports of Condition and Income (Call Reports), Schedule RC–R and Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), Schedule A.[10] The agencies expect in the near future to make all necessary revisions to the Call Reports and the FFIEC 101, Schedule A to implement the interim final rule's revisions to the supplementary leverage ratio for electing depository institutions and to require such institutions to disclose the election publicly.[11] In addition, the interim final rule provides for the necessary modifications of the disclosure requirements of section 173 of the capital rule to reflect the optional temporary exclusion provided by the interim final rule.

The agencies seek comment on all aspects of this interim final rule.

Question 1: Discuss the advantages and disadvantages of removing temporarily Treasuries and deposits at Federal Reserve Banks from total leverage exposure for depository institutions. How does the interim final rule support the objectives of facilitating financial intermediation by depository institutions? How does the interim final rule affect the concurrent objective of safety and soundness? How would the end date of March 31, 2021, for the exclusion under the interim final rule be consistent with the objectives of the rule, or what earlier or later end date should be used instead?

Question 2: What additional assets or exposure types should the agencies consider to exclude temporarily from total leverage exposure in order to achieve the interim final rule's objectives? For example, what consideration should the agencies give to excluding deposits at certain foreign central banks, foreign sovereign debt instruments, or exposures guaranteed by the U.S. Federal Government and why? Which specific repo-style transactions that would support depository institutions' role serving as financial intermediaries should the agencies exclude, if any, and why?

III. Impact Assessment

The supplementary leverage ratio requirement generally has not prevented depository institutions from accommodating customer deposit inflows or serving as financial intermediaries. However, as a result of the spread of COVID–19, stress has materialized in numerous financial markets. Disruptions in financial markets have resulted in expansion of depository institutions' balance sheets to accommodate inflows of deposits. In particular, using data from the fourth quarter of 2019, the agencies expect that the interim final rule would temporarily decrease binding tier 1 capital requirements by approximately $55 billion for depository institutions if all depository institutions subject to the supplementary leverage ratio elect to opt in.[12] In light of the exclusions under

[7] *See* 12 CFR 3.2 (defining ''distribution'') (OCC); 12 CFR 217.2 (defining ''distribution'') (Board); 12 CFR 324.2 (defining ''distribution'') (FDIC).

[8] Additional limitations on distributions may apply under 12 CFR part 3, subparts H and I; 12 CFR 5.46, 12 CFR part 5, subpart E; 12 CFR part 6; 12 CFR part 208, subparts A and D; 12 CFR part 303, subparts K and M. The restrictions set forth in this interim final rule are in addition to, and therefore do not supersede, any existing statutory or regulatory limitations on making capital distributions. For purposes of the FDIC's PCA rules, regarding capital distribution restrictions for undercapitalized FDIC-supervised institutions, see 12 CFR 324.405.

[9] Holding companies use dividends from their subsidiaries for various purposes. For example, dividends to the holding company can support the efficient internal allocation of capital within a holding company, allowing excess capital from one subsidiary, such as the depository institution, to be redeployed to other subsidiaries. As such, an effective dividend strategy can both ensure the safety and soundness of the depository institution and promote the safety and soundness of the entire banking organization.

[10] Depository institutions that are required to submit the OCC Reporting Form DFAST–14A on April 6, 2021, or the FDIC DFAST–14A, have the option to include these changes in their company-run stress test results.

[11] The instructions for Board's FR Y–9C, Schedule HC–R, Line Item 45 (Advanced approaches holding companies only: Supplementary leverage ratio) state that respondents must report the supplementary leverage ratio from FFIEC 101 Schedule A, Table 2, Item 2.22. Therefore, revisions to the FFIEC 101 regarding how to report the supplementary leverage ratio would flow through to the FR Y–9C. The Board plans to amend the instructions for FR Y–9C as necessary.

[12] This analysis takes into account the exclusion of qualifying central bank deposits for custodial banking organizations as provided under the capital rule. As of April 1, 2020, custodial banking organizations may exclude deposits with qualifying foreign central banks, in addition to the exclusions of deposits at Federal Reserve Banks provided

Continued

this interim final rule, this temporary reduction in capital requirements is expected to increase leverage exposure capacity at depository institutions by approximately $1.2 trillion. In particular, the agencies expect that the increase in leverage exposure capacity will strengthen the depository institutions' ability to continue to accept customer deposits, and therefore ensure that depository institutions remain able to fulfill this important function.

Depository institutions that opt into the temporary exclusion of Treasuries and deposits at Federal Reserve Banks from the denominator of the supplementary leverage ratio will likely incur some costs associated with making changes to internal systems or processes for managing supplementary leverage ratio compliance. However, these costs are likely to be very small.

Aside from increases in balance sheets caused by increases in customer deposits, the balance sheets of depository institutions also have increased as households and businesses draw down credit lines. If depository institutions become constrained by supplementary leverage ratio requirements, this could adversely affect their ability to intermediate in financial markets and hamper their ability to provide credit to households and businesses. Therefore, the temporary increase in leverage exposure capacity could have countercyclical benefits as it supports financial market liquidity and increases depository institutions' lending capacities in a time of economic stress.

Although a temporary increase in leverage exposure capacity could lead to an increase in overall leverage in the banking system, the temporary exclusion of Treasuries and deposits at Federal Reserve Banks will help alleviate ongoing stresses on the financial system and the real economy arising from COVID–19. The agencies will closely monitor the balance sheets of electing depository institutions in the coming months while the exclusion is in effect with a particular view toward any resulting increase in risks in conjunction with this interim final rule.

under this interim final rule. (*See supra* note 3.) In addition, the analysis in this interim final rule uses balances due from banks in foreign countries and foreign central banks, as reported under line item 3 of Schedule RC–A of the Call Report. Line item 3 of Schedule RC–A may slightly overstate amounts eligible for exclusion by custodial banking organizations because it includes balances due from banks in foreign countries and foreign central banks that are not eligible for exclusion under this interim final rule.

IV. Technical Amendments

Finally, the agencies are making technical corrections and clarifications to the Prompt Corrective Action regulations. In their respective Prompt Corrective Action regulations, the agencies are correcting an unintentional omission of ''Category III'' to clarify that depository institutions subject to Category III standards must meet their minimum supplementary leverage ratio requirement of 3 percent in order to be considered ''adequately capitalized.'' [13] When the minimum supplementary leverage ratio requirement was initially added to the capital rule in 2013, the term ''advanced approaches'' banking organizations referred to all banking organizations that were subject to the supplementary leverage ratio.[14] However, the tailoring rule that became effective on December 31, 2019, redefined ''advanced approaches.'' Under that rule, advanced approaches banking organizations now include a smaller group of banking organizations (*i.e.,* banking organizations subject to Category I and II standards), while certain banking organizations are no longer defined as advanced approaches but remain subject to the supplementary leverage ratio requirements (*i.e.,* banking organizations subject to Category III standards). The agencies did not intend to change the applicability of the minimum supplementary leverage ratio requirement in their respective Prompt Corrective Action regulations. Rather, the Prompt Corrective Action requirement should continue to apply to all banking organizations that are required to calculate the supplementary leverage ratio. Therefore, consistent with the capital rule, the agencies are now clarifying that the supplementary leverage ratio provisions in their respective Prompt Corrective Action regulations apply to all banking organizations subject to Category III standards, in addition to banking organizations subject to Category I and II standards.

V. Administrative Law Matters

A. Administrative Procedure Act

The agencies are issuing the interim final rule and its accompanying technical edits without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[15] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [16]

The agencies believe that the public interest is best served by implementing the interim final rule immediately upon publication in the **Federal Register**. As discussed above, the spread of COVID–19 has slowed economic activity in many countries, including the United States. Specifically, the disruptions in financial markets have caused depository institutions to receive inflows of deposits—contributing to the increase of deposits at Federal Reserve Banks—and to hold significant amounts of Treasuries. Notably, these deposits at Federal Reserve Banks and holdings of Treasuries are essential to the normal functioning of the financial markets, especially in times of stress. If depository institutions cannot sustain the rapid increase in deposits at Federal Reserve Banks and holdings of Treasuries, the financial markets would experience a marked decline in financial intermediation and a further increase in general market volatility. Because the interim final rule will mitigate these potential negative effects, the agencies find that there is good cause consistent with the public interest to issue the rule without advance notice and comment.[17] This final rule makes additional technical edits and corrections to more clearly articulate the scope of the supplementary leverage ratio requirements. Because the additional technical edits and corrections are not substantive, the agencies find there is good cause to issue the rule without advance notice and comment.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[18] Because the interim final rule will provide temporary capital relief, the interim final rule is exempt from the APA's delayed effective date requirement.[19] Additionally, the agencies find good cause to publish the technical edits and corrections, which clarify the scope of the supplementary

[13] 12 CFR 6.4(b) (OCC); 12 CFR 208.43(b) (Board); 12 CFR 324.403(b) (FDIC).

[14] 78 FR 62018 (Oct. 11, 2013).

[15] 5 U.S.C. 553.

[16] 5 U.S.C. 553(b)(B).

[17] 5 U.S.C. 553(b)(B); 553(d)(3).

[18] 5 U.S.C. 553(d).

[19] 5 U.S.C. 553(d)(1).

leverage ratio for purposes of the Prompt Corrective Action regulations, with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

While the agencies believe that there is good cause to issue this interim final rule without advance notice and comment and with an immediate effective date, the agencies are interested in the views of the public and request comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[20] If a rule is deemed a ''major rule'' by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[21]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States–based enterprises to compete with foreign-based enterprises in domestic and export markets.[22]

For the same reasons set forth above, the agencies are adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[23] In light of current market uncertainty, the agencies believe that delaying the effective date of the rule would be contrary to the public interest.

As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The interim final rule affects the agencies' current information collections for the Call Reports (OCC OMB No. 1557–0081; Board OMB No. 7100–0036; and FDIC OMB No. 3064–0052) and the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OCC OMB No. 1557–0239; Board OMB No. 7100–0319; and FDIC OMB No. 3064–0159). The revisions to the Call Reports and the FFIEC 101 will be addressed in a separate **Federal Register** notice.

The interim final rule also introduces a new notice opt-in requirement and a requirement for prior approval for distributions, which would affect the agencies' capital rule information collections. The agencies believe that these new requirements will amount to 12 burden hours per respondent (two responses per respondent at six hours per response).

OCC:

Title of Information Collection: Risk-Based Capital Standards: Advanced Capital Adequacy Framework.

OMB Control No.: 1557–0318.

Respondents for Interim Final Rule: 21.

Responses per Respondent: 2.

Burden per Response: 6 hours.

Burden for Interim Final Rule: 252 hours.

Total Burden for Collection: 66,333 hours.

FDIC:

Title of Information Collection: Regulatory Capital Rules.

OMB Control No.: 3064–0153.

Respondents for Interim Final Rule: 7.

Responses per Respondent: 2.

Burden per Response: 6 hours.

Burden for Interim Final Rule: 84 hours.

Total Burden for Collection: 128,140 burden hours.

The agencies request comment on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

The Board has temporarily revised the Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128) and the Recordkeeping and Disclosure Requirements Associated with Regulation Q (FR Q; OMB No. 7100–0313) information collections to accurately reflect certain aspects of this and other interim final rules. On June 15, 1984, OMB delegated to the Board authority under the PRA to temporarily approve a revision to a collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation. The Board's delegated authority requires that the Board, after temporarily approving a collection, solicit public comment to extend information collections for a period not to exceed three years. Therefore, the Board is inviting comment to extend the FR Q information collection for three years, with the revisions discussed below. The Board is not inviting comment on the FR Y–9 information collection for the reasons discussed below.

The Board invites public comment on the FR Q information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments must be submitted on or before July 31, 2020. Comments are invited on the following:

a. Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

[20] 5 U.S.C. 801 *et seq.*

[21] 5 U.S.C. 801(a)(3).

[22] 5 U.S.C. 804(2).

[23] 5 U.S.C. 808.

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the collections.

Final Approval Under OMB Delegated Authority of the Temporary Revision of the Following Information Collection

Report Title: Financial Statements for Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Effective Date: March 31, 2020

Frequency: Quarterly, semiannually, and annually.

Respondents: Bank holding companies, savings and loan holding companies,[24] securities holding companies, and U.S. intermediate holding companies (collectively, HCs).

Estimated number of respondents: FR Y–9C (non-advanced approaches CBLR HCs with less than $5 billion in total assets): 7; FR Y–9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 35; FR Y–9C (non-advanced approaches, non CBLR, HCs with less than $5 billion in total assets): 84; FR Y–9C (non-advanced approaches, non CBLR HCs, with $5 billion or more in total assets): 154; FR Y–9C (advanced approaches HCs): 19; FR Y–9LP: 434; FR Y–9SP: 3,960; FR Y–9ES: 83; FR Y–9CS: 236.

Estimated average hours per response:

Reporting

FR Y–9C (non-advanced approaches CBLR HCs with less than $5 billion in total assets): 29.14 hours; FR Y–9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 35.11; FR Y–9C (non-advanced approaches, non CBLR HCs, with less than $5 billion in total assets): 40.98; FR Y–9C (non-advanced approaches, non CBLR, HCs with $5 billion or more in total assets): 46.95 hours; FR Y–9C (advanced approaches HCs): 48.59 hours; FR Y–9LP: 5.27 hours; FR Y–9SP: 5.40 hours; FR Y–9ES: 0.50 hours; FR Y–9CS: 0.50 hours.

Recordkeeping

FR Y–9C (non-advanced approaches HCs with less than $5 billion in total assets), FR Y–9C (non-advanced approaches HCs with $5 billion or more in total assets), FR Y–9C (advanced approaches HCs), and FR Y–9LP: 1.00 hour; FR Y–9SP, FR Y–9ES, and FR Y–9CS: 0.50 hours.

Estimated annual burden hours:

Reporting

FR Y–9C (non-advanced approaches CBLR HCs with less than $5 billion in total assets): 8,276 hours; FR Y–9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 4,915; FR Y–9C (non-advanced approaches non CBLR HCs with less than $5 billion in total assets): 13,769; FR Y–9C (non-advanced approaches non CBLR HCs with $5 billion or more in total assets): 28,921 hours; FR Y–9C (advanced approaches HCs): 3,693 hours; FR Y–9LP: 9,149 hours; FR Y–9SP: 42,768 hours; FR Y–9ES: 42 hours; FR Y–9CS: 472 hours.

Recordkeeping

FR Y–9C (non-advanced approaches HCs with less than $5 billion in total assets): 620 hours; FR Y–9C (non-advanced approaches HCs with $5 billion or more in total assets): 756 hours; FR Y–9C (advanced approaches HCs): 76 hours; FR Y–9LP: 1,736 hours; FR Y–9SP: 3,960 hours; FR Y–9ES: 42 hours; FR Y–9CS: 472 hours.

General description of report: The FR Y–9C consists of standardized financial statements similar to the Call Reports filed by commercial banks.[25] The FR Y–9C collects consolidated data from HCs and is filed quarterly by top-tier HCs with total consolidated assets of $3 billion or more.[26]

The FR Y–9LP, which collects parent company only financial data, must be submitted by each HC that files the FR Y–9C, as well as by each of its subsidiary HCs.[27] The report consists of standardized financial statements.

The FR Y–9SP is a parent company only financial statement filed semiannually by HCs with total consolidated assets of less than $3 billion. In a banking organization with total consolidated assets of less than $3 billion that has tiered HCs, each HC in the organization must submit, or have the top-tier HC submit on its behalf, a separate FR Y–9SP. This report is designed to obtain basic balance sheet and income data for the parent company, and data on its intangible assets and intercompany transactions.

The FR Y–9ES is filed annually by each employee stock ownership plan (ESOP) that is also an HC. The report collects financial data on the ESOP's benefit plan activities. The FR Y–9ES consists of four schedules: A Statement of Changes in Net Assets Available for Benefits, a Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The FR Y–9CS is a free-form supplemental report that the Board may utilize to collect critical additional data deemed to be needed in an expedited manner from HCs on a voluntary basis. The data are used to assess and monitor emerging issues related to HCs, and the report is intended to supplement the other FR Y–9 reports. The data items included on the FR Y–9CS may change as needed.

Legal authorization and confidentiality: The Board has the authority to impose the reporting and recordkeeping requirements associated with the Y–9 family of reports on bank holding companies (''BHCs'') pursuant to section 5 of the Bank Holding Company Act (''BHC Act''), (12 U.S.C. 1844); on savings and loan holding companies pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act, (12 U.S.C. 1467a(b)(2) and (3)); on U.S. intermediate holding companies (''U.S. IHCs'') pursuant to section 5 of the BHC Act, (12 U.S.C. 1844), as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), (12 U.S.C. 511(a)(1) and 5365); and on securities holding companies pursuant to section 618 of the Dodd-Frank Act, (12 U.S.C. 1850a(c)(1)(A)). The FR Y–9 series of reports, and the recordkeeping requirements set forth in the respective instructions to each report, are mandatory, except for the FR Y–9CS, which is voluntary. With respect to the FR Y–9C, Schedule HI's memoranda item 7(g), Schedule HC–P's item 7(a), and Schedule HC–P's item 7(b) are considered confidential commercial and financial information under exemption 4 of the Freedom of Information Act (''FOIA''), (5 U.S.C. 552(b)(4)), as is Schedule HC's memorandum item 2.b. for both the FR Y–9C and FR Y–9SP reports.

[24] An SLHC must file one or more of the FR Y–9 series of reports unless it is: (1) A grandfathered unitary SLHC with primarily commercial assets and thrifts that make up less than 5 percent of its consolidated assets; or (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

[25] The Call Reports consist of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $5 Billion (FFIEC 051), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041) and the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031).

[26] Under certain circumstances described in the FR Y–9C's General Instructions, HCs with assets under $3 billion may be required to file the FR Y–9C.

[27] A top-tier HC may submit a separate FR Y–9LP on behalf of each of its lower-tier HCs.

Aside from the data items described above, the remaining data items on the FR Y–9 reports are generally not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information (12 CFR part 261), however, a respondent may request confidential treatment for any data items the respondent believes should be withheld pursuant to a FOIA exemption. The Board will review any such request to determine if confidential treatment is appropriate, and will inform the respondent if the request for confidential treatment has been denied.

To the extent that the instructions, to the FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9ES reports, each respectively direct a financial institution to retain the workpapers and related materials used in preparation of each report, such material would only be obtained by the Board as part of the examination or supervision of the financial institution. Accordingly, such information may be considered confidential pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). In addition, the financial institution's workpapers and related materials may also be protected by exemption 4 of the FOIA, to the extent such financial information is treated as confidential by the respondent (5 U.S.C. 552(b)(4)).

Current Actions: On April 1, 2020, the Board announced that it had temporarily revised the instructions to the FR Y–9C to accurately reflect the calculation of the supplementary leverage ratio pursuant to the Board's interim final rule (the ''holding company SLR IFR'') that revised, on a temporary basis for bank holding companies, savings and loan holding companies, and U.S. intermediate holding companies of foreign banking organizations, the calculation of total leverage exposure, the denominator of the supplementary leverage ratio in the Board's capital rule, to exclude the on-balance sheet amounts of Treasuries and deposits at Federal Reserve Banks.[28] This temporary revision to the FR Y–9C was necessary because holding companies were previously instructed to report their supplementary leverage ratio as reported in the FFIEC 101; because the FFIEC 101 was not revised to account for the holding company SLR IFR, retaining these instructions would have resulted in inaccurate reporting by holding companies on the FR Y–9C.

The agencies now intend to revise the FFIEC 101 to account for this interim final rule and the holding company SLR IFR. Following such revisions, holding companies would be able to report their supplementary leverage ratio on the FR Y–9C using the data reported on the FFIEC 101, as they did previously. Therefore, the temporary revisions to the FR Y–9C to account for the holding company SLR IFR, announced by the Board on April 1, 2020, are no longer necessary, and the Board has retracted these revisions. The Board has determined that this revision to the FR Y–9C must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would result in the collection of inaccurate information, and would interfere with the Board's ability to perform its statutory duties.

Because these revisions result completely revert the temporary revisions made by the Board to the FR Y–9C in connection with the holding company SLR IFR, the resulting instructions regarding the supplementary leverage ratio are identical to those adopted following notice and comment. Therefore, the Board does not intend to request further comment in order to retain these instructions.

Final Approval Under OMB Delegated Authority of the Temporary Revision of, and Solicitation of Comment To Extend for Three Years, With Revision, of the Following Information Collections

Title of Information Collection: Recordkeeping and Disclosure Requirements Associated with Regulation Q.

Agency form number: FR Q.

OMB control number: 7100–0313.

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

Respondents: State member banks (SMBs), bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), savings and loan holding companies (SLHCs), and global systemically important bank holding companies (GSIBs).

Legal authorization and confidentiality: This information collection is authorized by section 38(o) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(c)), section 908 of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)(1)), section 9(6) of the Federal Reserve Act (12 U.S.C. 324), and section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)). The obligation to respond to this information collection is mandatory. If a respondent considers the information to be trade secrets and/or privileged such information could be withheld from the public under the authority of the Freedom of Information Act (5 U.S.C. 552(b)(4)). Additionally, to the extent that such information may be contained in an examination report such information could also be withheld from the public (5 U.S.C. 552 (b)(8)).

Estimated number of respondents: 1,431 (of which 19 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios

Recordkeeping (Ongoing)—16.
Standardized Approach
Recordkeeping (Initial setup)—122.
Recordkeeping (Ongoing)—20.
Disclosure (Initial setup)—226.25.
Disclosure (Ongoing quarterly)—131.25.

Advanced Approach

Recordkeeping (Initial setup)—460.
Recordkeeping (Ongoing)—540.77.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—328.
Disclosure (Ongoing)—5.78.
Disclosure (Ongoing quarterly)—41.
Disclosure (Table 13 quarterly)—5.

Risk-based Capital Surcharge for GSIBs

Recordkeeping (Ongoing)—0.5.
Reporting (Twice)—6.

Total estimated annual burden: 1,136 hours initial setup, 80,245 hours for ongoing.

Current actions: The Board has temporarily revised the FR Q information collection to reflect a revision to the disclosure requirements contained in the Board's Regulation Q. Generally, § 217.173 of the Board's Regulation Q requires each advanced approaches Board-regulated institution and a Category III Board-regulated institution that is required to publicly disclose its supplementary leverage ratio pursuant to § 217.172(d) of Regulation Q to make certain disclosures, which are listed in Table 13 of § 217.173. Pursuant to this interim final rule, a Board-regulated institution that is required to make such disclosures will be required exclude the balance sheet carrying value of U.S. Treasury securities and funds on deposit at a Federal Reserve Bank from its disclosures under Table 13 of § 217.173. The interim final rule also introduces a new notice opt-in requirement and a requirement for prior approval for distributions, which would affect the agencies' capital rule information collections. The agencies believe that these new requirements will amount to 12 burden hours per respondent (two responses per respondent at six hours per response).

Additionally, the Board has temporarily revised the FR Q information collection to include the notification that an electing depository

[28] 85 FR 20578 (April 14, 2020).

institution must provide to its primary Federal banking regulator, as well as the request for approval that an electing depository institution must submit to its primary Federal banking regulator prior to making certain capital distributions.

The Board has determined that these revisions to the FR Q described above must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would result in the collection of inaccurate information, and would interfere with the Board's ability to perform its statutory duties.

The Board also invites comment on a proposal to extend the FR Y–Q for three years, with the revision described above. This revision would be effective for FR Q through March 31, 2021, the date after which the exclusions in this interim final rule will no longer be effective.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[29] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[30] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the agencies are not issuing a notice of proposed rulemaking. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the agencies seek comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[31] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[32] For the reasons described above, the agencies find good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date.

As such, the final rule will be effective on immediately. Nevertheless, the agencies seek comment on RCDRIA.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[33] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the interim final rule in a simple and straightforward manner. The agencies invite comments on whether there are additional steps it could take to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand? What else could we do to make the regulation easier to understand?

G. Unfunded Mandates Reform Act of 1995

As a general matter, the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. *See* 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for this interim final rule, the OCC has not prepared an economic analysis of the rule under the UMRA.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, Federal savings associations, National banks, Risk.

12 CFR Part 6

Federal savings associations, National banks, Prompt corrective action.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Consumer protection, Crime, Currency, Federal Reserve System, Flood insurance, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 217

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Authority and Issuance

For the reasons stated in the joint preamble, the Office of the Comptroller of the Currency amends part 3 of chapter I of title 12, Code of Federal Regulations as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, 5412(b)(2)(B), and Pub. L. 116–136, 134 Stat. 281.

■ 2. Section 3.304 is added to read as follows:

[29] 5 U.S.C. 601 *et seq.*

[30] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total average annual receipts of $41.5 million or less. *See* 13 CFR 121.201.

[31] 12 U.S.C. 4802(a).

[32] 12 U.S.C. 4802.

[33] 12 U.S.C. 4809.

§ 3.304 Temporary exclusions from total leverage exposure.

(a) *In general.* Subject to paragraphs (b) through (g) of this section, and notwithstanding any other requirement in this part, a national bank or Federal savings association, when calculating on-balance sheet assets as of each day of a reporting quarter for purposes of determining the national bank's or Federal savings association's total leverage exposure under § 3.10(c)(4), may exclude the balance sheet carrying value of the following items:

(1) U.S. Treasury securities; and

(2) Funds on deposit at a Federal Reserve Bank.

(b) *Opt-in period.* Before applying the relief provided in paragraph (a) of this section, a national bank or Federal savings association must first notify the OCC before July 1, 2020.

(c) *Calculation of relief.* When calculating on-balance sheet assets as of each day of a reporting quarter, the relief provided in paragraph (a) of this section applies from the beginning of the reporting quarter in which the national bank or Federal savings association filed an opt-in notice through the termination date specified in paragraph (d) of this section.

(d) *Termination of exclusions.* This section shall cease to be effective after the reporting period that ends March 31, 2021.

(e) *Custody bank.* A custody bank must reduce the amount in § 3.10(c)(4)(ii)(J)(*1*) (to no less than zero) by any amount excluded under paragraph (a)(2) of this section.

(f) *Disclosure.* Notwithstanding Table 13 to § 3.173, a national bank or Federal savings association that is required to make the disclosures pursuant to § 3.173 must exclude the items excluded pursuant to paragraph (a) of this section from Table 13 to § 3.173.

(g) *OCC approval for distributions.* During the calendar quarter beginning on July 1, 2020, and until March 31, 2021, no national bank or Federal savings association that has opted in to the relief provided under paragraph (a) of this section may make a distribution, or create an obligation to make such a distribution, without prior OCC approval. When reviewing a request under this paragraph (g), the OCC will consider all relevant factors, including whether the distribution would be contrary to the safety and soundness of the national bank or Federal savings association; the nature, purpose, and extent of the request; and the particular circumstances giving rise to the request.

PART 6—PROMPT CORRECTIVE ACTION

■ 3. The authority citation for part 6 continues to read as follows:

Authority: 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

■ 4. Amend § 6.4 by revising paragraphs (b)(2)(iv)(B) and (b)(3)(iv)(B) to read as follows:

§ 6.4 Capital measures and capital categories.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(B) With respect to an advanced approaches or Category III national bank or advanced approaches or Category III Federal savings association, the national bank or Federal savings association has a supplementary leverage ratio of 3.0 percent or greater; and

* * * * *

(3) * * *

(iv) * * *

(B) With respect to an advanced approaches or Category III national bank or advanced approaches or Category III Federal savings association, on January 1, 2018, and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of less than 3.0 percent.

* * * * *

Authority and Issuance

For the reasons stated in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 5. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78*l*(i), 780–4(c)(5), 78q, 78q-1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 6. Section 208.43(b)(2)(iv)(B) and (b)(3)(iv)(B) are revised to read as follows:

§ 208.43 Capital measures and capital categories.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(B) With respect to an advanced approaches bank or bank that is a Category III Board-regulated institution (as defined in § 217.2 of this chapter), the bank has a supplementary leverage ratio of 3.0 percent or greater; and

* * * * *

(3) * * *

(iv) * * *

(B) With respect to an advanced approaches bank or bank that is a Category III Board-regulated institution (as defined in § 217.2 of this chapter), the bank has a supplementary leverage ratio of less than 3.0 percent.

* * * * *

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

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

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, 5371 note, and sec. 4012, Pub. L. 116–136, 134 Stat. 281.

Subpart G—Transition Provisions

■ 8. Revise § 217.303 to read as follows:

§ 217.303 Temporary exclusions from total leverage exposure.

(a) *In general.* Subject to paragraphs (b) through (g) of this section and notwithstanding any other requirement in this part, when calculating on-balance sheet assets as of each day of a reporting quarter for purposes of determining the Board-regulated institution's total leverage exposure under § 217.10(c)(4), a Board-regulated institution that is a depository institution holding company or a U.S. intermediate holding company must, and a Board-regulated institution that is a state member bank may, exclude the balance sheet carrying value of the following items:

(1) U.S. Treasury securities; and

(2) Funds on deposit at a Federal Reserve Bank.

(b) *Opt-in period.* Before applying the relief provided in paragraph (a) of this section, a state member bank must first notify the Board before July 1, 2020.

(c) *Calculation of relief.* When calculating on-balance sheet assets as of each day of a reporting quarter, the relief provided in paragraph (a) of this section applies from the beginning of the reporting quarter in which the state member bank filed an opt-in notice

through the termination date specified in paragraph (d) of this section.

(d) *Termination of exclusions.* This section shall cease to be effective after the reporting period that ends March 31, 2021.

(e) *Custodial banking organizations.* A custodial banking organization must reduce the amount in § 217.10(c)(4)(ii)(J)(*1*) (to no less than zero) by any amount excluded under paragraph (a)(2) of this section.

(f) *Disclosure.* Notwithstanding Table 13 to § 217.173, a Board-regulated institution that is required to make the disclosures pursuant to § 217.173 must exclude the items excluded pursuant to paragraph (a) of this section from Table 13 to § 217.173.

(g) *Board approval for distributions.* During the calendar quarter beginning on July 1, 2020, and until March 31, 2021, no state member bank that has opted in to the relief provided under paragraph (a) of this section may make a distribution, or create an obligation to make such a distribution, without prior Board approval. When reviewing a request under this paragraph (g), the Board will consider all relevant factors, including whether the distribution would be contrary to the safety and soundness of the state member bank; the nature, purpose, and extent of the request; and the particular circumstances giving rise to the request.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Federal Deposit Insurance Corporation amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY OF FDIC–SUPERVISED INSTITUTIONS

■ 9. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note); Pub. L. 115–174; Pub. L. 116–136, 134 Stat. 281.

Subpart G—Transition Provisions

§ 324.304 [Redesignated as § 324.305]

■ 10. Redesignate § 324.304 as § 324.305.

■ 11. A new § 324.304 is added to read as follows:

§ 324.304 Temporary exclusions from total leverage exposure.

(a) *In general.* Subject to paragraphs (b) through (g) of this section, and notwithstanding any other requirement in this part, an FDIC-supervised institution, when calculating on-balance sheet assets as of each day of a reporting quarter for purposes of determining the FDIC-supervised institution's total leverage exposure under § 324.10(c)(4), may exclude the balance sheet carrying value of the following items:

(1) U.S. Treasury securities; and

(2) Funds on deposit at a Federal Reserve Bank.

(b) *Opt-in period.* Before applying the relief provided in paragraph (a) of this section, an FDIC-supervised institution must first notify the appropriate regional director of the FDIC Division of Risk Management Supervision before July 1, 2020.

(c) *Calculation of relief.* When calculating on-balance sheet assets as of each day of a reporting quarter, the relief provided in paragraph (a) of this section applies from the beginning of the reporting quarter in which the FDIC-supervised institution filed an opt-in notice through the termination date specified in paragraph (d) of this section.

(d) *Termination of exclusions.* This section shall cease to be effective after the reporting period that ends March 31, 2021.

(e) *Custody bank.* A custody bank must reduce the amount in § 324.10(c)(4)(ii)(J)(*1*) (to no less than zero) by any amount excluded under paragraph (a)(2) of this section.

(f) *Disclosure.* Notwithstanding Table 13 to § 324.173, an FDIC-supervised institution that is required to make the disclosures pursuant to § 324.173 must exclude the items excluded pursuant to paragraph (a) of this section from Table 13 to § 324.173.

(g) *FDIC approval for distributions.* During the calendar quarter beginning on July 1, 2020, and until March 31, 2021, no FDIC-supervised institution that has opted in to the relief provided under paragraph (a) of this section may make a distribution, or create an obligation to make such a distribution, without prior FDIC approval. When reviewing a request under this paragraph (g), the FDIC will consider all relevant factors, including whether the distribution would be contrary to the safety and soundness of the FDIC-supervised institution; the nature, purpose, and extent of the request; and the particular circumstances giving rise to the request.

Subpart H—Prompt Corrective Action

■ 12. Section 324.403(b)(2)(vi) and (b)(3)(v) are revised to read as follows:

§ 324.403 Capital measures and capital categories definitions.

* * * * *

(b) * * *

(2) * * *

(vi) Beginning January 1, 2018, an advanced approaches or Category III FDIC–supervised institution will be deemed to be ''adequately capitalized'' if it satisfies paragraphs (b)(2)(i) through (v) of this section and has a supplementary leverage ratio of 3.0 percent or greater, as calculated in accordance with § 324.10.

(3) * * *

(v) Beginning January 1, 2018, an advanced approaches or Category III FDIC–supervised institution will be deemed to be ''undercapitalized'' if it has a supplementary leverage ratio of less than 3.0 percent, as calculated in accordance with § 324.10.

* * * * *

Brian P. Brooks,

First Deputy Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about May 14, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–10962 Filed 5–29–20; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket No. ID OCC–2019–0013]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. OP–1680]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 364

RIN 3064–ZA10

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133–AF05

Interagency Policy Statement on Allowances for Credit Losses

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and National Credit Union Administration (NCUA).

ACTION: Final interagency policy statement.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration (collectively, the agencies) are issuing an interagency policy statement on allowances for credit losses (ACLs). The agencies are issuing this interagency policy statement in response to changes to U.S. generally accepted accounting principles (GAAP) as promulgated by the Financial Accounting Standards Board (FASB) in Accounting Standards Update (ASU) 2016–13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* and subsequent amendments issued since June 2016. These updates are codified in Accounting Standards Codification (ASC) Topic 326, *Financial Instruments—Credit Losses* (FASB ASC Topic 326). This interagency policy statement describes the measurement of expected credit losses under the current expected credit losses (CECL) methodology and the accounting for impairment on available-for-sale debt securities in accordance with FASB ASC Topic 326; the design, documentation, and validation of expected credit loss estimation processes, including the internal controls over these processes; the maintenance of appropriate ACLs; the responsibilities of boards of directors and management; and examiner reviews of ACLs.

DATES: The interagency policy statement is available on June 1, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: Amanda Freedle, Senior Accounting Policy Advisor, Office of the Chief Accountant, (202) 649–6280; or Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490; or for persons who are hearing impaired, TTY, (202) 649–5597.

BOARD: Lara Lylozian, Chief Accountant-Supervision, (202) 475–6656; or Kevin Chiu, Accounting Policy Analyst, (202) 912–4608, Division of Supervision and Regulation; or David W. Alexander, Senior Counsel, (202) 452–2877; or Asad Kudiya, Senior Counsel, (202) 475–6358, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Shannon Beattie, Chief, Accounting and Securities Disclosure Section, (202) 898–3952; or John Rieger, Chief Accountant, (202) 898–3602; or Andrew Overton, Examination Specialist (Bank Accounting), (202) 898–8922; Division of Risk Management Supervision; or Michael Phillips, Counsel, (202) 898–3581, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

NCUA: Technical information: Alison Clark, Chief Accountant, Office of Examination and Insurance, (703) 518–6611 or *Legal information:* Ariel Pereira, Staff Attorney, Office of General Counsel, (703) 548–2778. National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 17, 2019, the agencies requested comment for 60 days on a proposed Interagency Policy Statement on Allowances for Credit Losses [1] (proposed Policy Statement), which would maintain conformance with GAAP and FASB ASC Topic 326.

FASB ASC Topic 326 replaces the incurred loss methodology for financial assets measured at amortized cost, net investments in leases, and certain off-balance-sheet credit exposures, and modifies the accounting for impairment on available-for-sale debt securities. FASB ASC Topic 326 applies to all banks, savings associations, credit unions, and financial institution holding companies (collectively, institutions), regardless of size, that file regulatory reports for which the reporting requirements conform to GAAP.[2] The agencies are maintaining conformance with GAAP and consistency with FASB ASC Topic 326 through the issuance of the final Interagency Policy Statement on Allowances for Credit Losses (final Policy Statement).[3]

The agencies have issued guidelines establishing standards for safety and soundness, including operational and managerial standards that address such matters as internal controls and information systems, an internal audit system, loan documentation, credit underwriting, asset quality, and earnings that should be appropriate for an institution's size, complexity, and risk profile.[4] The principles described in the final Policy Statement are consistent with these guidelines.

The final Policy Statement does not prescribe requirements for estimating expected credit losses. It describes the measurement of expected credit losses in accordance with FASB ASC Topic 326; the design, documentation, and validation of expected credit loss

[1] 84 FR 55510 (October 17, 2019).

[2] *See* section 37(a) of the Federal Deposit Insurance Act and section 202(a) of the Federal Credit Union Act. Under these statutory provisions, the accounting principles applicable to reports or statements required to be filed by all insured depository institutions with the Federal banking agencies (OCC, Board, FDIC) or by all federally insured credit unions with assets of $10 million or more with the NCUA Board must be uniform and consistent with GAAP. Furthermore, regardless of asset size, all federally insured credit unions must comply with GAAP for certain financial reporting requirements relating to charges for loan losses. *See* 12 U.S.C. 1831n(a)(2)(A), 12 U.S.C. 1782(a)(6)(C), and 12 CFR 702.402(d).

[3] If the agencies determine that a particular accounting principle within GAAP, including a private company accounting alternative, is inconsistent with the statutorily specified supervisory objectives, those agencies may prescribe an accounting principle for regulatory reporting purposes that is no less stringent than GAAP. In such a situation, an institution would not be permitted to use that particular private company accounting alternative or other accounting principle within GAAP for regulatory reporting purposes.

[4] *See* Appendix A to 12 CFR part 30 (OCC), Appendix D to 12 CFR part 208 (Board), and Appendix A to 12 CFR part 364 (FDIC), which were adopted by the banking agencies for depository institutions pursuant to section 39 of the Federal Deposit Insurance Act. *See* 12 U.S.C. 1831p–1. Federally insured credit unions should refer to section 206(b)(1) of the Federal Credit Union Act (12 U.S.C. 1786) and 12 CFR 741.3.

estimation processes, including the internal controls over these processes; the maintenance of appropriate ACLs; the responsibilities of boards of directors and management; and examiner reviews of ACLs.

The comment period for the proposed Policy Statement ended on December 16, 2019. The agencies received 23 comment letters from trade associations, financial institutions, and individuals. Several commenters raised issues outside of the scope of the proposed Policy Statement that were not addressed in the final Policy Statement.[5] General comments on the notice and agency responses are summarized in Section II. Specific comments on the proposed Policy Statement and changes to the final Policy Statement the agencies made in response to these comments are described in Section III. The Paperwork Reduction Act is addressed in Section IV. Section V presents the final Policy Statement.

The final Policy Statement becomes applicable to an institution upon that institution's adoption of FASB ASC Topic 326.[6] The following policy statements are no longer effective for an institution upon its adoption of FASB ASC Topic 326: The December 2006 Interagency Policy Statement on the Allowance for Loan and Lease Losses;[7] the July 2001 Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions;[8] and the NCUA's May 2002 Interpretive Ruling and Policy Statement 02–3, Allowance for Loan and Lease Losses Methodologies and Documentation for Federally Insured Credit Unions[9] (collectively, ALLL Policy Statements). The agencies will rescind the ALLL Policy Statements once FASB ASC Topic 326 is effective for all institutions.

II. General Comments on the Proposed Policy Statement

Many commenters expressed support for the proposed Policy Statement. These commenters noted that the proposal is generally consistent with FASB ASC Topic 326 and retains the flexibility and judgmental nature of GAAP. Commenters also stated that supervisory practices and principles were clearly communicated. Some commenters appreciated the agencies' statement that examiners generally should accept an institution's ACL estimates and not seek adjustments to the ACLs when management has provided adequate support for the loss estimation process employed, and the ACL balances and the assumptions used in the ACL estimates are in accordance with GAAP and regulatory reporting requirements.

A number of commenters requested that the agencies include information in the final Policy Statement to provide additional guidance around technical aspects of FASB ASC Topic 326 and reduce the amount of management judgment required to implement the accounting standard. For example, commenters requested additional clarity on segmentation, data availability, estimating expected losses for credit cards, and accounting for loans transferred between held-for-sale and held-for investment classifications.

Requests were also made for the agencies to require certain measurement approaches or methods in places where FASB ASC Topic 326 provides flexibility, such as requiring a single expected credit loss estimation method, defining the reasonable and supportable forecast period, providing an economic forecast or a simple model that can be used by all institutions, and aligning the agencies' long-standing practice for collateral-dependent loans with the collateral-dependent practical expedient in FASB ASC Topic 326.[10]

The agencies considered these requests and decided not to limit flexibility in implementing FASB ASC Topic 326 by narrowing options or defining terms that are not defined in GAAP. The final Policy Statement does not endorse a specific loss estimation method or provide more detail about specific implementation choices, including providing templates for certain methods. FASB ASC Topic 326 allows management to exercise judgment to best reflect its estimate of expected credit losses given the institution's own unique set of facts and circumstances. Specific assumptions and determinations appropriate for one institution may not be appropriate for all other institutions. The final Policy Statement recognizes that different approaches and assumptions may be used by management in estimating expected credit losses. Prescribing only one method for use in estimating expected credit losses or narrowly defining terms or concepts introduced in ASC Topic 326 in the final Policy Statement could narrow the flexibility and scalability provided in FASB ASC Topic 326.

While outside of the scope of the final Policy Statement, institutions interested in more detailed implementation examples may continue to refer to the examples included in FASB ASC Topic 326 as well as FASB Staff Q&A—Topic 326, No. 1, ''Whether the Weighted-Average Remaining Maturity Method is an Acceptable Method to Estimate Credit Losses''[11] and FASB Staff Q&A—Topic 326, No. 2, ''Developing an Estimate of Expected Credit Losses on Financial Assets.''[12] Institutions may also refer to training events such as the interagency webinars the agencies conducted during 2018 and 2019. These webinars reviewed acceptable loss estimation methods including the open pool loss rate method, vintage method for closed pools, weighted average remaining maturity (WARM) method, and the probability of default (PD)/loss given default (LGD) method. The agencies encourage institution management to discuss FASB ASC Topic 326 and any related questions or concerns with its board of directors, audit committee, industry peers, external auditors, and primary federal regulator.[13]

[5] For example, the agencies received comments requesting exemptions from applying FASB ASC Topic 326. Other commenters requested adjustments to regulatory capital requirements upon adoption of FASB ASC Topic 326.

[6] As noted in ASU 2019–10, FASB ASC Topic 326 is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years, for public business entities that meet the definition of a Securities Exchange Commission (SEC) filer, excluding entities eligible to be small reporting companies as defined by the SEC. FASB ASC Topic 326 is effective for all other entities for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. For all entities, early application of FASB ASC Topic 326 is permitted as set forth in ASU 2016–13.

[7] *See* Financial Institution Letter (FIL) 105–2006 (FDIC); Supervision and Regulation (SR) Letter 06–17 (FRB); Accounting Bulletin 06–01 (NCUA); and Bulletin 2006–47 (OCC). The final Policy Statement does not affect Attachment 1 to the December 2006 Interagency Policy Statement on the Allowance for Loan and Lease Losses. Attachment 1 has been revised through a separate interagency notice published elsewhere in this issue of the **Federal Register**.

[8] *See* FIL–63–2001 (FDIC); SR 01–17 (FRB); and Bulletin 2001–37 (OCC).

[9] *See* Interpretive Ruling Policy Statement (IRPS) 02–3.

[10] The regulatory reporting requirement to apply the collateral-dependent practical expedient in ASC 326–20–35–5 for collateral-dependent loans, regardless of whether foreclosure is probable, was retained by the agencies to achieve safety and soundness objectives.

[11] *See https://www.fasb.org/jsp/FASB/Document_C/DocumentPage&cid=1176171932989.*

[12] *See https://www.fasb.org/jsp/FASB/Document_C/DocumentPage&cid=1176172970152.*

[13] Some commenters noted that different messages may be provided by various parties interested in FASB ASC Topic 326. The agencies meet regularly with many of these parties, including external auditors, the FASB, the SEC, the Public Company Accounting Oversight Board (PCAOB), and industry trade associations, to discuss FASB ASC Topic 326 to promote consistency in messaging regarding implementation of the accounting standard.

Commenters expressed concern about the level of documentation needed to support the assumptions and judgments included in an institution's estimate of expected credit losses. It is consistent with safe and sound banking practices to maintain documentation that is appropriate for an institution's size as well as the nature, scope, and risk of its activities and include clear explanations of the supporting analysis and rationale used in estimating expected credit losses under FASB ASC Topic 326. A third party that is independent of the ACL processes, whether internal or external, should also be able to understand the methodology used to determine estimated credit losses through review of the institution's ACL documentation.

The final Policy Statement is one of many steps the agencies have undertaken in assisting institutions with implementing FASB ASC Topic 326. The agencies will continue to monitor implementation activities through routine supervisory activities and will determine if any additional materials or outreach may be needed. The agencies recognize that FASB ASC Topic 326 may present implementation challenges, particularly for small community institutions and credit unions. The agencies may individually issue additional information to provide clarification beyond what is presented in the final Policy Statement as deemed necessary.

III. Specific Comments on the Proposed Policy Statement

A. Technical Revisions to the Final Policy Statement

Qualitative Factor Adjustments for Debt Securities

The proposed Policy Statement included a list of qualitative factor adjustments that may be considered when estimating expected credit losses for debt securities. Two commenters asked the agencies to clarify whether qualitative factor adjustments should also be considered for available-for-sale debt securities.

Expected credit losses for available-for-sale debt securities are measured using a discounted cash flow method. When estimating expected cash flows, institutions should consider past events, current conditions, and reasonable and supportable forecasts. While the qualitative factors included in the proposed Policy Statement may affect the institution's cash flow expectations used in the discounted cash flow calculation, the agencies have no expectation for institutions to develop and apply a separate qualitative analysis outside of the discounted cash flow model.

Consistent with FASB ASC Topic 326, qualitative factor adjustments should be considered and applied, as needed, to held-to-maturity debt securities. The final Policy Statement has been revised to indicate that the list of qualitative factor adjustments that may be considered for debt securities are specific to held-to-maturity debt securities.

Purchased Credit-Deteriorated (PCD) Assets

The proposed Policy Statement states that the non-credit discount associated with PCD assets and recorded at the time of acquisition should be accreted into interest income over the remaining life of the PCD assets on a level-yield basis. One commenter noted that the proposed Policy Statement does not specify whether the accretion of the non-credit discount should continue if the PCD asset is placed on nonaccrual status.

The determination of nonaccrual status for regulatory reporting purposes is outside of the scope of the final Policy Statement and institutions should continue to refer to existing regulatory reporting instructions [14] for information on reporting nonaccrual PCD assets. The Federal Financial Institutions Examination Council (FFIEC) will consider whether clarifications or amendments to the regulatory reporting instructions are necessary. There were no changes made to the final Policy Statement for this topic.

Accrued Interest Receivable

The proposed Policy Statement describes the independent accounting policy elections related to estimating expected credit losses for accrued interest receivable. It further states that these accounting policy elections are made upon adoption of FASB ASC Topic 326 and may differ by financial asset portfolio.

One commenter noted that FASB ASC Topic 326 allows accounting policy elections for accrued interest receivable to be made by class of financing receivable or major security-type level, and the proposed Policy Statement could limit the use of these accounting policy elections by requiring elections by portfolio.

The agencies did not intend to limit or restrict the use of accounting policy elections related to accrued interest receivable. The final Policy Statement has been revised to align the terminology with FASB ASC Topic 326. Accounting policy elections related to accrued interest receivable may be made by class of financing receivable or major security-type.

Estimated Credit Losses for Off-Balance-Sheet Credit Exposures

The proposed Policy Statement explained that expected credit losses for off-balance-sheet financial assets are estimated using the same methods applied to similar on-balance-sheet financial assets. The estimate of expected credit losses is recorded as a liability, separate from the ACLs, because cash has not yet been disbursed to fund the contractual obligation to extend credit. The proposed Policy Statement further explained that the amount needed to adjust the liability for expected credit losses for off-balance-sheet credit exposures is reported as an other noninterest expense, consistent with current regulatory reporting instructions for the Consolidated Reports of Condition and Income.

Four commenters noted that FASB ASC Topic 326 requires the amount needed to adjust the liability for expected credit losses for off-balance-sheet credit exposures to be reported as part of credit loss expense. Commenters interpreted that this amount should be included in the provision for credit losses (PCL) rather than other noninterest expense for financial reporting purposes.

In response to the commenters' recommendation, the FFIEC will reconsider whether to modify the instructions for the Consolidated Reports of Condition and Income. The NCUA Call Report Form 5300 currently requires that the expense needed to adjust the liability for expected credit losses for off-balance-sheet credit exposures should be reported as a separate provision expense in the income statement. Additionally, the final Policy Statement has been revised to eliminate any reference to the income statement category in which amounts needed to adjust the liability for expected credit losses for off-balance-sheet credit exposures should be reported in the agencies' regulatory reports.

B. Estimating Credit Losses With Limited Loss History or Limited Losses

Some commenters requested that the final Policy Statement provide further guidance on how to estimate expected

[14] Institutions required to file the Consolidated Reports of Condition and Income (Call Report) should refer to instruction pages RC–N–2 and RC–N–3. Institutions required to file the Consolidated Financial Statements of Holding Companies (FR Y–9C) should refer to instruction page HC–N–2. Credit unions required to file the NCUA Call Report Form 5300 should refer to the instructions for Schedule A—Specialized Lending.

credit losses when there is limited loss history or limited losses. When an institution has a long history of data with limited credit losses, management is not expected to default to external or peer data to determine expected credit losses. Existing data should be evaluated to determine if adjustments are needed to reflect changes in items such as the nature of the assets or underwriting terms. When an institution has loss data covering only recent periods, historical loss information should be supplemented with external or peer data, industry data, or qualitative factor adjustments to ensure that expected credit losses are appropriately captured.

Management should evaluate the facts and circumstances unique to the institution's financial asset portfolios to determine the appropriate course of action with respect to data needs. The final Policy Statement provides sufficient flexibility with respect to management's evaluation of data needs and was not modified in response to these concerns.

C. Comparing Actual Credit Losses to Estimated Credit Losses

Three commenters were concerned about the agencies' suggestion in the proposed Policy Statement to evaluate the ACLs by comparing actual credit losses to estimated credit losses. As noted by one of these commenters, actual charge-off experience will not agree to the quarterly estimate of expected credit losses under FASB ASC Topic 326. Additionally, one commenter stated that this analysis could not be relied upon without looking at other metrics.

The agencies are not requiring institutions to compare actual credit losses to estimated credit losses because there are limitations in making such a comparison. Although not required, the agencies consider this comparison useful in analyzing and evaluating the ACLs. The comparison can assist in evaluating the appropriateness of the ACLs each quarter and by informing management about the reasonableness of judgments applicable to future periods. This comparison is only one point of information available. Other methods, such as ratio analysis,[15] may also provide useful information in analyzing the ACLs. Management may also develop other methods, metrics, or tools not described in the final Policy Statement to assist in the evaluation and analysis of the institution's ACLs.

The agencies are retaining the suggestion to compare actual credit losses to estimated credit losses in the final Policy Statement.

D. Responsibilities of the Board of Directors

Several commenters stated that the responsibilities of the board of directors included in the proposed Policy Statement should be simplified. One of these commenters stated that the responsibilities should be specifically defined.

The agencies intend for the board of directors' responsibilities to be appropriate for the institution's size, complexity, and risk profile. Given the judgmental nature of the ACL methods under FASB ASC Topic 326, it is important to allow each institution's board of directors to identify new activities that the board may use to oversee management's activities. The proposed Policy Statement may also include oversight activities that are not applicable to certain institutions. To provide flexibility for each institution and its individual circumstances, which may change over time, the agencies have not made any changes to the responsibilities of the board of directors in the final Policy Statement.

E. Reliance on External Auditor To Perform Management Validation of ACLs

Commenters asked that the final Policy Statement clearly allow institutions to rely on external audit firms to perform management's validation of ACLs to minimize additional expense. External auditors are subject to applicable auditor independence standards.[16] The external auditor's performance of management's responsibilities may impair the external auditor's independence under those standards if the external auditor also performs an independent audit of the institution's financial statements. The final Policy Statement explains that a party independent of the ACL processes should validate the ACLs. An independent party may be from an internal audit function, a risk management unit of the institution, or a contracted third party.

The agencies added language to the final Policy Statement to clarify that external auditor independence may be impaired if the external auditor performs validation activities for management when the external auditor also conducts the institution's independent financial statement audit.

F. Comments Specific to Credit Unions

Several credit unions commented on the proposed Policy Statement and emphasized that FASB ASC Topic 326 should not apply to credit unions. Many of these commenters requested that credit unions be exempted from FASB ASC Topic 326. These exemptions are outside of the scope of the final Policy Statement and will be addressed in other communications by the NCUA, if necessary.

At least three commenters requested that the NCUA consider and evaluate the impact FASB ASC Topic 326 will have on credit union capital levels. Although the final Policy Statement does not address capital requirements, the NCUA is considering a rulemaking that will address the potential impact to regulatory net worth.[17]

IV. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[18] the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The final Policy Statement does not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

V. Final Interagency Policy Statement on Allowances for Credit Losses

The text of the final interagency Policy Statement is as follows:

[15] As noted in the final Policy Statement, management may also use peer comparisons to gain insight into its own ACL estimates. Management should apply caution when performing peer comparisons as there may be significant differences among peer institutions in the mix of financial asset portfolios, reasonable and supportable forecast period assumptions, reversion techniques, the data used for historical loss information and other factors.

[16] For example, external auditors are subject to the annual audit and reporting requirements in 12 CFR part 363 that apply to certain FDIC-insured institutions. 12 CFR 363.3(f) states that ''the independent public accountant must comply with the independence standards and interpretations of the AICPA, the SEC, and the PCAOB. To the extent that any of the rules within any of these standards (AICPA, SEC, and PCAOB) is more or less restrictive than the corresponding rule in the other independence standards, the independent accountant must comply with the more restrictive rule.'' 12 CFR 715.5 provides requirements for annual audits for federally insured credit unions and also describes auditor independence requirements for state licensed auditors.

[17] In late 2019, NCUA Board Chairman Rodney Hood confirmed that the NCUA has the authority to phase in a ''day one'' adjustment to net worth that results from the implementation of FASB ASC Topic 326.

[18] 44 U.S.C. 3501–3521.

Interagency Policy Statement on Allowances for Credit Losses

Purpose

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (collectively, the agencies) are issuing this Interagency Policy Statement on Allowances for Credit Losses (hereafter, the policy statement) to promote consistency in the interpretation and application of Financial Accounting Standards Board (FASB) Accounting Standards Update 2016–13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments,* as well as the amendments issued since June 2016.[1] These updates are codified in Accounting Standards Codification (ASC) Topic 326, *Financial Instruments—Credit Losses* (FASB ASC Topic 326). FASB ASC Topic 326 applies to all banks, savings associations, credit unions, and financial institution holding companies (collectively, institutions), regardless of size, that file regulatory reports for which the reporting requirements conform to U.S. generally accepted accounting principles (GAAP).[2] This policy statement describes the measurement of expected credit losses in accordance with FASB ASC Topic 326; the design, documentation, and validation of expected credit loss estimation processes, including the internal controls over these processes; the maintenance of appropriate allowances for credit losses (ACLs); the responsibilities of boards of directors and management; and examiner reviews of ACLs.

This policy statement is effective at the time of each institution's adoption of FASB ASC Topic 326.[3] The following policy statements are no longer effective for an institution upon its adoption of FASB ASC Topic 326: The December 2006 Interagency Policy Statement on the Allowance for Loan and Lease Losses; the July 2001 Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions; and the NCUA's May 2002 Interpretive Ruling and Policy Statement 02–3, Allowance for Loan and Lease Losses Methodologies and Documentation for Federally Insured Credit Unions (collectively, ALLL Policy Statements). After FASB ASC Topic 326 is effective for all institutions, the agencies will rescind the ALLL Policy Statements.

The principles described in this policy statement are consistent with GAAP, applicable regulatory reporting requirements,[4] safe and sound banking practices, and the agencies' codified guidelines establishing standards for safety and soundness.[5] The operational and managerial standards included in those guidelines, which address such matters as internal controls and information systems, an internal audit system, loan documentation, credit underwriting, asset quality, and earnings, should be appropriate for an institution's size and the nature, scope, and risk of its activities.

Scope

This policy statement describes the current expected credit losses (CECL) methodology for determining the ACLs applicable to loans held-for-investment, net investments in leases, and held-to-maturity debt securities accounted for at amortized cost.[6] It also describes the estimation of the ACL for an available-for-sale debt security in accordance with FASB ASC Subtopic 326–30. This policy statement does not address or supersede existing agency requirements or guidance regarding appropriate due diligence in connection with the purchase or sale of assets or determining whether assets are permissible to be purchased or held by institutions.[7]

The CECL methodology described in FASB ASC Topic 326 applies to financial assets measured at amortized cost, net investments in leases, and off-balance-sheet credit exposures (collectively, financial assets) including:

- Financing receivables such as loans held-for-investment;
- Overdrawn deposit accounts (*i.e.,* overdrafts) that are reclassified as held-for-investment loans;
- Held-to-maturity debt securities;
- Receivables that result from revenue transactions within the scope of Topic 606 on revenue from contracts with customers and Topic 610 on other income, which applies, for example, to the sale of foreclosed real estate;

[1] The FASB issued *Accounting Standards Update (ASU) 2016–13* on June 16, 2016. The following updates were published after the issuance of ASU 2016–13: *ASU 2018–19—Codification Improvements to Topic 326, Financial Instruments—Credit Losses; ASU 2019–04—Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments; ASU 2019–05—Financial Instruments—Credit Losses (Topic 326): Targeted Transition Relief; ASU 2019–10—Financial Instruments—Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842): Effective Dates;* and *ASU 2019–11—Codification Improvements to Topic 326, Financial Instruments—Credit Losses.* Additionally, institutions may refer to *FASB Staff Q&A-Topic 326, No. 1, Whether the Weighted-Average Remaining Maturity Method is an Acceptable Method to Estimate Expected Credit Losses,* and *FASB Staff Q&A-Topic 326, No. 2, Developing an Estimate of Expected Credit Losses on Financial Assets.*

[2] U.S. branches and agencies of foreign banking organizations may choose to, but are not required to, maintain ACLs on a branch or agency level. These institutions should refer to the instructions for the FFIEC 002, *Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks;* Supervision and Regulation (SR) Letter 95–4, *Allowance for Loan and Lease Losses for U.S. Branches and Agencies of Foreign Banking Organizations;* and SR Letter 95–42, *Allowance for Loan and Lease Losses for U.S. Branches and Agencies of Foreign Banking Organizations.*

[3] As noted in Accounting Standards Update 2019–10, FASB ASC Topic 326 is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years, for public business entities that meet the definition of a Securities Exchange Commission (SEC) filer, excluding entities eligible to be small reporting companies as defined by the SEC. FASB ASC Topic 326 is effective for all other entities for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. For all entities, early application of FASB ASC Topic 326 is permitted as set forth in ASU 2016–13.

[4] For FDIC-insured depository institutions, section 37(a) of the Federal Deposit Insurance Act (12 U.SC. 1831n(a)) states that, in general, the accounting principles applicable to the Consolidated Reports of Condition and Income (Call Report) ''shall be uniform and consistent with generally accepted accounting principles.'' Section 202(a)(6)(C) of the Federal Credit Union Act (12 U.S.C. 1782(a)(6)(C)) establishes the same standard for federally insured credit unions with assets of $10 million or greater, providing that, in general, the ''[a]ccounting principles applicable to reports or statements required to be filed with the [NCUA] Board by each insured credit union shall be uniform and consistent with generally accepted accounting principles.'' Furthermore, regardless of asset size, all federally insured credit unions must comply with GAAP for certain financial reporting requirements relating to charges for loan losses. *See* 12 CFR 702.402(d).

[5] FDIC-insured depository institutions should refer to the *Interagency Guidelines Establishing Standards for Safety and Soundness* adopted by their primary Federal regulator pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1) as follows: For national banks and Federal savings associations, Appendix A to 12 CFR part 30; for state member banks, Appendix D to 12 CFR part 208; and for state nonmember banks, state savings associations, and insured state-licensed branches of foreign banks, Appendix A to 12 CFR part 364. Federally insured credit unions should refer to section 206(b)(1) of the Federal Credit Union Act (12 U.S.C. 1786) and 12 CFR 741.3.

[6] FASB ASC Topic 326 defines the amortized cost basis as the amount at which a financing receivable or investment is originated or acquired, adjusted for applicable accrued interest, accretion, or amortization of premium, discount, and net deferred fees or costs, collection of cash, write-offs, foreign exchange, and fair value hedge accounting adjustments.

[7] *See* the final guidance attached to OCC Bulletin 2012–18, *Guidance on Due Diligence Requirements in Determining Whether Securities Are Eligible for Investment* (for national banks and Federal savings associations), 12 CFR part 1, *Investment Securities* (for national banks), and 12 CFR part 160, *Lending and Investment* (for Federal savings associations). Federal credit unions should refer to 12 CFR part 703, *Investment and Deposit Activities.* Federally insured, state-chartered credit unions should refer to applicable state laws and regulations, as well as 12 CFR 741.219 (''investment requirements'').

• Reinsurance recoverables that result from insurance transactions within the scope of Topic 944 on insurance;
• Receivables related to repurchase agreements and securities lending agreements within the scope of Topic 860 on transfers and servicing;
• Net investments in leases recognized by a lessor in accordance with Topic 842 on leases; and
• Off-balance-sheet credit exposures including off-balance-sheet loan commitments, standby letters of credit, financial guarantees not accounted for as insurance, and other similar instruments except for those within the scope of Topic 815 on derivatives and hedging.

The CECL methodology does not apply to the following financial assets:
• Financial assets measured at fair value through net income, including those assets for which the fair value option has been elected;
• Available-for-sale debt securities; [8]
• Loans held-for-sale;
• Policy loan receivables of an insurance entity;
• Loans and receivables between entities under common control; and
• Receivables arising from operating leases.

Measurement of ACLs for Loans, Leases, Held-To-Maturity Debt Securities, and Off-Balance-Sheet Credit Exposures

Overview of ACLs

An ACL is a valuation account that is deducted from, or added to, the amortized cost basis of financial assets to present the net amount expected to be collected over the contractual term [9] of the assets. In estimating the net amount expected to be collected, management should consider the effects of past events, current conditions, and reasonable and supportable forecasts on the collectibility of the institution's financial assets.[10] FASB ASC Topic 326 requires management to use relevant forward-looking information and expectations drawn from reasonable and supportable forecasts when estimating expected credit losses.

ACLs are evaluated as of the end of each reporting period. The methods used to determine ACLs generally should be applied consistently over time and reflect management's current expectations of credit losses. Changes to ACLs resulting from these periodic evaluations are recorded through increases or decreases to the related provisions for credit losses (PCLs). When available information confirms that specific loans, securities, other assets, or portions thereof, are uncollectible, these amounts should be promptly written off [11] against the related ACLs.

Estimating appropriate ACLs involves a high degree of management judgment and is inherently imprecise. An institution's process for determining appropriate ACLs may result in a range of estimates for expected credit losses. An institution should support and record its best estimate within the range of expected credit losses.

Collective Evaluation of Expected Losses

FASB ASC Topic 326 requires expected losses to be evaluated on a collective, or pool, basis when financial assets share similar risk characteristics. Financial assets may be segmented based on one characteristic, or a combination of characteristics.

Examples of risk characteristics relevant to this evaluation include, but are not limited to:
• Internal or external credit scores or credit ratings;
• Risk ratings or classifications;
• Financial asset type;
• Collateral type;
• Size;
• Effective interest rate;
• Term;
• Geographical location;
• Industry of the borrower; and
• Vintage.

Other risk characteristics that may be relevant for segmenting held-to-maturity debt securities include issuer, maturity, coupon rate, yield, payment frequency, source of repayment, bond payment structure, and embedded options.

FASB ASC Topic 326 does not prescribe a process for segmenting financial assets for collective evaluation. Therefore, management should exercise judgment when establishing appropriate segments or pools. Management should evaluate financial asset segmentation on an ongoing basis to determine whether the financial assets in the pool continue to share similar risk characteristics. If a financial asset ceases to share risk characteristics with other assets in its segment, it should be moved to a different segment with assets sharing similar risk characteristics if such a segment exists.

If a financial asset does not share similar risk characteristics with other assets, expected credit losses for that asset should be evaluated individually. Individually evaluated assets should not be included in a collective assessment of expected credit losses.

Estimation Methods for Expected Credit Losses

FASB ASC Topic 326 does not require the use of a specific loss estimation method for purposes of determining ACLs. Various methods may be used to estimate the expected collectibility of financial assets, with those methods generally applied consistently over time. The same loss estimation method does not need to be applied to all financial assets. Management is not precluded from selecting a different method when it determines the method will result in a better estimate of ACLs.

Management may use a loss-rate method,[12] probability of default/loss given default (PD/LGD) method, roll-rate method, discounted cash flow method, a method that uses aging schedules, or another reasonable method to estimate expected credit losses. The selected method(s) should be appropriate for the financial assets being evaluated, consistent with the institution's size and complexity.

Contractual Term of a Financial Asset

FASB ASC Topic 326 requires an institution to measure estimated expected credit losses over the contractual term of its financial assets, considering expected prepayments. Renewals, extensions, and modifications are excluded from the contractual term of a financial asset for purposes of estimating the ACL unless there is a reasonable expectation of executing a troubled debt restructuring (TDR) or the renewal and extension options are part of the original or modified contract and are not

[8] Refer to FASB ASC Subtopic 326–30, Financial Instruments—Credit Losses—Available-for-Sale Debt Securities (FASB ASC Subtopic 326–30).

[9] Consistent with FASB ASC Topic 326, an institution's determination of the contractual term should reflect the financial asset's contractual life adjusted for prepayments, renewal and extension options that are not unconditionally cancellable by the institution, and reasonably expected troubled debt restructurings. For more information, see the ''Contractual Term of a Financial Asset'' section in this policy statement.

[10] Recoveries are a component of management's estimation of the net amount expected to be collected for a financial asset. Expected recoveries of amounts previously written off or expected to be written off that are included in ACLs may not exceed the aggregate amounts previously written off or expected to be written off. In some circumstances, the ACL for a specific portfolio or loan may be negative because the amount expected to be collected, including expected recoveries, exceeds the financial asset's amortized cost basis.

[11] Consistent with FASB ASC Topic 326, this policy statement uses the verbs ''write off'' and ''written off'' and the noun ''write-off.'' These terms are used interchangeably with ''charge off,'' ''charged off,'' and ''charge-off,'' respectively, in the agencies' regulations, guidance, and regulatory reporting instructions.

[12] Various loss-rate methods may be used to estimate expected credit losses under the CECL methodology. These include the weighted-average remaining maturity (WARM) method, vintage analysis, and the snapshot or open pool method.

unconditionally cancellable by the institution. If such renewal or extension options are present, management must evaluate the likelihood of a borrower exercising those options when determining the contractual term.

Historical Loss Information

Historical loss information generally provides a basis for an institution's assessment of expected credit losses. Historical loss information may be based on internal information, external information, or a combination of both. Management should consider whether the historical loss information may need to be adjusted for differences in current asset specific characteristics such as differences in underwriting standards, portfolio mix, or when historical asset terms do not reflect the contractual terms of the financial assets being evaluated as of the reporting date.

Management should then consider whether further adjustments to historical loss information are needed to reflect the extent to which current conditions and reasonable and supportable forecasts differ from the conditions that existed during the historical loss period. Adjustments to historical loss information may be quantitative or qualitative in nature and should reflect changes to relevant data (such as changes in unemployment rates, delinquency, or other factors associated with the financial assets).

Reasonable and Supportable Forecasts

When estimating expected credit losses, FASB ASC Topic 326 requires management to consider forward-looking information that is both reasonable and supportable and relevant to assessing the collectibility of cash flows. Reasonable and supportable forecasts may extend over the entire contractual term of a financial asset or a period shorter than the contractual term. FASB ASC Topic 326 does not prescribe a specific method for determining reasonable and supportable forecasts nor does it include bright lines for establishing a minimum or maximum length of time for reasonable and supportable forecast period(s). Judgment is necessary in determining an appropriate period(s) for each institution. Reasonable and supportable forecasts may vary by portfolio segment or individual forecast input. These forecasts may include data from internal sources, external sources, or a combination of both. Management is not required to search for all possible information nor incur undue cost and effort to collect data for its forecasts. However, reasonably available and relevant information should not be ignored in assessing the collectibility of cash flows. Management should evaluate the appropriateness of the reasonable and supportable forecast period(s) each reporting period, consistent with other inputs used in the estimation of expected credit losses.

Institutions may develop reasonable and supportable forecasts by using one or more economic scenarios. FASB ASC Topic 326 does not require the use of multiple economic scenarios; however, institutions are not precluded from considering multiple economic scenarios when estimating expected credit losses.

Reversion

When the contractual term of a financial asset extends beyond the reasonable and supportable period, FASB ASC Topic 326 requires reverting to historical loss information, or an appropriate proxy, for those periods beyond the reasonable and supportable forecast period (often referred to as the reversion period). Management may revert to historical loss information for each individual forecast input or based on the entire estimate of loss.

FASB ASC Topic 326 does not require the application of a specific reversion technique or use of a specific reversion period. Reversion to historical loss information may be immediate, occur on a straight-line basis, or use any systematic, rational method. Management may apply different reversion techniques depending on the economic environment or the financial asset portfolio. Reversion techniques are not accounting policy elections and should be evaluated for appropriateness each reporting period, consistent with other inputs used in the estimation of expected credit losses.

FASB ASC Topic 326 does not specify the historical loss information that is used in the reversion period. This historical loss information may be based on long-term average losses or on losses that occurred during a particular historical period(s). Management may use multiple historical periods that are not sequential. Management should not adjust historical loss information for existing economic conditions or expectations of future economic conditions for periods beyond the reasonable and supportable period. However, management should consider whether the historical loss information may need to be adjusted for differences in current asset specific characteristics such as differences in underwriting standards, portfolio mix, or when historical asset terms do not reflect the contractual terms of the financial assets being evaluated as of the reporting date.

Qualitative Factor Adjustments

The estimation of ACLs should reflect consideration of all significant factors relevant to the expected collectibility of the institution's financial assets as of the reporting date. Management may begin the expected credit loss estimation process by determining its historical loss information or obtaining reliable and relevant historical loss proxy data for each segment of financial assets with similar risk characteristics. Historical credit losses (or even recent trends in losses) generally do not, by themselves, form a sufficient basis to determine the appropriate levels for ACLs.

Management should consider the need to qualitatively adjust expected credit loss estimates for information not already captured in the loss estimation process. These qualitative factor adjustments may increase or decrease management's estimate of expected credit losses. Adjustments should not be made for information that has already been considered and included in the loss estimation process.

Management should consider the qualitative factors that are relevant to the institution as of the reporting date, which may include, but are not limited to:

- The nature and volume of the institution's financial assets;
- The existence, growth, and effect of any concentrations of credit;
- The volume and severity of past due financial assets, the volume of nonaccrual assets, and the volume and severity of adversely classified or graded assets; [13]
- The value of the underlying collateral for loans that are not collateral-dependent; [14]
- The institution's lending policies and procedures, including changes in underwriting standards and practices for collections, write-offs, and recoveries;
- The quality of the institution's credit review function;
- The experience, ability, and depth of the institution's lending, investment,

[13] For banks and savings associations, adversely classified or graded loans are loans rated ''substandard'' (or its equivalent) or worse under the institution's loan classification system. For credit unions, adversely graded loans are loans included in the more severely graded categories under the institution's credit grading system, *i.e.,* those loans that tend to be included in the credit union's ''watch lists.'' Criteria related to the classification of an investment security may be found in the interagency policy statement *Uniform Agreement on the Classification and Appraisal of Securities Held by Depository Institutions* issued by the FDIC, Board, and OCC in October 2013.

[14] *See* the ''Collateral-Dependent Financial Assets'' section of this policy statement for more information on collateral-dependent loans.

collection, and other relevant management and staff;

- The effect of other external factors such as the regulatory, legal and technological environments; competition; and events such as natural disasters; and
- Actual and expected changes in international, national, regional, and local economic and business conditions and developments [15] in which the institution operates that affect the collectibility of financial assets.

Management may consider the following additional qualitative factors specific to held-to-maturity debt securities as of the reporting date: [16]

- The effect of recent changes in investment strategies and policies;
- The existence and effect of loss allocation methods, the definition of default, the impact of performance and market value triggers, and credit and liquidity enhancements associated with debt securities;
- The effect of structural subordination and collateral deterioration on tranche performance of debt securities;
- The quality of underwriting for any collateral backing debt securities; and
- The effect of legal covenants associated with debt securities.

Changes in the level of an institution's ACLs may not always be directionally consistent with changes in the level of qualitative factor adjustments due to the incorporation of reasonable and supportable forecasts in estimating expected losses. For example, if improving credit quality trends are evident throughout an institution's portfolio in recent years, but management's evaluation of reasonable and supportable forecasts indicates expected deterioration in credit quality of the institution's financial assets during the forecast period, the ACL as a percentage of the portfolio may increase.

Collateral-Dependent Financial Assets

FASB ASC Topic 326 describes a collateral-dependent asset as a financial asset for which the repayment is expected to be provided substantially through the operation or sale of the collateral when the borrower, based on management's assessment, is experiencing financial difficulty as of the reporting date. For regulatory reporting purposes, the ACL for a collateral-dependent loan is measured using the fair value of collateral, regardless of whether foreclosure is probable.[17]

When estimating the ACL for a collateral-dependent loan, FASB ASC Topic 326 requires the fair value of collateral to be adjusted to consider estimated costs to sell if repayment or satisfaction of the loan depends on the sale of the collateral. ACL adjustments for estimated costs to sell are not appropriate when the repayment of a collateral-dependent loan is expected from the operation of the collateral.

The fair value of collateral securing a collateral-dependent loan may change over time. If the fair value of the collateral as of the ACL evaluation date has decreased since the previous ACL evaluation date, the ACL should be increased to reflect the additional decrease in the fair value of the collateral. Likewise, if the fair value of the collateral has increased as of the ACL evaluation date, the increase in the fair value of the collateral is reflected through a reduction in the ACL. Any negative ACL that results is capped at the amount previously written off. Changes in the fair value of collateral described herein should be supported and documented through recent appraisals or evaluations.[18]

Troubled Debt Restructurings [19]

Expected credit losses on financial assets modified in TDRs or reasonably expected to be modified in TDRs (collectively, TDRs) are estimated under the same CECL methodology that is applied to other financial assets measured at amortized cost. Expected credit losses are evaluated on a collective basis, or, if a TDR does not share similar risk characteristics with other financial assets, on an individual basis.

FASB ASC Topic 326 allows an institution to use any appropriate loss estimation method to estimate ACLs for TDRs. However, there are circumstances when specific measurement methods are required. If a TDR, or a financial asset for which a TDR is reasonably expected, is collateral-dependent, the ACL is estimated using the fair value of collateral.

In addition, when management has a reasonable expectation of executing a TDR or if a TDR has been executed, the expected effect of the modification (*e.g.,* term extension or interest rate concession) is included in the estimate of the ACLs. Management should determine, support, and document how it identifies and estimates the effect of a reasonably expected TDR and estimates the related ACL. The estimated effect of reasonably expected TDRs may be included in an institution's qualitative factor adjustments.

Purchased Credit-Deteriorated Assets

FASB ASC Topic 326 introduces the concept of purchased credit-deteriorated (PCD) assets. PCD assets are acquired financial assets that, at acquisition, have experienced more-than-insignificant deterioration in credit quality since origination. FASB ASC Topic 326 does not provide a prescriptive definition of more-than-insignificant credit deterioration. The acquiring institution's management should establish and document a reasonable process to consistently determine what constitutes a more-than-insignificant deterioration in credit quality.

[15] Changes in economic and business conditions and developments included in qualitative factor adjustments are limited to those that affect the collectibility of an institution's financial assets and are relevant to the institution's financial asset portfolios. For example, an economic factor for current or forecasted unemployment at the national or state level may indicate a strong job market based on low national or state unemployment rates, but a local unemployment rate, which may be significantly higher, for example, because of the actual or forecasted loss of a major local employer may be more relevant to the collectibility of an institution's financial assets.

[16] This list is not all-inclusive, and all of the factors listed may not be relevant to all institutions.

[17] The agencies, at times, prescribe specific regulatory reporting requirements that fall within a range of acceptable practice under GAAP. These specific reporting requirements, such as the requirement for institutions to apply the practical expedient in ASC 326–20–35–5 for collateral-dependent loans, regardless of whether foreclosure is probable, have been adopted to achieve safety and soundness and other public policy objectives and to ensure comparability among institutions. The regulatory reporting requirement to apply the practical expedient for collateral-dependent financial assets is consistent with the agencies' long-standing practice for collateral-dependent loans, and it continues to be limited to collateral-dependent loans. It does not apply to other financial assets such as held-to-maturity debt securities that are collateral-dependent.

[18] For more information on regulatory expectations related to the use of appraisals and evaluations, see the *Interagency Appraisal and Evaluation Guidelines* published on December 10, 2010. Insured depository institutions should also refer to the interagency regulations on appraisals adopted by their primary Federal regulator as follows: For national banks and Federal savings associations, Subpart C of 12 CFR part 34; for state member banks, 12 CFR parts 208 and 225; for state nonmember banks, state savings associations, and insured state-licensed branches of foreign banks, 12 CFR part 323; and for federally insured credit unions, 12 CFR part 722.

[19] A troubled debt restructuring is defined in ASC Subtopic 310–40, Receivables—Troubled Debt Restructurings by Creditors. The October 24, 2013, Interagency Supervisory Guidance Addressing Certain Issues Related to Troubled Debt Restructurings provides more information on TDRs including, but not limited to, accrual status, regulatory credit risk grade, classification and write-off treatment, and capitalized costs. This interagency supervisory guidance remains applicable, unless affected by FASB ASC Topic 326. Information on the reporting of a subsequent restructuring of a TDR may be found in the instructions for the Call Report.

When recording the acquisition of PCD assets, the amount of expected credit losses as of the acquisition date is added to the purchase price of the financial assets rather than recording these losses through PCLs. This establishes the amortized cost basis of the PCD assets. Any difference between the unpaid principal balance of the PCD assets and the amortized cost basis of the assets as of the acquisition date is the non-credit discount or premium. The initial ACL and non-credit discount or premium determined on a collective basis at the acquisition date are allocated to the individual PCD assets.

After acquisition, ACLs for PCD assets should be adjusted at each reporting date with a corresponding debit or credit to the PCLs to reflect management's current estimate of expected credit losses. The non-credit discount recorded at acquisition will be accreted into interest income over the remaining life of the PCD assets on a level-yield basis.

Financial Assets With Collateral Maintenance Agreements

Institutions may have financial assets that are secured by collateral (such as debt securities) and are subject to collateral maintenance agreements requiring the borrower to continuously replenish the amount of collateral securing the asset. If the fair value of the collateral declines, the borrower is required to provide additional collateral as specified by the agreement.

FASB ASC Topic 326 includes a practical expedient for financial assets with collateral maintenance agreements where the borrower is required to provide collateral greater than or equal to the amortized cost basis of the asset and is expected to continuously replenish the collateral. In those cases, management may elect the collateral maintenance practical expedient and measure expected credit losses for these qualifying assets based on the fair value of the collateral.[20] If the fair value of the collateral is greater than the amortized cost basis of the financial asset and management expects the borrower to replenish collateral as needed, management may record an ACL of zero for the financial asset when the collateral maintenance practical expedient is applied. Similarly, if the fair value of the collateral is less than the amortized cost basis of the financial asset and management expects the borrower to replenish collateral as needed, the ACL is limited to the difference between the fair value of the collateral and the amortized cost basis of the asset as of the reporting date when applying the collateral maintenance practical expedient.

Accrued Interest Receivable

FASB ASC Topic 326 includes accrued interest receivable in the amortized cost basis of a financial asset. As a result, accrued interest receivable is included in the amounts for which ACLs are estimated. Generally, any accrued interest receivable that is not collectible is written off against the related ACL.

FASB ASC Topic 326 permits a series of independent accounting policy elections related to accrued interest receivable that alter the accounting treatment described in the preceding paragraph. These elections are made upon adoption of FASB ASC Topic 326 and may differ by class of financing receivable or major security-type level. The available accounting policy elections [21] are:

- Management may elect not to measure ACLs for accrued interest receivable if uncollectible accrued interest is written off in a timely manner. Management should define and document its definition of a timely write-off.
- Management may elect to write off accrued interest receivable by either reversing interest income, recognizing the loss through PCLs, or through a combination of both methods.
- Management may elect to separately present accrued interest receivable from the associated financial asset in its regulatory reports and financial statements, if applicable. The accrued interest receivable is presented net of ACLs (if any).

Financial Assets With Zero Credit Loss Expectations

There may be certain financial assets for which the expectation of credit loss is zero after evaluating historical loss information, making necessary adjustments for current conditions and reasonable and supportable forecasts, and considering any collateral or guarantee arrangements that are not free-standing contracts. Factors to consider when evaluating whether expectations of zero credit loss are appropriate may include, but are not limited to:

- A long history of zero credit loss;
- A financial asset that is fully secured by cash or cash equivalents;
- High credit ratings from rating agencies with no expected future downgrade; [22]
- Principal and interest payments that are guaranteed by the U.S. government;
- The issuer, guarantor, or sponsor can print its own currency and the currency is held by other central banks as reserve currency; and
- The interest rate on the security is recognized as a risk-free rate.

A loan that is fully secured by cash or cash equivalents, such as certificates of deposit issued by the lending institution, would likely have zero credit loss expectations. Similarly, the guaranteed portion of a U.S. Small Business Administration (SBA) loan or security purchased on the secondary market through the SBA's fiscal and transfer agent would likely have zero credit loss expectations if these financial assets are unconditionally guaranteed by the U.S. government. Examples of held-to-maturity debt securities that may result in expectations of zero credit loss include U.S. Treasury securities as well as mortgage-backed securities issued and guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association. Assumptions related to zero credit loss expectations should be included in the institution's ACL documentation.

Estimated Credit Losses for Off-Balance-Sheet Credit Exposures

FASB ASC Topic 326 requires that an institution estimate expected credit losses for off-balance-sheet credit exposures within the scope of FASB ASC Topic 326 over the contractual period during which the institution is exposed to credit risk. The estimate of expected credit losses should take into consideration the likelihood that funding will occur as well as the amount expected to be funded over the estimated remaining contractual term of the off-balance-sheet credit exposures. Management should not record an estimate of expected credit losses for off-balance-sheet exposures that are

[20] For example, an institution enters into a reverse repurchase agreement with a collateral maintenance agreement. Management may not need to record the expected credit losses at each reporting date as long as the fair value of the security collateral is greater than the amortized cost basis of the reverse repurchase agreement. Refer to ASC 326–20–55–46 for more information.

[21] The accounting policy elections related to accrued interest receivable that are described in this paragraph also apply to accrued interest receivable for an available-for-sale debt security that, for purposes of identifying and measuring an impairment, exclude the applicable accrued interest from both the fair value and amortized cost basis of the securities.

[22] Management should not rely solely on credit rating agencies but should also make its own assessment based on third party research, default statistics, and other data that may indicate a decline in credit rating.

unconditionally cancellable by the issuer.

Management must evaluate expected credit losses for off-balance-sheet credit exposures as of each reporting date. While the process for estimating expected credit losses for these exposures is similar to the one used for on-balance-sheet financial assets, these estimated credit losses are not recorded as part of the ACLs because cash has not yet been disbursed to fund the contractual obligation to extend credit. Instead, these loss estimates are recorded as a liability, separate and distinct from the ACLs.[23] The amount needed to adjust the liability for expected credit losses for off-balance-sheet credit exposures as of each reporting date is reported in net income.

Measurement of the ACL for Available-for-Sale Debt Securities

FASB ASC Subtopic 326–30, *Financial Instruments—Credit Losses—Available-for-Sale Debt Securities* (FASB ASC Subtopic 326–30) describes the accounting for expected credit losses associated with available-for-sale debt securities. Credit losses for available-for-sale debt securities are evaluated as of each reporting date when the fair value is less than amortized cost. FASB ASC Subtopic 326–30 requires credit losses to be calculated individually, rather than collectively, using a discounted cash flow method, through which management compares the present value of expected cash flows with the amortized cost basis of the security. An ACL is established, with a charge to the PCL, to reflect the credit loss component of the decline in fair value below amortized cost. If the fair value of the security increases over time, any ACL that has not been written off may be reversed through a credit to the PCL. The ACL for an available-for-sale debt security is limited by the amount that the fair value is less than the amortized cost, which is referred to as the fair value floor.

If management intends to sell an available-for-sale debt security or will more likely than not be required to sell the security before recovery of the amortized cost basis, the security's ACL should be written off and the amortized cost basis of the security should be written down to its fair value at the reporting date with any incremental impairment reported in income.

A change during the reporting period in the non-credit component of any decline in fair value below amortized cost on an available-for-sale debt security is reported in other comprehensive income, net of applicable income taxes.[24]

When evaluating impairment for available-for-sale debt securities, management may evaluate the amortized cost basis including accrued interest receivable, or may evaluate the accrued interest receivable separately from the remaining amortized cost basis. If evaluated separately, accrued interest receivable is excluded from both the fair value of the available-for-sale debt security and its amortized cost basis.[25]

Documentation Standards

For financial and regulatory reporting purposes, ACLs and PCLs must be determined in accordance with GAAP. ACLs and PCLs should be well documented, with clear explanations of the supporting analyses and rationale. Sound policies, procedures, and control systems should be appropriately tailored to an institution's size and complexity, organizational structure, business environment and strategy, risk appetite, financial asset characteristics, loan administration procedures, investment strategy, and management information systems.[26] Maintaining, analyzing, supporting, and documenting appropriate ACLs and PCLs in accordance with GAAP is consistent with safe and sound banking practices.

The policies and procedures governing an institution's ACL processes and the controls over these processes should be designed, implemented, and maintained to reasonably estimate expected credit losses for financial assets and off-balance-sheet credit exposures as of the reporting date. The policies and procedures should describe management's processes for evaluating the credit quality and collectibility of financial asset portfolios, including reasonable and supportable forecasts about changes in the credit quality of these portfolios, through a disciplined and consistently applied process that results in an appropriate estimate of the ACLs. Management should review and, as needed, revise the institution's ACL policies and procedures at least annually, or more frequently if necessary.

An institution's policies and procedures for the systems, processes, and controls necessary to maintain appropriate ACLs should address, but not be limited to:

- Processes that support the determination and maintenance of appropriate levels for ACLs that are based on a comprehensive, well-documented, and consistently applied analysis of an institution's financial asset portfolios and off-balance-sheet credit exposures. The analyses and loss estimation processes used should consider all significant factors that affect the credit risk and collectibility of the financial asset portfolios;
- The roles, responsibilities, and segregation of duties of the institution's senior management and other personnel who provide input into ACL processes, determine ACLs, or review ACLs. These departments and individuals may include accounting, financial reporting, treasury, investment management, lending, special asset or problem loan workout teams, retail collections and foreclosure groups, credit review, model risk management, internal audit, and others, as applicable. Individuals with responsibilities related to the estimation of ACLs should be competent and well-trained, with the ability to escalate material issues;
- Processes for determining the appropriate historical period(s) to use as the basis for estimating expected credit losses and approaches for adjusting historical credit loss information to reflect differences in asset specific characteristics, as well as current conditions and reasonable and supportable forecasts that are different from conditions existing in the historical period(s);
- Processes for determining and revising the appropriate techniques and periods to revert to historical credit loss information when the contractual term of a financial asset or off-balance-sheet credit exposure extends beyond the reasonable and supportable forecast period(s);
- Processes for segmenting financial assets for estimating expected credit losses and periodically evaluating the segments to determine whether the assets continue to share similar risk characteristics;
- Data capture and reporting systems that supply the quality and breadth of

[23] The ACL associated with off-balance-sheet credit exposures is included in the ''Allowance for credit losses on off-balance-sheet credit exposures'' in *Schedule RC–G—Other Liabilities* in the Call Report and in the *Liabilities* schedule in NCUA Call Report Form 5300.

[24] Non-credit impairment on an available-for-sale debt security that is not required to be recorded through the ACL should be reported in other comprehensive income as described in ASC 326–30–35–2.

[25] The accounting policy elections described in the ''Accrued Interest Receivable'' section of this policy statement apply to accrued interest receivable recorded for an available-for-sale debt security if an institution excludes applicable accrued interest receivable from both the fair value and amortized cost basis of the security for purposes of identifying and measuring impairment.

[26] Management often documents policies, procedures, and controls related to ACLs in accounting or credit risk management policies, or a combination thereof.

relevant and reliable information necessary, whether obtained internally or externally, to support and document the estimates of appropriate ACLs for regulatory reporting requirements and, if applicable, financial statement and disclosure requirements;

- The description of the institution's systematic and logical loss estimation process(es) for determining and consolidating expected credit losses to ensure that the ACLs are recorded in accordance with GAAP and regulatory reporting requirements. This may include, but is not limited to:
  - Management's judgments, accounting policy elections, and application of practical expedients in determining the amount of expected credit losses;
  - The process for determining when a loan is collateral-dependent;
  - The process for determining the fair value of collateral, if any, used as an input when estimating the ACL, including the basis for making any adjustments to the market value conclusion and how costs to sell, if applicable, are calculated;
  - The process for determining when a financial asset has zero credit loss expectations;
  - The process for determining expected credit losses when a financial asset has a collateral maintenance provision; and
  - A description of and support for qualitative factors that affect collectibility of financial assets;
- Procedures for validating and independently reviewing the loss estimation process as well as any changes to the process from prior periods;
- Policies and procedures for the prompt write-off of financial assets, or portions of financial assets, when available information confirms the assets to be uncollectible, consistent with regulatory reporting requirements; and
- The systems of internal controls used to confirm that the ACL processes are maintained and periodically adjusted in accordance with GAAP and interagency guidelines establishing standards for safety and soundness.

Internal control systems for the ACL estimation processes should:

- Provide reasonable assurance regarding the relevance, reliability, and integrity of data and other information used in estimating expected credit losses;
- Provide reasonable assurance of compliance with laws, regulations, and the institution's policies and procedures;
- Provide reasonable assurance that the institution's financial statements are prepared in accordance with GAAP, and the institution's regulatory reports are prepared in accordance with the applicable instructions;
- Include a well-defined and effective loan review and grading process that is consistently applied and identifies, measures, monitors, and reports asset quality problems in an accurate, sound and timely manner. The loan review process should respond to changes in internal and external factors affecting the level of credit risk in the portfolio; and
- Include a well-defined and effective process for monitoring credit quality in the debt securities portfolio.

Analyzing and Validating the Overall Measurement of ACLs

To ensure that ACLs are presented fairly, in accordance with GAAP and regulatory reporting requirements, and are transparent for regulatory examinations, management should document its measurements of the amounts of ACLs reported in regulatory reports and financial statements, if applicable, for each type of financial asset (*e.g.,* loans, held-to-maturity debt securities, and available-for-sale debt securities) and for off-balance-sheet credit exposures. This documentation should include ACL calculations, qualitative adjustments, and any adjustments to the ACLs that are required as part of the internal review and challenge process. The board of directors, or a committee thereof, should review management's assessments of and justifications for the reported amounts of ACLs.

Various techniques are available to assist management in analyzing and evaluating the ACLs. For example, comparing estimates of expected credit losses to actual write-offs in aggregate, and by portfolio, may enable management to assess whether the institution's loss estimation process is sufficiently designed.[27] Further, comparing the estimate of ACLs to actual write-offs at the financial asset portfolio level allows management to analyze changing portfolio characteristics, such as the volume of assets or increases in write-off rates, which may affect future forecast adjustments. Techniques applied in these instances do not have to be complex to be effective, but, if used, should be commensurate with the institution's size and complexity.

Ratio analysis may also be useful for evaluating the overall reasonableness of ACLs. Ratio analysis assists in identifying divergent or emerging trends in the relationship of ACLs to other factors such as adversely classified or graded loans, past due and nonaccrual loans, total loans, historical gross write-offs, net write-offs, and historic delinquency and default trends for securities.

Comparing the institution's ACLs to those of peer institutions may provide management with limited insight into management's own ACL estimates. Management should apply caution when performing peer comparisons as there may be significant differences among peer institutions in the mix of financial asset portfolios, reasonable and supportable forecast period assumptions, reversion techniques, the data used for historical loss information, and other factors.

When used prudently, comparisons of estimated expected losses to actual write-offs, ratio analysis, and peer comparisons can be helpful as a supplemental check on the reasonableness of management's assumptions and analyses. Because appropriate ACLs are institution-specific estimates, the use of comparisons does not eliminate the need for a comprehensive analysis of financial asset portfolios and the factors affecting their collectibility.

When an appropriate expected credit loss framework has been used to estimate expected credit losses, it is inappropriate for the board of directors or management to make further adjustments to ACLs for the sole purpose of reporting ACLs that correspond to a peer group median, a target ratio, or a budgeted amount. Additionally, neither the board of directors nor management should further adjust ACLs beyond what has been appropriately measured and documented in accordance with FASB ASC Topic 326.

After analyzing ACLs, management should periodically validate the loss estimation process, and any changes to the process, to confirm that the process remains appropriate for the institution's size, complexity, and risk profile. The validation process should include procedures for review by a party with appropriate knowledge, technical expertise, and experience who is independent of the institution's credit approval and ACL estimation processes.

[27] Institutions using models in the loss estimation process may incorporate a qualitative factor adjustment in the estimate of expected credit losses to capture the variance between modeled credit loss expectations and actual historical losses when the model is still considered predictive and fit for use. Institutions should monitor this variance, as well as changes to the variance, to determine if the variance is significant or material enough to warrant further changes to the model.

A party who is independent of these processes could be from internal audit staff, a risk management unit of the institution independent of management supervising these processes, or a contracted third-party. One party need not perform the entire analysis as the validation may be divided among various independent parties.[28]

Responsibilities of the Board of Directors

The board of directors, or a committee thereof, is responsible for overseeing management's significant judgments and estimates used in determining appropriate ACLs. Evidence of the board of directors' oversight activities is subject to review by examiners. These activities should include, but are not limited to:

- Retaining experienced and qualified management to oversee all ACL and PCL activities;
- Reviewing and approving the institution's written loss estimation policies, including any revisions thereto, at least annually;
- Reviewing management's assessment of the loan review system and management's conclusion and support for whether the system is sound and appropriate for the institution's size and complexity;
- Reviewing management's assessment of the effectiveness of processes and controls for monitoring the credit quality of the investment portfolio;
- Reviewing management's assessments of and justifications for the estimated amounts reported each period for the ACLs and the PCLs;
- Requiring management to periodically validate, and, when appropriate, revise loss estimation methods;
- Approving the internal and external audit plans for the ACLs, as applicable; and
- Reviewing any identified audit findings and monitoring resolution of those items.

Responsibilities of Management

Management is responsible for maintaining ACLs at appropriate levels and for documenting its analyses in accordance with the concepts and requirements set forth in GAAP, regulatory reporting requirements, and this policy statement. Management should evaluate the ACLs reported on the balance sheet as of the end of each period (and for credit unions, prior to paying dividends), and debit or credit the related PCLs to bring the ACLs to an appropriate level as of each reporting date. The determination of the amounts of the ACLs and the PCLs should be based on management's current judgments about the credit quality of the institution's financial assets and should consider known and expected relevant internal and external factors that significantly affect collectibility over reasonable and supportable forecast periods for the institution's financial assets as well as appropriate reversion techniques applied to periods beyond the reasonable and supportable forecast periods. Management's evaluations are subject to review by examiners.

In carrying out its responsibility for maintaining appropriate ACLs, management should adopt and adhere to written policies and procedures that are appropriate to the institution's size and the nature, scope, and risk of its lending and investing activities. These policies and procedures should address the processes and activities described in the ''Documentation Standards'' section of this policy statement.

Management fulfills other responsibilities that aid in the maintenance of appropriate ACLs. These activities include, but are not limited to:

- Establishing and maintaining appropriate governance activities for the loss estimation process(es). These activities may include reviewing and challenging the assumptions used in estimating expected credit losses and designing and executing effective internal controls over the credit loss estimation method(s);
- Periodically performing procedures that compare credit loss estimates to actual write-offs, at the portfolio level and in aggregate, to confirm that amounts recorded in the ACLs were sufficient to cover actual credit losses. This analysis supports that appropriate ACLs were recorded and provides insight into the loss estimation process's ability to estimate expected credit losses. This analysis is not intended to reflect the accuracy of management's economic forecasts;
- Periodically validating the loss estimation process(es), including changes, if any, to confirm it is appropriate for the institution; and
- Engaging in sound risk management of third parties involved[29] in ACL estimation process(es), if applicable, to ensure that the loss estimation processes are commensurate with the level of risk, the complexity of the third-party relationship and the institution's organizational structure.

Additionally, if an institution uses loss estimation models in determining expected credit losses, management should evaluate the models before they are employed and modify the model logic and assumptions, as needed, to help ensure that the resulting loss estimates are consistent with GAAP and regulatory reporting requirements.[30] To demonstrate such consistency, management should document its evaluations and conclusions regarding the appropriateness of estimating credit losses with models. When used for multiple purposes within an institution, models should be specifically adjusted and validated for use in ACL loss estimation processes. Management should document and support any adjustments made to the models, the outputs of the models, and compensating controls applied in determining the estimated expected credit losses.

Examiner Review of ACLs

Examiners are expected to assess the appropriateness of management's loss estimation processes and the appropriateness of the institution's ACL balances as part of their supervisory activities. The review of ACLs, including the depth of the examiner's assessment, should be commensurate with the institution's size, complexity, and risk profile. As part of their supervisory activities, examiners generally assess the credit quality and credit risk of an institution's financial asset portfolios, the adequacy of the institution's credit loss estimation processes, the adequacy of supporting

[28] Engaging the institution's external auditor to perform the validation process described in this paragraph when the external auditor also conducts the institution's independent financial statement audit, may impair the auditor's independence under applicable auditor independence standards and prevent the auditor from performing an independent audit of the institution's financial statements.

[29] Guidance on third party service providers may be found in SR Letter 13–19/Consumer Affairs Letter 13–21, *Guidance on Managing Outsourcing Risk* (FRB); Financial Institution Letter (FIL) 44–2008, *Guidance for Managing Third Party Risk* (FDIC); Supervisory Letter No. 07–01, *Evaluating Third Party Relationships* (NCUA); and OCC Bulletin 2013–29, *Third Party Relationships: Risk Management Guidance,* OCC Bulletin 2017–7, *Third Party Relationships: Supplemental Examination Procedures,* and OCC Bulletin 2017–21, *Third Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013–29.*

[30] *See* the interagency statement titled, *Supervisory Guidance on Model Risk Management,* published by the Board in SR Letter 11–7 and OCC Bulletin 2011–12 on April 4, 2011. The statement also addresses the incorporation of vendor products into an institution's model risk management framework following the same principles relevant to in-house models. The FDIC adopted the interagency statement on June 7, 2017. Institutions supervised by the FDIC should refer to FIL–22–2017, *Adoption of Supervisory Guidance on Model Risk Management,* including the statement of applicability in the FIL.

documentation, and the appropriateness of the reported ACLs and PCLs in the institution's regulatory reports and financial statements, if applicable. Examiners may consider the significant factors that affect collectibility, including the value of collateral securing financial assets and any other repayment sources. Supervisory activities may include evaluating management's effectiveness in assessing credit risk for debt securities (both prior to purchase and on an on-going basis). In reviewing the appropriateness of an institution's ACLs, examiners may:

- Evaluate the institution's ACL policies and procedures and assess the loss estimation method(s) used to arrive at overall estimates of ACLs, including the documentation supporting the reasonableness of management's assumptions, valuations, and judgments. Supporting activities may include, but, are not limited to:
  - Evaluating whether management has appropriately considered historical loss information, current conditions, and reasonable and supportable forecasts, including significant qualitative factors that affect the collectibility of the financial asset portfolios;
  - Assessing loss estimation techniques, including loss estimation models, if applicable, as well as the incorporation of qualitative adjustments to determine whether the resulting estimates of expected credit losses are in conformity with GAAP and regulatory reporting requirements; and
  - Evaluating the adequacy of the documentation and the effectiveness of the controls used to support the measurement of the ACLs;
- Assess the effectiveness of board oversight as well as management's effectiveness in identifying, measuring, monitoring, and controlling credit risk. This may include, but is not limited to, a review of underwriting standards and practices, portfolio composition and trends, credit risk review functions, risk rating systems, credit administration practices, investment securities management practices, and related management information systems and reports;
- Review the appropriateness and reasonableness of the overall level of the ACLs relative to the level of credit risk, the complexity of the institution's financial asset portfolios, and available information relevant to assessing collectibility, including consideration of current conditions and reasonable and supportable forecasts. Examiners may include a quantitative analysis (*e.g.,* using management's results comparing expected write-offs to actual write-offs as well as ratio analysis) to assess the appropriateness of the ACLs. This quantitative analysis may be used to determine the reasonableness of management's assumptions, valuations, and judgments and understand variances between actual and estimated credit losses. Loss estimates that are consistently and materially over or under predicting actual losses may indicate a weakness in the loss forecasting process;
- Review the ACLs reported in the institution's regulatory reports and in any financial statements and other key financial reports to determine whether the reported amounts reconcile to the institution's estimate of the ACLs. The consolidated loss estimates determined by the institution's loss estimation method(s) should be consistent with the final ACLs reported in its regulatory reports and financial statements, if applicable;
- Verify that models used in the loss estimation process, if any, are subject to initial and ongoing validation activities. Validation activities include evaluating and concluding on the conceptual soundness of the model, including developmental evidence, performing ongoing monitoring activities, including process verification and benchmarking, and analyzing model output.[31] Examiners may review model validation findings, management's response to those findings, and applicable action plans to remediate any concerns, if applicable. Examiners may also assess the adequacy of the institution's processes to implement changes in a timely manner; and
- Review the effectiveness of the institution's third-party risk management framework associated with the estimation of ACLs, if applicable, to assess whether the processes are commensurate with the level of risk, the complexity and nature of the relationship, and the institution's organizational structure. Examiners may determine whether management monitors material risks and deficiencies in third-party relationships, and takes appropriate action as needed.[32]

When assessing the appropriateness of ACLs, examiners should recognize that the processes, loss estimation methods, and underlying assumptions an institution uses to calculate ACLs require the exercise of a substantial degree of management judgment. Even when an institution maintains sound procedures, controls, and monitoring activities, an estimate of expected credit losses is not a single precise amount and may result in a range of acceptable outcomes for these estimates. This is a result of the flexibility FASB ASC Topic 326 provides institutions in selecting loss estimation methods and the wide range of qualitative and forecasting factors that are considered.

Management's ability to estimate expected credit losses should improve over the contractual term of financial assets as substantive information accumulates regarding the factors affecting repayment prospects. Examiners generally should accept an institution's ACL estimates and not seek adjustments to the ACLs, when management has provided adequate support for the loss estimation process employed, and the ACL balances and the assumptions used in the ACL estimates are in accordance with GAAP and regulatory reporting requirements. It is inappropriate for examiners to seek adjustments to ACLs for the sole purpose of achieving ACL levels that correspond to a peer group median, a target ratio, or a benchmark amount when management has used an appropriate expected credit loss framework to estimate expected credit losses.

If the examiner concludes that an institution's reported ACLs are not appropriate or determines that its ACL evaluation processes or loss estimation method(s) are otherwise deficient, these concerns should be noted in the report of examination and communicated to the board of directors and senior management.[33] Additional supervisory action may be taken based on the magnitude of the shortcomings in ACLs, including the materiality of any errors in the reported amounts of ACLs.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

[31] *See* footnote 30.

[32] *See* footnote 29.

[33] Each agency has formal and informal communication channels for sharing supervisory information with the board of directors and management depending on agency practices and the nature of the information being shared. These channels may include, but are not limited to, institution specific supervisory letters, letters to the industry, transmittal letters, visitation findings summary letters, targeted review conclusion letters, or official examination or inspection reports.

Dated at Washington, DC, on February 20, 2020.

Robert E. Feldman,

Executive Secretary.

By the National Credit Union Administration Board.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2020–10291 Filed 5–29–20; 8:45 am]

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket Number SBA–2020–0032]

RIN 3245–AH46

DEPARTMENT OF THE TREASURY

RIN 1505–AC69

Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Loan Forgiveness

AGENCY: U.S. Small Business Administration; Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds a new program, titled the ''Paycheck Protection Program,'' to the SBA's 7(a) Loan Program. The CARES Act also provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). The PPP is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). SBA posted additional interim final rules on April 3, 2020, April 14, 2020, April 24, 2020, April 28, 2020, April 30, 2020, May 5, 2020, May 8, 2020, May 13, 2020, May 14, 2020, May 18, 2020, and May 20, 2020, and the Department of the Treasury (Treasury) posted an additional interim final rule on April 27, 2020. This interim final rule supplements the previously posted interim final rules in order to help PPP borrowers prepare and submit loan forgiveness applications as provided for in the CARES Act, help PPP lenders who will be making the loan forgiveness decisions, inform borrowers and lenders of SBA's process for reviewing PPP loan applications and loan forgiveness applications, and requests public comment.

DATES: *Effective date:* May 28, 2020.

Applicability date: This interim final rule applies to loan forgiveness applications submitted under the Paycheck Protection Program.

Comment date: Comments must be received on or before July 1, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0032 through the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. SBA will post all comments on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices*.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, tribal, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency. Section 1102 of the CARES Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program, and requires SBA to issue guidance and regulations implementing section 1106 within 30 days after the date of enactment of the CARES Act. On April 2, 2020, SBA posted its first PPP interim final rule (85 FR 20811) (the First Interim Final Rule) covering in part loan forgiveness. On April 8, 2020 and April 26, 2020, SBA also posted Frequently Asked Questions relating to loan forgiveness.[1] On April 14, 2020, SBA posted an interim final rule covering in part loan forgiveness for individuals with self-employment income. On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the Paycheck Protection Program.

As described below, this interim final rule provides borrowers and lenders guidance on requirements governing the forgiveness of PPP loans.

Four provisions of this interim final rule are an exercise of rulemaking authority by Treasury either jointly with SBA or by Treasury alone: (1) The *de minimis* exemption provided with respect to certain offers of rehire, (2) the additional reference period option provided for seasonal employers, (3) the *de minimis* exemption from the full-time equivalent employee reduction penalty when an employee is, for example, fired for cause, and (4) the *de minimis* exemption from the full-time equivalent employee reduction penalty when the borrower eliminates reductions by June 30, 2020. Otherwise, all provisions in this rule are an exercise of rulemaking authority by SBA alone.

II. Comments and Immediate Effective Date

The intent of the CARES Act is that SBA provide relief to America's small businesses expeditiously. This intent, along with the dramatic decrease in

[1] *https://www.sba.gov/document/support-faq-lenders-borrowers.*

economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, it is critical to meet lenders' and borrowers' need for clarity concerning loan forgiveness requirements as rapidly as possible because borrowers can seek loan forgiveness as early as eight-weeks following the date of disbursement of their PPP loans. Because the first PPP loans were disbursed after April 3, providing borrowers with certainty on loan forgiveness requirements and other program requirements will enhance their ability to carry out the purposes of the CARES Act in keeping their workers employed and paid, while at the same time taking necessary steps to maximize eligible loan forgiveness amounts. An immediate effective date also is necessary for PPP lenders who generally will make the loan forgiveness determinations as provided in the CARES Act. Specifically, an immediate effective date is necessary for lenders so that they will have both a degree of certainty and sufficient time to develop their systems and policies and procedures in order to timely review and process loan forgiveness applications, which borrowers are permitted to begin submitting at the end of their covered period.

This interim final rule supplements previous regulations and guidance on the discrete issues related to loan forgiveness. This interim final rule is effective without advance notice and public comment because section 1114 of the CARES Act authorizes SBA to issue regulations to implement Title I of the CARES Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the ground that it would be contrary to the public interest. Specifically, SBA has determined that advance notice and public comment would delay the ability of PPP borrowers to understand with certainty which payroll costs and nonpayroll costs that are incurred or paid during the covered period are eligible for forgiveness. By providing a high degree of certainty to PPP borrowers through this interim final rule, PPP borrowers will be able to take immediate steps to maximize their loan forgiveness amounts, for example, by either rehiring employees or not laying off employees during the covered period. This rule is being issued to allow for immediate implementation of the forgiveness component of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of this interim final rule, including section III below. These comments must be submitted on or before July 1, 2020. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program Requirements for Loan Forgiveness

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under the Paycheck Protection Program (PPP). Loans under the PPP will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. Additional information about the PPP is available in interim final rules published by SBA and Treasury in the **Federal Register** (85 FR 20811, 85 FR 20817, 85 FR 21747, 85 FR 23450, 85 FR 23917, 85 FR 26321, 85 FR 26324, 85 FR 27287, 85 FR 29842, 85 FR 29845, 85 FR 29847, 85 FR 30835) as well as an SBA interim final rule posted on May 20, 2020.

1. General

Section 1106(b) of the CARES Act provides that, subject to several important limitations, borrowers shall be eligible for forgiveness of their PPP loan in an amount equal to the sum of the following costs incurred and payments made during the covered period (as described in section III.3. below):

(1) Payroll costs; [2]

(2) Interest payments on any business mortgage obligation on real or personal property that was incurred before February 15, 2020 (but not any prepayment or payment of principal);

(3) Payments on business rent obligations on real or personal property under a lease agreement in force before February 15, 2020; and

(4) Business utility payments for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

This interim final rule uses the term ''nonpayroll costs'' to refer to the payments described in (2), (3), and (4). As set forth in the First Interim Final Rule (85 FR 20811), eligible nonpayroll costs cannot exceed 25 percent of the loan forgiveness amount.

2. Loan Forgiveness Process

What is the general process to obtain loan forgiveness?

To receive loan forgiveness, a borrower must complete and submit the Loan Forgiveness Application (SBA Form 3508 or lender equivalent) to its lender (or the lender servicing its loan). As a general matter, the lender will review the application and make a decision regarding loan forgiveness. The lender has 60 days from receipt of a complete application to issue a decision to SBA. If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the lender must request payment from SBA at the time the lender issues its decision to SBA. SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA. If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender as required by section 1110(e)(6) of the CARES Act. If SBA determines in the course of its review that the borrower was ineligible for the PPP loan based on the provisions of the CARES Act, SBA rules or guidance available at the time of the borrower's loan application, or the terms of the borrower's PPP loan application (for example, because the borrower lacked an adequate basis for the certifications that it made in its PPP loan application), the loan will not be eligible for loan forgiveness. The lender is responsible for notifying the borrower of the forgiveness amount. If only a portion of the loan is forgiven, or if the forgiveness request is denied, any remaining balance due on the loan must be repaid by the borrower on or before the two-year maturity of the loan. If the amount remitted by SBA to the lender exceeds the remaining principal balance of the PPP loan (because the borrower made

[2] Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation. *See* 15 U.S.C. 636(a)(36)(A)(viii); 85 FR 20811, 20813.

scheduled payments on the loan after the initial deferment period), the lender must remit the excess amount, including accrued interest, to the borrower.

The general loan forgiveness process described above applies only to loan forgiveness applications that are not reviewed by SBA prior to the lender's decision on the forgiveness application. In a separate interim final rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, SBA will describe its procedures for reviewing PPP loan applications and loan forgiveness applications.

3. Payroll Costs Eligible for Loan Forgiveness

a. When must payroll costs be incurred and/or paid to be eligible for forgiveness?

In general, payroll costs paid or incurred during the eight consecutive week (56 days) covered period are eligible for forgiveness. Borrowers may seek forgiveness for payroll costs for the eight weeks beginning on either:

i. The date of disbursement of the borrower's PPP loan proceeds from the Lender (*i.e.,* the start of the covered period); or

ii. the first day of the first payroll cycle in the covered period (the ''alternative payroll covered period'').

Payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an ACH credit transaction. Payroll costs incurred during the borrower's last pay period of the covered period or the alternative payroll covered period are eligible for forgiveness if paid on or before the next regular payroll date; otherwise, payroll costs must be paid during the covered period (or alternative payroll covered period) to be eligible for forgiveness. Payroll costs are generally incurred on the day the employee's pay is earned (*i.e.,* on the day the employee worked). For employees who are not performing work but are still on the borrower's payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day that the employee would have performed work).

The Administrator of the Small Business Administration (Administrator), in consultation with the Secretary of the Treasury (Secretary), recognizes that the eight-week covered period will not always align with a borrower's payroll cycle. For administrative convenience of the borrower, a borrower with a bi-weekly (or more frequent) payroll cycle may elect to use an alternative payroll covered period that begins on the first day of the first payroll cycle in the covered period and continues for the following eight weeks. If payroll costs are incurred during this eight-week alternative payroll covered period, but paid after the end of the alternative payroll covered period, such payroll costs will be eligible for forgiveness if they are paid no later than the first regular payroll date thereafter.

The Administrator, in consultation with the Secretary, determined that this alternative computational method for payroll costs is justified by considerations of administrative feasibility for borrowers, as it will reduce burdens on borrowers and their payroll agents while achieving the paycheck protection purposes manifest throughout the CARES Act, including section 1102. Because this alternative computational method is limited to payroll cycles that are bi-weekly or more frequent, this computational method will yield a calculation that the Administrator does not expect to materially differ from the actual covered period, while avoiding unnecessary administrative burdens and enhancing auditability.

Example: A borrower has a bi-weekly payroll schedule (every other week). The borrower's eight-week covered period begins on June 1 and ends on July 26. The first day of the borrower's first payroll cycle that starts in the covered period is June 7. The borrower may elect an alternative payroll covered period for payroll cost purposes that starts on June 7 and ends 55 days later (for a total of 56 days) on August 1. Payroll costs paid during this alternative payroll covered period are eligible for forgiveness. In addition, payroll costs incurred during this alternative payroll covered period are eligible for forgiveness as long as they are paid on or before the first regular payroll date occurring after August 1. Payroll costs that were both paid and incurred during the covered period (or alternative payroll covered period) may only be counted once.

b. Are salary, wages, or commission payments to furloughed employees; bonuses; or hazard pay during the covered period eligible for loan forgiveness?

Yes. The CARES Act defines the term ''payroll costs'' broadly to include compensation in the form of salary, wages, commissions, or similar compensation. If a borrower pays furloughed employees their salary, wages, or commissions during the covered period, those payments are eligible for forgiveness as long as they do not exceed an annual salary of $100,000, as prorated for the covered period. The Administrator, in consultation with the Secretary, has determined that this interpretation is consistent with the text of the statute and advances the paycheck protection purposes of the statute by enabling borrowers to continue paying their employees even if those employees are not able to perform their day-to-day duties, whether due to lack of economic demand or public health considerations. This intent is reflected throughout the statute, including in section 1106(d)(4) of the Act, which provides that additional wages paid to tipped employees are eligible for forgiveness. The Administrator, in consultation with the Secretary, has also determined that, if an employee's total compensation does not exceed $100,000 on an annualized basis, the employee's hazard pay and bonuses are eligible for loan forgiveness because they constitute a supplement to salary or wages, and are thus a similar form of compensation.

c. Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?

Yes, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation can be no more than the lesser of 8/52 of 2019 compensation (*i.e.,* approximately 15.38 percent of 2019 compensation) or $15,385 per individual in total across all businesses. See 85 FR 21747, 21750.

In particular, owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf. Schedule C filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit.[3] General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners, as such expenses are paid out of their net self-employment income.

[3] *See* 85 CFR 21747, 21749 (April 20, 2020).

4. Nonpayroll Costs Eligible for Loan Forgiveness

a. When must nonpayroll costs be incurred and/or paid to be eligible for forgiveness?

A nonpayroll cost is eligible for forgiveness if it was:

i. Paid during the covered period; or

ii. incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.

Example: A borrower's covered period begins on June 1 and ends on July 26. The borrower pays its May and June electricity bill during the covered period and pays its July electricity bill on August 10, which is the next regular billing date. The borrower may seek loan forgiveness for its May and June electricity bills, because they were paid during the covered period. In addition, the borrower may seek loan forgiveness for the portion of its July electricity bill through July 26 (the end of the covered period), because it was incurred during the covered period and paid on the next regular billing date.

The Administrator, in consultation with the Secretary, has determined that this interpretation provides an appropriate degree of borrower flexibility while remaining consistent with the text of section 1106(b). The Administrator believes that this simplified approach to calculation of forgivable nonpayroll costs is also supported by considerations of administrative convenience for borrowers, and the Administrator notes that the 25 percent cap on nonpayroll costs will avoid excessive inclusion of nonpayroll costs.

b. Are advance payments of interest on mortgage obligations eligible for loan forgiveness?

No. Advance payments of interest on a covered mortgage obligation are not eligible for loan forgiveness because the CARES Act's loan forgiveness provisions regarding mortgage obligations specifically exclude ''prepayments.'' Principal on mortgage obligations is not eligible for forgiveness under any circumstances.

5. Reductions to Loan Forgiveness Amount

Section 1106 of the CARES Act specifically requires certain reductions in a borrower's loan forgiveness amount based on reductions in full-time equivalent employees or in employee salary and wages during the covered period, subject to an important statutory exemption for borrowers who have rehired employees and restored salary and wage levels by June 30, 2020 (with limitations). In addition, SBA and Treasury are adopting a regulatory exemption to the reduction rules for borrowers who have offered to rehire employees or restore employee hours, even if the employees have not accepted. The instructions to the loan forgiveness application and the guidance below explains how the statutory forgiveness reduction formulas work.

a. Will a borrower's loan forgiveness amount be reduced if the borrower laid-off or reduced the hours of an employee, then offered to rehire the same employee for the same salary and same number of hours, or restore the reduction in hours, but the employee declined the offer?

No. Employees whom the borrower offered to rehire are generally exempt from the CARES Act's loan forgiveness reduction calculation. This exemption is also available if a borrower previously reduced the hours of an employee and offered to restore the employee's hours at the same salary or wages. Specifically, in calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if:

i. The borrower made a good faith, written offer to rehire such employee (or, if applicable, restore the reduced hours of such employee) during the covered period or the alternative payroll covered period;

ii. the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the separation or reduction in hours;

iii. the offer was rejected by such employee;

iv. the borrower has maintained records documenting the offer and its rejection; and

v. the borrower informed the applicable state unemployment insurance office of such employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer.[4]

The Administrator and the Secretary determined that this exemption is an appropriate exercise of their joint rulemaking authority to grant *de minimis* exemptions under section 1106(d)(6).[5] Section 1106(d)(2) of the CARES Act reduces the amount of the PPP loan that may be forgiven if the borrower reduces full-time equivalent employees during the covered period as compared to a base period selected by the borrower. Section 1106(d)(5) of the CARES Act waives this reduction in the forgiveness amount if the borrower eliminates the reduction in full-time equivalent employees occurring during a different statutory reference period[6] by not later than June 30, 2020. The Administrator and the Secretary believe that the additional exemption set forth above is consistent with the purposes of the CARES Act and provides borrowers appropriate flexibility in the current economic climate. The Administrator, in consultation with the Secretary, have determined that the exemption is *de minimis* for two reasons. First, it is reasonable to anticipate that most laid-off employees will accept the offer of reemployment in light of current labor market conditions. Second, to the extent this exemption allows employers to cure FTE reductions attributable to terminations that occurred before February 15, 2020 (the start of the statutory FTE reduction safe harbor period), it is reasonable to anticipate those reductions will represent a relatively small portion of aggregate employees given the historically strong labor market conditions before the COVID–19 emergency.

b. What effect does a reduction in a borrower's number of full-time equivalent (FTE) employees have on the loan forgiveness amount?

In general, a reduction in FTE employees during the covered period or the alternative payroll covered period reduces the loan forgiveness amount by the same percentage as the percentage reduction in FTE employees. The borrower must first select a reference period: (i) February 15, 2019 through June 30, 2019; (ii) January 1, 2020 through February 29, 2020; or (iii) in the case of a seasonal employer, either of the two preceding methods or a consecutive 12-week period between May 1, 2019 and September 15, 2019.[7]

[4] Further information regarding how borrowers will report information concerning rejected rehire offers to state unemployment insurance offices will be provided on SBA's website.

[5] Section 1106(d)(6) is the sole joint rulemaking authority exercised in this interim final rule. All other provisions of this interim final rule are an exercise of rulemaking authority by SBA, except as expressly noted otherwise.

[6] Section 1106(d)(5) specifies that this reference period is between February 15, 2020 and 30 days after the date of enactment of the CARES Act or April 26, 2020 (the safe harbor period).

[7] This decision to permit seasonal employers to use, as a reference period, any consecutive 12-week period between May 1, 2019 and September 15, 2019 is an exercise of the Secretary's rulemaking authority under section 1109 of the CARES Act. This reference period is consistent with the interim final rule on seasonal employers issued by Treasury. *See* 85 FR 23917 (April 30, 2020).

If the average number of FTE employees during the covered period or the alternative payroll covered period is less than during the reference period, the total eligible expenses available for forgiveness is reduced proportionally by the percentage reduction in FTE employees. For example, if a borrower had 10.0 FTE employees during the reference period and this declined to 8.0 FTE employees during the covered period, the percentage of FTE employees declined by 20 percent and thus only 80 percent of otherwise eligible expenses are available for forgiveness.

This formula implements section 1106(d)(2) of the CARES Act, which expressly requires that the loan forgiveness amount be reduced by the amount resulting from multiplying the amount that the borrower would otherwise receive by the quotient of the average FTE employees in the covered period divided by the average FTE employees in the relevant reference period.

c. What does ''full-time equivalent employee'' mean?

Full-time equivalent employee means an employee who works 40 hours or more, on average, each week. The hours of employees who work less than 40 hours are calculated as proportions of a single full-time equivalent employee and aggregated, as explained further below in subsection d.

The CARES Act does not define the term ''full-time equivalent employee,'' and the Administrator, in consultation with the Secretary, has determined that full-time equivalent is best understood to mean 40 hours or more of work each week. The Administrator considered using a 30 hour standard, but determined that 40 hours or more of work each week better reflects what constitutes full-time employment for the vast majority of American workers.

d. How should a borrower calculate its number of full-time equivalent (FTE) employees?

Borrowers seeking forgiveness must document their average number of FTE employees during the covered period (or the alternative payroll covered period) and their selected reference period. For purposes of this calculation, borrowers must divide the average number of hours paid for each employee per week by 40, capping this quotient at 1.0. For example, an employee who was paid 48 hours per week during the covered period would be considered to be an FTE employee of 1.0.

For employees who were paid for less than 40 hours per week, borrowers may choose to calculate the full-time equivalency in one of two ways. First, the borrower may calculate the average number of hours a part-time employee was paid per week during the covered period. For example, if an employee was paid for 30 hours per week on average during the covered period, the employee could be considered to be an FTE employee of 0.75. Similarly, if an employee was paid for ten hours per week on average during the covered period, the employee could be considered to be an FTE employee of 0.25. Second, for administrative convenience, borrowers may elect to use a full-time equivalency of 0.5 for each part-time employee. The Administrator recognizes that not all borrowers maintain hours-worked data, and has decided to afford such borrowers this flexibility in calculating the full-time equivalency of their part-time employees.

Borrowers may select only one of these two methods, and must apply that method consistently to all of their part-time employees for the covered period or the alternative payroll covered period and the selected reference period. In either case, the borrower shall provide the aggregate total of FTE employees for both the selected reference period and the covered period or the alternative payroll covered period, by adding together all of the employee-level FTE employee calculations. The borrower must then divide the average FTE employees during the covered period or the alternative payroll covered period by the average FTE employees during the selected reference period, resulting in the reduction quotient.

The Administrator, in consultation with the Secretary, determined that because the Act does not define the term FTE employee, this approach to measurement of FTE is a reasonable and appropriate exercise of the Administrator's rulemaking authority, as it balances the need for a reasonable measurement of FTE employee headcount with the need to limit borrower compliance burdens and ensure administrative feasibility.

e. What effect does a borrower's reduction in employees' salary or wages have on the loan forgiveness amount?

Under section 1106(d)(3) of the CARES Act, a reduction in an employee's salary or wages in excess of 25 percent will generally result in a reduction in the loan forgiveness amount, unless an exception applies. Specifically, for each new employee in 2020 and each existing employee who was not paid more than the annualized equivalent of $100,000 in any pay period in 2019, the borrower must reduce the total forgiveness amount by the total dollar amount of the salary or wage reductions that are in excess of 25 percent of base salary or wages between January 1, 2020 and March 31, 2020 (the reference period), subject to exceptions for borrowers who restore reduced wages or salaries (see g. below). This reduction calculation is performed on a per employee basis, not in the aggregate.

Example: A borrower reduced a full-time employee's weekly salary from $1,000 per week during the reference period to $700 per week during the covered period. The employee continued to work on a full-time basis during the covered period with an FTE of 1.0. In this case, the first $250 (25 percent of $1,000) is exempted from the reduction. Borrowers seeking forgiveness would list $400 as the salary/hourly wage reduction for that employee (the extra $50 weekly reduction multiplied by eight weeks).

The provision implements section 1106(d)(3) of the CARES Act, which provides that ''the amount of loan forgiveness shall be reduced by the amount of any reduction in total salary or wages of any employee [who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than $100,000] during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.''

f. How should borrowers seeking loan forgiveness account for the reduction based on a reduction in the number of employees (Section 1106(d)(2)) relative to the reduction relating to salary and wages (Section 1106(d)(3))?

To ensure that borrowers are not doubly penalized, the salary/wage reduction applies only to the portion of the decline in employee salary and wages that is *not* attributable to the FTE reduction.

The Act does not address the intersection between the FTE employee reduction provision in section 1106(d)(2) and the salary/wage reduction provision in section 1106(d)(3). To help ensure uniformity across all borrowers in applying the FTE reduction provision and the salary/wage reduction provision, the Administrator, in consultation with the Secretary, has determined that the salary/wage reduction applies only to the portion of the decline in employee salary and wages that is *not* attributable to the FTE reduction. This approach will help

ensure that borrowers are not doubly penalized for reductions.

Example: An hourly wage employee had been working 40 hours per week during the borrower selected reference period (FTE employee of 1.0) and the borrower reduced the employee's hours to 20 hours per week during the covered period (FTE employee of 0.5). There was no change to the employee's hourly wage during the covered period. Because the hourly wage did not change, the reduction in the employee's total wages is entirely attributable to the FTE employee reduction and the borrower is not required to conduct a salary/wage reduction calculation for that employee.

The Administrator considered applying the salary/wage reduction provision in addition to the FTE reduction in situations similar to the example above because section 1106(d)(3) refers to reductions in ''total salary or wages'' in excess of 25 percent. However, the Administrator determined that, based on the structure of section 1106(d)(2) and section 1106(d)(3), Congress intended to distinguish between an FTE reduction on the one hand and a reduction in hourly wages or salary on the other hand. This interpretation harmonizes the two loan forgiveness reduction provisions in a logical manner consistent with the statute.

g. If a borrower restores reductions made to employee salaries and wages or FTE employees by not later than June 30, 2020, can the borrower avoid a reduction in its loan forgiveness amount?

Yes. Section 1106(d)(5) of the CARES Act provides that if certain employee salaries and wages were reduced between February 15, 2020 and April 26, 2020 (the safe harbor period) but the borrower eliminates those reductions by June 30, 2020 or earlier, the borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required due to reductions in salaries and wages under section 1106(d)(3) of the CARES Act. Similarly, if a borrower eliminates any reductions in FTE employees occurring during the safe harbor period by June 30, 2020 or earlier, the borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required due to reductions in FTE employees.[8]

This provision implements section 1106(d)(5) of the CARES Act, which gives borrowers an opportunity to cure reductions in FTEs, salary/wage reductions in excess of 25 percent, or both, using the applicable methodology set forth in section 1106(d)(5). The Act provides that the reduction in FTEs or the reduction in salary/hourly wages must be eliminated ''not later than June 30, 2020.'' This does not change or affect the requirement that at least 75 percent of the loan forgiveness amount must be attributable to payroll costs.

h. Will a borrower's loan forgiveness amount be reduced if an employee is fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction?

No. When an employee of the borrower is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the covered period or the alternative payroll covered period (FTE reduction event), the borrower may count such employee at the same full-time equivalency level before the FTE reduction event when calculating the section 1106(d)(2) FTE employee reduction penalty. The Administrator and the Secretary have decided to exempt such employees from the calculation of the FTE reduction penalty.

Section 1106 is silent concerning how to account for employees who are fired for cause, voluntarily resign, or voluntarily request a reduced schedule. The Administrator and the Secretary have determined that such an exemption is *de minimis,* because a limited number of borrowers will face an FTE reduction event during the covered period or the alternative payroll covered period. Further, borrowers should not be penalized for changes in employee headcount that are the result of employee actions and requests. Borrowers that avail themselves of this *de minimis* exemption shall maintain records demonstrating that each such employee was fired for cause, voluntarily resigned, or voluntarily requested a schedule reduction. The borrower shall provide such documentation upon request.

6. Documentation Requirements

What must borrowers submit for forgiveness of their PPP loans?

The loan forgiveness application form details the documentation requirements; specifically, documentation each borrower must submit with its Loan Forgiveness Application (SBA Form 3508 or a lender equivalent), documentation each borrower is required to maintain and make available upon request, and documentation each borrower may voluntarily submit with its loan forgiveness application. Section 1106(e) of the Act requires borrowers to submit to their lenders an application, which includes certain documentation, and section 1106(f) provides that the borrower shall not receive forgiveness without submitting the required documentation. For purposes of administrative convenience for both lenders and borrowers, the Administrator, in consultation with the Secretary, has determined that requiring borrowers to submit certain documentation, maintain certain documentation, and choose whether to submit additional documentation will reduce initial reporting burdens on borrowers and reduce initial recordkeeping burdens on lenders.

7. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at *www.sba.gov*. Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices*.

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

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D), based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

[8] In light of the flexibility the Act provides to borrowers with respect to their selection of the reference time period for any potential reduction in loan forgiveness, and the statutory authority for SBA and the Department of the Treasury to grant *de minimis* exemptions from this requirement, if the borrower meets the requirements for the FTE reduction safe harbor, it will not be subject to any loan forgiveness reduction based on a reduction in FTE employees.

Executive Order 13132

SBA has determined that this 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 layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

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

SBA has determined that this rule will impose a new reporting requirement on borrowers who request forgiveness of their PPP loan. SBA has developed Form 3508, Paycheck Protection Program—Loan Forgiveness Application, for use in collecting the information required to determine whether a borrower is eligible for loan forgiveness. SBA obtained approval of Form 3508 from the Office of Management and Budget (OMB) as a modification to the existing PPP collection of information (OMB Control Number (3245–0407). This collection of information was approved under emergency procedures to facilitate immediate implementation of the PPP and expires on October 31, 2020.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Jovita Carranza,

Administrator Small Business Administration.

Michael Faulkender,

Assistant Secretary for Economic Policy, Department of the Treasury.

[FR Doc. 2020–11536 Filed 5–28–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket Number SBA–2020–0033]

RIN 3245–AH47

Business Loan Program Temporary Changes; Paycheck Protection Program—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds a new program, titled the ''Paycheck Protection Program,'' to the SBA's 7(a) Loan Program. The CARES Act also provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). The PPP is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). SBA posted additional interim final rules on April 3, 2020, April 14, 2020, April 24, 2020, April 28, 2020, April 30, 2020, May 5, 2020, May 8, 2020, May 13, 2020, May 14, 2020, May 18, 2020, and May 20, 2020, and the Department of the Treasury (Treasury) posted an additional interim final rule on April 27, 2020. SBA and Treasury posted an interim final rule on Loan Forgiveness contemporaneously with this interim final rule on May 22, 2020. This interim final rule supplements the previously posted interim final rules in order to inform borrowers and lenders of SBA's process for reviewing PPP loan applications and loan forgiveness applications, and requests public comment.

DATES:

Effective date: This rule is effective May 28, 2020.

Applicability date: This interim final rule applies to loan applications and loan forgiveness applications submitted under the Paycheck Protection Program.

Comment date: Comments must be received on or before July 1, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0033 through the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. SBA will post all comments on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices*.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of

Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, tribal, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency. Section 1102 of the CARES Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program, and requires SBA to issue guidance and regulations implementing section 1106 within 30 days after the date of enactment of the CARES Act. On April 2, 2020, SBA posted its first PPP interim final rule (85 FR 20811) (the First Interim Final Rule) covering in part loan forgiveness. On April 8, 2020 and on April 26, 2020, SBA posted Frequently Asked Questions on loan forgiveness.[1] On April 14, 2020, SBA posted another PPP interim final rule (85 FR 21747) covering in part loan forgiveness. On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the Paycheck Protection Program.

As described below, this interim final rule informs borrowers and lenders of SBA's process for reviewing PPP loan applications and loan forgiveness applications. This interim final rule supplements the interim final rule on Loan Forgiveness posted contemporaneously with this interim final rule.

II. Comments and Immediate Effective Date

The intent of the CARES Act is that SBA provide relief to America's small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, it is critical to meet lenders' and borrowers' need for clarity concerning loan forgiveness requirements as rapidly as possible because borrowers can seek loan forgiveness as early as eight-weeks following the date of disbursement of their PPP loans. Because the first PPP loans were disbursed after April 3, providing borrowers with certainty on SBA's process for reviewing PPP loan applications and loan forgiveness applications will enhance borrowers' ability to determine whether, and to what extent, they should apply for PPP loans and loan forgiveness, and thereby carry out the purposes of the CARES Act in keeping their workers employed and paid, while at the same time taking necessary steps to maximize eligible loan forgiveness amounts. An immediate effective date also is necessary for PPP lenders who generally will make the loan forgiveness determinations, as provided in the CARES Act. Specifically, an immediate effective date is necessary for lenders so that they will have both a degree of certainty and sufficient time to develop their systems and policies and procedures in order to timely process loan forgiveness applications.

This interim final rule supplements previous regulations and guidance on the discrete issues related to SBA's process for review of PPP loan applications and loan forgiveness applications. This interim final rule is effective without advance notice and public comment because section 1114 of the CARES Act authorizes SBA to issue regulations to implement Title I of the CARES Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the ground that it would be contrary to the public interest. Specifically, SBA has determined that advance notice and public comment would delay the ability of PPP borrowers to understand with certainty SBA's process for reviewing PPP loan applications and loan forgiveness applications. By providing a high degree of certainty to PPP borrowers through this interim final rule, PPP borrowers will be able to take immediate steps to maximize their loan forgiveness amounts. This rule is being issued to allow for immediate implementation of the forgiveness component of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of this interim final rule, including section III below. These comments must be submitted on or before July 1, 2020. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program Requirements for SBA Loan Review Procedures and Related Borrower and Lender Responsibilities

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under the Paycheck Protection Program (PPP). Loans under the PPP will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. Additional information about the PPP is available in interim final rules published by SBA and Treasury in the **Federal Register** (85 FR 20811, 85 FR 20817, 85 FR 21747, 85 FR 23450, 85 FR 23917, 85 FR 26321, 85 FR 26324, 85 FR 27287, 85 FR 29842, 85 FR 29845, 85 FR 29847, 85 FR 30835), as well as an SBA interim final rule posted on May 20, 2020 and an SBA and Treasury interim final rule posted on May 22, 2020 (collectively, the PPP Interim Final Rules).

Under the CARES Act, SBA is authorized to guarantee loans under the PPP, a new temporary 7(a) program, through June 30, 2020. The intent of the Act is that SBA provide relief to America's small businesses expeditiously, which is expressed in the Act by giving all lenders delegated authority and streamlining the requirements of the regular 7(a) loan program.

The Small Business Act authorizes the Administrator to conduct investigations to determine whether a recipient or participant in any assistance under a 7(a) program, including the PPP, is ineligible for a loan, or has violated section 7(a), or any rule, regulation or order issued

[1] *https://www.sba.gov/document/support-faq-lenders-borrowers.*

thereunder. 15 U.S.C. 634(b)(11). Additionally, under section 7(a), the Administrator is empowered to make loans in cooperation with lenders through agreements to participate on a deferred (guaranteed) basis. 15 U.S.C. 636(a). Further, the Administrator may make such rules and regulations as deemed necessary and take any and all actions determined to be necessary or desirable with respect to 7(a) loans. 15 U.S.C. 634(b)(6) and (b)(7). Pursuant to these provisions of the Small Business Act, SBA has issued regulations establishing the standards by which it will investigate whether a loan met program requirements and the circumstances under which SBA will be released from liability on a guarantee for such a loan. 13 CFR 120.524.

In light of the structure of the PPP program established by the CARES Act and the PPP Interim Final Rules, in which loans and loan forgiveness are provided based on the borrower's certifications and documentation provided by the borrower, the Administrator, in consultation with the Secretary of the Treasury (Secretary), has determined that it is appropriate to adopt additional procedures and criteria through which SBA will review whether an action by the borrower has resulted in its receipt of a PPP loan that did not meet program requirements.[2] SBA's review of borrower certifications and representations regarding the borrower's eligibility for a PPP loan and loan forgiveness, and the borrower's use of PPP loan proceeds, is essential to ensure that PPP loans are directed to the entities Congress intended, and that PPP loan proceeds are used for the purposes Congress required, including the CARES Act's central purpose of keeping workers paid and employed.

1. SBA Reviews of Individual PPP Loans

a. Will SBA review individual PPP loans?

Yes. SBA may review any PPP loan, as the Administrator deems appropriate, as described below.

b. What borrower representations and statements will SBA review?

The Administrator is authorized to review the following:

Borrower Eligibility: The Administrator may review whether a borrower is eligible for the PPP loan based on the provisions of the CARES Act, the rules and guidance available at the time of the borrower's PPP loan application, and the terms of the borrower's loan application. See FAQ 17 (posted April 6, 2020).[3] These include, but are not limited to, SBA's regulations under 13 CFR 120.110 (as modified and clarified by the PPP Interim Final Rules) and 13 CFR 121.301(f) and the information, certifications, and representations on the Borrower Application Form (SBA Form 2483 or lender's equivalent form) and Loan Forgiveness Application Form (SBA Form 3508 or lender's equivalent form).

Loan Amounts and Use of Proceeds: The Administrator may review whether a borrower calculated the loan amount correctly and used loan proceeds for the allowable uses specified in the CARES Act.

Loan Forgiveness Amounts: CThe Administrator may review whether a borrower is entitled to loan forgiveness in the amount claimed on the borrower's Loan Forgiveness Application (SBA Form 3508 or lender's equivalent form).

c. When will SBA undertake a loan review?

For a PPP loan of any size, SBA may undertake a review at any time in SBA's discretion. For example, SBA may review a loan if the loan documentation submitted to SBA by the lender or any other information indicates that the borrower may be ineligible for a PPP loan, or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower. 13 CFR 120.524(c). As noted on the Loan Forgiveness Application Form, the borrower must retain PPP documentation in its files for six years after the date the loan is forgiven or repaid in full, and permit authorized representatives of SBA, including representatives of its Office of Inspector General, to access such files upon request.

Lenders must comply with applicable SBA requirements for records retention, which for Federally regulated lenders means compliance with the requirements of their federal financial institution regulator and for SBA supervised lenders (as defined in 13 CFR 120.10 and including PPP lenders with authority under SBA Form 3507) means compliance with 13 CFR 120.461.

d. Will I have the opportunity to respond to SBA's questions in a review?

Yes. If loan documentation submitted to SBA by the lender or any other information indicates that the borrower may be ineligible for a PPP loan or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower, SBA will require the lender to contact the borrower in writing to request additional information. SBA may also request information directly from the borrower. The lender will provide any additional information provided to it by the borrower to SBA. SBA will consider all information provided by the borrower in response to such an inquiry.

Failure to respond to SBA's inquiry may result in a determination that the borrower was ineligible for a PPP loan or ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower.

e. If SBA determines that a borrower is ineligible for a PPP loan, can the loan be forgiven?

No. If SBA determines that a borrower is ineligible for the PPP loan, SBA will direct the lender to deny the loan forgiveness application. Further, if SBA determines that the borrower is ineligible for the loan amount or loan forgiveness amount claimed by the borrower, SBA will direct the lender to deny the loan forgiveness application in whole or in part, as appropriate. SBA may also seek repayment of the outstanding PPP loan balance or pursue other available remedies.

Section 1106(b) of the CARES Act provides for forgiveness of a PPP loan only if the borrower is an ''eligible recipient.'' The Administrator has determined that to be an eligible recipient that is entitled to forgiveness under section 1106(b), the borrower must be an ''eligible recipient'' under 15 U.S.C. 636(a)(36)(A)(iv) and rules and guidance available at the time of the borrower's loan application. This requirement promotes the public interest, aligns SBA's functions with other governmental policies, and appropriately carries out the CARES Act's PPP provisions, including by preventing evasion of the requirements for PPP loan eligibility and ensuring program integrity with respect to this emergency financial assistance program. It is also consistent with the CARES Act's nonrecourse provision, 15 U.S.C. 636(a)(36)(F)(v), which limits SBA's recourse against individual shareholders, members, or partners of a PPP borrower for nonpayment of a PPP loan only if the borrower is an eligible

[2] This interim final rule is an exercise of SBA's rulemaking authority under 15 U.S.C. 634(b), 15 U.S.C. 633(d), and 5 U.S.C. App., Reorg. Plan No. 4 of 1965, 11(b), 13(a) (abolishing Loan Policy Board and transferring functions to the Administrator); and CARES Act sections 1106(k) and 1114.

[3] *https://www.sba.gov/document/support—faq-lenders-borrowers.*

recipient of the loan. Accordingly, the PPP Loan Forgiveness Application (SBA Form 3508 or lender's equivalent form) notes that SBA may direct a lender to disapprove a borrower's loan forgiveness application if SBA determines that the borrower does not qualify as an eligible recipient for the PPP loan.

f. May a borrower appeal SBA's determination that the borrower is ineligible for a PPP loan or ineligible for the loan amount or the loan forgiveness amount claimed by the borrower?

Yes. SBA intends to issue a separate interim final rule addressing this process.

2. The Loan Forgiveness Process for Lenders

a. What should a lender review?

For all PPP Loan Forgiveness Applications, each lender shall:

i. Confirm receipt of the borrower certifications contained in the Loan Forgiveness Application Form.

ii. Confirm receipt of the documentation borrowers must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the Loan Forgiveness Application Form.

iii. Confirm the borrower's calculations on the borrower's Loan Forgiveness Application, including the dollar amount of the (A) Cash Compensation, Non-Cash Compensation, and Compensation to Owners claimed on Lines 1, 4, 6, 7, 8, and 9 on PPP Schedule A and (B) Business Mortgage Interest Payments, Business Rent or Lease Payments, and Business Utility Payments claimed on Lines 2, 3, and 4 on the PPP Loan Forgiveness Calculation Form, by reviewing the documentation submitted with the Loan Forgiveness Application.

iv. Confirm that the borrower made the calculation on Line 10 of the Loan Forgiveness Calculation Form correctly, by dividing the borrower's Eligible Payroll Costs claimed on Line 1 by 0.75.

Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application. Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. By contrast, if payroll costs are not documented with such recognized sources, more extensive review of calculations and data would be appropriate. The borrower shall not receive forgiveness without submitting all required documentation to the lender.

As the First Interim Final Rule [4] indicates, lenders may rely on borrower representations. If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue. As stated in paragraph III.3.c of the First Interim Final Rule, the lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.

b. What is the timeline for the lender's decision on a loan forgiveness application?

The lender must issue a decision to SBA on a loan forgiveness application not later than 60 days after receipt of a complete loan forgiveness application from the borrower. That decision may take the form of an approval (in whole or in part); denial; or (if directed by SBA) a denial without prejudice due to a pending SBA review of the loan for which forgiveness is sought. In the case of a denial without prejudice, the borrower may subsequently request that the lender reconsider its application for loan forgiveness, unless SBA has determined that the borrower is ineligible for a PPP loan. The Administrator has determined that this process appropriately balances the need for efficient processing of loan forgiveness applications with considerations of program integrity, including affording SBA the opportunity to ensure that borrower representations and certifications (including concerning eligibility for a PPP loan) were accurate.

When the lender issues its decision to SBA approving the application (in whole or in part), it must include (1) the PPP Loan Forgiveness Calculation Form; (2) PPP Schedule A; and (3) the (optional) PPP Borrower Demographic Information Form (if submitted to the lender). The lender must confirm that the information provided by the lender to SBA accurately reflects lender's records for the loan, and that the lender has made its decision in accordance with the requirements set forth in 2.a. If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the lender must request payment from SBA at the time the lender issues its decision to SBA. SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA. If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender as required by section 1110(e)(6) of the CARES Act.

When the lender issues its decision to SBA determining that the borrower is not entitled to forgiveness in any amount, the lender must provide SBA with the reason for its denial, together with (1) the PPP Loan Forgiveness Calculation Form; (2) PPP Schedule A; and (3) the (optional) PPP Borrower Demographic Information Form (if submitted to the lender). The lender must confirm that the information provided by the lender to SBA accurately reflects lender's records for the loan, and that the lender has made its decision in accordance with the requirements set forth in 2.a. The lender must also notify the borrower in writing that the lender has issued a decision to SBA denying the loan forgiveness application. SBA reserves the right to review the lender's decision in its sole discretion. Within 30 days of notice from the lender, a borrower may request that SBA review the lender's decision by reviewing the loan in accordance with 2.c. below.

Enabling SBA to use the statutory 90-day period to review the PPP loan and forgiveness documentation is an appropriate procedural protection to prevent fraud or misuse of PPP funds, ensure that recipients of PPP loans are within the scope of entities that the CARES Act is intended to assist, and confirm compliance with the PPP requirements set forth in the statute, rules, and guidance. This protection is also important in light of the large number and diverse types of PPP lenders, many of which were not previously SBA participating lenders and which were approved rapidly in order to enable financial assistance to be provided as rapidly as feasible to millions of small businesses. SBA will use the 90-day period to help ensure that applicable legal requirements have been satisfied.

SBA will issue additional procedures on the process for advance purchase of PPP loans.

[4] 85 FR 20811, 20815–20816 (April 15, 2020).

c. What should a lender do if it receives notice that SBA is reviewing a loan?

SBA may begin a review of any PPP loan of any size at any time in SBA's discretion. If SBA undertakes such a review, SBA will notify the lender in writing and the lender must notify the borrower in writing within five business days of receipt.

Within five business days of receipt of such notice, the lender shall transmit to SBA electronic copies of the following:

i. The Borrower Application Form (SBA Form 2483 or lender's equivalent form) and all supporting documentation provided by the borrower.

ii. The Loan Forgiveness Application (SBA Form 3508 or lender's equivalent form), and all supporting documentation provided by the borrower (if the lender has received such application). If the lender receives such application after it receives notice that SBA has commenced a loan review, the lender shall transmit electronic copies of the application and all supporting documentation provided by the borrower to SBA within five business days of receipt. The lender must also request that the borrower provide the lender with a copy of the Schedule A Worksheet to the Loan Forgiveness Application, and the lender must submit the worksheet to SBA within 5 business days of receipt from the borrower.

iii. A signed and certified transcript of account.

iv. A copy of the executed note evidencing the PPP loan.

v. Any other documents related to the loan requested by SBA.

If SBA has notified the lender that SBA has commenced a loan review, the lender shall not approve any application for loan forgiveness for such loan until SBA notifies the lender in writing that SBA has completed its review.

3. Lender Fees

a. Is the lender eligible for a processing fee if SBA determines that a borrower is ineligible?

No. If SBA conducts a loan review and determines that the borrower was ineligible for a PPP loan, the lender is not eligible for a processing fee.

b. Are lender processing fees subject to clawback if SBA determines that a borrower is ineligible?

Yes. For any SBA-reviewed PPP loan, if within one year after the loan was disbursed SBA determines that a borrower was ineligible for a PPP loan based on the provisions of the CARES Act or applicable rules or guidance available at the time of the borrower's loan application, or the terms of the loan application, SBA will seek repayment of the lender processing fee from the lender. However, SBA's determination of borrower eligibility will have no effect on SBA's guaranty of the loan if the lender has complied with its obligations under section III.3.b of the First Interim Final Rule and the document collection and retention requirements described in the lender application form (SBA Form 2484).

c. Are lender processing fees subject to clawback if a lender has not fulfilled its obligations under PPP regulations?

Yes. If a lender fails to satisfy the requirements applicable to lenders that are set forth in section III.3.b of the First Interim Final Rule or the document collection and retention requirements described in the lender application form (SBA Form 2484), SBA will seek repayment of the lender processing fee from the lender and may determine that the loan is not eligible for a guaranty.

4. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at *www.sba.gov*. Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices*.

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

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this 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 layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

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

SBA has determined that this rule will impose a new reporting requirement on the lenders that are participating in the PPP. As discussed above, when a lender approves or denies a request for loan forgiveness, the lender must submit to SBA limited information from the borrower's Loan Forgiveness Application (SBA Form 3508 or lender's equivalent form), including the portion of the form used to calculate the total amount to be forgiven, as well as the schedule used to determine the borrower's payroll expenses. In addition, for those loans that SBA selects for review, the applicable lenders will be required to submit information to allow SBA to review the loans for borrower eligibility, loan amount eligibility, and loan forgiveness eligibility. SBA will submit the new reporting requirements to OMB for approval as a modification to the existing PPP information collection. This information collection is currently approved as an emergency request under OMB Control Number 3245–0407 until October 31, 2020.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except

for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Jovita Carranza,

Administrator.

[FR Doc. 2020–11533 Filed 5–28–20; 8:45 am]

BILLING CODE 8026–03–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1253

[Docket No. CPSC–2019–0023]

Children's Toys and Child Care Articles: Determinations Regarding ASTM F963 Elements and Phthalates for Unfinished Manufactured Fibers

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (CPSC) is issuing a final rule determining that certain unfinished manufactured fibers do not contain the ASTM F963 elements or specified phthalates that exceed the limits set forth under the CPSC's statutes and regulations for children's toys and child care articles. Based on these determinations, the specified unfinished manufactured fibers would not be required to have third party testing for compliance with the requirements of the ASTM F963 elements or phthalates for children's toys and child care articles.

DATES: The rule is effective on July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Stephen W. Lee, Compliance Officer, Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408: telephone 301–504–7814; email: *slee@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

1. Third Party Testing and Burden Reduction

Section 14(a) of the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires that manufacturers of products subject to a consumer product safety rule or similar rule, ban, standard, or regulation enforced by the CPSC, must certify that the product complies with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). For children's products, certification must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id.* Public Law 112–28 (August 12, 2011) directed the CPSC to seek comment on ''opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation.'' Public Law 112–28 also authorized the Commission to issue new or revised third party testing regulations if the Commission determines ''that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.'' *Id.* 2063(d)(3)(B).

To provide opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulations, the CPSC assessed whether children's toys and child care articles manufactured with seven manufactured fibers: polyester (polyethylene terephthalate (PET)), nylon, polyurethane (spandex), viscose rayon, natural rubber latex, acrylic, and modacrylic, would comply with CPSC's requirements for ASTM F963 elements or phthalates. The Commission determines that such materials will comply with CPSC's requirements with a high degree of assurance. Therefore, manufacturers do not need to have those materials tested by a third party testing laboratory in order to issue a Children's Product Certificate (CPC).

2. ASTM F963 Elements

Section 106 of the CPSIA provides that the provisions of ASTM International, *Consumer Safety Specifications for Toy Safety* (ASTM F963), shall be considered to be consumer product safety standards issued by the Commission.[1] 15 U.S.C. 2056b. The Commission has issued a rule that incorporates by reference the relevant provisions of ASTM F963 at 16 CFR part 1250.[2] Thus, children's toys subject to ASTM F963 must be tested by a CPSC-accepted third party laboratory and demonstrate compliance with all applicable CPSC requirements for the manufacturer to issue a CPC before the children's toys can be entered into commerce.

Section 4.3.5 of ASTM F963 requires that surface coating materials and accessible substrates of children's toys that can be sucked, mouthed, or ingested[3] must comply with the solubility limits of eight elements given in Table 1 of the toy standard. The materials and their solubility limits are shown in Table 1. We refer to these eight elements as ''ASTM F963 elements.''

[1] ASTM F963 is a consumer product safety standard, except for section 4.2 and Annex 4, or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute.

[2] The Commission is not incorporating ASTM F963 by reference into part 1253.

[3] ASTM F963 contains the following note regarding the scope of the solubility requirement: NOTE 4—For the purposes of this requirement, the following criteria are considered reasonably appropriate for the classification of children's toys or parts likely to be sucked, mouthed or ingested: (1) All toy parts intended to be mouthed or contact food or drink, components of children's toys which are cosmetics, and components of writing instruments categorized as children's toys; (2) Children's toys intended for children less than 6 years of age, that is, all accessible parts and components where there is a probability that those parts and components may come into contact with the mouth.

TABLE 1—MAXIMUM SOLUBLE MIGRATED ELEMENT IN PPM (MG/KG) FOR SURFACE COATINGS AND SUBSTRATES INCLUDED AS PART OF A TOY

Elements	Solubility Limit, (ppm) [4]
Antimony (Sb)	60
Arsenic (As)	25
Barium (Ba)	1000
Cadmium (Cd)	75
Chromium (Cr)	60
Lead (Pb)	90
Mercury (Hg)	60
Selenium (Se)	500

The [4] third party testing burden could be reduced only if all elements listed in section 4.3.5 have concentrations below their solubility limits. Because third party conformity assessment bodies typically run one test for all of the ASTM F963 elements, no testing burden reduction would be achieved if any one of the elements requires testing.

To alleviate some of the third party testing burdens associated with the ASTM F963 elements in the accessible component parts of children's toys, the Commission determined that certain unfinished and untreated trunk wood does not contain ASTM F963 elements that would exceed the limits specified in section 106 of the CPSIA. Based on this determination, unfinished and untreated trunk wood would not require third party testing for the ASTM F963 elements. 16 CFR part 1251. The Commission also has determined that untreated and unfinished engineered wood products would not require third party testing for the ASTM elements or specified phthalates (discussed below) for children's products, children's toys, and child care products. 16 CFR part 1252.

3. Phthalates

Section 108(a) of the CPSIA permanently prohibits the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any ''children's toy or child care article'' that contains concentrations of more than 0.1 percent of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or butyl benzyl phthalate (BBP). 15 U.S.C. 2057c(a).

The CPSIA required the Commission to appoint a Chronic Hazard Advisory Panel (CHAP) to ''study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles.'' 15 U.S.C. 2057c(b)(2). The CHAP issued its report in July 2014. On October 27, 2017, the Commission published a final rule in the **Federal Register**, ''Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates,'' 82 FR 49938, prohibiting children's toys and child care articles containing concentrations greater than 0.1 percent of: di-(2-ethylhexyl) phthalate (DEHP); dibutyl phthalate (DBP); benzyl butyl phthalate (BBP); diisononyl phthalate (DINP); diisobutyl phthalate (DIBP); di-n-pentyl phthalate (DPENP); di-n-hexyl phthalate (DHEXP); or dicyclohexyl phthalate (DCHP). These restrictions apply to any plasticized component part of a children's toy or child care article or any other component part of a children's toy or child care article that is made of other materials that may contain phthalates. The phthalates prohibitions are set forth in 16 CFR part 1307.

Tests for phthalate concentration are among the most expensive certification tests to conduct on a product, and each accessible component part subject to section 108 of the CPSIA must be tested. Third party testing burden reductions can occur only if each phthalate's concentration is below 0.1 percent (1000 ppm). Because laboratories typically run one test for all of the specified phthalates, no testing burden reduction likely is achieved if any one of the phthalates requires compliance testing.

4. Notice of Proposed Rulemaking

On October 9, 2019, the Commission published a notice of proposed rulemaking (NPR) in the **Federal Register** for the unfinished manufactured fibers determinations. (84 FR 54055). The Commission proposed that certain unfinished [5] manufactured fibers do not contain any of the specified ASTM F963 elements in excess of specified concentrations and any of the specified phthalates in concentrations greater than 0.1 percent (1000 ppm). Thus, accessible component parts made from such manufactured fibers in children's toys and child care articles subject to sections 106 and 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) and 16 CFR part 1307 that are made with these manufactured fibers would not require third party testing for certification purposes.[6] The comments to the NPR are addressed in section C of this preamble.

B. Contractor's Research

1. TERA Task 17 Contractor's Report

The CPSC contracted with the Toxicology Excellence for Risk Assessment (TERA, or the contractor) to conduct literature reviews on the production of certain undyed manufactured fibers and to evaluate whether the specified manufactured fibers potentially contain: (1) Any of the specified chemical elements that are included in the toy standard in concentrations [7] exceeding specified limits; or (2) any of 10 specified phthalates in concentrations greater than 0.1 percent (1000 ppm). TERA researched the following manufactured fibers: polyester (polyethylene terephthalate (PET)), nylon, polyurethane (spandex), viscose rayon, natural rubber latex, acrylic, and modacrylic. Staff reviewed the information provided in the TERA report, *Exposure Assessment: Potential for the Presence of Phthalates and Other Specified Elements in Undyed Manufactured Fibers and their Colorants* (the report, Task 17).[8] TERA's Task 17 report formed the basis for the unfinished manufactured fiber determinations.[9]

All of the fibers covered in the Task 17 report are manufactured and do not naturally occur in a fiber state. Although their raw starting materials may be different, these fibers are generally extruded into a fiber form. In many cases, additional chemicals may be

[4] The method to assess the solubility of a listed element is detailed in section 8.3, *Test Methods for Determination of Heavy Element Content in Toys, Toy Components, and Materials,* of ASTM F963.

[5] An unfinished fiber is one that has no chemical additives beyond those required to manufacture the fiber. Manufactured fibers, unlike naturally occurring fibers, could have chemicals added before fiber formation to impart color or some desirable performance property, such as flame retardancy. For unfinished fibers as described in this rule, the unfinished fiber is free of these chemical additives.

[6] The Commission has previously determined that certain products and materials do not contain lead at levels that exceed the limits for lead established under section 101 of the CPSIA. These lead determinations include textiles consisting of natural and manufactured fibers (dyed or undyed). 16 C.F.R § 1500.91.

[7] Although the ASTM F963–17 standard for chemical elements is a solubility requirement, TERA researched total content, in part because of the expected availability of content data versus solubility data and because content is a conservative stand-in for chemical solubility (*i.e.,* the content of a chemical is the same value as one hundred percent solubility of the chemical from solubility testing).

[8] Task Order 17, Contract Number CPSC–D–12–0001. Available at: *https://www.cpsc.gov/s3fs-public/TERA%20Task17%20Report%20Phthalates%20and%20ASTM%20Elements%20in%20Manufactured%20Fibers.pdf.*

[9] The staff briefing package for the NPR contains detailed information on theTask 17 report and staff analysis of the report. *https://www.cpsc.gov/s3fs-public/Draft%20NPR-%20Children%27s%20Toys%20and%20Child%20Care%20Articles-%20Determinations%20Regar....pdf?IB4eKjJ_meZH1vdT5uQeojG8FfYGeqD9.*

added before the extrusion process so that the chemicals are embedded in the fiber structure. To better understand where the specified phthalates or ASTM elements may be present, TERA documented the fiber chemical characteristics, manufacturing processes, typical colorants, and any other relevant information found through their search strategy.

2. CPSC Staff Analysis of TERA Task 17 Report

As described in the preamble of the NPR, CPSC staff reviewed the TERA Task 17 Report. CPSC staff also examined TERA's source references to better understand the report's findings. The Task 17 Report focused on the possibility of the ASTM F963 elements and specified phthalates being present in seven manufactured fiber types.

Unfinished Fibers

The manufactured fibers within scope of the TERA report included the following generic fiber types: Polyester (polyethylene terephthalate (PET)), nylon, natural latex rubber, polyurethane (spandex), rayon, acrylic, and modacrylic. The TERA report found concentrations of antimony exceeding specified limits are used in the manufacture of undyed and unfinished PET. However, staff does not know the soluble concentration when tested according to ASTM F963. PET fiber is widely used in consumer textile products, including children's toys.

In staff's review of the source material, staff did not find any information or data suggesting intentional use of any of the other chemicals of interest or presence of contaminants in fibers at significant levels, with reported contaminant levels no higher than a few parts per million. Staff believes that contaminants or impurities are unintentional (*i.e.,* not added by the manufacturer intentionally), existing in the environment at trace levels, or present in general industrial practices and conditions. We conclude that any impurities will be at levels below the relevant limits.

Dyed or Finished Fibers (or Fibers With Chemical Additives Pre-Fiber Formation)

Colorants, such as dyes, often contain metals in their structure. The contractor reported the use of mercury, arsenic, barium, or chromium in dyes or dye auxiliaries. For example, chrome dyes are a type of acid dye that can be used on nylon fibers and contains chromium to form a complex between the dye and the fiber. Because the use of these metals is not necessarily limited to a specific dye class or fiber type, staff cannot rule out the use of these metals at concentrations greater than those specified in ASTM F963 without more information. Furthermore, the contractor reported that some of the specified phthalates could be used as dye auxiliaries or carriers for pigments. Although some of the findings may have been with products potentially out of the scope of the subject rule, the mechanism by which colorants are applied to fibers could extend to relevant products.

Finishes may also be added at the fiber (yarn or fabric) stage to impart desirable characteristics. The contractor report cited the potential use of antimony-containing flame retardants and noted that other chemicals of interest could be used in finished fiber (yarn or fabric). However, those finishes were not within the scope of the contractor report. Staff notes that the restriction in the ASTM F963 standard is based on solubility (excluding lead, which has separate specific restrictions under the CPSIA); *i.e.,* migration of the elements from the product or material.

C. Discussion of Comments to the NPR

The CPSC received one comment in response to the NPR. The commenter, who works with small batch manufacturers, urged approval of the proposed rule. The commenter did not provide data or specific comments or suggestions on the proposed rule.

D. Determinations for Unfinished Manufactured Fibers

1. Legal Requirements for a Determination

As discussed in section A.1. of the preamble, section 14(a)(2) of the CPSA requires third party testing for children's products that are subject to a children's product safety rule. 15 U.S.C. 2063(a)(2). Children's toys must comply with the limits on the ASTM F963 elements incorporated in 16 CFR part 1250. Children's toys and child care articles must also comply with the phthalates prohibitions in section 108 of the CPSIA and 16 CFR part 1307. 15 U.S.C. 2057c. In response to statutory direction, the Commission has investigated approaches that would reduce the burden of third party testing while also assuring compliance with CPSC requirements. As part of that endeavor, the Commission has considered whether certain materials used in children's toys and child care articles would not require third party testing.

To issue a determination that a manufactured fiber does not require third party testing, the Commission must have sufficient evidence to conclude that the product consistently complies with the CPSC requirements to which the manufactured fiber is subject so that third party testing is unnecessary to provide a high degree of assurance of compliance. Under 16 CFR section § 1107.2, ''a high degree of assurance'' is defined as ''an evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture.''

For accessible component parts of children's toys and child care articles subject to sections 106 and 108 of the CPSIA and 16 CFR part 1307, compliance to the specified content limits is always required, irrespective of any testing exemptions. Thus, a manufacturer or importer who certifies a children's toy or child care article, must assure the product's compliance. The presence of the ASTM F963 elements or the specified phthalates does not have to be intentional to require compliance. The presence of these chemicals, whether for any functional purpose, as a trace material, or as a contaminant, must be in concentrations below the specified content or solubility limits for the material to be compliant. Additionally, the manufacturer or importer must have a high degree of assurance that the product has not been adulterated or contaminated to an extent that would render it noncompliant. For example, if a manufacturer or importer is relying on a determination that a manufactured fiber does not contain the ASTM F963 elements or specified phthalates in concentrations greater than the specified limits in a children's toy or child care article, the manufacturer must ensure that the manufactured fiber is one on which a determination has been made.

Furthermore, under the rule, any determinations that are made on manufactured fibers are limited to unfinished manufactured fibers. Children's toys and child care articles made from these manufactured fibers may have other materials that are applied to or added on to the manufactured fiber after it is manufactured, such as colorants and flame retardants. Such component parts fall outside of the scope of the determinations in the rule and would be subject to third party testing requirements, unless the component part has a separate determination that does not require third-party testing for certification purposes. Finally, even if a determination is in effect and third

party testing is not required, a certifier must still issue a certificate of compliance.

For ASTM F963 elements, determinations are made for six unfinished manufactured fibers: Nylon, polyurethane (spandex), viscose rayon, acrylic, and modacrylic, and natural rubber latex. Based on staff's review of the TERA report as discussed in section B of the preamble, the Commission finds that there is a high degree of assurance that these unfinished manufactured fibers will not contain the ASTM F963 elements in concentrations greater than the specified limits. We note that based on staff's review of the Task 17 report, a determination that polyester (PET) fiber does not contain any of the ASTM F963 elements in concentrations greater than their specified solubility limits is not warranted due to findings in the contractor report regarding the use of antimony compounds in polyester manufacturing.

The Commission also finds that determinations for seven unfinished manufactured fibers for the specified phthalates prohibitions: Polyester (PET), nylon, polyurethane (spandex), viscose rayon, acrylic, and modacrylic, and natural rubber latex are warranted. Based on staff's review of the TERA report as discussed in section B. of the preamble, the Commission finds that there is a high degree of assurance that these unfinished manufactured fibers will not contain the prohibited phthalates in concentrations greater than the specified limits.

These determinations mean that for the specified unfinished manufactured fibers, third party testing is not required to assure compliance with sections 106 and 108 of the CPSIA and 16 CFR part 1307. The Commission is making these determinations to reduce the third party testing burden on children's product certifiers while continuing to assure compliance.

2. Statutory Authority

Section 3 of the CPSIA grants the Commission general rulemaking authority to issue regulations, as necessary, to implement the CPSIA. Public Law 110–314, sec. 3, Aug. 14, 2008. Section 14(a)(2) of the CPSA, as amended by the CPSIA, requires third party testing for children's products subject to a children's product safety rule. 15 U.S.C. 2063(a)(2). Section 14(d)(3)(B) of the CPSA, as amended by Public Law 112–28, gives the Commission the authority to ''prescribe new or revised third party testing regulations if it determines that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.'' *Id.* 2063(d)(3)(B). These statutory provisions authorize the Commission to issue a rule determining that certain unfinished manufactured fibers do not contain the ASTM F963 elements and the specified prohibited phthalates in concentrations greater than the specified limits, and thus, are not required to be third party tested to assure compliance with sections106 and 108 of the CPSIA and 16 CFR part 1307.

The determinations in the rule relieve manufacturers who use the specified unfinished manufactured fibers from the third party testing requirements of section 14 of the CPSA for purposes of supporting the required certification. However, the determinations are not applicable to any other manufactured fibers beyond those listed in the rule. The determinations only relieve the manufacturers of the obligation to have the specified unfinished manufactured fibers tested by a CPSC-accepted third party conformity assessment body. Children's toys and child care articles must still comply with the substantive content limits in sections 106 and 108 of the CPSIA and 16 CFR part 1307 regardless of any relief on third party testing requirements.

3. Description of the Rule

This rule creates a new part 1253 for ''Children's Toys and Child Care Articles: Determinations Regarding the ASTM F963 Elements and Phthalates for Unfinished Manufactured Fibers.'' The text of the rule is being finalized unchanged from the proposed text in the NPR. The rule determines that the specified unfinished manufactured fibers do not contain any of the ASTM F963 elements in excess of specified concentrations, and any of the phthalates (DEHP, DBP, BBP, DINP, DIBP, DPENP, DHEXP, and DCHP) prohibited by statute or regulation in concentrations greater than 0.1 percent.

- Section 1253.1(a) of the rule explains the statutorily-created requirements for limiting the ASTM F963 elements in children's toys under the CPSIA and the third party testing requirements for children's toys.
- Section 1253.1(b) of the rule explains the statutory and regulatory requirements limiting phthalates for children's toys and child care articles under the CPSIA and the third party testing requirements for children's toys and child care articles.
- Section 1253.2(a) of the rule provides a definition of the term ''unfinished manufactured fiber'' that applies to part 1253.
- Section 1253.2(b) of the rule establishes the Commission's determinations that specified unfinished manufactured fibers do not exceed the solubility limits for ASTM F963 elements with a high degree of assurance as that term is defined in 16 CFR part 1107.
- Section 1253.2(c) of the rule establishes the Commission's determinations that specified unfinished manufactured fibers do not exceed the phthalates content limits with a high degree of assurance as that term is defined in 16 CFR part 1107.
- Section 1253.2(d) of the rule states that accessible component parts of children's toys and child care articles made with the specified unfinished manufactured fibers specifically listed in the determinations in § 1253.3(b) and (c) are not required to be third party tested pursuant to section 14(a)(2) of the CPSA and 16 CFR part 1107.
- Section 1253.2(e) of the rule states that accessible component parts of children's toys and child care articles that are not specifically listed in the determinations in § 1253.3(b) and (c) are required to be third party tested pursuant to section 14(a)(2) of the CPSA and 16 CFR part 1107.

E. Effective Date

The Administrative Procedure Act (APA) generally requires that a substantive rule must be published not less than 30 days before its effective date. 5 U.S.C. 553(d)(1). Because the final rule provides relief from existing testing requirements under the CPSIA, the Commission concludes a 30 day effective date is sufficient. This is the same effective date proposed in the NPR. Thus, the effective date is July 1, 2020.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to consider the impact of proposed and final rules on small entities, including small businesses. Section 604 of the RFA requires that agencies prepare a final regulatory flexibility analysis (FRFA) when promulgating final rules, unless the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities. The FRFA must describe the impact of the rule on small entities. CPSC staff prepared a FRFA that may be found in Tab A of the staff briefing

package.[10] The staff FRFA is summarized below.

CPSC staff's review shows that comprehensive estimates of the number of children's toys and child care articles that contain component parts made from the specified unfinished manufactured fibers are not available. However, based on the number of domestic producers and sellers of these products, staff believes that a substantial number of small entities could be impacted by this regulation. Staff's review indicates that there be might be close to 10,000 small firms that supply children's toy or child care articles with unfinished manufactured fibers in accessible component parts. However, staff does not know the number of small firms that actually supply products with the unfinished manufactured fibers in accessible component parts, or the number of children's toys and child care article. Nevertheless, based on the number of domestic toy manufacturers that are classified as small businesses (according to SBA size standards and data provided by the U.S. Bureau of the Census) and evidence that the specified fibers could be used extensively in toys and child care articles, even if only a small proportion of these firms manufacture or sell products using the unfinished manufactured fibers of interest, we find that a substantial number would benefit from the reduced testing burden. The impact of the determinations on small businesses would be to reduce the burden of third party testing for firms and are expected to be entirely beneficial. The current cost of testing, on a per-test basis, is reflective of the expected cost reductions that would result from the determinations, and are as follows:

- ASTM F963 Elements—Based on published invoices and price lists, the cost of a third party test for the ASTM F963 elements ranges from around $60 in China, up to around $190 in the United States, using inductively coupled plasma atomic emission spectroscopy (ICP–AES). This cost can be greatly reduced with the use of high definition X-ray fluorescence spectrometry (HDXRF), which is an acceptable method for certification of third party testing for the presence of the ASTM elements. The cost can be reduced to about $40 per component part.
- Phthalates—The cost of phthalate testing is relatively high: Between about $125 and $350 per component, depending upon where the testing is conducted and any discounts that are applicable. Because one product might have multiple components that require testing, the cost of testing a single product for phthalates could exceed $1,000 in some cases.

More than one sample might have to be tested to provide a high degree of assurance of compliance with the requirements for testing. To the extent that small businesses have lower production or lower sales volume than larger businesses, these determinations would be expected to have a disproportionately beneficial impact on small businesses. This beneficial impact is due to spreading the costs of the testing over fewer units. However, small entities that need fewer third party tests may not qualify for discounts that some laboratories may offer their larger customers. In addition, the possible benefits associated with the determinations might be somewhat lower to the extent that firms were already taking advantage of component part testing as allowed by 16 CFR part 1109. Additionally, some firms have reduced their testing costs by using XRF or HDXRF technology, which is less expensive than ICP–AES, and would reduce the marginal benefit of these determinations. Finally, some firms, particularly importers, might not know the specific fibers used in the products they import or whether fibers are unfinished and might opt to conduct the testing anyway to ensure that the products do not violate requirements.

The determinations would not impose any new reporting, recordkeeping, or other compliance requirements on small entities. In fact, because the rule would eliminate a testing requirement, there would be a small reduction in some of the recordkeeping burden under 16 CFR parts 1107 and 1109 because manufacturers would no longer have to maintain records of third party tests for the component parts manufactured from these unfinished manufactured fibers the ASTM F963 elements or the specified phthalates.

In summary, although there are a substantial number of small entities that manufacture or import children's toys and childcare articles in which manufactured fibers could be used, we do not have data on the number or the extent to which unfinished manufactured fibers are used in these products. Consequently, although the rule could potentially have a significant positive impact on a substantial number of small entities, we cannot make this determination categorically. Although public comments on the potential impact of the proposed rule on small entities were solicited, just one comment was received in response to the proposal. While that comment supported the adoption of the rule as a means to reduce the burden of third-party testing on small batch toy producers, specific estimates of the benefits to small businesses were not provided. Based on staff's review, the Commission finds that that the burden reduction from this rule could potentially result in significant benefits for a substantial number of manufacturers, importers, or retailers of the relevant product categories.

Under section 604 of the Regulatory Flexibility Act, a FRFA should include a ''statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.'' The final rule is being issued toreduce third party testing costs consistent with assuring compliance with all applicable consumer product safety rules. Therefore, because the rule is intended to reduce the cost of third-party testing on small businesses and will not impose any additional burden on small businesses, the staff did not consider alternatives to the rule. We note, the Commission did not receive any comments or other information on any additional manufactured fibers for further burden-reduction activities.

G. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement where they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

H. The Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines

[10] *https://www.cpsc.gov/s3fs-public/Draft%20Final%20Rule-%20Children%27s%20Toys%20and%20Child%20Care%20Articles%20-%20Determinations%20Regarding%20ASTM%20F963%20Elements%20and%20Phthalates%20for%20Unfinished%20Manufactured%20Fibers.pdf?LFcbYLvpcSdVanRkTUp.jI4.mEcY05GA.*

whether a rule qualifies as a ''major rule.'' Pursuant to the CRA, this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1253

Business and industry, Consumer protection, Imports, Infants and children, Product testing and certification, Toys.

■ For the reasons stated in the preamble, the Commission amends title 16 of the CFR by adding part 1253 to read as follows:

PART 1253—CHILDREN'S TOYS AND CHILD CARE ARTICLES: DETERMINATIONS REGARDING THE ASTM F963 ELEMENTS AND PHTHALATES FOR UNFINISHED MANUFACTURED FIBERS

Sec.
1253.1 Children's toys and child care articles containing the ASTM F963 elements and phthalates in manufactured fibers and testing requirements.
1253.2 Determinations for unfinished manufactured fibers.

Authority: Sec. 3, Pub. L. 110–314, 122 Stat. 3016; 15 U.S.C. 2063(d)(3)(B).

§ 1253.1 Children's toys and child care articles containing the ASTM F963 elements and phthalates in manufactured fibers and testing requirements.

(a) Section 106 of the CPSIA made most provisions of ASTM F963, Consumer Product Safety Specifications for Toy Safety, a mandatory consumer product safety standard. 16 CFR part 1250 codified these provisions by incorporating by reference ASTM F963, *see* 16 CFR1250.1. Among the mandated provisions is section 4.3.5 of ASTM F963, which requires that surface coating materials and accessible substrates of children's toys that can be sucked, mouthed, or ingested, must comply with solubility limits that the toy standard establishes for eight elements. Materials used in children's toys subject to section 4.3.5 of the toy standard must comply with the third party testing requirements of section 14(a)(2) of the CPSA, unless listed in § 1253.2.

(b) Section 108(a) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) permanently prohibits any children's toy or child care article that contains concentrations of more than 0.1 percent of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP). In accordance with section 108(b)(3) of the CPSIA, 16 CFR part 1307 prohibits any children's toy or child care article that contains concentrations of more than 0.1 percent of diisononyl phthalate (DINP), diisobutyl phthalate (DIBP), di-n-pentyl phthalate (DPENP), di-n-hexyl phthalate (DHEXP), or dicyclohexyl phthalate (DCHP). Materials used in children's toys and child care articles subject to section 108(a) of the CPSIA and 16 CFR part 1307 must comply with the third party testing requirements of section 14(a)(2) of the Consumer Product Safety Act (CPSA), unless listed in § 1253.2.

§ 1253.2 Determinations for unfinished manufactured fibers.

(a) The following definition for an unfinished manufactured fiber applies for this part 1253. An unfinished manufactured fiber is one that has no chemical additives beyond those required to manufacture the fiber. For unfinished manufactured fibers as defined in this rule, the unfinished manufactured fiber is free of any chemical additives added to impart color or some desirable performance property, such as flame retardancy.

(b) The following unfinished manufactured fibers do not exceed the ASTM F963 elements solubility limits set forth in 16 CFR part 1250 with a high degree of assurance as that term is defined in 16 CFR part 1107:

(1) Nylon;

(2) Polyurethane (Spandex);

(3) Viscose Rayon;

(4) Acrylic and Modacrylic; and

(5) Natural Rubber Latex.

(c) The following unfinished manufactured fibers do not exceed the phthalates content limits set forth in 16 CFR part 1307 with a high degree of assurance as that term is defined in 16 CFR part 1107:

(1) Polyester (polyethylene terephthalate, PET);

(2) Nylon;

(3) Polyurethane (Spandex);

(4) Viscose Rayon;

(5) Acrylic and Modacrylic; and

(6) Natural Rubber Latex.

(d) Accessible component parts of children's toys and child care articles made with the unfinished manufactured fibers, listed in paragraphs (b) and (c) of this section are not required to be third-party tested pursuant to section 14(a)(2) of the CPSA and 16 CFR part 1107.

(e) Accessible component parts of children's toys and child care articles made with manufactured fibers not listed in paragraphs (b) and (c) of this section are required to be third party tested pursuant to section 14(a)(2) of the CPSA and 16 CFR part 1107.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2020–09991 Filed 5–29–20; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–87005A; File No. S7–05–14]

RIN 3235–AL45

Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correcting amendment.

SUMMARY: On December 16, 2019, the Securities and Exchange Commission revised Commission rules. That document inadvertently listed an incorrect subordinate paragraph in a cross-reference to a rule. This document corrects the final regulations.

DATES: Effective on June 1, 2020.

FOR FURTHER INFORMATION CONTACT: Sheila Dombal Swartz, Senior Special Counsel, at (202) 551–5545; Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is making a correcting amendment to 17 CFR 240.18a–6 (Rule 18a–6) under the Securities Exchange Act of 1934 (''Exchange Act''), published on December 16, 2019 [84 FR 68550] and adopted in Exchange Act Release No. 87005 (September 19, 2019).

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Accordingly, 17 CFR part 240 is corrected by making the following correcting amendments:

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. In § 240.18a–6, revise paragraph (b)(1)(x) to read as follows:

§ 240.18a–6 Records to be preserved by certain security-based swap dealers and major security-based swap participants.

* * * * *

(b)(1) * * *

(x) The records required to be made pursuant to § 240.18a–1(e)(2)(iii)(F)(*1*) and (*2*).

* * * * *

Dated: May 6, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–10016 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 361

[Docket ID ED–2019–OSERS–0140]

State Vocational Rehabilitation Services Program

AGENCY: Office of Special Education and Rehabilitative Services, U.S. Department of Education.

ACTION: Reopening of comment period; policy interpretation.

SUMMARY: On February 28, 2020, the U.S. Department of Education (Department) published a policy interpretation and request for comment concerning a change in policy regarding the use of Federal vocational rehabilitation (VR) funds reserved for pre-employment transition services. The interpretation established a deadline of March 30, 2020, for submitting comments. This document reopens the comment period.

DATES: The comment period for the policy interpretation that published February 28, 2020, at 85 FR 11848, is reopened. Comments are due July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Carol Dobak, U.S. Department of Education, 400 Maryland Avenue SW, Room 5153, Potomac Center Plaza, Washington, DC 20202–5108. Telephone: (202) 245–7325. Email: *Carol.Dobak@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On February 28, 2020, the Department published in the **Federal Register** (85 FR 11848) a notice of policy interpretation and request for comment concerning a change in policy regarding the use of Federal VR funds reserved for pre-employment transition services.

Specifically, the Department issued this notice of interpretation to—(1) clarify current policy regarding the use of Federal VR funds reserved for the provision of pre-employment transition services to pay for auxiliary aids and services needed by all students with disabilities in order to access or participate in required pre-employment transition services under section 113(b) of the Rehabilitation Act of 1973, as amended; and (2) announce a change in policy with respect to additional VR services needed by eligible students with disabilities that may be paid for with the 15 percent minimum of Federal VR grant funds reserved for the provision of pre-employment transition services and the circumstances under which those funds may be used to pay for those additional VR services.

The comment period closed on March 30, 2020. Because the novel coronavirus pandemic has disrupted operations of VR agencies, service providers, educational agencies, and other stakeholders nationwide, and because we have received a number of requests to reopen the comment period on this important issue, we are reopening the comment period until July 1, 2020.

Note: All information in the notice of policy interpretation and request for comment concerning a change in policy regarding the use of Federal VR funds reserved for the provision of pre-employment transition services remains the same, except for the deadline for comments. For purposes of making comments, the notice of interpretation is published in full at 85 FR 11848 (Feb. 28, 2020).

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or portable document format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

Commissioner, Rehabilitation, Services Administration. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–10261 Filed 5–29–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0217; FRL–10009–27–Region 4]

Air Plan Approval; Kentucky; Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a State Implementation Plan (SIP) submission, provided by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ), on January 9, 2019, to demonstrate that the Commonwealth meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each such NAAQS. KDAQ certified that the Kentucky SIP contains provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in Kentucky. EPA has in this action determined that the Kentucky infrastructure SIP submissions satisfy certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: This rule is effective July 1, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2019–0217. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, 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. Bell can be reached via electronic mail at *bell.tiereny@epa.gov* or the telephone number (404) 562–9088.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone revising the 8-hour ozone NAAQS from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP submission meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an ''infrastructure SIP.'' States were required to submit such SIPs for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.[1]

This action approves portions of Kentucky's January 9, 2019, SIP submission for the applicable requirements of the 2015 8-hour ozone NAAQS. In this action, EPA is not acting upon portions of the submission pertaining to the interstate transport provisions of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 and 2) pertaining to contribution to nonattainment or interference with maintenance in other states; the prevention of significant deterioration (PSD) provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J); and air quality modeling and submission of modeling data under section 110(a)(2)(K). EPA will address these provisions in separate rulemaking actions.

In a notice of proposed rulemaking (NPRM) published on March 12, 2020 (85 FR 14442), EPA proposed to approve Kentucky SIP submission provided on January 9, 2019, for the applicable infrastructure SIP requirements of the 2015 8-hour ozone NAAQS. The March 12, 2020, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments were due to EPA on or before April 13, 2020. No adverse comments were received.

II. Final Action

With the exception of interstate transport provisions of section 110(a)(2)(D)(i)(II) (prongs 1 and 2), PSD provisions related to major sources under section 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J), and air quality models of section 110(a)(2)(K), EPA is approving Kentucky's January 9, 2019, infrastructure SIP submission for the 2015 8-hour ozone NAAQS for the above described infrastructure SIP requirements. EPA is approving portions of Kentucky's infrastructure SIP submission for the 2015 8-hour ozone NAAQS because these aspects of the submission are consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

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

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

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

[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally approved SIP. In addition, certain federally approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 5, 2020.

Mary Walker,

Regional Administrator, Region 4.

Accordingly, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart S—Kentucky

■ 2. Section 52.920(e) is amended by adding the entry ''110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS'' at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanations
*	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS.	Kentucky	1/9/2019	6/1/2020, [Insert citation of publication].	With the exception of 110(a)(2)(D)(i)(I) (prongs 1 and 2), PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), and air quality modeling under section 110(a)(2)(K).

[FR Doc. 2020–10062 Filed 5–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2020–0059; FRL–10009–33–Region 7]

Air Plan Approval; Iowa; State Implementation Plan and Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Iowa State Implementation Plan (SIP) and the Operating Permits Program. The revisions include updating definitions, regulatory references, correcting the State's mailing address, requiring facilities to submit electronic emissions inventory information under the State's title V permitting program, and updating references for the most recent federally approved minimum specifications and quality assurance procedures for performance evaluations of continuous monitoring systems. Approval of these revisions will not impact air quality and will ensure consistency between the State and Federally approved rules.

DATES: This final rule is effective July 1, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2020–0059. 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: Stephanie Doolan, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7719; email address *Doolan.stephanie@epa.gov*.

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

Table of Contents

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. The EPA's Response to Comments
IV. What action is the EPA taking?

V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. What is being addressed in this document?

The EPA is approving the State of Iowa's April 18, 2019, submission to revise its SIP and the Operating Permits Program to incorporate recent changes to Iowa Administrative Code. In this document, the EPA is approving revisions to three chapters, including Chapter 20, ''Scope of Title—Definitions;'' Chapter 22, ''Controlling Pollution;'' and Chapter 25, ''Measurement of Emissions''. The revisions the EPA is approving are to make the definition of ''EPA reference method'' consistent with Federal reference methods, add a cross-reference to Iowa's permitting rules with a state rule regarding air quality nonattainment areas, provide the correct address for the Iowa Department of Natural Resources Air Quality Bureau, and adopt the minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems specified by the EPA in 40 CFR part 60, appendix B, amended through August 7, 2017. A more detailed discussion of these revisions is provided in the proposed approval. (85 FR 10357, February 24, 2020).

The EPA is not acting on Iowa Administrative Code 567–22.105(1) that allows facility owners or operators to submit an electronic title V operating permit application until the State obtains approval from the EPA that its electronic document receiving system is consistent with the Cross-Media Electronic Reporting Rule, 40 CFR part 3. (74 FR 68692, December 29, 2009). In addition, subrule 22.105(1)''a'' subparagraph (9) is not approved.

Sections 111 and 112 of the Clean Air Act (CAA) allow the EPA to delegate authority to states for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), and emission guidelines. The EPA has delegated authority to Iowa for approved portions of these sections of the CAA. Changes made to Iowa's Chapter 23 pertaining to new and revised NSPS, NESHAPs, and emission guidelines are not directly approved into the SIP, but rather, are adopted by reference. Thus, the EPA is not specifically approving these changes to Iowa Administrative Code into the State's SIP.

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

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 held a public comment period from December 19, 2018 to January 22, 2019, with a public hearing on January 22, 2019. One comment was received, but it was outside the scope of this rulemaking. The submission satisfies the completeness criteria of 40 CFR part 51, appendix V. In addition, these revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the revisions are also consistent with applicable EPA requirements of title V of the CAA and 40 CFR part 70.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened February 24, 2020, the date of its publication in the **Federal Register** and closed on March 25, 2020. (85 FR 10357, February 24, 2020). During this period, EPA received one comment which was not substantive and does not require the EPA to respond.

IV. What action is the EPA taking?

The EPA is taking final action to revise the Iowa SIP and Operating Permits Program to update the definition of ''EPA Reference Method'' and the corresponding procedures for Federal updates to methods and procedures for continuous monitoring systems, correct the mailing address for IDNR's Air Quality Bureau, add a regulatory cross-reference, and require facilities to submit electronic emissions inventory information under the State's title V permitting program. The EPA has determined that approval of these revisions will not impact air quality and will ensure consistency between the State and federally-approved rules, and ensure Federal enforceability of the State's revised air program rules.

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 Iowa 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 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.[1]

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, 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

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

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 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 July 31, 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: May 5, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 70 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 Q—Iowa

■ 2. In § 52.820, the table in paragraph (c) is amended by revising the entries ''567–20.2'', ''567–22.1'', ''567–22.9'', ''567–22.300'', and ''567–25.1'' to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567] Chapter 20—Scope of Title—Definitions				
*	*	*	*	* * *
567–20.2	Definitions	4/17/2019	6/1/2020, [insert **Federal Register** citation].	The definitions for ''anaerobic lagoon,'' ''odor,'' ''odorous substance,'' ''odorous substance source'' are not SIP approved.
*	*	*	*	* * *
Chapter 22—Controlling Pollution				
567–22.1	Permits Required for New or Stationary Sources.	4/17/2019	6/1/2020, [insert **Federal Register** citation].	In 22.1(3) the following sentence regarding electronic submission is not SIP approved. The sentence is: ''Alternatively, the owner or operator may apply for a construction permit for a new or modified stationary source through the electronic submittal format specified by the department.''
*	*	*	*	* * *
567–22.9	Special Requirements for Visibility Protection.	4/17/2019	6/1/2020, [insert **Federal Register** citation].	
*	*	*	*	* * *
567–22.300 ..	Operating Permit by Rule for Small Sources.	4/17/2019	6/1/2020, [insert **Federal Register** citation].	

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 25—Measurement of Emissions				
567–25.1	Testing and Sampling of New and Existing Equipment.	4/17/2019	6/1/2020, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

PART 70–STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Appendix A to part 70 is amended by adding paragraph (v) under ''Iowa'' to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(v) The Iowa Department of Natural Resources submitted for program approval revisions to rules 567–22.100, 567–22.105(1), 567–22.106(2), 567–22.128(4), 567–22.300(8), and 567–22.300(12).

The state effective date is April 17, 2019. This revision is effective May 5, 2020.

* * * * *

[FR Doc. 2020–09930 Filed 5–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2019–0673; FRL–10008–85-Region 4]

Florida: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final authorization.

SUMMARY: The Environmental Protection Agency (EPA) is granting Florida final authorization for changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a Proposed Rule on February 25, 2020, and provided for public comment. No comments were received during the comment period on this Proposed Rule. No further opportunity for comment will be provided.

DATES: This final authorization is effective June 1, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R04–RCRA–2019–0673. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Leah Davis, RCRA Programs and Cleanup Branch, LCR Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8562; fax number: (404) 562–9964; email address: *davis.leah@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. What changes to Florida's hazardous waste program is EPA authorizing with this action?

Florida submitted a complete program revision application, dated September 16, 2019, seeking authorization of changes to its hazardous waste program in accordance with 40 CFR 271.21. EPA now makes a final decision that Florida's hazardous waste program revisions that are being authorized are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. For a list of State rules being authorized with this final authorization, please see the Proposed Rule published in the February 25, 2020, **Federal Register** at 85 FR 10643.

B. What is codification and is EPA codifying Florida's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not codifying the authorization of Florida's revisions at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart K, for the authorization of Florida's program changes at a later date.

C. Statutory and Executive Order Reviews

This final authorization revises Florida's authorized hazardous waste management program pursuant to Section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please see the Proposed Rule published in the February 25, 2020, **Federal Register** at 85 FR 10643. 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 document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is

published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final action will be effective June 1, 2020.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Mary Walker

Regional Administrator, Region 4.

[FR Doc. 2020–10914 Filed 5–29–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 200522–0145]

RIN 0648–BJ80

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Extend Portions of the Fishing Year 2019 Scallop Carryover Provisions

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

ACTION: Temporary rule; emergency action.

SUMMARY: This temporary rule implements emergency measures under the authority of the Magnuson-Stevens Fishery Conservation and Management Act to extend portions of the fishing year 2019 carryover provisions in the Atlantic Sea Scallop Fishery Management Plan into the 2020 fishing year. This action is necessary to provide the scallop fleet with the opportunity to land allocations that otherwise may have gone unharvested and reduce economic harm to the scallop industry.

DATES: Effective June 1, 2020, through November 28, 2020. Comments must be received by July 1, 2020.

ADDRESSES: For this action, NMFS developed a Supplemental Impact Report (SIR) for the Environmental Assessment (EA) for Framework 32 to the Atlantic Sea Scallop Fishery Management Plan (FMP) that describes the measures in this temporary rule. Copies of the SIR and the Regulatory Impact Review of this rulemaking are available on the internet at *https://www.fisheries.noaa.gov/region/new-england-mid-atlantic*.

You may submit comments on this document, identified by NOAA–NMFS–2020–0072, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0072,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Email:* Submit email comments to *Travis.Ford@noaa.gov*. Include ''Comments on Emergency Rule to Extend Scallop Carryover'' in the subject line.

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

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2019, NMFS implemented Framework Adjustment 30 to the Scallop FMP (84 FR 11436; March 27, 2019), which set specifications for fishing year 2019, including carryover provisions for limited access general category (LAGC) individual fishing quota (IFQ), sea scallop access area trip allocations, and research set-aside (RSA). On April 1, 2020, NMFS implemented Framework Adjustment 32 to the Scallop FMP (85 FR 17754; March 31, 2020), which set specifications for the 2020 fishing year. Typically, a limited access vessel has 60 days (until May 30) to fish any access area carryover from the previous fishing year. An IFQ vessel can carry over up to 15 percent of the vessel's total IFQ, which includes the vessel's original IFQ plus the total amount of IFQ transferred to such vessel minus the total IFQ transferred from such vessel (either temporary or permanent), into the next fishing year. RSA projects are generally awarded in the spring, and the recipients have until June 30 the following fishing year to land the awarded scallops.

Toward the end of the 2019 fishing year (March 2020), the scallop industry began to experience negative impacts due to ongoing health mandates and travel restrictions that made it difficult for vessels to make trips. These impacts include disruptions in getting supplies and the inability for crew to access ports.

At its April 15, 2020, meeting, the Council requested that NMFS implement the following measures through an emergency action:

- All 2019 access area carryover pounds and unharvested RSA compensation pounds from fishing year 2019 will be available for harvest for 180 days in fishing year 2020.
- The Nantucket Lightship-West Access Area (NLS-West) would remain an access area during fishing year 2020 for the extent of this emergency action.
- All LAGC IFQ vessels would be able to roll forward all fishing year 2019 unharvested quota for 180 days into fishing year 2020.

After considering the Council's request, NMFS is extending the carryover provisions as requested by the Council with minor changes. The Council's emergency action request would have extended these carryover provisions through September 28, 2020. The rationale from the Council's emergency action request stated that, ''Fishing unharvested fishing year 2019 allocations during the fall months could have negative impacts on the scallop resource considering these months are known to have the lowest meat yields in comparison to the rest of the year. Fishing when meat yields are lower means catch rates will be reduced, translating to greater fishing mortality, greater area swept, and negative impacts to the scallop resource relative to if fishing occurred during the spring/summer months.'' On Georges Bank, scallop meat yields sharply decline in September. Further, observer data from the NLS-West (the area where the bulk of the carryover allocation remains, ~3.2 million lb (~1,451 mt) from fishing years 2018 and 2019 show a spike in discard/kept all rates for flatfish beginning in September. For these reasons, this action allows LAGC IFQ vessels to carryover all fishing year 2019 unharvested quota into fishing year 2020, but only extends the access area

and RSA carryover provisions to August 31, 2020.

This action:

- Allows limited access general category individual fishing quota vessels to carryover all fishing year 2019 unharvested quota into fishing year 2020;
- Allows any access area carryover pounds and unharvested research set-aside compensation pounds from fishing year 2019 to be available for harvest through August 31, 2020; and
- Extends the time period vessels may utilize their 2019 access area allocation in the Nantucket Lightship-West Access Area (NLS-West) through August 31, 2020, and then close the area on September 1, 2020, in order to minimize unwanted bycatch.

Although the FMP currently provides for some carryover of unused 2019 fishing allocations, the amount of IFQ carryover is limited to 15 percent of a vessel's total IFQ, and access area carryover is only authorized until May 30, 2020. Extending these carryover provisions further into fishing year 2020 gives vessels more flexibility to harvest some carryover that would otherwise be lost (~5.2 million lb fleet-wide), to land this allocation at the most opportune time, and to avoid unnecessary adverse economic impacts. Overall, does not add any new allocation, it only extends the time period that carryover can be fished. Extending these carryover provisions will not cause any annual catch limits to be exceeded in the scallop fishery.

NMFS's policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS's policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. NMFS has determined that extending portions of the fishing year 2019 scallop carryover provisions meets the three criteria for emergency action for the reasons outlined below.

The emergency results from recent, unforeseen events or recently discovered circumstance. On March 13, 2020, a national emergency was declared in response to the global spread of a novel coronavirus (SARS-CoV–2), and the outbreaks of the disease caused by this virus, COVID–19. Days earlier, state governors across the Greater Atlantic region had begun declaring states of emergency in recognition of the growing impacts and risks of COVID–19. The scallop industry began to experience impacts from the COVID–19 pandemic in March 2020. These impacts were unforeseen during the development of Framework 30 and Framework 32 that included measures for the 2020 fishing year that began on April 1, 2020.

The emergency presents serious conservation or management problems in the fishery. As described above, toward the end of fishing year 2019 (March 2020), it became more difficult for some members of the scallop industry to complete fishing trips and fully harvest the available quota. This emergency action helps prevent additional economic losses to industry participants, shoreside businesses, and fishing communities and help offset lost fishing opportunities at the end of the 2019 fishing year. Ensuring that outstanding fishing year 2019 scallop fishery allocations can be harvested when meat yields are high during the summer months will also prevent negative impacts to the scallop resource and other non-target stocks relative to if they were harvested during the early spring or fall. This action also directly addresses adverse effects to health of participants in the scallop fishery because vessels are afforded flexibility and do not feel obligated to inhabit close quarters on a fishing vessel when the risk of exposure to COVID–19 remains heightened.

The emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advanced notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. Although the Council has the authority to develop a management action to extend the availability of 2019 carryover, an emergency action can be developed and implemented by NMFS more swiftly than a Council action that is subject to procedural and other requirements not applicable to the Secretary. If the normal regulatory process is used to revise the carryover provisions, it would take substantially longer for the revised provisions to be implemented and could prevent vessels from harvesting any lost carryover at an opportune time. Harvesting scallops when meat yields are high (*i.e.,* June and July) reduces both mortality on scallops and negative impacts on other biological resources. It is not possible to implement these changes through rulemaking following the normal Council process because the Council does not meet again until June. If implemented through emergency action, it may be possible for vessels to maintain any carryover that would have been lost, land this allocation when meat yields are higher, and avoid unnecessary adverse economic impacts.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws. The rule may be extended for a period of not more than 186 days as provided under section 305(c)(3)(B) of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) that it is contrary to the public interest and impracticable to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest.

Fishing year 2019 access area carryover would expire on May 30, 2020, and RSA carryover would expire on June 30, 2020. If this action is delayed beyond May 30, 2020, limited access vessels would temporarily lose their carryover allocation. Not taking immediate action would lead to conservation and management problems in the fishery. The start of the fishing year aligns closely with seasonal trends of increasing meat yield, which peak between the spring and mid-summer months depending on the area. Fishing during this time of year is beneficial because scallop meats are larger than in the fall and winter months. Focusing effort during this time of year reduces impacts to the scallop resource as overall fishing mortality is reduced. Further, taking immediate action allows the fleet to catch this carryover in June and July, when meat weight are highest. This would reduce the dredge hours necessary to harvest the allocation

compared to harvesting the scallops only in April and May. Reducing dredge hours has benefits for non-target species, protected resources, and essential fish habitat. This action could not have been put into place sooner to allow for a 30-day delayed effectiveness because this event was unforeseen and did not provide enough time for NMFS to publish this temporary rule by May 30, 2020, the end of the access area carryover period. Delaying the implementation of this action for 30 days would reduce positive economic benefits to the scallop fleet that this rule is intended to provide.

Although this action is being implementing without notice and comment, NMFS is seeking public comment on this rule for purposes of assessing the need to extend the rule if other measures are not implemented before the expiration of this rule.

For these same reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the full 30-day delay in effectiveness for this rule. This action is undertaken at the request of the Council. The Council urged that NMFS implement this action quickly in order to minimize any economic impacts on the scallop fleet as a result of ongoing health mandates and travel restrictions and to help offset lost fishing opportunities at the end of the 2019 fishing year. Moreover, it would be contrary to the public interest if this rule does not become effective immediately because allowing carryover allocations to expire and then reinstating them would cause confusing for the fleet and enforcement and create additional regulatory and administrative burden. For these reasons, there is good cause to waive the requirement for delayed effectiveness.

This action is being taken pursuant to the emergency provision of MSA and is exempt from review under Executive Order 12866.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

In the interest of receiving public input on this action, the SIR analyzing this action will be made available to the public and this temporary final rule solicits public comment.

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 22, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

■ 2. In § 648.53, suspend paragraph (h)(2)(v)(A) and add paragraph (h)(2)(v)(B) to read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

* * * * *

(h) * * *

(2) * * *

(v) * * *

(B) With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(ii)(L) for the entirety of fishing year 2019, LAGC IFQ vessels that have unused IFQ on the last day of March of fishing year 2019 may carry 100 percent of the vessel's unharvested IFQ into fishing year 2020.

* * * * *

■ 3. In § 648.56, suspend paragraph (f) and add paragraph (i) to read as follows:

§ 648.56 Scallop research.

* * * * *

(i) If all fishing year 2019 RSA pounds awarded to a project cannot be harvested during the 2019 fishing year, RSA TAC awarded to that project may be harvested through August 31, 2020.

■ 4. In § 648.59, suspend paragraphs (b)(3)(i)(B)(*1*)(*ii*), (b)(3)(i)(B)(*2*)(*ii*), and (c) revise paragraph (b)(3)(i)(B)(*1*)(*iii*), and add paragraphs (b)(3)(i)(B)(*2*)(*iv*), and (h) to read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) * * *

(*1*) * * *

(*iii*) For the 2019 fishing year and through August 31 of the 2020 fishing year, a full-time limited access vessel may choose to land up to 18,000 lb (8,165 kg) of any unharvested 2019 Closed Area I Access Area allocation from any access area made available in the 2019 fishing year as described in the § 648.60. For example, a vessel could take a trip in the Closed Area I Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 8,000 lb (3,629 kg) of the Closed Area I flex allocation available, which could be landed from any other available access area as described in this section, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

* * * * *

(*2*) * * *

(*iv*) For the 2019 fishing year and the first through August 31 of the 2020 fishing year, a part-time limited access vessel may choose to land up to 17,000 lb (7,711 kg) of its fishing year 2019 Closed Area I Access Area allocation from any access area made available in the 2019 fishing year as described in the § 648.60(a), (c), and (f). For example, a vessel could take a trip in the Closed Area I Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 7,000 lb (3,175 kg) of the Closed Area I flex allocation available, which could be landed from any other available access area as described in this section, provided the possession limit is not exceeded on any one trip.

* * * * *

(h) *Fishing year 2019 Scallop Access Area scallop allocation carryover.* For fishing year 2019 Access Area scallop allocation carryover, with the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from fishing year 2019 through August 31, 2020, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit.

* * * * *

■ 5. In § 648.60, suspend paragraph (f) and add paragraph (i) to read as follows:

§ 648.60 Sea Scallop Rotational Areas.

(i) *Nantucket Lightship West Scallop Rotational Area.* The Nantucket Lightship West Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 9 TO PARAGRAPH (i)

Point	N latitude	W longitude
NLSW1	40°20′	70°00′
NLSW2	40°43.44′	70°00′
NLSW3	40°43.44′	69°30′
NLSW4	40°20′	69°30′

TABLE 9 TO PARAGRAPH (i)—Continued

Point	N latitude	W longitude
NLSW1	40°20′	70°00′

* * * * *

[FR Doc. 2020–11495 Filed 5–28–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 105
Monday, June 1, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 310

[Docket No. FSIS–2020–0005]

RIN 0583–AD81

Elimination of the Requirement To Defibrinate Livestock Blood Saved as an Edible Product

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service is proposing to remove a provision from the Federal meat inspection regulations that requires the defibrination of livestock blood saved as an edible product. This proposed action would eliminate a regulatory requirement and its associated costs to industry without affecting food safety. Moreover, it would allow industry to fulfill a demand for non-defibrinated blood products.

DATES: Comments must be received by July 31, 2020.

ADDRESSES: FSIS invites interested persons to submit comments on the proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2020–0005. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Acting Assistant Administrator, Office of Policy and Program Development, FSIS; Telephone: (202)–720–0399.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) to protect the health and welfare of consumers. FSIS is responsible for ensuring that the nation's commercial supply of meat and meat food products is safe, wholesome, not adulterated, and correctly labeled and packaged. Under the FMIA, FSIS has broad authority to promulgate rules and regulations necessary to carry out this mission (21 U.S.C. 621). However, like all executive branch agencies, FSIS must also prudently manage the costs associated with governmental imposition of private expenditures required to comply with its regulations (Executive Order (E.O.) 13771). FSIS, therefore, has a responsibility to identify and eliminate burdensome regulations that are not necessary to ensure the safety of meat and meat food products.

The Federal meat inspection regulations govern the saving of livestock blood for edible purposes (9 CFR 310.20). Prior to 1974, the regulations allowed establishments to collect edible blood from all livestock, except swine. However, in 1974, the Agency promulgated 9 CFR 310.20, which removed the swine blood prohibition, finding that it was not necessary for food safety (39 FR 1973, January 16, 1974). In the 1974 rule, the Agency also reasoned that the prohibition was burdensome, in that it denied specialty food producers a source of swine blood for their products.

There have been no substantive changes governing the saving of livestock blood since 1974. Since that time, 9 CFR 310.20 allows establishments to save edible blood from all livestock, including swine, provided the animals' carcasses are inspected and passed and the blood is collected, *defibrinated,* and handled in a manner so as not to render it adulterated under the FMIA. Defibrination is the process of preventing fibrin from forming in blood—fibrin being an insoluble protein that causes blood to coagulate. Defibrination, therefore, results in blood that does not clot and remains in a liquid state. As explained below, FSIS is proposing to remove the defibrination requirement from the Federal meat inspection regulations for many of the same reasons it eliminated the swine blood prohibition in 1974.

Proposed Rule

FSIS is proposing to remove the defibrination requirement from 9 CFR 310.20. Blood collected from inspected and passed livestock carcasses and handled in a manner so as not to render it adulterated under the FMIA is safe for human consumption. FSIS conducted a review of the peer-reviewed literature regarding coagulated, *i.e.* non-defibrinated, blood and did not identify any scientifically supportable food safety concerns. Thus, FSIS believes coagulated blood, like fluid blood, is safe for human consumption, provided the blood is saved from inspected and passed animals, and the blood is otherwise produced and prepared in compliance with all other FSIS regulations. Therefore, FSIS believes the defibrination requirement is not necessary to ensure food safety in accordance with the FMIA.[1]

Furthermore, FSIS has become aware that some establishments are interested in collecting coagulated blood for use in human food products, including specialty and ethnic food products that require coagulated blood as an ingredient. Such foods include

[1] FSIS Notice 22–19 instructs inspection program personnel on how to verify that edible blood, including coagulated blood, is collected and handled in a manner to be fit for use in human food. FSIS will periodically review data generated by such verification activities to ensure that establishments are following proper foods safety practices pertaining to the collection of edible blood.

variations of blood sausage, blood pudding, and blood tofu. The current defibrination requirement denies specialty and ethnic food producers a source of coagulated blood, thereby placing an unnecessary economic burden on them and on the livestock slaughter establishments that could provide coagulated blood. This proposed rule would rectify that situation.

FSIS is proposing to remove the word ''defibrinated'' from the codified regulations. Under the proposed rule, official establishments would still have the option to defibrinate blood, provided they meet all other requirements in 9 CFR 310.20. The regulations would continue to prohibit the defibrination of blood by hand. The regulations would also continue to require the use of anticoagulants that meet cited requirements in title 9 and title 21 of the Code of Federal Regulations.

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated as a ''non-significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Baseline

From October 2015 to December 3, 2019, FSIS received 15 askFSIS [2] questions about defibrination from 14 slaughter establishments. Therefore, FSIS assumes that at least 14 establishments would be affected by this proposed rule.

Expected Costs of the Proposed Rule

There are no expected costs associated with this proposed rule. If this proposed rule is finalized, FSIS would allow coagulated blood to be saved for edible purposes.

Expected Benefits of the Proposed Rule

The proposed rule would benefit slaughter establishments that manufacture livestock blood and processing establishments that use the blood in their products, such as blood sausage, blood tofu, and blood pudding. This proposed rule would allow slaughter establishments manufacturing livestock blood for edible purposes to package and sell the item in its customary coagulated form, enhancing the marketability for these niche products. In addition, removing the unnecessary, prescriptive requirements would allow establishments additional flexibility to be innovative and to operate in the most efficient manner.

Removing the regulation that requires establishments to defibrinate livestock blood is expected to result in industry cost savings. Establishments would reduce anti-coagulant solution costs and labor costs associated with defibrination.

According to 9 CFR 424.21, sodium citrate is a FSIS approved anti-coagulant that can be used to defibrinate blood. FSIS estimated that the 2019 sodium citrate solution cost per gallon of blood was $1.39.[3] Based on askFSIS and Public Health Information System (PHIS) [4] data, all 14 establishments that process edible blood are small or very small establishments. FSIS experts estimated that small establishments that process edible blood products process two to five gallons of edible blood per production day. These establishments operate about 213 [5] production days per year, which means that they each process an estimated 426 to 1,065 gallons of edible blood per year. Each of these establishment would save approximately $592 [6] to $1,480 [7] in anti-coagulate solution cost per year if they no longer defibrinate blood.

Establishments that process edible blood would also benefit from labor cost savings. FSIS experts estimate that it takes one production worker two to five minutes to defibrinate one gallon of livestock blood. FSIS estimated the total compensation rate of a production employee was $27.36 [8] per hour or approximately $0.50 [9] per minute based on 2018 estimates from the Bureau of Labor Statistics. Each establishment would save approximately $1,305 in labor costs per year,[10] with a range of $426 to $2,663 if they no longer defibrinate blood.

FSIS estimated that at least the 14 establishments that submitted askFSIS questions about defibrination from October 2015 to December 3, 2019 would benefit from the cost savings associated with this proposed rule. The total estimated annual industry cost savings are detailed in Table 1. FSIS requests comments and data on the total number of establishments that save livestock blood for edible purposes.

[2] askFSIS is a web-based computer application designed to help answer technical and policy-related questions from inspection program personnel, industry, consumer groups, other stakeholders, and the public. This data was received on December 4, 2019.

[3] Sodium citrate prices were obtained from three laboratory websites, *https://www.jorvet.com/, https://www.rpicorp.com/, https://www.tocris.com/*. These websites were accessed on 11/27/2019.

The average sodium citrate price per milliliter was $0.07. This price was multiplied by the conversion rate of 3,785.412 ml per gallon to get the average sodium citrate price per gallon of $277.09. According to 9 CFR 424.21, the sodium citrate solution cannot exceed 0.5 percent based on the ingoing weight of the product. Therefore, the price of sodium citrate per gallon of blood would be $277.09 multiplied by .005 or $1.39.

[4] PHIS is FSIS's electronic data analytic system, used to collect, consolidate, and analyze data in order to improve public health. FSIS used data from (PHIS) to identify these establishments by Hazard Analysis and Critical Control Point (HACCP) category. This data was received on December 10, 2019.

[5] Viator. C. et. al. 2015. RTI International ''Costs of Food Safety Investments'' prepared by Catherine L. Viator, Mary K. Muth, and Jenna E. Brophy. The contract number is No. AG–3A94–B–13–0003. The order number is AG–3A94–K–14–0056. Table 2–5. Available at *http://www.fsis.usda.gov/wps/wcm/connect/0cdc568e-f6b1-45dc-88f1-45f343ed0bcd/Food-Safety-Costs.pdf?MOD=AJPERES*.

[6] 426 gallons multiplied by $1.39 sodium citrate cost per gallon of blood equals $592. Costs are rounded to the nearest dollar.

[7] 1,065 gallons multiplied by $1.39 equals $1,480. Costs are rounded to the nearest dollar.

[8] Wage estimate of $13.68 obtained from the Bureau of Labor Statistics, May 2018 National Industry-Specific Occupational Employment and Wage Estimates for the Processing Workers (Occupational Code 51–3023) in the Animal Slaughtering and Process Industry (NAICS code 311600). *https://www.bls.gov/oes/current/oes513023.htm*. FSIS multiplied the mean hourly wage rate by a benefits factor of 2, to obtain a total compensation rate of $27.36 per hour.

[9] $27.36 divided by 60 minutes equals $0.456 rounded to the nearest tenth of a cent to $0.50.

[10] 3.5 (2+5/2) minutes multiplied by the mid estimate of 3.5 (2+5/2) gallons of blood per production day multiplied by 213 production days, multiplied by the labor cost per minute ($0.50). The costs are rounded to the nearest dollar.

TABLE 1—INDUSTRY ANNUAL COST SAVINGS

	Low estimate	Medium estimate	High estimate
Sodium Citrate Cost Savings/Year	$8,288	$14,504	$20,720
Labor Cost Savings/Year	5,964	18,270	37,282
Total Cost Savings	14,252	32,774	58,002
Total Costs Savings annualized at a discount rate of 7% over 10 years	14,252	32,774	58,002

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Small and very small establishments would benefit from the cost savings associated with this proposed rule. However, the benefits to small and very small establishments would not be significant based on the total savings estimates in Table 1 ($14,252 to $58,002 over 10 years). Of the 14 establishments that submitted askFSIS questions about defibrination from October 2015 to December 3, 2019, about 64 percent were classified as Hazard Analysis and Critical Control Point (HACCP) size small and 36 percent were HACCP size very small. Under the HACCP size definitions, large establishments have 500 or more employees and small establishments have fewer than 500 but more than 10 employees. Very small establishments have fewer than 10 employees or annual sales of less than $2.5 million.

Executive Order 13771

Consistent with E.O. 13771 (82 *FR* 9339, February 3, 2017), FSIS has estimated that this proposed rule would yield cost savings. Assuming a 7 percent discount rate, a perpetual time horizon, and a starting year of 2020, the proposed rule, if finalized, is estimated to yield approximately $25,003 (2016$) in annual cost savings. Therefore, if finalized as proposed, this rule would be an E.O. 13771 deregulatory action.

Paperwork Reduction Act

There are no new paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Expected Environmental Effects

Each USDA agency is required to comply with 7 CFR part 1b of the Departmental regulations, which supplements the National Environmental Policy Act regulations published by the Council on Environmental Quality. Under these regulations, actions of certain USDA agencies and agency units are categorically excluded from the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) unless the agency head determines that an action may have a significant environmental effect (7 CFR 1b.4(b)). FSIS is among the agencies categorically excluded from the preparation of an EA or EIS (7 CFR 1b.4(b)(6)).

FSIS has determined that this proposed rule, which would remove the defibrination requirement from 9 CFR 310.20, would not create any extraordinary circumstances that would result in this normally excluded action having a significant individual or cumulative effect on the human environment. Therefore, this action is appropriately subject to the categorical exclusion from the preparation of an environmental assessment or environmental impact statement provided under 7 CFR 1b.4 of the U.S. Department of Agriculture regulations.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at: *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the

option to password protect their accounts.

List of Subjects in 9 CFR Part 310

Blood, Meat and meat products.

For the reasons set forth in the preamble, FSIS is proposing to amend 9 CFR Chapter III as follows:

PART 310—POST-MORTEM INSPECTION

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53

§ 310.20 [Amended]

■ 2. In § 310.20, remove ''defibrinated,'' from the first sentence in the paragraph.

Done, at Washington, DC

Paul Kiecker,

Administrator.

[FR Doc. 2020–11191 Filed 5–29–20; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 352

[Docket No. FSIS–2019–0028]

RIN 0583–AD83

Inspection of Yak and Other Bovidae, Cervidae, and Camelidae Species

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its regulations to define yak and include it among ''exotic animals'' eligible for voluntary inspection. This proposed change responds to a petition for rulemaking. It would officially allow yak products to be voluntarily inspected and to bear the USDA voluntary mark of inspection, benefitting the yak industry. FSIS is also requesting comments on whether all farmed-raised species in the biological families Bovidae, Cervidae, and Camelidae, if not already subject to mandatory inspection, should be eligible for voluntary inspection, and whether any species in these families should be added to the list of amenable species requiring mandatory inspection. FSIS already requires mandatory inspection for several species of the Family Bovidae (cattle, sheep, and goats). The Agency also provides voluntary inspection to several species of Bovidae not subject to mandatory inspection under the Federal Meat Inspection Act, as well as several species of Cervidae. These species include: Reindeer, elk, deer, antelope, water buffalo, and bison.

DATES: Submit comments on or before July 31, 2020.

ADDRESSES: FSIS invites interested persons to submit comments on the proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov*. Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2019–0028. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov*.

Docket: For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Acting Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 720–0399.

SUPPLEMENTARY INFORMATION:

Background

Under the Agricultural Marketing Act (AMA; 7 U.S.C. 1622 (h)) and the regulations at 9 CFR part 352, FSIS conducts voluntary inspection of exotic animals, when requested by an establishment. In the regulations at 9 CFR 352.1(k), FSIS defines ''exotic animals'' to include reindeer, elk, deer, antelope, water buffalo, and bison. Yak is not currently listed in the regulations as an ''exotic animal.'' However, the Agency has been inspecting yak under its voluntary program for several years.

In 2014, FSIS issued a memo rescinding all labels for yak product, because the species was not listed as an ''exotic animal'' eligible for voluntary inspection. On September 3, 2014, the International Yak Association (IYAK) submitted a petition for rulemaking, under 9 CFR part 392, requesting that FSIS amend 9 CFR 352.1(k) to include yak under the definition of an ''exotic animal.'' The petition is available on FSIS's website at: *https://www.fsis.usda.gov/wps/wcm/connect/db2ac10c-7b92-4bb4-a0d3-885641738711/Petition-YAK-112014.pdf?MOD=AJPERES*. The petitioner stated that because FSIS had voluntarily inspected yak for many years, it had created an expectation among breeders and buyers that FSIS would continue to inspect yak. Furthermore, the petitioner argued that withdrawing voluntary inspection services could significantly harm the yak industry. On November 21, 2014, IYAK submitted additional supporting data. IYAK had surveyed United States yak producers and found that continued FSIS inspection of yak meat is critical to the industry as a whole.[1] After reviewing the petition and supporting data, FSIS decided to grant the petition and stated that it would continue to voluntarily inspect yak while FSIS went through rulemaking to add yak to the list of exotic animals eligible for voluntary inspection (*https://www.fsis.usda.gov/wps/wcm/connect/aa5f69d7-ddc6-44bc-9ff3-bc9489fcd338/IYAK-FSIS-response-120314.pdf?MOD=AJPERES* and *https://www.fsis.usda.gov/wps/wcm/connect/c109452f-4497-4144-815e-6a382b94a113/FSIS-Final-Response-IAK-080315.pdf?MOD=AJPERES*). At the time, FSIS was unable to predict when it would initiate rulemaking.

Proposed Rule

FSIS is now proposing to amend 9 CFR part 352 to define yak and to add it to the list of exotic animals eligible for voluntary inspection. Under this proposed rule, yak would be defined as a long-haired bovid animal originally found throughout the Himalaya region of southern Central Asia and the Tibetan Plateau. As is noted above, FSIS is currently inspecting yak slaughter and processing under voluntary inspection services. Yak inspection is similar to that of other Bovidae, including cattle.

Request for Public Comment

Over the years, FSIS has received inquiries about its voluntary inspection program from various animal producers

[1] IYAK asked that the supporting data remain confidential because it contains proprietary information.

and growers. Because of interest from these stakeholders, FSIS is requesting comments as to whether the regulations should be amended to list as eligible for voluntary inspection all farm-raised species in the biological families Cervidae (*e.g.,* moose, all deer and elk), all Bovidae not currently subject to mandatory inspection (*e.g.,* water buffalo and impalas), and Camelidae (*e.g.,* camel, llama, and alpaca).

FSIS provides voluntary inspection of some species in the biological families Bovidae and Cervidae under the AMA. Currently, all ''exotic animals,'' as defined in the regulations, fall under these two families. The Food and Drug Administration (FDA) currently has jurisdiction over the slaughter and processing of species of the biological family Camelidae, as do some state or local agencies. FSIS does not provide voluntary inspection for any of these species but is requesting comment on this issue because there has been stakeholder interest in FSIS expanding its services to include Camelidae.

Based on interest from stakeholders, FSIS also requests comment as to whether any species in these families, if not currently subject to mandatory inspection, should be. As discussed above, FSIS already requires the inspection of some species of the biological family Bovidae under the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601(w)). These species include cattle, sheep, and goats.

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated as a ''non-significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Expected Costs of the Proposed Rule

If this rule is finalized, FSIS does not expect any additional industry or Agency costs because, although yak is not currently listed as an ''exotic animal'' eligible for voluntary inspection, FSIS has been inspecting yak under the voluntary inspection program for many years.

Expected Benefits of the Proposed Rule

In 2014, IYAK conducted a National Yak Industry Survey to support its petition requesting that FSIS amend 9 CFR 352.1(k) to include Yak under the definition of an ''exotic animal.'' According to IYAK's survey, FSIS voluntarily inspected 109 yaks from 22 establishments in 2014. The IYAK survey also stated that there were 33 total establishments slaughtering yak in 2014. From 2014 to November 8, 2019, 22 unique establishments submitted a total of 70 yak product labels to the FSIS Labeling and Program Delivery Staff (LPDS) for approval.[2] These establishments would benefit from being able to continue to use their labels with FSIS's voluntary mark of inspection if this proposed rule is finalized. According to the 2014 IYAK survey, 90 percent of the establishments surveyed noted that USDA inspection is critical to the yak industry. Amending 9 CFR 352.1 to list yak as an ''exotic animal'' eligible for FSIS's voluntary inspection service would avoid disruption to the yak industry and the possible economic harm to producers if FSIS stopped voluntarily inspecting yak.

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule would have a significant, but positive, economic impact on a substantial number of small yak entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule would allow FSIS to continue to voluntarily inspect yak and there would be no increased costs to industry. About 14 percent of the establishments that submitted yak labels from 2014 to November 8, 2019 were classified as Hazard Analysis and Critical Control Point (HACCP) size small and 86 percent were HACCP size very small.[3] The proposed rule would benefit small and very small establishments because it would continue to give these establishments access to the FSIS voluntary mark of inspection and access to buyers who look for that mark of inspection when making purchasing decisions.

[2] FSIS used data from the Labeling and Program Delivery Staff's Label Submission and Approval System (LSAS). This data was received on November 7, 2019.

[3] FSIS used data from the Public Health Information System (PHIS) to identify these establishments by HACCP category. This data was received on November 19, 2019.

Executive Order 13771

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), this proposed rule would expand marketing options for the Yak industry. Therefore, if finalized as proposed, this rule is expected to be an E.O. 13771 deregulatory action.

Paperwork Reduction Act

There are no new paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Environmental Impact

Each USDA agency is required to comply with 7 CFR part 1b of the Departmental regulations, which supplements the National Environmental Policy Act regulations published by the Council on Environmental Quality. Under these regulations, actions of certain USDA agencies and agency units are categorically excluded from the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) unless the agency head determines that an action may have a significant environmental effect (7 CFR 1b.4(b)). FSIS is among the agencies categorically excluded from the preparation of an EA or EIS (7 CFR 1b.4(b)(6)).

FSIS has determined that this proposed rule, which amends its regulations to define yak and include it among ''exotic animals'' eligible for voluntary inspection under 9 CFR part 352, would not create any extraordinary circumstances that would result in this normally excluded action having a significant individual or cumulative effect on the human environment. Therefore, this action is appropriately subject to the categorical exclusion from the preparation of an EA or EIS provided under 7 CFR 1b.4 of the U.S. Department of Agriculture regulations.

E-Government Act

FSIS and the U.S. Department of Agriculture (USDA) are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Congressional Review Act

Pursuant to the Congressional Review Act at 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs has determined that this proposed rule is

not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register*.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Constituent Update is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe*. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

List of Subjects in 9 CFR Part 352

Exotic animals.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR part 352 as follows:

PART 352—EXOTIC ANIMALS AND HORSES: VOLUNTARY INSPECTION

■ 1. The authority citation for part 352 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.53.

■ 2. Amend § 352.1 by revising paragraph (k) and adding paragraph (bb) to read as follows:

* * * * *

(k) *Exotic animal* means any reindeer, elk, deer, antelope, water buffalo, bison, or yak.

* * * * *

(bb) *Yak* means a long-haired bovid animal originally found throughout the Himalaya region of southern Central Asia and the Tibetan Plateau.

Done at Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2020–11264 Filed 5–29–20; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–TP–0013]

FRIN 1904–AC72

Energy Conservation Program: Test Procedure for Illuminated Exit Signs

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

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) is initiating a data collection process through this request for information (RFI) to consider whether to amend DOE's test procedure for illuminated exit signs. Specifically, DOE seeks data and information pertinent to whether amended test procedures would more accurately or fully comply with the requirement that the test procedure produces results measure energy use during a representative average use cycle or period of use for the product without being unduly burdensome to conduct, or reduce testing burden. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this RFI), as well as the submission of data and other relevant information.

DATES: Written comments and information are requested and will be accepted on or before July 16, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–TP–0013, by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: exitsigns2019TP0013@ee.doe.gov.* Include docket number EERE–2019–BT–TP–0013 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=13.* The docket web page contains instructions on how to access

all documents, including public comments, in the docket. See section III for information on how to submit comments through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: 202–287–6111. Email: *Jennifer.Tiedeman@Hq.Doe.Gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
A. Authority and Background
B. Rulemaking History
II. Request for Information and Comments
A. Scope and Definitions
B. Test Procedure
1. Standby Mode and Off Mode
2. References to ENERGY STAR
3. Input Voltage for Testing
4. Conditioning Period
5. Alternate Test Procedure for Combination Illuminated Exit Signs
C. Other Test Procedure Topics
III. Submission of Comments

I. Introduction

Illuminated exit signs are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy efficiency standards and test procedures. (42 U.S.C. 6295(w) and 42 U.S.C. 6293(b)(9)) DOE's test procedure for illuminated exit signs is prescribed at title 10 of the Code of Federal Regulations (CFR) part 431, subpart L. The following sections discuss DOE's authority to establish and amend the test procedure for illuminated exit signs, as well as relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority and Background

The Energy Policy and Conservation Act of 1975, as amended (EPCA),[1] among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include illuminated exit signs, the subject of this RFI. (42 U.S.C. 6293(b)(9); 42 U.S.C. 6295(w)) [3]

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making certain other representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

If DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission (IEC), unless the current test procedure already incorporates standby mode and off mode energy consumption or such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. *Id.*

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including illuminated exit signs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use and not to be unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A)) If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. (42 U.S.C. 6293(b)(2)) The comment period on a proposed rule to

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] Although illuminated exit signs are covered products pursuant to EPCA, as a matter of administrative convenience and to minimize confusion among interested parties, DOE codified illuminated exit sign provisions into subpart L of 10 CFR part 431 (containing DOE regulations that apply to commercial and industrial equipment) because typically businesses, rather than individuals, purchase them. 70 FR 60407, 60409 (Oct. 18, 2005). DOE refers to illuminated exit signs as either ''products'' or ''equipment.''

amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. *Id.* If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this RFI to collect data and information to inform its decision pursuant to EPCA's 7-year review requirement. (42 U.S.C. 6293(b)(1)(A))

B. Rulemaking History

The Energy Policy Act of 2005 (EPACT 2005) amended EPCA to provide a test procedure for illuminated exit signs, requiring that the procedure ''be based on the test method used under version 2.0 of the ENERGY STAR [4] program of the Environmental Protection Agency for illuminated exit signs.'' (42 U.S.C. 6293(b)(9)) In 2006, DOE published a final rule adopting a test procedure for illuminated exit signs at 10 CFR 431.204. 71 FR 71340, 71372–71373 (Dec. 8, 2006). Certification, compliance and enforcement (CCE) requirements for illuminated exit signs, including sample size, sampling plan, compliance, calculations and reporting, are found at 10 CFR 429.48 and 10 CFR 429.11.

On August 6, 2013, DOE published final guidance [5] clarifying that energy conservation standards apply to illuminated exit signs with auxiliary functions such as integrated egress lighting and/or audible alarms (sometimes referred to as combination exit signs).[6] DOE stated that the addition of auxiliary features or hardware in a combination exit sign does not transform an illuminated exit sign into non-covered equipment or otherwise exempt it from regulatory requirements, although the added features or hardware are not subject to the relevant energy conservation standard. In the August 2013 guidance, DOE noted that using the current DOE procedure used to test combination illuminated exit sign models may result in measured values that are not representative of solely the illuminated exit sign component's input power demand due to the typically larger battery required to accommodate operation of the auxiliary features. DOE's current test procedure does not provide a methodology for excluding the power consumed in charging the battery to operate auxiliary features from the power consumed to illuminate the exit sign faces. As such, DOE stated that manufacturers may seek a waiver from the DOE test procedure to test and certify combination illuminated exit sign models if manufacturers do not believe the result of the DOE test procedure is representative of an illuminated exit sign's input power demand.

DOE granted a waiver to Acuity Brands Lighting (Acuity), published on March 16, 2018, requiring Acuity to use an alternate test procedure to test and rate the combination illuminated exit sign basic models for which it requested a waiver. 83 FR 11740 (''March 2018 Acuity waiver''). DOE granted a waiver to Beghelli North America (Beghelli) published on June 21, 2019, for certain combination exit sign models similar to those basic models identified by Acuity in its waiver petition. 84 FR 29186 (''June 2019 Beghelli waiver''). DOE granted a waiver to Signify North America Corporation (Signify) published on January 31, 2020 for certain combination exit sign models, also similar to those identified by Acuity and Beghelli. 85 FR 5652 (''January 2020 Signify waiver''). Under applicable regulations, after issuing a waiver, DOE must update the relevant test procedure to establish how to test those basic models granted a waiver. 10 CFR 431.401(l). Therefore, DOE is considering an alternate test procedure for combination illuminated exit signs.

II. Request for Information and Comments

In the following sections, DOE has identified a variety of issues on which it seeks input to aid in the development of technical and economic analyses used to determine whether an amended test procedure for illuminated exit signs would more accurately or fully comply with the requirements in EPCA that test procedures: (1) Be reasonably designed to produce test results which reflect energy use during a representative average use cycle or period of use; and (2) not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). DOE also requests comment on any opportunities to streamline and simplify testing requirements for illuminated exit signs.

Additionally, DOE welcomes comment on other issues relevant to the conduct of this process. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its regulations applicable to illuminated exit signs, consistent with the requirements of EPCA.

A. Scope and Definitions

This notice concerns illuminated exit signs; an illuminated exit sign is defined as a sign that is designed to be permanently fixed in place to identify an exit and consists of an electrically powered integral light source that both illuminates the legend ''EXIT'' and any directional indicators, and provides contrast between the legend, any directional indicators, and the background. (42 U.S.C. 6291(37)); *see also* 10 CFR 431.202. DOE's current energy conservation standards for illuminated exit signs limit input power demand to 5 W or less per face. 10 CFR 431.206. For example, a single face illuminated exit sign (*e.g.,* mounted flush to a wall with only one side illuminated) must have an input power demand of 5 W or less, and a two face illuminated exit sign (*e.g.,* mounted perpendicular to a wall, or ceiling mounted with two sides illuminated) must have an input power demand of 10 W or less.

As noted above, the August 2013 guidance clarified that energy conservation standards for illuminated exit signs apply to illuminated exit signs with integrated egress lighting or other auxiliary features (*i.e.,* ''combination exit signs''). The guidance stated that a product meeting the statutory and regulatory definition of ''illuminated exit sign'' is subject to the applicable DOE regulations, regardless of whether that product also provides additional features. As explained in the August 2013 guidance; however, DOE interprets the input demand standard as a limit only on the energy use of components that illuminate the face(s), not on the energy use of other components beyond the definition of illuminated exit sign (*e.g.,* egress lighting, alarms).

DOE is considering whether a definition for ''combination illuminated

[4] ENERGY STAR is a U.S. Environmental Protection Agency (EPA) voluntary program that allows manufacturers to label products as ENERGY STAR qualified if they meet certain performance requirements for energy efficiency.

[5] The August 6, 2013 guidance is available at: *https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/exitsigns_faq_2013-8-6_final.pdf* (''August 2013 guidance'').

[6] As described in section II.A of this RFI, ''combination exit signs'' require larger capacity batteries than illuminated exit signs without features such as egress lighting and/or audible alarms.

exit sign'' is needed, in conjunction with test procedure provisions specific to combination illuminated exit signs (see section II.B.5 of this RFI). DOE is considering defining combination illuminated exit signs as illuminated exit signs that include or are packaged with (1) at least one auxiliary feature (*i.e.,* an electrically connected component or device with a function that does not support the illumination of the face(s) of an exit sign, such as egress lighting and audible alarms) and (2) a battery electrically connected to the illumination source for the face. Combination illuminated exit signs have auxiliary features (*e.g.,* egress lighting and/or audible alarms) that require larger capacity batteries than do illuminated exit signs without such features.

DOE is also considering revising or adding supporting definitions. For example, the existing definition of ''face'' is an illuminated side of an illuminated exit sign. DOE is considering aligning the definition of ''face'' with the definition of ''illuminated exit sign'' by specifying that each face must include the legend ''EXIT'' (read from left to right), and any directional indicators, if present. To illustrate the need for further clarity in the definition of ''face,'' DOE notes three configurations of edge-lighted illuminated exit signs [7] of which the Department is aware: (1) One side is illuminated and reads ''EXIT'' from left to right and the other side is not illuminated; (2) one side is illuminated and reads ''EXIT'' left to right and the other side is illuminated and displays a reversed, illegible version of the same text; and (3) both sides are illuminated and both sides read ''EXIT'' from left to right. DOE considers configurations (1) and (2) to have a single face because the legend ''EXIT'' can be read correctly (*i.e.,* from left to right) only when viewed from one side of the sign. DOE considers configuration (3) to have two faces because the legend can be read correctly from either side of the sign. The considered definition, above, would clarify that each view of the legend ''EXIT'' that can be read correctly constitutes one face. Based on this definition, it would be clear that configuration (3) has two faces, while configurations (1) and (2) each have one face.

Some illuminated exit signs can be configured by the user to have different numbers of faces (*e.g.,* an illuminated exit sign can be configured with one or two face(s)). The energy conservation standard for illuminated exit signs is a maximum input power demand per face. 10 CFR 431.206. To provide additional direction for calculating input power demand per face, DOE is considering defining ''face count'' as the lowest number of faces with which an exit sign can be configured with all electric light sources connected and energized. For example, if an illuminated exit sign can be configured with either one or two faces, while having all electric light sources connected and energized, then the number of faces would be one under the definition DOE is considering.

Issue 1: DOE requests comment on whether it should adopt definitions for any of the following terms: ''combination illuminated exit sign,'' ''face,'' and ''face count.'' DOE also requests comment on the definitions it is considering for these terms. Additionally, DOE requests comment on whether DOE should adopt any definitions in addition to those specified here, and the appropriate content of any such definitions.

B. Test Procedure

1. Standby Mode and Off Mode

EPCA requires energy conservation standards adopted for any covered product after July 1, 2010, to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)). EPCA defines ''active mode'' as the condition in which an energy-using product is connected to a main power source, has been activated, and provides one or more main functions. (42 U.S.C. 6295)(gg)(1)(A)(i)). ''Standby mode'' is the condition in which an energy-using product is connected to a main power source and offers one or more of the following user-oriented or protective functions: Facilitating the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer; or providing continuous functions, including information or status displays (including clocks), or sensor-based functions. (42 U.S.C. 6295)(gg)(1)(A)(iii)). ''Off mode'' is the condition in which an energy-using product is connected to a main power source and is not providing any standby mode or active mode function. (42 U.S.C. 6295)(gg)(1)(A)(ii)).

Building safety codes generally require that exit signs be continuously illuminated.[8] Additionally, a preliminary review of the market indicates that illuminated exit signs may not operate in either standby mode or off mode, either through remote switching technology or continuous user-oriented or protection functions.

Issue 2: DOE requests comment on whether any illuminated exit sign models on the market or being developed for the market operate in standby mode and/or in off mode. If so, DOE requests information on the standby mode power consumption and/or off mode power consumption, as compared to the active mode power consumption of such models.

2. References to ENERGY STAR

DOE's current test procedure for illuminated exit signs incorporates by reference EPA's ''ENERGY STAR Program Requirements for Exit Signs,'' Version 2.0 (hereafter ''ENERGY STAR V2.0''), and requires determining the energy consumption of an illuminated exit sign by conducting the test procedure set forth in ENERGY STAR V2.0 section 4 (Test Criteria), ''Conditions for testing'' and ''Input power measurement.'' 10 CFR 431.204. The ENERGY STAR exit sign program was suspended in 2008 after EPACT 2005 established energy conservation standards for this equipment at the same input power demand limit as the ENERGY STAR specification. DOE is considering removing the incorporation by reference to ENERGY STAR V2.0 and providing specifications and requirements for testing illuminated exit signs directly in 10 CFR 431.204.

Issue 3: DOE requests comment on removing the reference to ENERGY STAR V2.0 and providing specifications and requirements for testing illuminated exit signs directly in 10 CFR 431.204.

3. Input Voltage for Testing

The current test procedure specifies that an illuminated exit sign under test be operated at the rated input voltage which represents normal operation pursuant to section 4 of ENERGY STAR V2.0. Some illuminated exit signs are rated for multiple voltages, including the following combinations of voltages: 120/277 V, 120/347 V, 277/347 V, or 120/277/347 V. To ensure that the test procedure provides results that are representative of an average period of use while not being unduly burdensome to conduct, as required by EPCA, DOE is considering specifying the input voltage at which to test any unit that is rated for multiple voltages. This

[7] Edge-lighted illuminated exit signs employ an enclosed light source that directs light output through a light transmitting plate.

[8] An example is the National Fire Protection Agency (NFPA) 101, which is the most widely used source for fire safety codes across the U.S. (See section 7.10.5.2.1 of NFPA 101: LIFE SAFETY CODE®, 2015, available at: *www.nfpa.org/101*).

approach is also intended to improve the clarity of the test procedure.

Specifically, DOE is considering requiring that illuminated exit signs rated at multiple voltages be tested at 277 V if rated to operate at that voltage and, if not, at 120 V if rated to operate at that voltage. DOE notes that commercial buildings most commonly provide 277 V for illuminated exit signs; therefore, DOE is considering requiring testing at 277 V, if possible. If an illuminated exit sign is not rated to operate at either 277 V or 120 V, DOE is considering requiring testing at the highest rated input voltage specified by the manufacturer. Finally, if no rated input voltage is provided for the illuminated exit sign, DOE is considering requiring testing it at 277 V. Table II.1 summarizes the input voltages DOE is considering for specific scenarios.

TABLE II.1—INPUT VOLTAGE FOR TESTING

[Under consideration]

Rated input voltage	Input voltage for testing
120/277 V	277 V.
120/347 V	120 V.
277/347 V	277 V.
120/277/347 V	277 V.
Neither 120 V nor 277 V	The highest rated input voltage specified.
No rated input voltage	277 V.

Issue 4: DOE requests comment on whether, for each scenario of multiple rated input voltages in Table II.1, the test input voltage being considered by DOE will provide results representative of an average period of use. For illuminated exit signs that are rated to operate at multiple input voltages, DOE requests information on how such equipment is currently tested. DOE requests information on whether there are currently models of illuminated exit signs on the market, or in development for, the market for which the manufacturer does not provide an input rated voltage and, if there is such equipment, which input voltage is used for testing.

4. Conditioning Period

To ensure that test units are sufficiently stable for taking accurate and reproducible measurements, they must be operated for a period of time, *i.e.* conditioned, prior to taking measurements. The DOE test procedure, per section 4 of ENERGY STAR V2.0, specifies that prior to input power measurements, an exit sign model shall be operated at the rated input voltage for a period of 100 hours. For those units with an internal battery, the DOE test procedure requires that a unit under test be operated using the battery for an additional one-and-one-half hours (*i.e.,* 90 minutes),[9] and then recharged for the period specified by the sign manufacturer prior to input power measurements. On the other hand, the National Electrical Manufacturers Association's (NEMA) standard EM 1–2010, ''Exit Sign Visibility Testing Requirements for Safety and Energy Efficiency'' (hereafter ''NEMA EM 1–2010'') states that the sign shall be energized for at least 100 hours before testing procedures begin, and immediately prior to testing the exit sign shall be energized for a manufacturer-specified time, but no less than 20 minutes. NEMA EM 1–2010 does not provide any additional steps for exit signs with internal batteries (*e.g.,* operating the internal battery for 90 minutes or recharging the internal battery prior to testing). Although NEMA EM 1–2010 has been rescinded, DOE considers it reflective of industry practice because it was developed based on a consensus among manufacturers. As such, it may not be necessary to require any illuminated exit sign with an internal battery to operate on battery power for at least 90 minutes and then recharge the battery in accordance with manufacturer specifications after the 100 hours of operation and prior to measuring input power demand. DOE is considering eliminating this requirement.

DOE is considering proposing that if, after the 100-hour conditioning period, a sample unit is disconnected from the main power source, the unit must be stabilized prior to taking power measurements. Specifically, this would require operating the equipment until it is energized, which DOE has tentatively determined would be at least 20 minutes. This aligns with direction provided in NEMA EM 1–2010 that the exit sign be energized immediately prior to testing for a time period specified by the manufacturer, but no less than 20 minutes. It is also consistent with results reported from testing conducted by the Lighting Research Center (LRC), a leading center for research and education in lighting. To evaluate the power characteristics of illuminated exit signs (both with and without an internal battery) the LRC took the following steps: (1) Conditioned them for a minimum of 100 hours and (2) operated for at least 20 minutes immediately before taking measurements.[10]

Issue 5: DOE requests comment and information on whether the 100-hour conditioning requirement alone sufficiently charges an illuminated exit sign's internal battery and whether units with an internal battery require a 90-minute charging period and recharging prior to testing. DOE also requests comment on whether a minimum stabilization period of 20 minutes is appropriate if the illuminated exit sign (with or without an internal battery) is disconnected from the main power source after conditioning.

5. Alternate Test Procedure for Combination Illuminated Exit Signs

As discussed in section II.A, a combination exit sign has auxiliary features (*e.g.,* egress lighting and/or audible alarms) that require a larger capacity battery than an illuminated exit sign without such features. When alternating current (AC) power fails, the larger capacity battery operates not only the faces, but also the auxiliary features of the illuminated exit sign. When a combination illuminated exit sign runs on AC power (*i.e.* power delivered to buildings from the electric grid), it may draw additional power to maintain a full battery charge, as compared to a sign with a smaller capacity battery and no auxiliary features. Further, the combination illuminated exit sign may

[9] As ENERGY STAR V2.0 states, one-and-one-half hours is the minimum period of emergency operation specified in NFPA's ''Life Safety Code (Section 4).''

[10] Lighting Research Center, *Specifier Reports: Exit Signs,* Vol. 2 No. 2 (January 1994) National Lighting Product Information Program, Rensselaer Polytechnic Institute (Available at: *www.lrc.rpi.edu/programs/NLPIP/PDF/VIEW/SRExit.pdf*) (Last accessed April 15, 2019).

require a higher-capacity rechargeable battery system, which requires a higher maintenance charge,[11] to operate the faces and the auxiliary features.

Hence, the input power demand of combination illuminated exit signs is influenced by the larger battery used for operation. DOE defines input power demand as the amount of power required to continuously *illuminate* an exit sign model. 10 CFR 431.202 (emphasis added). As explained in the August 2013 guidance, because auxiliary features such as egress lighting and/or audible alarms do not support the illumination of the faces of the exit sign, measurement of the input power demand consumed by these models may result in measured values that are not representative solely of the energy consumption of the exit sign's illuminated components.

DOE is considering an alternate test procedure for combination illuminated exit signs. For illuminated exit signs in which the face(s) remain illuminated when the battery is disconnected, and all auxiliary features can be disconnected in a manner that permits reinstallation using only the original parts as assembled by the manufacturer, testing could be conducted with the battery and all auxiliary features disconnected, and the input power demand measured in accordance with the current test procedure for illuminated exit signs. This method would require that the battery can be disconnected while allowing the illumination of the faces. This is only possible when the battery is connected in parallel rather than in series with the exit sign circuitry. Additionally, both the battery and any auxiliary features must be removable *via* a reversible process that requires no additional materials (such as tape, glue, or solder) for reinstallation; otherwise, the test unit would be altered so that it would no longer be the same product. This method would allow for a direct measurement of the input power demand required only for the illumination of all faces of the unit that is being tested.

Some units, however, do not permit such reversible removal of supplemental components there exists a unit that is equivalent except that it is not combination illuminated exit sign. The March 2018 Acuity waiver, the June 2019 Beghelli waiver, and the January 2020 Signify waiver addressed such cases with substantively similar alternate test procedures. 83 FR 11740 (Mar. 16, 2018); 84 FR 29186 (June 21, 2019); 85 FR 5652 (Jan. 31, 2020). For these cases, DOE is considering an alternate test procedure similar to those established in the March 2018 Acuity waiver, June 2019 Beghelli waiver, and January 2020 Signify waiver.

Specifically, this alternate test procedure would require the manufacturer to identify a unit of a non-combination illuminated exit sign (''non-combination unit'') equivalent to the combination unit. A non-combination unit would be equivalent only if it consists entirely of electricity-consuming components identical to all of those of the combination unit, but does not include any auxiliary features, and contains an electrically connected battery. The equivalent non-combination unit would also need to have the same number of faces as the combination unit and be produced by the same manufacturer. The manufacturer would test the equivalent non-combination unit using the DOE test procedure and assign the measured input power demand of the non-combination unit as the input power demand of the combination unit.

DOE is also considering specifying that, for each combination illuminated exit sign unit selected, the manufacturer would assign the measured input power demand of a separate corresponding equivalent non-combination unit. For example, if DOE regulations require testing of two units, the manufacturer would be required to identify and measure the input power demand of two equivalent non-combination units, and assign the measured input power of each unit to each of the two combination units, respectively. In those instances where only a single, non-combination unit is available, the manufacturer would be required to measure the input power demand of that single unit and assign the measured input power to the combination unit.

Some basic models of combination illuminated exit signs use only light-emitting diode (LED) light sources to illuminate all face(s), and do not have an equivalent non-combination models. The March 2018 Acuity waiver addressed such cases. DOE is considering the same approach for these models, as established in the March 2018 Acuity wavier. Specifically, DOE is considering that an input power demand be assigned according to the following formula:

$$\text{input power demand} = 5 \times \text{number of faces}$$ [12]

This method would require determining the number of faces for each basic model. As discussed in section II.A, DOE is considering defining face count as the lowest number of faces (no fewer than one) with which an illuminated exit sign basic model can be configured by an end user when all electric light sources are connected and energized.

In the case where neither of the above-mentioned alternate test procedures under consideration can be applied, DOE is considering specifying that for such combination illuminated exit signs the current test procedure for illuminated exit signs remains in effect.

Issue 6: DOE requests comment on the test methods described above for combination illuminated exit signs.

C. Other Test Procedure Topics

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of the existing test procedure for illuminated exit signs. DOE recently issued an RFI to seek more information on whether its test procedures are reasonably designed, as required by EPCA, to produce results that measure the energy use or efficiency of a product during a representative average use cycle or period of use. 84 FR 9721 (Mar. 18, 2019). DOE seeks comment on this issue as it pertains to the test procedure for illuminated exit signs. DOE also seeks information that would improve the repeatability and reproducibility of the test procedure and limit manufacturer test burden.

DOE seeks comment on whether there have been changes in product testing methodology or new products on the market since the last test procedure update that may create the need to make amendments to the test procedure for illuminated exit signs. With respect to non-combination illuminated exit signs, DOE seeks data and information that could enable the agency to propose that the current test procedure produces results that are representative of an average use cycle for the product and is not unduly burdensome to conduct, and therefore does not need amendment. DOE also seeks information on whether an existing private-sector developed test procedure would produce such results and should be adopted by DOE rather than DOE establishing its own test procedure, either entirely or by adopting only certain provisions of one or more private-sector developed tests.

[11] A maintenance charge is the power required to maintain the battery in a fully charged condition so that when it is called into service, it will be able to deliver its full charge capacity.

[12] Because LED technology requires minimal power, this method reflects the determination that the power required to illuminate all faces of the basic model being tested would be no more than 5 W per face, and therefore would comply with existing energy conservation standards for illuminated exit signs.

Additionally, DOE requests comment on whether the existing test procedure limits a manufacturer's ability to provide additional features to consumers on illuminated exit signs. DOE particularly seeks information on how the test procedure could be amended to reduce the cost of new or additional features and make it more likely that such features are included on illuminated exit signs while still meeting the requirements of EPCA.

DOE also requests comment on any potential amendments to the existing test procedures that would address impacts on manufacturers, including small businesses.

Finally, DOE recently published an RFI on the emerging smart technology appliance and equipment market. 83 FR 46886 (Sept. 17, 2018). In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. DOE seeks comments, data and information on the issues presented in the RFI as they may be applicable to illuminated exit signs.

III. Submission of Comments

DOE invites all interested parties to submit in writing by July 16, 2020, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of amended test procedures for illuminated exit signs. These comments and information will aid in the development of a test procedure notice of proposed rulemaking for illuminated exit signs if DOE determines that amended test procedures may be appropriate for these products.

Submitting comments via https://www.regulations.gov. The *https://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *https://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *https://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *https://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *https://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *https://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *Appliance StandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on April 30, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, pursuant to delegated authority from the Secretary of Energy. That document with the original

signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 20, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–11213 Filed 5–29–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0442; Project Identifier AD–2020–00260–E]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Pratt & Whitney (PW) PW2037, PW2037M, PW2040, and F117–PW–100 model turbofan engines. This proposed AD was prompted by a report of an uncontained engine failure resulting from cracks in the knife edge of the high-pressure turbine (HPT) 2nd-stage air seal. This proposed AD would require initial and repetitive borescope inspections (BSIs), fluorescent penetrant inspections (FPIs), and visual inspections of the HPT 2nd-stage air seal assembly and, depending on the results of the inspections, replacement of the HPT 2nd-stage air seal assembly with a part eligible for installation. This proposed AD would also require replacement of the affected HPT 2nd-stage air seal assembly, depending on the engine model, at either the next engine shop visit or the next piece-part opportunity. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 16, 2020.

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

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

For service information identified in this NPRM, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118, United States; phone: 800–565–0140; fax: 860–565–5442; email: *help24@pw.utc.com;* website: *https://fleetcare.pw.utc.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0442; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7655; fax: 781–238–7199; email: *carol.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0442; Project Identifier AD–2020–00260–E'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Carol Nguyen, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA received a report of an uncontained engine failure during a revenue flight. The failure resulted from a crack originating in the knife edge of the HPT 2nd-stage air seal assembly. After further analysis, it was determined that the knife-edge crack was due to seal rubbing that elevated the HPT 2nd-stage air seal temperature and induced fatigue. This condition, if not addressed, could result in uncontained HPT 2nd-stage air seal assembly release, damage to the engine, and damage to the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed PW Service Bulletin (SB) PW2000 72–773, dated March 11, 2020. The SB describes procedures for performing a BSI of the HPT 2nd-stage air seal assembly. This service information is reasonably available because the interested parties have access to it through their normal

course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA reviewed PW SB PW2000 72–754, Revision No. 2, dated April 30, 2019, and PW SB PWF117 72–402, Revision No. 2, dated May 3, 2019. The SBs describe procedures for inspecting and replacing the HPT 2nd-stage air seal assembly.

FAA's Determination

The FAA is proposing this AD because it evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require initial and repetitive BSIs, FPIs, and visual inspections of the HPT 2nd-stage air seal assembly and, depending on the results of the inspections, replacement of the HPT 2nd-stage air seal assembly with a part eligible for installation. This proposed AD would also require replacement of the affected HPT 2nd-stage air seal assembly, depending on the engine model, at either the next engine shop visit or the next piece-part opportunity.

Costs of Compliance

The FAA estimates that this proposed AD affects 445 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
BSI the HPT 2nd-stage air seal assembly	2 work-hours × $85 per hour = $170	$0	$170	$75,650
Visual inspection, strip the knife edge coating, and FPI the HPT 2nd-stage air seal assembly.	10 work-hours × $85 per hour = $850	0	850	378,250

The FAA estimates the following costs to do any necessary replacements. The FAA has no way of determining how many replacements of the HPT 2nd-stage air seal assembly will be done with a modified HPT 2nd-stage air seal assembly and how many will be done with a new HPT 2nd-stage air seal assembly. The FAA also has no way of determining the number of engines that might need replacement of the HPT 2nd-stage air seal assembly, HPT 1st-stage disk, and HPT 2nd-stage hub.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the HPT 2nd-stage air seal assembly with modified HPT 2nd-stage air seal assembly.	10 work-hours × $85 per hour = $850	$5,000	$5,850
Replace the HPT 2nd-stage air seal assembly with new seal assembly.	0.25 work-hours × $85 per hour = $21.25	355,000	355,021.25
Replace the HPT 2nd-stage air seal assembly, HPT 1st-stage disk, and HPT 2nd-stage hub (based on FPI results).	0.25 work-hours × $85 per hour = $21.25	970,000	970,021.25

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. FAA–2020–0442; Project Identifier AD–2020–00260–E.

(a) Comments Due Date

The FAA must receive comments by July 16, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney (PW) PW2037, PW2037M, PW2040, and F117–PW–100 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a report of an uncontained engine failure resulting from cracks originating in the knife edge of the high-pressure turbine (HPT) 2nd-stage air seal assembly. The FAA is issuing this AD to prevent failure of the HPT 2nd-stage air seal assembly. The unsafe condition, if not addressed, could result in uncontained HPT 2nd-stage air seal assembly release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Borescope Inspection (BSI) of HPT 2nd-Stage Air Seal Assembly

For PW PW2037, PW2037M, and PW2040 model turbofan engines with an HPT 2nd-stage air seal assembly, part number (P/N) 1A8209 or 1A8209–001, installed, and with any of the following: An engine with serial number 716301 to 716600, inclusive; 717901 to 717999, inclusive; 718000; 726501 to 727132, inclusive; or 727135 to 727143, inclusive; or an engine that has operated with electronic engine control model number EEC104–1 since the last HPT overhaul:

(i) Within 2,500 flight cycles (FCs) since the last HPT 2nd stage air seal assembly installation or 500 FCs after the effective date of this AD, whichever occurs later, perform an initial BSI of the HPT 2nd-stage air seal assembly using the Accomplishment Instructions, paragraph 6, of PW Service Bulletin (SB) PW2000 72–773, dated March 11, 2020.

(ii) Thereafter, perform the BSI required by paragraph (g)(1)(i) of this AD within every 500 FCs since performance of the last BSI.

(iii) If, during any BSI required by paragraphs (g)(1)(i) or (ii) of this AD, a cracked seal is found, before further flight, remove the HPT 2nd-stage air seal assembly from the engine and perform additional inspections of the HPT 2nd-stage air seal assembly using paragraph (g)(2) of this AD.

(2) Visual Inspection and Fluorescent Penetrant Inspection (FPI) of HPT 2nd-Stage Air Seal Assembly

For PW PW2037, PW2037M, PW2040, and F117–PW–100 model turbofan engines, after the effective date of this AD, at every piece part opportunity of the HPT 1st-stage disk, HPT 2nd-stage disk, or the HPT 2nd-stage air seal assembly:

(i) Perform a visual inspection of the HPT 2nd-stage air seal assembly, strip the knife edge coating from the HPT 2nd-stage air seal assembly, and then perform an FPI of the HPT 2nd-stage air seal assembly.

(ii) If a crack is found in the HPT 2nd-stage air seal assembly during the visual inspection or FPI required by paragraph (g)(2)(i) of this AD, before further flight, remove the HPT 2nd-stage air seal assembly from service and replace it with a part eligible for installation.

(iii) If a through-crack is found in the forward edge or aft edge of the HPT 2nd-stage air seal assembly during the visual inspection or FPI required by paragraph (g)(2)(i) of this AD, before further flight, remove the HPT 2nd-stage air seal assembly, mating HPT 1st-stage disk, and HPT 2nd-stage hub from service, and replace the parts with parts eligible for installation. In order to return the mating HPT 1st-stage disk and HPT 2nd-stage hub to service, the inspections of the HPT 2nd-stage air seal assembly cannot reveal a through-crack.

(3) Replacement of HPT 2nd-Stage Air Seal Assembly

(i) For PW PW2037, PW2037M, and PW2040 model turbofan engines, at the next engine shop visit after the effective date of this AD, remove the HPT 2nd-stage air seal assembly, P/N 1A8209 or 1A8209–001, and replace it with a part eligible for installation.

(ii) For PW F117–PW–100 model turbofan engines, at the next piece part opportunity after the effective date of this AD, remove the HPT 2nd-stage air seal assembly, P/N 1A8209 or 1A8209–001, and replace it with a part eligible for installation.

(h) Terminating Action

Removal of the HPT 2nd-stage air seal assembly, P/N 1A8209 or 1A8209–001, and its replacement with a part eligible for installation as required by paragraph (g)(3) of this AD is a terminating action for the repetitive BSI requirements in paragraph (g)(1)(ii) of this AD.

(i) Definitions

(1) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation of the engine without subsequent engine maintenance does not constitute an engine shop visit.

(2) For the purpose of this AD, a ''piece-part opportunity'' is when the part is completely disassembled.

(3) For the purpose of this AD, a ''part eligible for installation'' is:

(i) An HPT 2nd-stage air seal assembly that is not P/N 1A8209 or 1A8209–001, or;

(ii) An HPT 2nd-stage air seal assembly that has been modified using PW SB PW2000 72–754, Revision No. 2, dated April 30, 2019, or PW SB PWF117 72–402, Revision No. 2, dated May 3, 2019.

(4) For the purpose of this AD, a ''through-crack'' is a crack that has propagated through the thickness of the part and is present on both the inner diameter and outer diameter of either the forward or aft edge of the HPT 2nd-stage air seal assembly.

(5) For the purpose of this AD, an ''HPT overhaul'' is the disassembly of the HPT and maintenance of the HPT module that included an inspection of the HPT 2nd-stage air seal assembly.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Carol Nguyen, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7655; fax: 781–238–7199; email: *carol.nguyen@faa.gov.*

(2) For service information identified in this AD, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118, United States; phone: 800–565–0140; fax: 860–565–5442; email: *help24@pw.utc.com;* website: *https://fleetcare.pw.utc.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued on May 22, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–11499 Filed 5–29–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0457; Product Identifier 2020–NM–039–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2018–25–02 and AD 2019–23–01, which apply to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, and –271N airplanes; and Model A321 series airplanes. Those ADs require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and/or airworthiness limitations. Since the FAA issued AD 2018–25–02 and AD 2019–23–01, the agency has determined that new or more restrictive airworthiness limitations are necessary and models need to be added to the applicability. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 16, 2020.

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

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

For the EASA material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.*

For the Airbus material that was previously incorporated by reference, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0457.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0457; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0457; Product Identifier 2020–NM–039–AD'' at the beginning of your comments. The FAA specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The FAA issued AD 2019–23–01, Amendment 39–19794 (84 FR 66579, December 5, 2019) (''AD 2019–23–01''), for certain Airbus SAS Model A318 series airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, and –271N airplanes; and A321 series airplanes. AD 2019–23–01 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. AD 2019–23–01 resulted from a determination that new or more restrictive airworthiness limitations are necessary. The FAA issued AD 2019–23–01 to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. AD 2019–23–01 requires airworthiness limitations that are newer or more restrictive than those specified in AD 2018–25–02, Amendment 39–19513 (83 FR 62690, December 6, 2018) (''AD 2018–25–02''). AD 2019–23–01 specifies that accomplishing the revision required by paragraph (i) of AD 2019–23–01 terminates all requirements of AD 2018–25–02.

Actions Since AD 2019–23–01 Was Issued

Since the FAA issued AD 2019–23–01, the agency has determined that new or more restrictive airworthiness limitations are necessary. In addition, the FAA has added Model A319–151N and –153N airplanes and Model A320–253N, –272N, and –273N airplanes to the applicability of this proposed AD.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0036, dated February 26, 2020 (''EASA AD 2020–0036'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N,

–272N, and –273N airplanes; and Model A321 series airplanes. EASA AD 2020–0036 superseded EASA AD 2018–0288 (which corresponds to FAA AD 2019–23–01). Model A320–215 airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after October 11, 2019, must be in compliance with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0036 describes new or more restrictive airworthiness limitations for damage tolerance of airplane structures.

This proposed AD would also require Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2–Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018, which the Director of the Federal Register approved for incorporation by reference as of January 9, 2020 (84 FR 66579, December 5, 2019).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2019–23–01. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2020–0036 described previously, as incorporated by reference. Any differences with EASA AD 2020–0036 are identified as exceptions in the regulatory text of this proposed AD.

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

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0036 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0036 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD.

Service information specified in EASA AD 2020–0036 that is required for compliance with EASA AD 2020–0036 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0457 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

Costs of Compliance

The FAA estimates that this proposed AD affects 1,553 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–23–01 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the agency has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by

■ a. Removing Airworthiness Directive (AD) 2018–25–02, Amendment 39–19513 (83 FR 62690, December 6, 2018), and AD 2019–23–01, Amendment 39–19794 (84 FR 66579, December 5, 2019); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2020–0457; Product Identifier 2020–NM–039–AD.

(a) Comments Due Date

The FAA must receive comments by July 16, 2020.

(b) Affected ADs

This AD replaces AD 2018–25–02, Amendment 39–19513 (83 FR 62690, December 6, 2018) (''AD 2018–25–02''), and AD 2019–23–01, Amendment 39–19794 (84 FR 66579, December 5, 2019) (''AD 2019–23–01'').

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before October 11, 2019.

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

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–23–01, with no changes. Accomplishing the maintenance or inspection program revision required by paragraph (i) of this AD terminates the requirements of this paragraph.

(1) For airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued on or before June 13, 2018, except for Model A319–151N and –153N airplanes and Model A320–253N, –272N, and –273N airplanes: Within 90 days after January 9, 2020 (the effective date of AD 2019–23–01), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2–Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018.

(2) The initial compliance time for doing the tasks is at the time specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2–Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018, or within 90 days after January 9, 2020, whichever occurs later.

(h) Retained Restriction on Alternative Actions and Intervals with a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2019–23–01, with a new exception. Except as required by paragraph (i) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0036, dated February 26, 2020 (''EASA AD 2020–0036''). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2020–0036

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0036 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0036 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2020–0036 within 90 days after the effective date of this AD.

(3) The initial compliance times for doing the tasks specified in paragraph (3) of EASA AD 2020–0036 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2020–0036, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4), (5), and (6) of EASA AD 2020–0036 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0036 does not apply to this AD.

(k) New Provisions for Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0036.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch,

FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (m)(4) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

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

(ii) AMOCs approved previously for AD 2019–23–01 are approved as AMOCs for the corresponding provisions of EASA AD 2020–0036 that are required by paragraph (g) of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) For information about EASA AD 2020–0036, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(2) For information about the Airbus material that was previously incorporated by reference, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

(3) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0457.

(4) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

Issued on May 21, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–11407 Filed 5–29–20; 8:45 am]

BILLING CODE 4910–13–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046–AB00

Official Time in Federal Sector Cases Before the Commission

AGENCY: Equal Employment Opportunity Commission

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) is announcing that it is reopening the comment period for the proposed rule on Official Time in Federal Sector Cases Before the Commission for an additional 60 days. The original comment period ended on February 10, 2020.

DATES: The comment period for the proposed rule published on December 11, 2019 at 84 FR 67683 is reopened. Written comments must be received on or before July 31, 2020.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 3046–AB00, on the Federal eRulemaking Portal: *http://www.regulations.gov.* Alternatively, you may submit comments, which must reference RIN Number 3046–AB00, by U.S. Mail to: Bernadette Wilson, Executive Officer, Office of the Executive Secretariat, U.S. EEOC, 131 M Street NE, Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the agency name and docket number or RIN for this rulemaking. If you previously submitted comments during the original comment period, you do not need to submit those same comments again. Comments need be submitted in only one of the above listed formats. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information you provide.

Docket: For access to the docket to read comments previously received, go to *https://www.regulations.gov/docket?D=EEOC-2019-0004.* Copies of comments received in response to proposed rules usually are also available for review at the Commission's library until the Commission publishes the rule in final form. However, given the EEOC's current 100% telework status due to the COVID–19 pandemic, the Commission's library is closed until further notice. Once the Commission's library is re-opened, copies of comments received in response to the proposed rule will be made available for viewing at 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Andrew Maunz, Legal Counsel, at *andrew.maunz@eeoc.gov* or 202–702–2671.

SUPPLEMENTARY INFORMATION: On December 11, 2019, the EEOC requested comments on a proposed rule, published at 84 FR 67683, to amend its rule covering official time for representatives who are employees of the federal government. The EEOC received more than 1,800 comments before the comment period closed on February 10, 2020. Due to the high level of interest on the topic, the Commission wants to ensure that it gives all interested stakeholders ample opportunity to comment. Therefore, the EEOC will reopen the comment period for 60 additional days. Parties should refer to the proposed rule, at 84 FR 67683, for further details about the issues under consideration.

For the Commission.

Dated: May 22, 2020.

Janet Dhillon,

Chair.

[FR Doc. 2020–11457 Filed 5–29–20; 8:45 am]

BILLING CODE 6570–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0256; FRL–10009–96–Region 7]

Air Plan Approval; Missouri; Restriction of Emission of Lead From Specific Lead Smelter-Refinery Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by Missouri on February 5, 2019. Missouri requests that EPA revise its approved plan which restricts emission of lead from specific lead smelter-refinery installations. The revisions remove emission restrictions for a facility that is no longer operating, update a reference to the Federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) for secondary lead smelters, and update incorporation by reference to testing methods. Minor editorial revisions have also been made for clarity. The EPA's

proposed approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before July 1, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0256 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Stephanie Doolan, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7719; email address *Doolan.stephanie@epa.gov.*

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

Table of Contents

I. Written Comments
II. What is being addressed in this document?
III. Have the requirements for approval of a SIP revision been met?
IV. What action is the EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2020–0256, at *https://www.regulations.gov.* 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.*

II. What is being addressed in this document?

The EPA is proposing to approve revisions to 10 Code of State Regulation (CSR) 10–6.120, *Restriction of Emission of Lead From Specific Lead Smelter-Refinery Installations,* in the

Missouri SIP. The EPA received the Missouri Department of Natural Resources' (MoDNR) SIP revision submission on February 15, 2019. The revisions are described in detail in the technical support document (TSD) included in the docket for this action. The Environmental Protection Agency (EPA) is proposing to approve revisions to the Missouri State Implementation Plan (SIP).

The revisions to 10 CSR 10–6.120 eliminate restrictions for a facility that is no longer operational as a primary lead smelter, update the reference to the National Emissions Standards for Hazardous Air Pollutants (NESHAP), Subpart X, update the incorporation by reference information, and make editorial changes to the rule for clarity. The EPA believes that these revisions do not impact the stringency of the Missouri SIP and do not adversely impact air quality.

A list of the revisions Missouri made to 10 CSR 10–6.120 are as follows:

- The reference in paragraph (3), General Provisions, to the Herculaneum primary lead smelter and corresponding Table 1 which formerly contained lead emission limits has been removed because the Herculaneum facility no longer operating as a primary lead smelter. The Herculaneum area is a nonattainment area for the 2008 Lead National Ambient Air Quality Standard (NAAQS) and thus has an approved plan to bring the area back into attainment of the standard. See 79 FR 62572, October 20, 2014. The lead emissions limits in the approved attainment demonstration SIP are more stringent than those in table 1; thus, EPA did not approve table 1 of the General Provisions in its August 28, 2015, action. See 80 FR 52190. Missouri's removal of the emissions limitations from its State rule does not affect the enforceability of the attainment SIP and the controls required to meet the NAAQS.
- Paragraph (5), Test Methods, has also been revised to incorporate the Secondary Lead Smelter NESHAP by reference, as well as, reference specific EPA test methods described in Missouri's rule 10 CSR 10–6.030(22).

As discussed above a detailed description of Missouri's revision and EPA analysis of the impact to air quality have provided in the TSD which is part of the docket for this action.

The revisions to this state regulation were placed on public notice for review and comment from June 29 through October 4, 2018. Missouri received three comments from two sources during the comment period: EPA provided two comments and Doe Run Resource Recycling Facility provided one comment on the rule revisions. Missouri responded to all three comments, as noted in the State submission included in the docket for this action. Missouri responded to all three comments in its Order of Rulemaking dated January 2, 2019. The three comments Missouri received were:

- EPA commented on paragraph (5) of the proposed rule revision that the SIP revision request for subsection 10 CSR 10–6.030 (22), upon which the revisions regarding test methods in 10 CSR 10–6.120 relies, had not yet been approved. Since EPA submitted its comment, the Missouri SIP has been approved as a separate action to incorporate the revisions to 10 CSR 10–6.030. See 85 FR 4229, January 24, 2020.
- EPA also commented on the revisions to paragraph (5) encouraging MoDNR to reference 40 CFR part 60, appendix A, rather that adding references to 10 CSR 10–6.030(22) in subsections 5(B) and 5(C). MoDNR did not amend the rule text in response to this comment. Missouri's reliance on test methods incorporated by reference in 10 CSR 10–6.030(22) does not affect the stringency of the rule and remains protective of air quality.
- Doe Run Buick Resource Recycling Division submitted one comment to Missouri stating that it believes the correct lead emission limit to be 0.00043 gr/dscf. MoDNR's response was to remove the reference to the specific numerical standard and to emphasize that Doe Run is still required to meet the Secondary Lead Smelter NESHAP, subpart X, which is incorporated in 10 CSR 10–6.075 as well. See 79 FR 371, June 10, 2014.

Missouri made editorial text revisions detailed in EPA's TSD for clarity which do not have an impact to air quality.

Based on a detailed analysis in its TSD of the revisions to the state rule that are listed above, EPA is proposing to approve the revisions to this rule because it promotes clarity by removing no longer needed emission limits for the former Herculaneum primary lead

smelter refinery and will not have a negative impact on air quality.

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

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 placed this rule revision on public notice from June 29 through October 4, 2008. MoDNR responded to all three comments received. 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?

The EPA is proposing to approve Missouri's request to revise 10 CSR 10–6.120. We are processing this as a proposed SIP revision because we are soliciting comments on it. Final rulemaking will occur after consideration of any comments received. The EPA is soliciting comment on the substantive and administrative revisions detailed in this document and in the TSD. EPA is not soliciting comment on existing rule text that has been previously approved by EPA into the SIP.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulations described in the proposed 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).

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).

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, Lead, Reporting and recordkeeping requirements, Test methods.

Dated: May 21, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 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–AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–6.120'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

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				

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
10–6.120	Restriction of Emissions of Lead from Specific Lead Smelter-Refinery Installations.	10/25/18	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*

* * * * *

[FR Doc. 2020–11494 Filed 5–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2019–0643; FRL–10009–77–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 1, 2015, the Environmental Protection Agency (EPA) promulgated the 2015 ozone National Ambient Air Quality Standard (NAAQS), revising the standard to 0.070 parts per million. Whenever a new or revised 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 approve the State of Utah's 2015 ozone NAAQS infrastructure SIP submitted to the EPA on January 29, 2020.

DATES: Written comments must be received on or before July 1, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0643, 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.* To reduce the risk of COVID–19 transmission, for this action we will not be accepting comments submitted by mail or hand delivery

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 not be placed on the internet. Publicly available docket materials are available electronically at *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Kate Gregory, (303) 312–6175, *gregory.kate@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.[1] 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.[2] The October 1, 2015 standards are known as the 2015 ozone NAAQS.

Under sections 110(a)(1) and (2) of the CAA, after the promulgation of a new or revised NAAQS states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS.[3] These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that the existing SIPs already meet those requirements. The EPA highlighted and explained this statutory requirement in a series of guidance documents.[4]

A. 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

[1] Final rule, National Ambient Air Quality Standards for Ozone, 73 FR 16436, 16483 (March 27, 2008).

[2] Final rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292, 65362 (Oct. 26, 2015).

[3] 42 U.S.C. 7410(a)(1), (2).

[4] ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (Oct. 2, 2007); ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (Sep. 25, 2009); ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (Oct. 14, 2011); ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' (Sep. 13, 2013) (2013 Memo).

must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure 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 prevention of significant deterioration (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 for Utah is contained in section III of this document.

B. How did the State address the infrastructure elements of Sections 110(a)(1) and (2)?

The Utah 2015 ozone NAAQS infrastructure SIP submissions demonstrates how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2015 ozone NAAQS. The State submittals are available in the electronic docket for today's proposed action at *www.regulations.gov*.[5]

The Utah Department of Environmental Quality (UDEQ) submitted a certification of Utah's infrastructure SIP for the 2015 ozone NAAQS on January 29, 2020. The State's submission references the current Utah Division of Air Quality (UDAQ) Rules (UAR).[6]

[5] Utah made a submittal to address the 2015 ozone NAAQS infrastructure SIP requirements on October 24, 2019, but then made a second submittal on January 29, 2020, to address public participation requirements. The second submittal is comprehensive and includes all of the substantive material in the first, but for completeness the docket includes both submittals (see 'UT 2015 Ozone ISIP Submission—10.24.19' and 01.29.20 UT 2015 ISIP Submission' in docket).

[6] *See https://rules.utah.gov/publicat/code/r307/r307.htm* (as in effect December 1, 2019; site accessed April 13, 2020); Utah's approved SIP can be found at 40 CFR 52.2320.

II. What is the scope of this proposed rule?

The EPA is acting upon SIP submissions from Utah that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

Whenever the 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. 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.[7] Unless otherwise noted below, we are following that approach in acting on this submission. In addition, in the context of acting on infrastructure submissions, the EPA generally evaluates the state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[8] The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, and other materials that comprise its SIP.

[7] The EPA explains and elaborates on these ambiguities and its approach to address them in its 2013 Infrastructure SIP Guidance (available at *https://www.epa.gov/sites/production/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf*), as well as in agency actions on infrastructure SIPs. *See, e.g.,* Proposed Rule, Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO2 National Ambient Air Quality Standards; South Dakota, 79 FR 71040 (December 1, 2014).

[8] *See Montana Envtl. Info. Ctr.* v. *Thomas,* 902 F.3d 971, 978 (9th Cir. 2018).

III. The EPA's Evaluation of the State Submittal

A. CAA Section 110(a)(2)(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 this Act.

Multiple SIP-approved UDAQ Rules cited in Utah's certification provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2015 NAAQS. The State's submission cites SIP section I (*Legal Authority*), which allows the adoption of emission standards and other limits necessary for attainment and maintenance of the NAAQS. SIP section I, in combination with other specific control measures adopted by the Utah Air Quality Board (AQB), and multiple SIP-approved state air quality regulations cited in Utah's certification, including SIP sections II (*Review of New and Modified Air Pollution Sources*), VIII (*Prevention of Significant Deterioration*), IX (*Part D: 8 Hour Ozone Provisions*), X (*Part A, B, C: Vehicle Inspection and Maintenance Program General Provisions*), ozone Reasonable Available Control Technology (RACT) rules and R307–325 (*Ozone Nonattainment and Maintenance Areas: General Requirement*), R307–326 (*Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions*), R307–327 (*Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage*), R307–328 (*Gasoline Transfer and Storage*), R307–335 (*Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations*), R307–340 (*Ozone Nonattainment and Maintenance Areas: Surface Coating Processes*) provide enforceable emission limitations and other control measures, means of techniques, 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 clarifications.[9]

The EPA does not consider the SIP requirements triggered by the nonattainment area mandates in part D of Title 1 of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Utah has included some SIP provisions originally submitted in response to part D requirements in its certification for the infrastructure requirements of section 110(a)(2). For the purposes of this action, the EPA is reviewing any rules originally submitted in response to part D requirements solely for the purposes of determining whether they support a finding that the State has met the basic infrastructure requirements of section 110(a)(2). For example, in response to the requirement to have enforceable emission limitations under section 110(a)(2)(A), Utah's certification (contained within this docket) generally listed provisions within its SIP which regulate pollutants through various programs, including its stationary source permit program, which requires sources to demonstrate that emissions will not cause or contribute to a violation of any NAAQS. The EPA is approving those rules as meeting the requirement to have enforceable emission limitations on ozone precursors; any judgment about whether those emission limitations discharge the State's obligation to impose RACT under part D will be made separately, in an action reviewing those rules pursuant to the requirements of part D. This suffices, in the case of Utah, to meet the requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

B. CAA Section 110(a)(2)(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.''

As discussed in Utah's submission, the UDEQ periodically submits a Quality Management Plan and a Quality Assurance Project Plan to the EPA. These plans cover procedures to monitor and analyze data. As part of the monitoring SIP, Utah submits an Annual Monitoring Network Plan (AMNP) each year for the EPA's approval.

A comprehensive AMNP, intended to fully meet the federal requirements, was submitted to the EPA by Utah on July 3, 2019 and subsequently approved by the EPA.[10] Utah's SIP-approved regulations provide for the design and operation of its monitoring network, reporting of data obtained from the monitors, and annual network review including notification to the EPA of any changes, and public notification of exceedances of NAAQS. As described in its submission, Utah operates a comprehensive monitoring network, including ozone monitoring, compiles and analyzes collected data, and submits the data to the EPA's Air Quality System on a quarterly basis.

Based on this information, we are proposing to approve the Utah SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2015 ozone NAAQS.

C. CAA Section 110(a)(2)(C): Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment New Source Review (NSR), and minor NSR permitting programs that are adequate to implement the 2015 ozone NAAQS. As explained elsewhere in this action, the EPA is not evaluating nonattainment-related provisions, such as the nonattainment NSR program required by part D of the Act. The EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

The State's submissions for the 2015 ozone infrastructure requirements cite SIP section I (*Legal Authority*), which provides for enforcement of applicable laws, regulations, and standards, including injunctive relief, and also provides authority 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.

PSD Requirements

With respect to Element (C), 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 for Element (J) in relation to a comprehensive PSD permitting program are the same as the requirements with respect to Element (C).[11]

Utah has shown that it has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs). SIP section VIII (*Prevention of Significant Deterioration*) applies to all air pollutants regulated under the CAA. Utah implements the PSD program by, for the most part, incorporating by reference the Federal PSD program located in 40 CFR 52.21 as it existed on a specific date. On April 13, 2020, we proposed to approve portions of a Utah SIP revision revising the date of incorporation by reference of the Federal PSD program to July 1, 2018.[12] With this Utah SIP revision, the Utah SIP now generally reflects all changes to PSD requirements that the EPA has promulgated through the revised date of incorporation by reference.

For the above reasons, the EPA is proposing to approve Utah'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 Act.

Minor NSR Requirements

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act.[13] Since approval of the minor NSR program, the State and the EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. Utah's minor NSR program, as approved into the SIP, covers the construction and modification of stationary sources of regulated NSR pollutants, including $PM_{2.5}$, lead, and ozone and its precursors.

The EPA is proposing to approve Utah'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,

[9] Utah 2015 Ozone Infrastructure SIP Submission, pp. 1, 2.

[10] *See Utah AMNP Approval 2019*.docx in the docket for this action. Additionally, Utah's AMNPs can be found at *http://www.airmonitoring.utah.gov/network/review.htm*.

[11] The ''Prong 3'' requirements of Element (D)(i)(II) may be satisfied in part by demonstrating that the air agency has a complete PSD permitting program that correctly addresses all regulated NSR pollutants. Our explanation of how the state has satisfied the Prong 3 requirements is below.

[12] *See* Proposed Rule, Revisions to the Utah Division of Administrative Rules, 85 FR 14606 (April 13, 2020). We did not receive any comments on our proposed approval and anticipate finalizing that approval before any final action on this proposal.

[13] *See* Final Rule, Approval and Promulgation of Air Quality Implementation Plans; Utah; Revisions to Utah Administrative Code—Permit: New and Modified Sources, 79 FR 7072, 7076 (July 19, 2016).

modification, and construction of any stationary source as necessary to assure that the NAAQS are achieved.

D. CAA Section 110(a)(2)(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 that will contribute significantly to nonattainment of the NAAQS in any other state (prong 1), and adequate provisions prohibiting emissions that 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 that 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, 2, and 4 portions of the Utah 2015 ozone infrastructure SIP. We will act on these portions of Utah's infrastructure SIP in a separate rulemaking action.

Prong 3: Interference With PSD Measures

As to in-state sources subject to PSD permitting, 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).[14] As discussed above in connection with Element (C), Utah has provided that confirmation by demonstrating that it has a federally approved PSD program, current as of the most recent revisions to 40 CFR 52.21.

In-state sources that are *not* subject to PSD permitting—that is, 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 the air agency's EPA-approved nonattainment NSR provisions addressing all pollutants for which the state has designated nonattainment areas. Utah has a SIP-approved nonattainment NSR program[15] which ensures regulation of major sources and major modifications in nonattainment areas, and therefore we find that this satisfies prong 3 with regard to this requirement.

Accordingly, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable prong 3 requirements of section 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

110(a)(2)(D)(ii): Interstate and International Transport Provisions

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.

To address CAA section 110(a)(2)(D)(ii), Utah states that no sources within the State are the subject of an active finding under CAA section 126 with respect to the 2015 ozone NAAQS, and that there are no final findings under CAA section 115 against Utah with respect to the 2015 ozone NAAQS. In the assessing CAA section 110(a)(2)(D)(ii), we reviewed the information presented by Utah in its 2015 ozone infrastructure SIP submission, as well as relevant portions of the EPA-approved Utah SIP. As required by 40 CFR 51.166(q)(2)(iv), Utah'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.[16] This suffices to meet the notice requirement of section 126(a). Utah also has no pending obligations under sections 126(c) or 115(b) of the CAA. Therefore, the Utah infrastructure SIP currently meets the requirements of those sections. For these reasons, the EPA is proposing to approve the Utah SIP as fully meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

E. CAA Section 110(a)(2)(E): Adequate Resources

Section 110(a)(2)(E)(i) requires each state to provide necessary assurances that it 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 each state 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 provisions in Chapter 2 of Title 19 of the Utah Code and Utah SIP section I (*Legal Authority*) provide the UDAQ and the AQB adequate authority to carry out SIP obligations with respect to the 2015 ozone NAAQS. The State receives section 105 grant funds through its Performance Partnership Grant, along with required state matching funds to provide funding necessary to carry out Utah's SIP requirements (Utah SIP section V, *Resources*). Utah's Performance Partnership Agreement with the EPA documents that the State has the resources needed to carry out agreed 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, R307–414, *Permits: Fees for Approval Orders,* requires the owner and operator of each new major source or major modification to pay a fee sufficient to cover reasonable costs of reviewing and acting upon the notice of intent and implementing and enforcing requirements placed on such source by any approval order issued. Collectively, these rules and commitments provide evidence that UDEQ has adequate

[14] *See* 2013 Memo at 31 (''This is because in order to be approved by the EPA, a major source PSD permitting program would need to fully consider source impacts on air quality in other states.'').

[15] *See* Final Rule, Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to Nonattainment Permitting Regulations, 84 FR 35831 (July 25, 2019).

[16] *See* Final Rule, Approval, Disapproval, and Promulgation of Air Quality Implementation Plans; Utah; Revisions to New Source Review Rules, 76 FR 41712 (July 15, 2011) (approving incorporation of most 40 CFR 52.21 requirements into state program).

personnel, 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 regulations cited by Utah in their submittals (Utah SIP section VI, *Intergovernmental Cooperation*) also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve Utah's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2015 ozone NAAQS.

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 contains two explicit requirements: (i) That ''any board or body which approves permits or enforcement orders under [the CAA] shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders'' under the CAA; 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 February 14, 2006, EPA approved SIP section 1 (*Legal Authority*) into the Utah SIP as codified in UAR R307–110–2.[17] Utah SIP section 1 (*Legal Authority*) specifies certain requirements regarding the composition of the State board and disclosure by its members of potential conflicts of interest. Details on how this portion of the Procedural Rules meet the requirements of section 128 are provided in our April 26, 2016 proposal.[18] In our August 2, 2016 final action, we correspondingly approved Utah's infrastructure SIP for the 2008 ozone NAAQS for element (E)(ii).[19] Section 128 is not NAAQS-specific, and once the State has met the requirements of section 128, that is sufficient for purposes of section 110(a)(2)(E)(ii) for all NAAQS. Therefore, Utah's SIP continues to meet the requirements of section 110(a)(2)(E)(ii). We are proposing to approve the State's January 29, 2020 SIP submission as meeting the requirements of section 128 because it continues to comply with the statutory requirements and is consistent with the EPA's guidance recommendations concerning section 128.

F. CAA Section 110(a)(2)(F): Stationary Source Monitoring System

Under section 110(a)(2)(F), the SIP must 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.

In its submission, Utah includes reference to EPA-approved section III (*Source Surveillance*) which describes the State's program of periodic emissions testing, emissions inventories, plant inspections and source monitoring.[20]Additionally, the State cites EPA-approved SIP section II (*Review of New and Modified Air Pollution Sources*) and SIP section VIII (*Prevention of Significant Deterioration*) as the State's program for new or modified sources to submit plans to UDEQ (and receive approval) prior to construction or modification of stationary sources. Utah also cites UAR rules in its submission (including R307–150, R307–165 and R307–170) that require certain large sources to install and maintain continuous emission monitors to assure compliance with emission limitations established in approval orders and the SIP.[21] In addition, Utah provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting.

Additionally, Utah is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Utah made its latest update to the NEI in November 2019. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website *https://www.epa.gov/air-emissions-inventories.*

Based on the analysis above, we propose to approve the Utah SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2015 ozone NAAQS.

G. CAA Section 110(a)(2)(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 file suit to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment. If it is not practicable to assure prompt protection by filing suit, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment. Those orders can be extended if the EPA subsequently files a civil suit.

In our April 2016 proposed Utah infrastructure SIP action, we explained how Utah meets the requirement that the plan provide for State authority comparable to that in CAA section 303.[22] For the reasons stated in the April 2016 document, we are proposing to approve the State's submittal for this requirement of section 110(a)(2)(G) with respect to the 2015 ozone NAAQS.

As discussed above, each state must also have adequate contingency plans adopted into the SIP to implement the air agency's emergency episode authority. This can be done by

[17] *See* Final Rule, Approval and Promulgation of Air Quality Implementation Plans; Utah; Rule Recodification, 71 FR 7679, 7682 (February 14, 2006); 40 CFR 52.2320.

[18] *See* Proposed Rule, Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 NO2, 2010 SO_2, and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; Utah, 81 FR 24525, 24531–24532 (April 26, 2016).

[19] *See* Final Rule, Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 NO2, 2010 SO_2, and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; Utah, 81 FR 50626 (Aug. 2, 2016).

[20] Utah 2015 Ozone Infrastructure SIP Submission, p. 15; *see* 40 CFR 52.2320.

[21] Utah 2015 Ozone Infrastructure SIP Submission, p. 15.

[22] *See* 81 FR at 24534 (proposing to approve Utah SIP as meeting CAA section 110(a)(2)(G) requirement to provide authority comparable to that in CAA section 303); 81 FR 50626 (taking final action on proposal).

submitting a plan that meets the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS, if the NAAQS is covered by those regulations. Evaluating Utah's plan in our 2016 infrastructure SIP action, we found that Utah's air pollution emergency rules, consistent with the subpart H requirements, address ozone (as well as several other pollutants); establish stages of episode criteria; provide for public announcement whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage.[23] The 2016 action concerned the 2008 ozone standard, but as to ozone, Utah's SIP-approved criteria for emergency episodes remain consistent with the Significant Harm Levels established in EPA's regulations.[24] Accordingly, Utah's contingency plans remain approvable with respect to the 2015 ozone standard.

For these reasons, we propose approval of Utah's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

H. CAA Section 110(a)(2)(H): Future SIP Revisions

Section 110(a)(2)(H) requires that SIPs provide for revision ''(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 the Act.

Utah SIP section I cites 19–2–104 (describing the powers of the Air Quality Board) and 19–2–109 (the State's Air Conservation Act) and of the Utah Code. We have previously found that these provisions give the AQB sufficient authority to meet the requirements of CAA section 110(a)(2)(H), and find that the basis for that finding is still valid.[25] We therefore propose to approve Utah's SIP as meeting the requirements of CAA section 110(a)(2)(H).

I. CAA Section 110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in CAA section 110(a)(2) that are 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 nonattainment NSR or CAA section 110(a)(2)(I).

J. CAA Section 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 FLMs pursuant to CAA section 121. In addition, states must satisfy the requirements of CAA section 127 concerning measures 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 and of the ways for the public to participate in air quality improvement efforts. Finally, as noted above, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, Title I of the CAA related to PSD and visibility protection.

In its submittals, the State cites SIP section I (*Legal Authority*) adopting requirements for transportation consultation, SIP section VI (*Intergovernmental Cooperation*), and SIP section XII (*Transportation Conformity Consultation*) to meet the requirements of CAA section 121.[26] The State has thereby 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 Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. In its submission, Utah cites SIP section XVI (*Public Notification*), which is the State's plan to report monitored levels of emissions both daily and annually, which meets the general requirements of CAA section 127 to notify the public when the NAAQS have been exceeded.

As to the section 110(a)(2)(J) requirement to address Part C's PSD requirements, we have discussed the State's program above in connection with section 110(a)(2)(C). As we have noted, the requirements for Element (J) in relation to a comprehensive PSD permitting program are the same as the requirements with respect to Element (C). Our proposed approval of the State's submissions with respect to Element (C) therefore applies to the PSD component of Element (J).

Finally, with regard to the applicable requirements for visibility protection, 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. Thus, we find that there are no newly applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective, and thus no requirement for Utah to address the visibility component of Element (J) in its infrastructure SIP.

For these reasons, we propose to approve the Utah SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2015 ozone NAAQS.

K. CAA Section 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 NAAQS pollutant, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator. Applicable EPA requirements for air quality modeling for criteria pollutants are found in 40 CFR part 51, appendix W, Guideline on Air Quality Models.[27]

[23] *See* 81 FR 24525, 24533 (proposal); 81 FR 50626 (final rule).

[24] Compare UAC R307–105–1 with 40 CFR 51.151.

[25] *See* 81 FR 24525, 24533–24534 (proposal); 81 FR 50626 (final rule).

[26] Utah 2015 Ozone Infrastructure SIP Submission, p. 17.

[27] In its most recent revision to appendix W, the EPA stated that revised requirements must be ''integrated into the regulatory processes of respective reviewing authorities and followed by applicants by no later than January 17, 2018.'' Final Rule, Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter, 82 FR 5182 (Jan. 17, 2017). On April 13, 2020, we proposed to approve portions of a Utah SIP revision that revised the date of incorporation by reference for appendix W to comply with EPA's January 17, 2017 revisions to appendix W. *See* 85 FR 14606. As noted previously, we did not receive any comments

Continued

In its submissions, Utah cites UAR rule R307–405–13, which incorporates by reference the air quality model provisions of 40 CFR 52.21(l), which includes the air quality model requirements of appendix W of 40 CFR part 51, pertaining to the Guideline on Air Quality Models.[28] Additionally, the State cites EPA-approved SIP section II (*Review of New and Modified Air Pollution Sources*) and SIP section VIII (*Prevention of Significant Deterioration*) as the State's program for new or modified sources to submit plans to UDEQ (and receive approval) prior to construction or modification of stationary sources. Utah's PSD program incorporates by reference the federal program at 40 CFR 52.21, including the provision at 52.21(l)(1) requiring that estimates of ambient air concentrations be based on applicable air quality models specified in appendix W of 40 CFR part 51, and the provision at 52.21(l)(2) requiring that modification or substitution of a model specified in appendix W must be approved by the Administrator.

Therefore, we propose to approve the Utah SIP as meeting the CAA section 110(a)(2)(K) for the 20015 ozone NAAQS.

L. CAA Section 110(a)(2)(L): Permitting Fees

CAA section 110(a)(2)(L) provides that SIPs must require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit. Utah's SIP-approved rules require the owner and operator of each new major source or major modification to pay a fee sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent and implementing and enforcing requirements placed on such source by any approval order issued.[29] Likewise, SIP section I (*Legal Authority*) ''identifies the statutory authority to charge a fee to major sources to cover permit and enforcement expenses.'' [30] Finally, the State's submissions cite R307–415, which is the state regulation that provides for collection of permitting fees under Utah's approved title V permit program.[31] As discussed in that approval, the State demonstrated that the fees collected were sufficient to administer the program.[32] Therefore, we propose to approve the submissions as supplemented by the State for the 2015 ozone NAAQS.

M. CAA Section 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. To satisfy this requirement, Utah refers to SIP section VI (*Intergovernmental Cooperation*), codified at R307–110–7. The provisions of this section require and provide authority for public hearings, notice of hearings, public comment periods, and the consultation and coordination between state and local governments. The EPA most recently approved this rule on February 14, 2006.[33] The rules and regulations cited by Utah provide for the consultation and participation by local political subdivisions affected by the SIP; therefore, we are proposing to approve the Utah SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2015 ozone NAAQS.

IV. Proposed Action

In this rulemaking, we are proposing approval for multiple elements of the infrastructure SIP requirements for the 2015 ozone NAAQS for Utah along with a proposed no action for three infrastructure elements for Utah. Our proposed actions are contained in Table 1 below.

The EPA is proposing to approve Utah's January 29, 2020 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, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA is proposing no action on (D)(i)(I) Prongs 1 and 2, and (D)(i)(II) Prong 4.

In the table below, the key is as follows:

A—*Approve.*

D—*Disapprove.*

NA—*No Action.*

TABLE 1—INFRASTRUCTURE ELEMENTS THAT THE EPA IS PROPOSING TO ACT ON

2015 Ozone NAAQS Infrastructure SIP Elements: Utah	
(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	NA
(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

on our proposed approval and anticipate that that approval will be final before any final action on this proposal.

[28] Utah 2015 Ozone Infrastructure SIP Submission, p.19.

[29] *See* UAC rule R307–414, *Permits: Fees for Approval Orders;* 40 CFR 52.2320.

[30] *See* SIP Section I (*Legal Authority*), codified at UAC R307–10–2; 40 CFR 52.2320.

[31] *See* Clean Air Act Final Full Approval of Operating Permits Program; Approval of Construction Permit Program Under Section 112(l); State of Utah, 60 FR 30192 (June 8, 1995); 40 CFR 52.2320.

[32] Utah 2015 Ozone Infrastructure SIP Submission, p.19.

[33] 71 FR 7679.

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, Greenhouse gases, 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: May 18, 2020.

Gregory Sopkin,

Regional Administrator, EPA Region 8.

[FR Doc. 2020–11182 Filed 5–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0692; FRL–10009–29]

Receipt of a Pesticide Petition Filed for Residues of a Pesticide Chemical in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces EPA's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of a pesticide chemical in or on various commodities.

DATES: Comments must be received on or before July 1, 2020.

ADDRESSES: Submit your comments, identified by docket identification number EPA–HQ–OPP–2019–0692, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-docket.*

Please note that, due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information, and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI

must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, EPA seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is EPA taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of a pesticide chemical in or on various food commodities. EPA is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of a pesticide chemical in or on various food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

PP *9F8780.* Syngenta Crop Protection, LLC, 410 South Swing Rd., Greensboro, NC 27409, requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.1254 to include residues of the fungicide *Aspergillus flavus* strain NRRL 21882 in or on all food and feed commodities of almond; corn, field; corn, pop; corn, sweet; peanut; and pistachio. The petitioner believes no analytical method is needed because a petition for an amendment to the currently existing exemption from tolerance for *Aspergillus flavus* strain NRRL 21882 has been submitted. Note: In the **Federal Register** of February 10, 2020 (85 FR 7499) (FRL–10004–54), EPA announced the filing of this petition to amend an exemption from the requirement of a tolerance for residues of *Aspergillus flavus* strain NRRL 21882 to include residues in or on almond and pistachio. Since that time, the petitioner provided a revised petition requesting a revision to the existing tolerance exemption to include all food and feed commodities of almond; corn, field; corn, pop; corn, sweet; peanut; and pistachio. In order to give the public an opportunity to comment on this new information, EPA is republishing its receipt of this tolerance exemption petition filing with an updated and accurate description.

Authority: 21 U.S.C. 346a.

Dated: May 13, 2020.

Robert McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2020–11574 Filed 5–29–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2019–0065; 4500030113]

RIN 1018–BE11

Endangered and Threatened Wildlife and Plants; Removing San Benito Evening-Primrose (*Camissonia benitensis*) From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), propose to remove San Benito evening-primrose (*Camissonia benitensis*) from the Federal List of Endangered and Threatened Plants. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to the species have been reduced or eliminated so that the plant no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). We are seeking information and comments from the public regarding this proposed rule and the draft post-delisting monitoring plan for San Benito evening-primrose.

DATES: We will accept comments received or postmarked on or before July 31, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by July 16, 2020.

ADDRESSES:

Comment submission: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2019–0065, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R8–ES–2019–0065; U.S. Fish and Wildlife Service, MS: JAO/1N; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Document availability: The recovery plan, 5-year review summary, and draft post-delisting monitoring plan referenced in this document are available at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2019–0065.

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; by telephone 805–644–1766. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species may warrant removal (*i.e.,* ''delisting'') from the Federal List of Endangered and Threatened Plants if it no longer meets the definition of an endangered species or a threatened species. Delisting a species can only be completed by issuing a rule.

What this document does. We propose to remove San Benito evening-primrose (*Camissonia benitensis*) from the Federal List of Endangered and Threatened Plants.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the threats to the species have been reduced or eliminated so that the plant no longer meets the definition of an endangered or threatened species under the Act. We are seeking information and comments from the public regarding this proposed rule and the draft post-delisting monitoring plan for the species. We will also seek peer review.

San Benito evening-primrose, a small annual plant with bright yellow flowers, is found in the central coast range in California's San Benito, Monterey, and Fresno counties. The scientific community's understanding of the San Benito evening-primrose's ecology and habitat has improved since time of listing due to the efforts of the Bureau of Land Management (BLM) to survey and study the plant over the last three decades. We listed San Benito evening-primrose as threatened in 1985 due to ongoing threats of motorized recreation activities and commercial mining operations. At the time of listing, the San Benito evening-primrose was documented in only nine locations in a small area of only San Benito County.

Off-highway vehicle recreation, the greatest persistent threat to the species, has been reduced to levels that no longer pose a significant threat of extinction to San Benito evening-primrose or its habitat due to the closure of the Serpentine Area of Critical Environmental Concern, and the restriction of off-highway vehicle use within the Clear Creek Management Area. Most significantly, the species is much more wide-ranging and common than originally known and occurs across a broader range of habitat types (BLM 2018, p. 32). The number of known occurrences has increased from nine to 79 and the range of the species is now known from three watersheds and occupied habitat covers 63.2 acres (25.6 ha). The species persists through periods of disturbance due to the persistence of a robust and long lived seedbank that facilitates reestablishment, dispersal, and buffers against stochastic events. Annual surveys of San Benito evening-primrose have demonstrated a large amount of interannual variation in numbers of individuals observed. We conclude that the 27 occurrences that have been monitored since 1983 have remained relatively stable around a 5-year moving average when the abnormally high count year (1988) is considered. Furthermore, the significant increase in the number of occurrences detected by recent BLM surveys is not represented in the analysis of the 27 occurrences that were known at the time the Recovery Plan was written. The existing regulatory mechanisms in place are adequate to ensure the continued persistence of San Benito evening-primrose occurrences and suitable potential habitat. Based on the best available information, the intent of the recovery criteria and the recovery goal identified in the Recovery Plan has been met for the species. We, therefore, conclude that San Benito evening-primrose is no longer a threatened species throughout its range, nor is it likely to become so within the foreseeable future.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we will seek the expert opinions of at least three appropriate specialists regarding this proposed rule. The purpose of peer review is to ensure that our classification determinations are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species. A peer review panel will conduct an assessment of the proposed rule and the specific assumptions and conclusions regarding the proposed delisting. This assessment will be completed during the public comment period.

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is still warranted for listing. Such final decisions would be a logical outgrowth of this proposal, as long as we: (1) Base the decisions on the best scientific and commercial data available after considering all of the relevant factors; (2) do not rely on factors Congress has not intended us to consider; and (3) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion.

Information Requested

We intend any final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American tribes, the scientific community, industry, or other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The extent of any current threats to the species and its habitat.

(2) The potential for shrub encroachment to reduce suitable habitat for the species.

(3) The ability of previously degraded habitat to return to suitable habitat for colonization and/or reintroduction.

(4) The lasting effects of past off-highway vehicle (OHV) use and the level of natural restoration to those areas of suitable habitat disturbed by OHV use.

(5) The potential for climate change to either positively or negatively affect the species.

(6) The climatic conditions under which germination naturally occurs and by which seed set is initiated.

(7) The monitoring guidelines proposed for the post-delisting monitoring plan and whether they appropriately characterize the extent of disturbance and can adequately identify the thresholds at which San Benito evening-primrose can persist.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5)(E) of the Act provides for one or more public hearings on this proposal, if requested. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by the date shown in **DATES**. We will schedule a public hearing on this proposal, if any are requested, and announce the date, time, and place of those hearings, as well as how to obtain reasonable accommodation, in the **Federal Register** at least 15 days before the first hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Previous Federal Actions

On February 12, 1985, we listed San Benito evening-primrose as a threatened species (50 FR 5755–5759) based primarily on the threats from motorized recreation and active gravel mining. Nine occurrences of the plant were known at the time, ranging from only 10 to 100 individuals each (50 FR 5755). At the time of listing, we found that designation of critical habitat was not prudent, and no further action regarding critical habitat has been taken (50 FR 5757–5759). Accordingly, we do not address critical habitat in this proposed rule.

A recovery plan for San Benito evening-primrose was published on September 19, 2006 (71 FR 54837–54838) (Recovery Plan). In the Recovery Plan, we noted the need to fully map the extent and range of the species, acknowledging that additional occurrences had been found since listing in 1985. We also noted that, during 20 years of monitoring known occurrences, only 2 of those years had produced large numbers of individuals. This determination led recovery actions to focus heavily on preserving suitable habitat and the seed bank since target numbers of individuals were unlikely to be reliable indicators of population health (USFWS 2006, p. 51).

In 2009, the Service conducted a 5-year review pursuant to 16 U.S.C. 1533(c)(2)(A) to evaluate whether the species' status had changed since listing in 1985 and publication of the Recovery Plan in 2006 (USFWS 2009, entire). In the 5-year review, we reported an increase in the number of known sub-occurrences from 53 in 2006 at the time of the Recovery Plan to 69 in 2009 as well as changes in the management of OHV use.

We published a notice announcing the initiation of a 5-year review of the status of San Benito evening-primrose on June 18, 2018 (83 FR 28251–28254). This proposed rule to remove San Benito evening-primrose from the Federal List of Endangered and Threatened Plants also serves as a status review for the species.

Supporting Documents

In 2009, a 5-year review was prepared for San Benito evening-primrose. At the time, the review represented a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. Where we have more recent information than was contained in the 5-year review, we have incorporated it as appropriate into this proposed rule.

I. Proposed Delisting Determination

Background

San Benito evening-primrose is a small, yellow-flowered, annual species in the evening-primrose family (Onagraceae). The plant is slender with narrowly elliptic leaves 0.3 inches (in) (7–20 millimeters (mm)) in length and minutely serrate. The stem may be erect or decumbent (lying on the ground with the extremity curving upward) and ranges in height from 1.2 to 7.9 in (3–20 centimeters (cm)) with branches widely spreading. Petals are 0.1 to 0.2 in (3.5 to 4 mm) and may fade from yellow to reddish (Wagner 2012, pp. 925–929). San Benito evening-primrose is autogamous (self-fertilizing) and produces seed that persists for long periods of time, which creates well-established seed banks where the species occurs (Taylor 1990, pp. 7–8).

San Benito evening-primrose is known only from the southeastern portion of San Benito County, the western edge of Fresno County, and the northeastern edge of Monterey County, largely within the New Idria serpentinite mass (figure 1). Serpentine is a rock formed from ancient volcanic activity that results in minerals with a greenish and brownish appearance such as antigorite, lizardite, and chrysotile. The New Idria serpentinite mass covers approximately 13,000 hectares (32,124 acres) and is one of the largest serpentine formations in the southern Coast Ranges of California (Rajakaruna *et al.* 2011, p. 698). Average rainfall in areas occupied by San Benito evening-primrose is 16–17 in (40–42 cm) annually with temperatures ranging from lows of 21 to 34 degrees Fahrenheit (F) (-6.7 to -1.1 degrees Celsius (C)) in the winter to highs of 90 to 100 degrees F (32.2 to 37.8 degrees C) in the summer (USFWS 2009, p. 8). Occupied habitat of San Benito evening-primrose occurs primarily on land managed by the Bureau of Land Management (BLM) (36.5 acres), as well as on private land (26.6 acres).

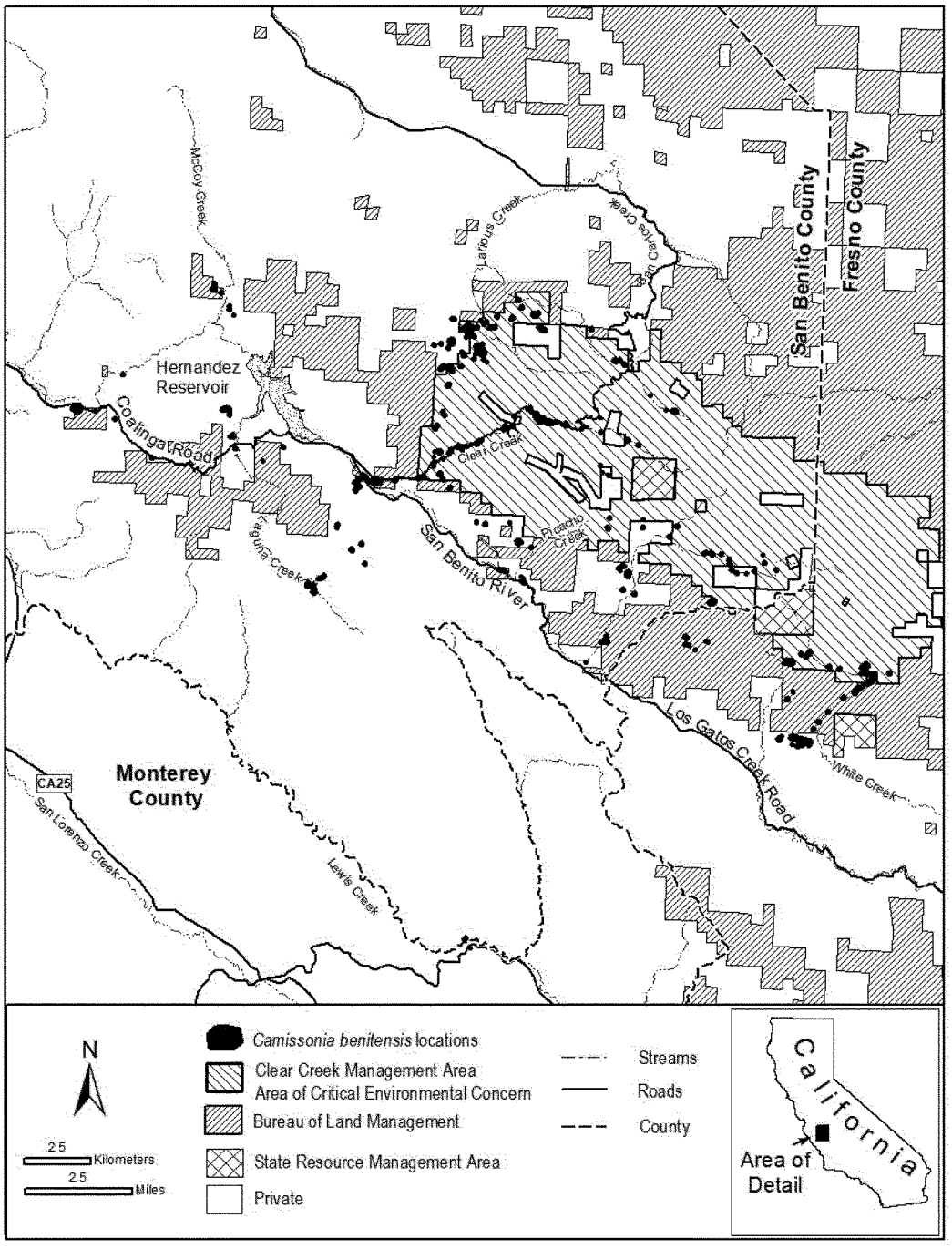

Figure 1. Known locations of San Benito evening-primrose with land management identified.

San Benito evening-primrose occurs at elevations between 1,969 to 3,938 feet (ft) (600 and 1,200 meters (m)) on alluvial terraces and upland geologic transition zones containing sandy to gravelly serpentine derived soil, but may also be found on greywacke, chert, and syenite derived soils (Raven 1969, pp. 332–333, Taylor 1990, pp. 24–36, 39–42, BLM 2018, pp. 17–19). Alluvial terrace habitat is characterized by serpentine soils that are deeper and better developed than neighboring slopes, generally flat (<3 degrees slope), and contain less than 25 percent cover of chaparral or woody vegetation (Taylor 1990, pp. 69, 71–72, USFWS 2006, p. 13). Geologic transition zone habitat is characterized by sandy soils within uplands on slopes between 15 degrees and 60 degrees as well as rock outcrops and talus (Dick *et al.* 2014, p. 167, BLM 2018, p. 18). The transition zone that the habitat type refers to is the boundary between serpentine masses and non-serpentine rock (BLM 2014, pp. 110–112). Generally, alluvial habitat is found closer to water and in association with *Quercus durata* (leather oak), *Arctostaphylos* spp. (manzanita), *Pinus jeffreyi* (Jeffrey pine), *P. sabiniana* (bull pine), and *P. coulteri* (Coulter pine). Geologic transition zone habitat is found far from water and in association with *Q. douglassii* (blue oak), *Juniperus californicus* (California juniper), and *Q.*

berberidifolia (scrub oak) (Dick *et al.* 2014, p. 167).

The BLM first identified the geologic transition zone habitat type in 2009 through surveys of potential habitat and known occurrences of San Benito evening-primrose. The discovery of the new habitat type, and associated new occurrences, increased the number of known point locations from 69 in 2009 to 658 in 2018 (BLM 2018, p. 32). The difference between geologic transition zone habitat and alluvial terrace habitat suggested the possibility that there were two genetically distinct lineages of San Benito evening-primrose or that the species may be hybridizing with the close relatives plains evening primrose (*C. contorta*) and sandysoil suncup (*C. strigulosa*). However, it was determined that hybridization was not occurring and that watersheds and habitat type did not explain any genetic differences that were identified (Dick *et al.* 2014, entire). The findings suggest that the known occurrences of San Benito evening-primrose are all part of the same genetic population (Dick *et al.* 2014, entire).

The BLM has been conducting surveys for San Benito evening-primrose since 1980 within the Clear Creek Management Area, where the majority of sub-occurrences are located. The surveys conducted by the BLM have resulted in an increase in the understanding of the range of the species, habitat preferences, life history, and numbers (BLM 2018, entire). The monitoring has resulted in the identification of 658 point locations occurring within and outside of the boundary of the Clear Creek Management Area (CCMA), including a substantial number on private land (5 known point locations in 2009 and 290 known point locations in 2018). The species' current known range is bordered on the north by New Idria Road near the confluence of Larious Creek and San Carlos Creek, to the South at the Monterey County Line near Lewis Creek, to the west near the Hernandez Reservoir, and to the east by the eastern boundary of the serpentine area of critical environmental concern (ACEC), an area of approximately 307 square miles. The BLM's ACEC designations highlight areas where special management attention is needed to protect important historical, cultural, and scenic values, or fish and wildlife or other natural resources. ACECs can also be designated to protect human life and safety from natural hazards. The known occurrences cover 64 ac (26 ha) of public and private land, and potential suitable habitat is currently estimated at 260 ac (105 ha) (BLM 2018, p. 31). The findings of the BLM have been documented in annual reports from 2009 to 2018 and are the source of the most recent information regarding the status of the occurrences of San Benito evening-primrose.

This document presents data that was provided by the BLM within the 2018 Annual Report (BLM 2018, entire) and from spatial data provided by the BLM in 2018. Within this report a single ''occurrence'' refers to areas where San Benito evening-primrose has been mapped. Mapped areas within 0.25 mi (0.4 km) of each other, but discontinuous, are considered a single occurrence consisting of multiple sub-occurrences. The BLM has recorded point data, in addition to polygon sub-occurrences for San Benito evening-primrose, which are referred to as point locations in this report. Point locations are mapped point features while sub-occurrences are mapped polygon features. In 2018, 79 occurrences, consisting of 519 sub-occurrences, and 658 point locations were mapped by the BLM (table 1) (BLM 2018, p. 32; BLM 2018, spatial data).

TABLE 1—2018 BLM SURVEY RESULTS

	Number of occurrences	Number of sub-occurrences	Number of point locations	Acres (hectares)
2018 San Benito evening-primrose (*Camissonia benitensis*) survey results	79	519	658	63.2 (25.6)

Occurrences consist of sub-occurrences (mapped polygons) within 0.25 mile of each other. Point locations are reported in the 2018 Annual Report (BLM 2018 p. 32). Acreage data are derived from the spatial extent of the mapped occurrences.

The BLM compared historical occurrence data to their point location counts in their annual reports, and Service used those comparisons in the Recovery Plan (USFWS 2006, entire) and 5-Year Review (USFWS 2009, entire). Here, we have chosen to update the occurrence organization because the numbers of occurrences, sub-occurrences, and point locations have increased dramatically since 2009. Table 1 illustrates the nested nature of the way the data are presented. When possible we use the same terminology as previous reports.

Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: ''[O]bjective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.'' However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is an endangered species or threatened species (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' Therefore, recovery criteria should help indicate when we would anticipate that an analysis of the species' status under section 4(a)(1) would result in a determination that the species is no longer an endangered species or threatened species.

Thus, while recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of or remove a species from the Federal List of Endangered and Threatened Plants (50 CFR 17.12) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species meets the definition of an endangered species or a threatened species, regardless of whether that information differs from the recovery plan. Below, we summarize

the recovery plan goals and discuss progress toward meeting the recovery objectives and how they inform our analysis of the species' status and the stressors affecting it.

The Recovery Plan (USFWS2006, pp. 48–74) describes the recovery goal and criteria that need to be achieved in order to consider removing San Benito evening-primrose from the Federal List of Endangered and Threatened Plants. We summarize the goal and then discuss progress toward meeting the recovery criteria in the following sections.

Recovery Goal

In the Recovery Plan, the stated goal is to restore occurrences of San Benito evening-primrose so that they are self-sustaining and protected from future threats (USFWS 2006, p. 51). This goal is broadly evaluated through trends in the observed numbers of individuals indicated by annual monitoring, the abundance and distribution of suitable habitat, evaluation of the seed bank, and the effectiveness of protective measures that have been implemented to reduce threats from human activities such as mining, OHV use, and other recreational activity (USFWS2006, pp. 51–52). In order to evaluate threats to the species we must consider potential impacts within the foreseeable future. The Recovery Plan (USFWS 2006, entire) uses 20 years as the appropriate period of time to evaluate population stability because the number of individuals fluctuates widely from year to year and a longer monitoring time will better reflect changes in trends despite this variation (USFWS 2006, p. 51, 53). Given this and information on potential threats into the future, in this proposed rule we have adopted 20 to 30 years as the foreseeable future to evaluate potential threats and the species' responses to those threats.

Recovery Criteria

The Recovery Plan identified five criteria for removing San Benito evening-primrose from the Federal List of Endangered and Threatened Plants (USFWS 2006, pp. 52–54):

(1) Research has evaluated the possibility for restoration of suitable habitat and the natural rate of the replacement of suitable habitat (*i.e.,* succession from open habitat to woody vegetation), the ecology of the seedbank, and population viability modeling. The results of completed research, and any other research that was conducted, should inform all other recovery criteria suggested by the Recovery Plan and are listed below.

(2) Known occurrences and sufficient additional suitable habitat within each watershed unit throughout its range are protected from direct effects from OHV use and other recreational activities. Appropriate levels of compliance with use regulations by recreationists have prevented adverse impacts to San Benito evening-primrose occurrences and habitat.

(3) Currently occupied and suitable habitat for the species has been restored and maintained over an appropriate period of time, as informed by monitoring and research. Twenty years was estimated as ''the appropriate period of time'' in the Recovery Plan (USFWS 2006, p. 53). The Recovery Plan emphasizes maintaining suitable habitat and more precisely defining the requirements of suitable habitat. Additionally, disturbance and erosion rates should not be elevated above natural levels and the seed bank should be evaluated for continued persistence, as above-ground numbers of individuals are known to fluctuate widely from year to year.

(4) Population sizes have been maintained over a monitoring period that includes multiple rainfall cycles (successive periods of drought and wet years). The Recovery Plan states that the trend of above-ground counts of species should be stable or increasing and defines non-drought years as those with greater than 15 in (38 cm) of rainfall from October through April at the Priest Valley weather station.

(5) A post-delisting monitoring plan for San Benito evening-primrose has been developed.

Achievement of Recovery Criteria

Criterion 1: Research has been completed.

Research to increase the understanding of the extent of existing occurrences, the range of suitable habitat, the persistence of the seed bank, and analysis of the genetic variability across watersheds and habitat types have been undertaken since listing in 1985 (Taylor 1990, entire; BLM 2010, entire; BLM 2014, entire; BLM 2015, entire; BLM 2018, entire; Dick et al. 2014, entire).

Habitat Suitability. Research conducted in 1990 (Taylor 1990, entire) provided the first comprehensive overview of the ecology of San Benito evening-primrose that established the initial understanding for the requirements of suitable habitat for the species, the species' life history, including early examination of the seed bank and germination characteristics, and the known distribution of the species as well as threats to the known occurrences. From 1990 through 2010, San Benito evening-primrose was thought to be restricted to alluvial terrace habitat that was characterized by relatively deep and well-developed, serpentine-derived soils on flat ground (compared to nearby barren serpentine slopes), association with ephemeral or intermittent streams, and open habitat lacking woody vegetation (Taylor 1990, pp. 39–40). In 2010, the BLM identified a second type of habitat, termed the ''geologic transition zone,'' that was suitable for San Benito evening-primrose (BLM 2010, pp. 8–16). The geologic transition zone was characterized by relatively steeper slopes (0—~60 degrees) of uplands on serpentine soils at the interface with non-serpentine soils. Geologic transition zone habitat is not topographically constrained to the toe of slopes, whereas alluvial stream terrace habitat is. From the time of listing through 2018, the BLM conducted extensive surveys within these habitat types, which led to the discovery and documentation of over 600 new point locations. The results indicated that the majority of both occupied and potential habitat is greatest within the geologic transition zone type (BLM 2018, p. 32). The new sub-occurrences identified within the geologic transition zone habitat are relatively undisturbed in comparison to the highly disturbed sites of the initial locations known from alluvial stream terraces (BLM 2010, p. 11). The majority of new point locations are found outside of the historical areas used by OHVs and as a result have not been subjected to the same levels of disturbance. Approximately one-third to half of the currently known occurrences exist on private land outside of the Clear Creek Management Area (table 2, table 3) (BLM 2018, p. 33).

Seed Bank Analysis. Our understanding of the role of the seed bank in the life history of San Benito evening-primrose has similarly increased due to research efforts. The number of viable seeds within the seed bank was often many times greater than the above-ground expression in any given year—including those years in which there was a large above-ground expression (Taylor 1990, p. 57). The size of the seed bank at existing locations was reevaluated in 2010 by the BLM (BLM 2011, pp. 36–42). The BLM found that there were 519 times as many seeds as emergent plants when averaged across 67 sub-occurrences in 2010, emphasizing that the size of the seedbank is much greater than the total number of observed individuals in a given year. Maintaining a large amount

of seed within the soil is a common strategy for short-lived annuals in habitats with frequent disturbance because the persistent seed bank buffers against stochastic environmental events such as drought (Kalisz and McPeek 1993, pp. 319–320; Fischer and Matthies 1998, pp. 275–277; Adams *et al.* 2005, p. 434). In species that develop large seed banks, it is not uncommon to see no above-ground expression one year and to see a large expression the following year, and this pattern has been well-documented with San Benito evening-primrose (BLM 2018, p. 11).

Disturbance Ecology. Frost heaving (the expansion and contraction of water within the soil during freeze-thaw cycles), small mammal soil disturbance (*e.g.,* gopher burrowing), sediment movement from adjacent slopes, and erosion from stream flows were identified as the primary sources of natural disturbance experienced by San Benito evening-primrose (Taylor 1990, pp. 39–42, 57). Quantifiable measures of erosion (natural or anthropogenic) and a scale to measure disturbance severity and persistence, as well as the corresponding effect to San Benito evening-primrose and associated species, have not been developed. While San Benito evening-primrose tolerates, and is adapted to, disturbance from natural processes, anthropogenic disturbances from activities such as mining, road and building construction, and OHV use are much more severe and may lead to loss of habitat through soil removal, soil compaction, and increased rates of erosion (BLM 2010, p. 29, Snyder *et al.* 1976, pp. 29–30, Brooks and Lair 2005, p. 7, Groom *et al.* 2007, pp. 130–131, Lovich and Bainbridge 1999, pp. 315–317, Switalski *et al.* 2017, p. 88). Alluvial terrace habitat that was greater than 50 percent disturbed from OHV use was considered to be unsuitable for San Benito evening-primrose (Taylor 1990, p. 71; USFWS 2006, p. 13). Geologic transition zone habitat was not considered here because it had not yet been recognized as suitable habitat, but tends to have less OHV disturbance than alluvial terrace habitat. The seed bank of San Benito evening-primrose is very large, and the amount of seed present is many times greater than the amount of individuals that germinate in any given year (Taylor 1990, p. 57, BLM 2011, pp. 33–42). Additionally, the BLM found that the majority of the existing seed bank is found within the top 1 to 3 in (4 to 8 cm) of soil (BLM 2013, pp. 19–34). As a result, any damage to, or loss of, the top layer of soil has the potential to negatively affect the ability of the species to persist through time.

Recolonization. Natural rates of recolonization of native flora in arid environments following disturbance have been estimated to be between 65–76 years for a return to predisturbance cover of annuals and perennials, and from 148–215 (and greater) years for a return to predisturbance species composition and cover (Abella 2010, pp. 1,258–1,260, Berry *et al.* 2015, pp. 149–150). Persistent OHV use reduced the number of *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch) by 4–5 times the amount of comparable undisturbed areas (Groom *et al.* 2006, pp. 126–127). The reduction in mature individuals led to a decrease in the amount of seeds produced and suggested that persistent impacts from OHVs over extended periods of time may result in the depletion of the existing seedbank (Groom *et al.* 2006, pp. 131–132). We can use this information as an indicator of how San Benito evening-primrose recolonization may be similarly affected by OHV.

The Recovery Plan recommends target numbers of individuals for a sub-set (27) of the known occurrences of San Benito evening-primrose (USFWS 2006, pp. 56–58). These occurrences also generally have the longest record of survey data and include the initial occurrences described in Taylor (1990, entire). Data from the BLM indicate that, despite cessation of OHV use in 2008, the number of individuals observed annually at these occurrences has not increased and may be decreasing (figure 2). The 5-year moving average indicates a decrease in the average number of individuals from 1988 through 1993 followed by stable to slightly increasing numbers of individuals. However, 1988 was an abnormal year, and the number of individuals counted during surveys was significantly greater than any other recorded year. The abnormally high numbers of individuals identified that year have a large effect on the observed trend in annual number of individuals. These data are consistent with available literature that suggests that a return to predisturbance conditions likely occurs on time scales of greater than 65–76 years and possibly even greater than 150 years.

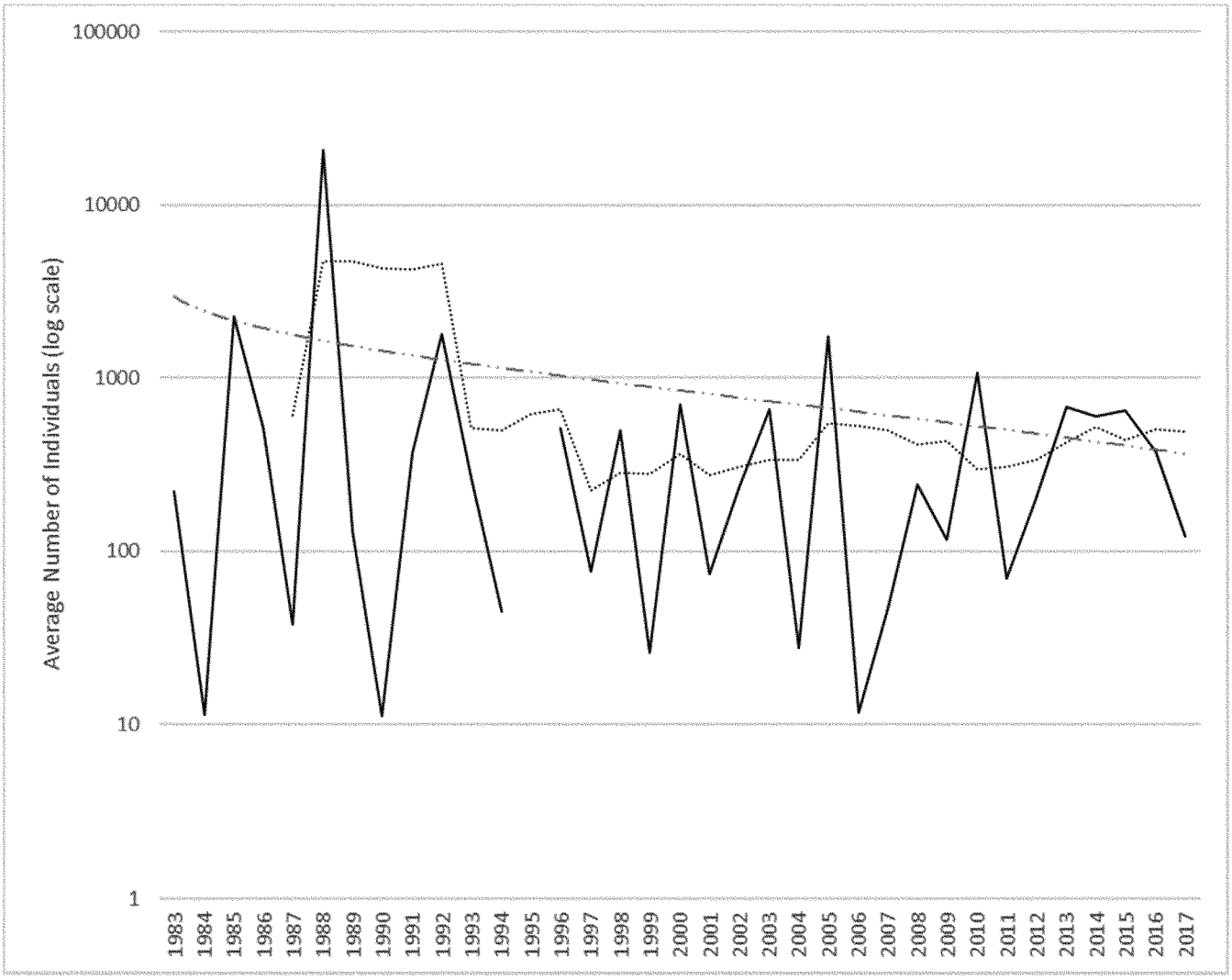

Figure 2. Average number of individuals observed at 27 locations of San Benito evening-primrose (*C. benitensis*) within the Clear Creek Management Area from 1983 through 2017. The solid line shows the annual average, while the dotted line shows the 5-year moving average. The hashed-dotted line shows a linear fit of the annual average data. Note that the y-axis is on a log scale. The number of individuals observed in 1988 was several orders of magnitude greater than any other observed year. Data for 1995 are not included because surveys occurred at the end of the blooming season.

Population Genetics. The occurrences of San Benito evening-primrose that the BLM began finding within geologic transition zone habitat were at first thought to be genetically distinct from occurrences within alluvial terrace habitat. The new occurrences were also located within different watersheds from the first known occurrences, and there was some question as to whether or not the species may be hybridizing with a close relative, *Camissonia strigulosa* (contorted primrose). If the occurrences were genetically distinct, recovery actions, such as restoration of degraded habitat and out-planting efforts, would need to be identified for each habitat type. There were three distinct genetic clusters of San Benito evening-primrose found but none of the genetic clusters coincided with type of habitat or watershed (Dick *et al.* 2014, entire). Additionally, the same study found no evidence of hybridization between San Benito evening-primrose and contorted primrose. Because the genetic diversity identified within the occurrences was widespread and uncorrelated with habitat and watershed, future out-planting efforts would not need to be restricted to genetic type. The study instead concluded that seed from different occurrences should be mixed to increase diversity across the entire geographic range. In summary, research to increase the understanding of the extent of existing occurrences, the range of suitable habitat, the persistence of the seed bank, and analysis of the genetic variability across watersheds and habitat types have been undertaken fulfilling recovery criterion 1.

Criterion 2: Known occurrences and sufficient additional suitable habitat within each watershed unit throughout its range are protected from direct effects from OHV use and other recreational activities.

Wire fencing, steel pipe barriers, signage, and enforcement of trail restrictions were used to protect San Benito evening-primrose and suitable habitat prior to the 2006 amendment to

the Resource Management Plan. The 2006 amendment to the Resource Management Plan closed to OHVs all areas not marked for limited or open use. This restricted the total OHV use area to 242 miles (390 km) of OHV trails and directed OHV use away from areas that provided suitable habitat for, or were occupied by, San Benito evening-primrose (BLM 2006 p. 3–1). By 2009, non-compliance with the 2006 Resource Management Plan had declined (BLM 2008, pp. 5–9; USFWS 2009, pp. 19–21). In 2008, the EPA issued a report concluding that exposure to naturally occurring asbestos during recreational activities, including OHV use, was higher than the acceptable risk range for causing cancer within the CCMA (EPA 2008, p. 6–3). The level of exposure to asbestos varied with recreational activity and participant age, but was significant enough to warrant an emergency temporary closure of the CCMA (BLM 2008, p. 2). Although not the intent, the closure effectively temporarily protected all known occurrences of San Benito evening-primrose from OHV disturbance. The temporary closure remained in place until the 2014 amendment to the Resource Management Plan was adopted (BLM 2014, entire). The 2014 Resource Management Plan further restricted OHV access to areas of suitable habitat and known sub-occurrences of San Benito evening-primrose by reducing the amount of open trails and restricting access to the Serpentine Area of Critical Environmental Concern (ACEC) to 5 days per year per recreationalist through a permit system and a series of locked gates (BLM 2014, pp. 1–18).

The BLM has conducted OHV non-compliance monitoring as part of the annual San Benito evening-primrose surveys since 2008 and the initial closure of the Serpentine ACEC (table 2). During this time non-compliance has remained relatively low with the number of point locations or potential habitat being impacted by OHV ranging from 2 to 11 locations in a given year. The amount of disturbance within each area has been observed to be low, and natural recovery was observed. Upper Clear Creek, Larious Canyon, and San Carlos Creek are areas of repeated non-compliance despite annual repairing of fencing and barriers and issuance of citations for violating the closures when users are caught (BLM 2013, p. 5, BLM 2015, p. 6). The intensity of non-compliance varied from heavy (greater than 10 tracks observed) to moderate or low (less than 10 tracks observed). The BLM assumes that non-compliant OHV use originates from private land adjacent to the CCMA.

TABLE 2—SUMMARY OF OFF-HIGHWAY VEHICLE NON-COMPLIANCE WITHIN THE SERPENTINE AREA OF CRITICAL ENVIRONMENTAL CONCERN 2008 THROUGH 2016

Year *	Number of point locations with observed non-compliance	Minimum number of tracks	Max number of tracks	Average number of tracks	Reference
2008	6	NA	NA	NA	BLM 2008 pp. 8–9.
2009	3	NA	NA	NA	BLM 2010 p. 5.
2010	2	2	10+	2	BLM 2011 pp. 12–13.
2012	11	1	10+	7	BLM 2012 p. 5.
2013	10	1	10+	8	BLM 2013 p. 5.
2014	9	1	10+	5	BLM 2015 p. 6.
2015	8	1	10+	7	BLM 2017 pp. 6–7.
2016	6	1	10+	8	BLM 2017 p. 8.

* No data available for 2011, 2017, 2018. Minimum, maximum, and average number of tracks observed were not available for the 2008 and 2009 survey seasons.

By 2014, the number of known point locations of San Benito evening-primrose had grown to 500 with the majority occurring within the geologic transition zone habitat. Approximately half of those locations were protected from OHV use due to the restrictions imposed by the 2014 Resource Management Plan (BLM 2014, pp. 1–18; BLM 2015, pp. 7–16). By 2018, 658 point locations of San Benito evening-primrose had been mapped by the BLM (BLM 2018, pp. 32–47). The 658 point locations correspond to 79 occurrences consisting of 519 sub-occurrences and covering 63.2 acres (25.6 ha) (table 1, figure 1). Twenty-three occurrences (81 sub-occurrences) are located within the Serpentine ACEC and are effectively protected from OHV use due to the 2014 Resource Management Plan (BLM 2018, p. 33) (table 3). There are 36 occurrences (260 sub-occurrences) within BLM-managed land outside of the Serpentine ACEC. OHV use within the CCMA, but outside of the Serpentine ACEC, has been designated as ''limited,'' meaning that motorized use is restricted to highway-licensed vehicles and ATVs and utility task vehicles on designated routes only (BLM 2014, pp. 1–13 through 1–14). Forty-five occurrences (178 sub-occurrences) are known to occur on private land that are not subject to management by the BLM or other Federal agencies (table 3, table 4).

When the recovery plan criteria were written, there were 27 known occurrences. Twenty- three of those occurrences were on land managed by the BLM, and four were on private property. Currently, there are 59 occurrences on BLM-managed land and 45 occurrences on private property. Although protections for the occurrences on private land cannot be guaranteed, the number of occurrences on land managed by the BLM has exceeded the goal of Recovery Criterion 2 through discovery of new occurrences.

TABLE 3—NUMBER OF OCCURRENCES, SUB-OCCURRENCES, AND ACREAGE OF MAPPED SAN BENITO EVENING-PRIMROSE (*Camissonia benitensis*) LOCATIONS BY LAND MANAGER (2018)

	Number of occurrences	Number of sub-occurrences	Acres
BLM	36	260	23.8
ACEC	23	81	12.7

TABLE 3—NUMBER OF OCCURRENCES, SUB-OCCURRENCES, AND ACREAGE OF MAPPED SAN BENITO EVENING-PRIMROSE (*Camissonia benitensis*) LOCATIONS BY LAND MANAGER (2018)—Continued

	Number of occurrences	Number of sub-occurrences	Acres
Private	45	178	26.6

Occurrences consist of sub-occurrences (mapped polygons) within 0.25 mile of each other. Point locations are reported in the 2018 Annual Report (BLM 2018 p. 32). Acreage data are derived from the spatial extent of the mapped occurrences. Note that occurrences that encompass multiple property owners may be counted twice because of how the mapped data are nested.

The majority of the known occurrences and sub-occurrences occur within the geologic transition zone identified by the BLM as habitat in 2010 (table 4). Occurrences of San Benito evening-primrose within geologic transition zone habitat are assumed to be less likely to be affected by OHV recreation since OHV riders have historically preferred the terrain associated with alluvial terrace habitat (BLM 2010, p. 11). In summary, known occurrences and sufficient additional suitable habitat within each watershed unit throughout its range are protected from direct effects from OHV use and other recreational activities, fulfilling recovery criterion 2.

TABLE 4—NUMBER OF KNOWN OCCURRENCES AND SUB-OCCURRENCES BY LAND MANAGER AND HABITAT TYPE

	Alluvial terrace habitat			Geologic transition zone habitat		
	Number of occurrences	Number of sub-occurrences	Acres	Number of occurrences	Number of sub-occurrences	Acres
BLM	17	104	6.7	19	156	17.2
ACEC	6	37	3.0	17	44	9.7
Private	10	26	0.6	35	152	26.0
Total	33	167	10.3	71	352	53.0

Occurrences consist of sub-occurrences (mapped polygons) within 0.25 mile of each other. Point locations are reported in the 2018 Annual Report (BLM 2018 p. 32). Acreage data are derived from the spatial extent of the mapped occurrences. Note that occurrences that encompass multiple property owners may be counted twice because of how the mapped data are nested.

Criterion 3: Currently occupied and suitable habitat for the species has been restored and maintained over an appropriate period of time, as informed by monitoring and research.

In the Recovery Plan, 20 years was identified as the appropriate period of time to conduct and evaluate the success of restoration activities. Twenty years was chosen to allow enough time for observations of natural and restored occurrences during non-drought years to be made in order to evaluate the stability of San Benito evening-primrose occurrences (USFWS 2006, pp. 53–54). Thirty-three years have passed since San Benito evening-primrose was listed by the Service as a threatened species. Restoration began prior to listing by using fencing to discourage disturbance by OHVs (Taylor 1990, pp. 24–36, 71). The BLM has continued to implement passive restoration measures such as installation of additional wire fencing and steel pipe barriers to reduce OHV trespass and signage to promote awareness of the natural resources (BLM 2018 pp. 50–56). Photopoint monitoring has demonstrated an increase in the amount of woody vegetation cover in previously open and disturbed areas. The increase in woody vegetation cover suggests that fencing and other barriers have been effective in reducing ground disturbance from OHV use prior to the temporary closure in 2008 and the permanent restrictions in 2014.

Seed of San Benito evening-primrose was introduced between 1990 and 1991 at six areas near existing point locations. At five of the reintroduction sites, 30,000 seeds were broadcast into areas that were each 2,153 ft^2 (200–300 m^2) in area. Sixty thousand seeds were broadcast into the sixth site (BLM 2013, Excel data, Taylor 1993, p. 14). Very few plants, relative to the amount of seed reintroduced, were observed (between 3 and 147 plants) in the years immediately following the seeding. It has been determined that San Benito evening-primrose establishment from artificially sown seed is very low and that seeding introduction is not likely to be a successful restoration tool (Taylor 1993, p. 14). The areas where seed was introduced have continued to have small numbers of individuals observed each year. Approximately 3,000 seeds were sown in 2008 and 2012 in areas where San Benito evening-primrose had not been observed but where potential habitat existed that could support new occurrences. The number of individuals at these areas have remained similarly low ranging from 0 to 320 individuals in a single year (BLM 2018, pp. 34–47).

Restoration of five staging areas located on stream terraces that were heavily degraded from OHV use and mining (prior to 1939) was completed in 2010 (BLM 2011, pp. 4–10). The staging areas were characterized by a mix of lack of vegetation, soil compaction, buried original soil surface, debris from facilities, and erosion on adjacent hillslopes. A total of 2.01 ac (0.81 ha) of San Benito evening-primrose habitat was restored. Annual counts of San Benito evening-primrose at each of the staging areas and associated sub-occurrences have indicated that the number of individuals in any given year fluctuates greatly (BLM 2018, pp. 34–47). Staging areas 1, 4, and 5 have relatively stable annual counts, while staging areas 2 and 3 have had more variable, and possibly slightly declining, annual counts.

The BLM has also undertaken efforts to improve watershed quality by identifying the most appropriate species and methods to restore streambanks (BLM 2011, pp. 10–12). While the immediate stream banks are not suitable habitat for San Benito evening-primrose, restoring natural hydrology and maintaining bank composition can reduce sedimentation and erosion in the watershed that indirectly supports the persistence of San Benito evening-primrose habitat. The BLM found that revegetation of degraded streambanks

using sod of *Agrostis exarata* (spike bentgrass) was most effective. Additionally, six vehicle routes were closed and restored by removing access and ripping the compacted soil (BLM 2011 p. 10). In summary, currently occupied and suitable habitat for the species has been restored and maintained over an appropriate period of time, as informed by monitoring and research, fulfilling recovery criterion 3.

Criterion 4: Population sizes have been maintained over a monitoring period that includes multiple rainfall cycles (successive periods of drought and wet years).

The Recovery Plan recommended a target average number of individuals for 27 occurrences of San Benito evening-primrose (USFWS 2006, pp. 54–58; BLM 2018, pp. 34–35). The target counts were based on past observations of the number of individuals observed during favorable years and were considered to be approximate. Four of the 27 locations with a target number of individuals had an average annual count that met or exceeded the target levels between 1983 and 2017 (USFWS 2006, pp. 56–58; BLM 2018, pp. 34–35; USFWS Review of BLM reporting data). Five of the 27 locations had an annual average count that met or exceeded the target number of individuals when only years with normal precipitation are considered. We consider the average number of individuals because the number of individuals at any given site fluctuate greatly from year to year causing single year counts to be inaccurate measures of the stability of the species (figure 2).

The total annual number of individuals for the same 27 sites has fluctuated around a mean of approximately 9,600 individuals since 1983 (Figure 2). Over time, a slight decrease in the species count is observable, but is small enough to be affected by a single year's count. The slight negative trend is due to a significantly above-average year in 1988 where the total number of individuals observed was an order of magnitude greater than during any other annual count. The 5-year moving average indicates a decrease in the average number of individuals from 1988 through 1993, followed by stable to slightly increasing numbers of individuals. We also recognize that only those occurrences that were known by 2006, and had suggested target numbers of individuals, are represented in the 27 locations. This does not take into consideration the majority of currently known occurrences. Evaluating the trend of each of the 79 occurrences (658 point locations, see table 1) is not feasible because census data for the entirety of known point locations are not available.

The target number of individuals has not been met for 23 of the 27 occurrences with target criteria. However, the target numbers were estimates and the lack of a consistent decline in mean annual counts suggest that, while the occurrences are not increasing in abundance of San Benito evening-primrose, they are not threatened with extinction. The lack of decline in number of individuals over a 27-year monitoring period and an increase in the number of known occurrences indicate that the criteria of maintaining population numbers over an appropriate period of time has been met.

Criterion 5: A post-delisting monitoring plan for the species has been developed.

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a system to monitor effectively, for not less than 5 years, all species that have been recovered and delisted (50 CFR 17.11, 17.12). The purpose of this post-delisting monitoring is to verify that a species remains secure from risk of extinction after it has been removed from the protections of the Act. The monitoring is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of post-delisting monitoring programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of post-delisting monitoring. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post delisting.

Post-delisting Monitoring Guidelines. Post-delisting monitoring is designed to verify that San Benito evening-primrose remains secure from risk of extinction after delisting by detecting changes in trend that indicate that the known occurrences have become unstable and/or are at risk of becoming once again threatened or endangered. The Act has a minimum post-delisting monitoring requirement of 5 years, but a longer period of time may be necessary to account for fluctuations in counts from year to year, potential changes in land use, and climatic variability. If a decline in abundance or a substantial new threat arises, post-delisting monitoring may be extended or modified and the status of the species will be reevaluated. The Service is responsible for establishing a final post-delisting monitoring plan. As the sole Federal entity that manages land where San Benito evening-primrose occurs, the BLM will contribute expertise for development and implementation of the final post-delisting monitoring plan. The draft post-delisting monitoring plan can be found at *http://www.regulations.gov* in Docket No. FWS–R8–ES–2019–0065. The Service intends to work with the BLM to finalize the post-delisting monitoring plan upon publication of this proposed rule.

Summary of Recovery Criteria

Research and survey efforts have clarified the distribution, extent, and habitat characteristics of San Benito evening-primrose. The seed bank has been demonstrated to be prolific and an integral part of the species' ecology in responding to, and persisting through, negative stochastic events. A genetic evaluation of the newly identified sub-occurrences have shown that there is no genetic distinction based upon habitat type or watershed among the different sub-occurrences. Existing research has resulted in a better understanding of the species' ecology and has shown an increase in the species' range, suitable habitat, and number of occurrences. With the currently completed research, the intent of the first recovery criteria has been met.

The second recovery criteria has been achieved through the 2014 Resource Management Plan, which restricted OHV access to areas of suitable habitat and known sub-occurrences of San Benito evening-primrose by reducing the amount of open trails and restricting access to the Serpentine ACEC to 5 days per year per recreationalist through a permit system and a series of locked gates (BLM 2014, pp. 1–18). The identification of a new habitat type, the geologic transition zone, and numerous new point locations have increased the known range and amount of known occupied habitat. The topography and composition of geologic transition zone habitat is not typical of areas preferred by OHV users, and many of the new occurrences of San Benito evening-primrose were not subject to OHV disturbance. As a result, the majority of the currently known occurrences of San Benito evening-primrose have not been disturbed from OHV use. The existing Resource Management Plan (BLM 2014, entire) will continue to provide protection for San Benito evening-

primrose occurrences within the Serpentine ACEC and the CCMA through trail restrictions and a permitting system. The Post-delisting Monitoring Plan will provide guidelines for evaluating the species following delisting to detect substantial declines that may lead to consideration of reclassification to threatened or endangered. Changes in land use will still be subject to State and Federal environmental review.

Annual monitoring of 27 locations of San Benito evening-primrose listed in the Recovery Plan have shown that numbers of individuals at historically occupied habitat have remained relatively stable. Active and passive restoration efforts undertaken by the BLM, in conjunction with the closure of the Serpentine ACEC to OHV use, have improved degraded areas into suitable habitat for San Benito evening-primrose. The reduction in OHV use described in the 2014 Resource Management Plan provided protection of occupied habitat within the CCMA, and continued prohibition on OHV use will ensure that future degradation of occupied habitat will not occur within the CCMA. The Recovery Plan suggested target numbers of individuals that could be used as a point of reference to assess the stability of San Benito evening-primrose. Those goals have been met for four (five if only normal precipitation years are considered) of the 27 locations that are listed in the Recovery Plan. Those values were considered an approximation, and it appears that the 27 locations listed in the Recovery Plan have remained relatively stable around a 5-year moving average when the abnormally high-count year (1988) is considered (figure 2). Furthermore, the 27 locations are no longer representative of the entire range of San Benito evening-primrose due to the discovery of the geologic transition zone as suitable habitat and the associated increase in the known total number of individuals and occupied acreage.

Therefore, we conclude that based on the best available information, the recovery criteria in the Recovery Plan have been achieved and the recovery goal identified in the Recovery Plan has been met for San Benito evening-primrose. Recovery criterion 1 has been met with research to increase the understanding of the extent of existing occurrences, the range of suitable habitat, the persistence of the seed bank, and analysis of the genetic variability across watersheds and habitat types. Recovery criterion 2 has been met with protection of known occurrences and sufficient additional suitable habitat within each watershed unit throughout its range. Recovery criteria three and four have been met through the closure of the Serpentine ACEC, restoration of degraded areas, and observed stability of 27 of the 79 occurrences over a period that included 18 years of normal rainfall over a 27-year period. Recovery criterion 5 has been met through the development of a draft post-delisting monitoring plan for the species, which will be finalized in collaboration with the BLM.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The 5-year review documents the results of our comprehensive biological status review for the species, including an assessment of the potential threats to the species. The review provides the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The 5-year review can be found at *http://www.regulations.gov* under Docket FWS–R8–ES–2019–0065. Where information in the 5-year review is out of date, we have provided updated information in this proposed rule.

Summary of Biological Status and Threats

Historical analyses and discussion of the threats to San Benito evening-primrose are detailed in the Recovery Plan (USFWS 2006, pp. 26–36) and 5-Year Review (USFWS 2009, pp. 10–18). An updated analysis and discussion follows here. Primary threats to San Benito evening-primrose identified in the listing rule included OHV use of occupied and potential habitat and gravel mining. Uncertainty about the reproductive capacity of the species and vandalism were also considered additional threats at listing. Vandalism was considered a threat due to the small population size and public resistance to listing the species under the Act. The resistance came from the OHV community perception that listing the species would inhibit their ability to continue recreating. However, vandalism was not believed to be significant with subsequent reviews of the species in the Recovery Plan and 5-Year Review and is not considered further in this proposed rule. Since listing, the Recovery Plan and 5-Year Review identified as additional threats: Soil loss and elevated erosion rates from OHV trails and staging areas, camping, facilities construction and maintenance, habitat alteration due to invasive species and/or natural vegetation community succession, climate change and the local effect on precipitation patterns and temperature, and stochastic events. The following sections provide a summary of the past, current, and potential future threats relating to San Benito evening-primrose.

Off-Highway Vehicle Use

Off-highway vehicle use of open serpentine barrens and alluvial terraces was considered the primary threat to San Benito evening-primrose when it was listed in 1985. Soil disturbance from OHVs use increased soil loss, soil compaction, and could result in the physical removal of plants. Staging areas and camping associated with OHV use had similar negative impacts to the species and its habitat. Between 1985 and 2010, the BLM implemented a series of measures to reduce effects to known habitat and occurrences of San Benito evening-primrose through fencing of sensitive areas, signage, designation of specific open riding areas, and enforcement and management of designated OHV trails. In 2005, the BLM estimated 50,000 visitor-use days per year occurred within the CCMA (USFWS 2006, p. 27). OHV use decreased in 2008 following the release of an EPA report that found high levels of naturally occurring asbestos that posed a significant health risk to visitors within the Serpentine ACEC.

To address the EPA findings, the BLM issued new Management Plans and associated Records of Decision in 2014, which restricted OHV access to areas of suitable habitat and known sub-occurrences of San Benito evening-primrose by reducing the amount of open trails and restricting access to the Serpentine ACEC to 5 days per year per recreationalist through a permit system and a series of locked gates (BLM 2014, pp. 1–18). Currently, only highway-licensed vehicles are allowed within the Serpentine ACEC on designated roads and by permit, which is limited to five use-days per year per person. These restrictions on OHV use have effectively removed OHV impacts to San Benito evening-primrose. OHV non-compliance with fencing and trail restrictions has been monitored within lands managed by the BLM. Findings of non-compliance remain low compared to levels of use prior to closure (table 2). Occurrences located on private property are not protected from OHV use, and occurrences on BLM land near private land are at greater risk of disturbance from OHV trespass. Under the current Resource Management Plan (BLM 2014, entire), because of its implementation of closures and restrictions, we do not consider OHV use will become a threat to occurrences on BLM land in the foreseeable future. While BLM restrictions do not provide protection to occurrences on private land, the best available data on historical and current recreation levels do not indicate that the level of OHV use on private land will increase from current levels to levels that would threaten the persistence of the species in the foreseeable future.

Mining

The last commercial mining in the CCMA ceased extraction activities in 2002 (BLM 2018, p. 66). The BLM has acquired surface rights to 208 ha (520 ac) along the lower reaches of Clear Creek up to and including the confluence with the San Benito River. This acquisition protects habitat and occurrences of San Benito evening-primrose, but without having the mineral rights to the land, it cannot be considered fully under the control of the BLM (USFWS 2009, p. 13). The BLM decided in the 2014 Resource Management Plan that no mineral leasing or sales on public lands will occur within the Serpentine ACEC and that mineral leasing and sales on public lands outside of the Serpentine ACEC will have ''no surface occupancy'' stipulations where occupied special status species habitat occurs (BLM 2018, pp. 1–36 through 1–37). With these requirements, and no active mining leases within suitable habitat and known occurrences, we conclude that mining is no longer a significant threat to San Benito evening-primrose and is not likely to become a threat in the foreseeable future

Rock hounding (hobby of collecting rock and mineral specimens from the natural environment) within the CCMA persists as a recreation activity, although quantifying the amount and effect of rock hounding on San Benito evening-primrose is lacking. However, given the restricted vehicle access and relatively low impact of an individual user versus a commercial mining operation, we consider that effects to San Benito evening-primrose from rock hounding are negligible and are not likely to become a threat in the foreseeable future.

Soil Loss and Elevated Erosion Rates

Soil loss and erosion may occur naturally due to seasonal disturbances as would be expected by frost heaving, overland sheet flow from precipitation, unconsolidated soil, sparse vegetation, and flood events. These natural disturbances promote areas relatively free of dense vegetation, increase water infiltration, and may aid in dispersal of the San Benito evening-primrose downstream or downslope from existing occurrences. Many of the threats presented under Factor A may be considered a ''disturbance'' to the habitat of the species, but this does not mean that they are beneficial. For example, the effects to soil from frost heaving and overland sheet flow are very different from those resulting from repeated use of OHVs. The BLM attempted to quantify the differences between the natural, or background, rates of soil loss and erosion, and those that result from OHV and highway

vehicle use. The mean background soil loss in the Clear Creek Watershed was 8 yards^3 (yd^3)/ac-year (11 tons/ac-year) and that soil loss resulting from OHV open riding resulted in soil loss of 12 yd^3/ac-year (16 tons/ac-year) (PTI Environmental 1993, pp. 36–39). The erosion rate from roads was estimated at 59 yd^3/ac-year (80 tons/ac-year).

Increased erosion and elevated soil loss are indicative of loss of suitable habitat. The seed bank may be lost as soil erodes and the remaining soil may become compacted, decreasing germination potential as well as water retention. Trails that form from repeated use on open slopes or terraces may collect and funnel water, creating runnels, which in turn increase erosion while drawing water away from adjacent areas (Brooks and Lair 2005, p. 7; Ouren *et al.* 2007, pp. 5–16). The BLM has recognized this issue and has attempted to enact minimization measures for soil loss and erosion. In the most recent Resource Management Plan, the BLM includes guidelines that call for road closures during extreme wet weather, prioritizing closed roads for restoration and reclamation, and establishing automated weather stations to monitor precipitation and soil moisture and requires approved erosion control strategies to be evaluated for any soil-disturbing activities on slopes of 20–40 percent (BLM 2014, p. 1–30). Presently, the threat of soil loss and erosion is limited to natural cycles, remnant effects of past land use, and roads (for which the above minimization measures apply). Considering that additional sub-occurrences of San Benito evening-primrose continue to be identified and persist within habitat that is more prone to erosion (upland slopes of the geologic transition zone habitat type), it is unlikely that natural rates of soil loss and erosion present a threat to the continued existence of the species and is not likely to do so in the foreseeable future.

Facilities Construction and Maintenance

The construction of the BLM Section 8 Administrative Site in 1988 and associated structures resulted in direct loss of San Benito evening-primrose and its habitat, although the species still occurs in the vicinity of the disturbance (USFWS 2009, pp. 12–13, BLM 2018, p. 34). The Section 8 Administrative Site was decommissioned in 2010 and replaced by the Clear Creek Administrative Site. The new administrative site was not constructed on occupied or potential habitat for San Benito evening-primrose, although the impacts resulting from the original disturbance remain (BLM 2018, p. 66). The old Section 8 Administrative Site is infrequently used and, at current levels of use, does not present a threat to the persistence of San Benito evening-primrose due to the discovery of new sub-occurrences and potential habitat throughout the CCMA (BLM 2018 p. 66). No new facilities and construction projects are planned, and it is not likely that new projects in occupied or potential habitat will be proposed in the foreseeable future.

Habitat Alteration Due to Invasive Species

The serpentine-derived soils inhibit invasion from nonnative plant species where San Benito evening-primrose occurs. However, the habitat may still be degraded if invasion by nonnative species is allowed to occur on adjacent land. High densities of nonnative species may negatively influence existing or potential habitat for San Benito evening-primrose by providing a persistent threat of colonization. Yellow star thistle (*Centaurea solstitialis*) and tocalote (*C. melitensis*) have been actively controlled near occurrences of San Benito evening-primrose within the CCMA since 2005 (BLM 2018, p. 62). The BLM has identified prescribed fire followed by broadcast application of clopyralid, a broadleaf specific herbicide, as the most effective means of reducing the cover of invasive species threatening San Benito evening-primrose. The cover of yellow star thistle has been reduced by 95 percent in the Clear Creek drainage, and San Benito evening-primrose has expanded into the improved habitat (BLM 2018, p. 62). The natural buffer that the serpentine-derived soils provide, coupled with BLM's management of invasive species and the expansion of known sub-occurrences and potential habitat, make it unlikely that invasive species present a significant threat either now or into the future to the persistence of San Benito evening-primrose. The abundance of invasive species will be monitored as part of the Post-delisting Monitoring Plan. The Post-delisting Monitoring Plan will suggest thresholds that will determine the necessary control efforts on federally managed land.

Succession to Woody Shrub Community

San Benito evening-primrose habitat is typically open and relatively free of high amounts of woody vegetation and canopy cover. Succession to a woody shrub community in habitat that presently or historically supported San Benito evening-primrose could result in increased canopy cover (potentially shading out San Benito evening-primrose) and increased competition for resources (lessening the success of establishment and survival) (Taylor 1990, p. 66). Photopoints initiated by the BLM in 1980 suggest that open serpentine barrens are less susceptible to encroachment by woody shrubs (typically chaparral species such as manzanita (*Arctostaphylos* spp.)) than alluvial terrace habitat. This is presumably due to the greater concentration of serpentine soils on the open barrens compared to the more organic rich soils of the alluvial terraces. Continued evidence of encroachment into areas occupied by San Benito evening-primrose has been observed at established photomonitoring points (BLM 2018, pp. 56–57).

The immediate effect of encroachment by woody vegetation would be to reduce, or possibly eliminate, known occurrences and potential habitat of San Benito evening-primrose through competition and alteration of habitat structure. It is possible that the seed bank, once established, is long lived enough that it may persist through cycles of vegetation community shifts due to natural events such as fires. However, the species has not been studied for sufficient time to observe the effects of vegetation succession. The BLM has estimated that seed may remain viable for 107 years in the presence of common co-occurring shrubs (BLM 2015, pp. 16–28).

San Benito evening-primrose has not been observed in the geologic transition zone habitat for as long a period of time as either alluvial terrace habitat or the open serpentine barrens. As a result, the rate of succession to woody vegetation is not as well understood. It is likely that the rate of succession to woody habitat is less within geologic transition zone habitat than alluvial terrace, but greater than the rate of succession compared to open serpentine barrens. Succession of plant communities is a natural process and may result in loss of current or potential habitat. However, the amount of new sub-occurrences that have been identified lessen the immediate risk to the existence of the species; therefore, succession to woody shrub community is not currently a species-level threat. No occurrences of San Benito evening-primrose have been extirpated due to succession of woody vegetation since monitoring began in 1980, and, because San Benito evening-primrose grows on serpentine soils, threats to the species from succession to woody vegetation is also unlikely to be a threat in the foreseeable future.

Stochastic Events

At the time of listing, only nine occurrences of San Benito evening-primrose were known within a relatively restricted range. The small number of occurrences increased the susceptibility of the species to extinction from a stochastic event, such as a fire, flood, drought, or other unpredictable event, because a single event had the capability to negatively impact all known occurrences at the same time. The threat from stochastic events due to a small number of occurrences has decreased as the number of known occurrences has increased to 79 occurrences (519 sub-occurrences or 658 point locations) occurring across multiple watersheds, and into a new habitat type (the geologic transition zone). The species' current known range is bordered on the north by New Idria Road near the confluence of Larious Creek and San Carlos Creek, to the south at the Monterey County line near Lewis Creek, to the west near the Hernandez Reservoir, and to the east by the eastern boundary of the Serpentine ACEC, an area of approximately 307 square miles.

Within this broad range, approximately 260 ac (105 ha) is considered potential habitat (BLM 2018, p. 31) and 63.2 ac (25.6 ha) are known to be occupied. Despite the occupied area being relatively small, it is spread over a large geographic area across multiple habitat types and many occurrences, suggesting a low possibility of extinction from a single stochastic event. The presence of a long-lived and well-established seed bank further insulates San Benito evening-primrose from the possibility of extinction due to a single stochastic event. The land management practices of the BLM within the CCMA have promoted preserving and restoring San Benito evening-primrose habitat and the natural soil processes and hydrology of the watersheds it occurs within as well. Stochastic events are unlikely to threaten the species in the foreseeable future due to the current range of San Benito evening-primrose and number of known occurrences.

Climate Change

The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change. The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (for example, temperature or precipitation) that persists for an extended period, whether the change is due to natural variability or human activity (IPCC 2014a, pp. 119–120). The effects of climate change are wide ranging but include alteration of historical climate patterns including storm frequency and severity, seasonal shifts in temperatures, and changing precipitation patterns. Globally, these effects may be positive, neutral, or negative for any given species, ecosystem, land use, or resource, and they may change over time (IPCC 2014b, pp. 49–54; IPCC 2018, pp. 9–12). Potential effects derived from climate change have consequences for the biological environment and may result in changes to the suitability of currently occupied habitat through increased drought stress, shortened growing seasons, and alteration of the historical soil and hydrologic cycles. The synthesis report that was issued by IPCC is conclusive that future climate conditions will be dissimilar from current climate conditions. The effects of these changes to San Benito evening-primrose and its habitat are not known, but we may reasonably infer potential effects from the globally anticipated changes. The State of California assessment on climate change provides a better estimate for the effects of climate change to areas occupied by San Benito evening-primrose.

California released its fourth climate change assessment in 2018 (Langridge 2018, entire). The California assessment differs from the IPCC assessments in that it is localized to the State and has specific analyses for nine regions within the State. California's Fourth Climate Change Assessment uses downscaled versions of the global climate models used by IPCC to create localized predictions based on future emissions scenarios in order to provide relevant predictions for management and planning. The range of San Benito evening-primrose falls within the Central Coast region of California's fourth climate change assessment. In general, the region is expected to experience increasing minimum and maximum temperatures and slight increases in precipitation with significant increases in variability (Langridge 2018, p. 6). These expected trends are slightly variable across the three watersheds within which San Benito evening-primrose occurs (hydrologic unit code (HUC) 10): Upper San Benito River, Los Gatos Creek, and Larious Creek–Silver Creek. The predicted increases in minimum temperature, maximum temperature, and precipitation are similar for both high (representative concentration pathway (RCP) 8.5) and low (RCP 4.5) emissions scenarios and across model variations (Cal-adapt 2018, p. NA; table 5).

TABLE 5—CHANGES IN PRECIPITATION, MINIMUM AVERAGE TEMPERATURE, AND MAXIMUM AVERAGE TEMPERATURE FOR LOW AND HIGH EMISSION SCENARIOS COMPARED TO HISTORICAL AVERAGES FOR THE THREE WATERSHEDS WITHIN WHICH SAN BENITO EVENING-PRIMROSE OCCURS

Watershed	Precipitation (inches)		Min avg. temp. (degrees F)		Max avg. temp. (degrees F)	
	Historical average	RCP 4.5 (RCP 8.5)	Historical average	RCP 4.5 (RCP 8.5)	Historical average	RCP 4.5 (RCP 8.5)
Upper San Benito River	17.8	20.4 (19.7)	38.9	41.7 (42.3)	71.0	73.9 (74.4)
Los Gatos Creek	14.4	16.8 (15.3)	44.7	47.5 (48.1)	74.8	77.6 (78.1)
Larious Creek–Silver Creek	15.1	17.4 (16.6)	42.3	45.3 (45.9)	72.3	75.3 (75.8)

Watersheds are based on the HUC 10 resolution. Reported values for the modeled futures are based on the average of the HadGEM2–ES (warmer and drier), CNRM–CM5 (cooler and wetter), and CanESM2 (average) models. The RCP 4.5 scenario refers to a future scenario where emissions peak near 2040 and then decline, while RCP 8.5 refers to a scenario where emissions continue to rise strongly through 2050 and plateau near 2100. The historical average is based on the years 1950–2005 as reported by *cal-adapt.org*. The modeled values are estimates from the years 2020–2050.

Based on the state of California assessment of climate change, the IPCC data, taking into account known uncertainties with climate change projection, the effects of the predicted changes due to climate change to occurrences of San Benito evening-primrose are varied. A slight increase in precipitation may provide additional

water during the growing season, but the variability between seasons may result in long periods of drought followed by high-volume precipitation that may cause erosion. Increasing minimum temperatures may reduce the amount of days with frost, thereby altering the physical cues for germination, and increasing maximum temperatures could result in increased stress for flowering individuals. Conversely, increased amounts of rain may promote increased germination and seedling success. In order to precisely understand the effects of climate change, location-specific data on temperature, precipitation, San Benito evening-primrose germination, seedling success, and seed bank cycling over multiple years would be needed.

Shifts in community composition are likely to occur as a result of changes in California's climate and may impact the long-term suitability of currently occupied and potential habitat for San Benito evening-primrose. All California macrogroups of vegetation are expected to have moderate to high risk of vulnerability to climate change (Thorne et al. 2016, p. 1). This means that all vegetation communities are susceptible to portions of their current range becoming unsuitable. It is also possible that previously unsuitable areas for a given macrogroup will become suitable as physical parameters that were previously unfavorable become favorable. Vegetation communities migrating higher in elevation along temperature gradients or moving upland as sea levels rise along hydrological gradients are typical examples of this scenario. However, the ability of a vegetation macrogroup to migrate assumes that natural seed dispersal pathways are available and that undeveloped land exists along dispersal pathways.

San Benito evening-primrose occurs within three macrogroups within San Benito and Fresno Counties: California foothill and valley forests and woodlands, chaparral, and California annual and perennial grassland. California foothill and valley forests and woodlands and chaparral are both ranked at moderate risk of vulnerability, and California annual and perennial grassland is ranked as moderate to high risk of vulnerability (Thorne *et al.* 2016, p. 3; table 6). Estimates of the percent of existing habitat that will become unsuitable, have no change, or become newly suitable based on low and high emissions scenarios are shown in table 6 based on data within Thorne *et al.* (2016, pp. 33–41; 114–122; 132–140).

TABLE 6—RESULTS OF SENSITIVITY AND ADAPTIVE CAPACITY MODELING AND THE RESULTING CHANGE IN SUITABILITY OF EXISTING HABITAT FOR THREE VEGETATION MACROGROUPS WITHIN WHICH SAN BENITO EVENING-PRIMROSE OCCURS

Vegetation macrogroup	Mean vulnerability rank	Unsuitable		No change		Newly suitable	
		Low (%)	High (%)	Low (%)	High (%)	Low (%)	High (%)
California foothill and valley forests and woodlands.	Moderate	24	59	41	76	11	34
Chaparral	Moderate	8	54	46	92	17	47
California annual and perennial grassland.	Mid-High	16	48	52	84	10	52

Data from Thorne et al. 2016 pp. 3; 33–41; 114–122; 132–140.

Under both high and low emissions scenarios, currently suitable habitat for San Benito evening-primrose is lost due to changes in climate. Conversely, the species that compose the vegetation communities that are associated with San Benito evening-primrose are expected to have the capability to migrate into newly suitable habitat. The primary concern, in regard to San Benito evening-primrose habitat, is the threat of an increase in woody vegetation as a response to climate change. However, San Benito evening-primrose is found in serpentine and serpentine-derived soils that are not likely to be affected by climate change in the foreseeable future. The edaphic (soil) conditions may restrain woody vegetation migration into areas currently occupied. While the soil type may mitigate habitat loss due to habitat conversion, it may also restrain the species from dispersing to areas where climatic conditions are more favorable for survival. The currently predicted changes in precipitation and climate do not suggest that the species may become endangered due to those changes in the foreseeable future.

Existing Regulatory Mechanisms

State Protections

San Benito evening-primrose is not a State-listed taxon under the California Endangered Species Act. The species is listed by the California Native Plant Society (CNPS) as 1B.1, indicating that the taxon is rare throughout its range and is generally endemic to California as well as having been reduced throughout its historical range. Species listed by CNPS as 1B.1 meet the definition of threatened in the California Endangered Species Act as described in the California Fish and Game Code (CNPS 2018 Rare Plant Inventory website) and must therefore be considered during environmental analysis for California Environmental Quality Act (CEQA) documentation (CEQA 2018 Guidelines Section 15380).

Federal Protections

In 2001, the BLM published the National Management Strategy for Motorized Off-Highway Vehicle Use on Public Lands. This guiding document ensures consistent and positive management of environmentally responsible motorized OHV use on public lands. Detailed regulations are established in BLM's 2014 Resource Management Plan for the CCMA that provides for protections of San Benito evening-primrose. BLM's 2014 Resource Management Plan for the CCMA is in place until superseded. The restriction of OHV use within the CCMA and the Serpentine ACEC is based on concerns of health risks and will be unaffected by the delisting of San Benito evening-primrose. Currently, only highway-licensed vehicles are allowed within the Serpentine ACEC on designated roads and by permit, which is limited to five use-days per year per person, and within the CCMA trail riding is restricted to designated areas near Condon Peak (BLM 2014, p. 1–18). The Post-delisting Monitoring Plan will provide for continued evaluation of the status of occurrences to prevent the species from again becoming warranted for listing under the Federal Endangered Species Act.

The BLM has regulations and policies that guide the management of natural resources on the public lands they manage. In particular, Congress passed the Federal Land Policy and Management Act of 1976 to provide policy for ''the management, protection, development, and enhancement'' of public lands managed by the BLM. This law directs the BLM to ''take any action necessary to prevent unnecessary or undue degradation of the lands'' during mining operations (43 U.S.C. 1732(b)). Mining operations that exceed 5 acres (2.02 ha), and certain other defined operations, require a plan of operations approved by the BLM (43 CFR 3809.1–4, 1–6).

BLM may enact special rules to protect soil, vegetation, wildlife, threatened or endangered species, wilderness suitability, and other resources by immediately closing affected areas to off-road vehicles that are causing resource damage until the adverse effects are eliminated and measures are implemented to prevent recurrence (43 FR 8340–8364).

Two Executive Orders (E.O.) apply specifically to off-road vehicles on public lands: E.O. 11644 directs agencies to designate zones of off-road use that are based on protecting natural resources, the safety of all users, and minimizing conflicts among various land uses. The BLM and other agencies are to locate such areas and trails to minimize damage to soil, watershed, vegetation, or other resources, and to minimize disruption to wildlife and their habitats. Areas may be located in designated park and refuge areas or natural areas only if the head of the agency determines that off-road use will not adversely affect the natural, aesthetic, or scenic values of the locations. The respective agencies are to ensure adequate opportunity for public participation in the designation of areas and trails.

E.O. 11989 amends the previous order by adding the following stipulations: (a) Whenever the agency determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas or trails on public lands, it is to immediately close the areas or trails to the type of off-road vehicle causing the effects until it determines that the adverse effects have ceased and that measures are in place to prevent future recurrence; and (b) each agency is to close portions of public lands within its jurisdiction to off-road vehicles except areas or trails designated as suitable and open to off-road vehicle use.

As San Benito evening-primrose is a listed species under the Act, the BLM is required to consult with the Service on any activities it funds, authorizes, or carries out that may affect San Benito evening-primrose. There are no Federal prohibitions under the Act for negatively impacting listed plants on non-Federal lands, unless a person damages or destroys federally listed plants while in violation of a State law or a criminal trespass law. Where the species occurs on private lands, protections afforded by section 7(a)(2) of the Act are triggered only if there is a Federal nexus (*i.e.,* an action funded, permitted, or carried out by a Federal agency). If the species is delisted, the protections afforded by the Act would no longer apply. Even in the absence of the protections of the Act, adequate regulatory mechanisms are in place, such as the Federal Land Policy and Management Act of 1976, E.O. 11644 and E.O. 11989, to ensure the continued persistence of San Benito evening-primrose*s* occurrences and suitable potential habitat.

Summary of Threats Analysis

A very limited range, small number of occurrences, and direct and indirect threats from OHV use and mining and associated facilities and road maintenance were the primary threats to San Benito evening-primrose at the time of listing in 1985 (50 FR 5755–5759, February 12, 1985). OHV use continued to be a significant threat to San Benito evening-primrose until the temporary closure of the Serpentine ACEC in 2008. The 2014 Resource Management Plan permanently reduced the amount of exposure San Benito evening-primrose has to OHV recreation and has resulted in indirectly removing the most significant threat to the species, which was direct loss of individuals by OHV recreation and indirect loss of habitat and seed bank through erosion on slopes and soil compaction on alluvial terraces. The threat from mining was reduced by 2002 with the closure of the last commercial mine, and future threats from mining are unlikely based on BLM management actions listed in the 2014 Resource Management Plan for the CCMA. Habitat alteration from invasive species and succession to woody vegetation communities are not likely to threaten San Benito evening-primrose because invasive species and woody vegetation communities are intolerant to serpentine soils. The significant increase in the number of known occurrences and the associated increase in range and the new habitat association greatly reduce the threat of stochastic events resulting in significant loss to the species. The effects of climate change on the species are predicted changes in temperature and rainfall by 2050, and do not suggest species-level threats to survival.

When individual threats that influence reproductive output, germination, and survival occur together, one threat may add to, or exacerbate, the effects of another, resulting in a disproportionate increase in threat to the species. When this occurs, we call the interactive effects synergistic or cumulative. The lack of current threats to San Benito evening-primrose reduce the possibility of synergistic or cumulative effects occurring, and, given the current range of the species, number of known occurrences, and likelihood of new occurrences to become known, synergistic and cumulative effects do not pose a significant population-level impact to San Benito evening-primrose at this time nor do we anticipate that they will in the future.

Determination of San Benito Evening-Primrose Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' For a more detailed discussion on the factors considered when determining whether a species meets the definition of ''endangered species'' or ''threatened species'' and our analysis on how we determine the foreseeable future in making these decisions, see Regulatory Framework, above.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we have assessed the best scientific and commercial information available regarding the past, present, and future threats faced by San Benito evening-primrose in this proposed rule. At the time of listing in 1985 (50 FR 5755–5759, February 12, 1985), San Benito evening-primrose was known from only nine occurrences within a very narrow range that were all subject to potential loss from the threats listed in Factors A through E.

Off-highway vehicle recreation (Factor A), the greatest persistent threat to the species, has been reduced to levels that no longer pose a significant threat of extinction to San Benito evening-primrose or loss of its habitat, due to the closure of the Serpentine ACEC and the restriction of OHV use within the CCMA but outside of the Serpentine ACEC. Most significantly, surveys by the BLM have shown that the species is much more wide-ranging and common than originally known and occurs across a broader range of habitat types. The number of known occurrences has increased from 9 to 79 and includes 658 mapped point locations. The range of the species is now known from three watersheds, and occupied habitat covers 63.2 acres (25.6 ha). Our understanding of the ecology of the species has demonstrated that the species may persist through periods of disturbance due to the persistence of a robust and long-lived seedbank that facilitates reestablishment, dispersal, and buffers against stochastic events. Annual surveys of San Benito evening-primrose have demonstrated that there is a large amount of interannual variation in numbers of individuals observed. We believe that the 27 occurrences that have been monitored since 1983 have remained relatively stable around a 5-year moving average when the abnormally high count year (1988) is considered. Furthermore, the significant increase in the number of occurrences is not represented in the analysis of the 27 occurrences that were known at the time the Recovery Plan was written. The best available information indicates that Factors B, C, and E are not affecting the species and are unlikely to do so in the foreseeable future. The existing regulatory mechanisms in place are adequate to ensure the continued persistence of San Benito evening-primrose occurrences and suitable potential habitat because a majority of occurrences are managed on Federal land and are protected by a 2014 BLM Resources Management Plan and a BLM Area of Critical Environmental Concern (ACEC) designation. Based on the information presented in this status review, the recovery criteria in the Recovery Plan have been achieved and the recovery goal identified in the Recovery Plan has been met for San Benito evening-primrose. Thus, after assessing the best available information, we conclude that San Benito evening-primrose is not in danger of extinction throughout all of its range either now or within the foreseeable future.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range.

Having determined that San Benito evening-primrose is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so within the foreseeable future in a significant portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do the ''screening'' analysis, we ask whether there are portions of the species' range for which there is substantial information indicating that: (1) The portion may be significant; and (2) the species may be, in that portion, either in danger of extinction or likely to become so in the foreseeable future. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing because of its status in that portion of its range. Conversely, we emphasize that answering both of these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more-detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more thorough analysis to determine whether the portion does indeed meet both of the ''significant portion of the range prongs'': (1) The portion is significant and (2) the species is, in that portion, either in danger of extinction or likely to become so within the foreseeable future. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species or threatened species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both significant portion of the range prongs would the species warrant listing because of its status in a significant portion of its range.

We evaluated the range of San Benito evening-primrose to determine if any area may be a significant portion of the range. San Benito evening-primrose is a narrow endemic that occurs over 300 square miles, but occupies a relatively small amount of acreage (63.2 ac (25.6 ha) of occupied habitat). Genetic analysis indicated no differentiation in occurrences based on watershed or habitat and that there was no hybridization with a close relative. Every threat to the species in any portion of its range is a threat to the species throughout all of its range, and so the species has the same status under the Act throughout its narrow range. Therefore, we conclude, based on this screening analysis, that the species is not in danger of extinction or likely to become so in the foreseeable future in any significant portion of its range. Our conclusion—that we do not undertake additional analysis if we determine that the species has the same status under the Act throughout its narrow range—is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018); *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017); and *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020).

Determination of Status

Our review of the best scientific and commercial data available indicates that the San Benito evening-primrose does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we propose to delist the San Benito evening-primrose from the List of Endangered and Threatened Plants.

Effects of This Rule

If this proposed rule is made final, it would revise 50 CFR 17.12(h) to remove San Benito evening-primrose from the Federal List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to San Benito evening-primrose. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect San Benito evening-primrose.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us to implement a system to monitor effectively, for not less than 5 years, all species that have been recovered and

delisted (50 CFR 17.11, 17.12). The purpose of this post-delisting monitoring is to verify that a species remains secure from the risk of extinction after it has been removed from the protections of the Act. The monitoring is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of post-delisting monitoring programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of post-delisting monitoring. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

Post-Delisting Monitoring Overview

If we make this proposed rule final, the post-delisting monitoring is designed to verify that San Benito evening-primrose remains secure from the risk of extinction after its removal from the Federal List of Endangered and Threatened Plants by detecting changes in trend and habitat suitability. A draft post-delisting monitoring plan for the species can be found at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2019–0065. If this proposed rule is finalized, the final post-delisting monitoring plan will be agreed upon by the Service and the BLM prior to publication of a final rule.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare an environmental analyses pursuant to the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. There are no tribal lands associated with this proposed rule.

References Cited

A complete list of all references cited in this proposed rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2019–0065, or upon request from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Ventura Fish and Wildlife Office in Ventura, California, in coordination with the Pacific Southwest Regional Office in Sacramento, California.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.12 [Amended]

■ 2. In § 17.12(h), remove the entry for ''San Benito evening-primrose (*Camissonia benitensis*)'' under FLOWERING PLANTS from the List of Endangered and Threatened Plants.

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–11024 Filed 5–29–20; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 85, No. 105
Monday, June 1, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0034]

Notice of Request for Revision to and Extension of Approval of an Information Collection; APHIS Credit and User Fee Accounts

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's (APHIS') intention to request a revision to and extension of approval of an information collection associated with establishing credit accounts and the collection of user fees for certain reimbursable APHIS services.

DATES: We will consider all comments that we receive on or before July 31, 2020.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0034.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0034, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0034* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on APHIS user fees forms covered by this notice, contact Ms. Kris Caraher, Review and Analysis Branch Chief, Financial Management Division, MRPBS, APHIS, USDA, 4700 River Road, Unit 54, Riverdale, MD 20737–3148; (301) 851–2834. For information on the information collection process, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: APHIS Credit and User Fee Accounts.

OMB Control Number: 0579–0055.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Section 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes the Animal and Plant Health Inspection Service (APHIS) to establish credit accounts and collect user fees for providing import- and export-related services for animals, animal products, birds, germplasm, organisms, and vectors. In addition, this section authorizes APHIS to collect user fees for agricultural quarantine and inspection services, inspection and certification of plants and plant products offered for export or transiting the United States, and for providing veterinary diagnostic services and services related to the importation and exportation of animals and animal products.

APHIS also provides the services of a Federal inspector to clear imported and exported agricultural commodities for animal and plant health purposes. These services are paid for by user fees during regular working hours. If an importer wishes to have shipments cleared at other hours, such services will usually be provided on a reimbursable overtime basis, unless already covered by a user fee. Exporters wishing cargo to be certified during nonworking hours may also utilize this procedure.

The services that APHIS provides involves certain information collection activities. For example, many importers and exporters who require inspection services are repeat customers who request that APHIS bill them. The Agency needs to collect certain information to conduct a credit check on prospective applicants to ensure creditworthiness prior to extending credit services and to prepare billings. Also, the Debt Collection Improvement Act of 1996, as amended (31 U.S.C. 3332), requires that agencies collect tax identification numbers from all persons doing business with the Government for purposes of collecting delinquent debts. Without a tax identification number, service cannot be provided on a credit basis.

Also, requests for APHIS services are in writing, by telephone, or in person. The information contained in each request identifies the specific service requested and the time in which the requester wishes the service to be performed. This information is necessary in order for animal import centers and port offices to schedule the work and to calculate the fees due.

Lastly, APHIS is responsible for ensuring that fees collected are correct and that they are remitted in full and in a timely manner. To ensure this, the party (ticketing agents for transportation companies) responsible for collecting and remitting fees must allow APHIS personnel to verify the accuracy of the fees collected and remitted, and otherwise determine compliance with the statute and regulations. We also require that whoever is responsible for making fee payments advise us of the name, address, and telephone number of a responsible officer who is authorized to verify fee calculations, collections, and remittances.

This information collection was previously titled ''Credit Account Approval for Reimbursable Services.'' It now incorporates burden from Office of Management and Budget (OMB) control number 0579–0094, User Fee Regulations, and is retitled ''APHIS Credit and User Fee Accounts.''

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

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

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection

of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.063 hours per response.

Respondents: Individuals and private and commercial importers or exporters of agricultural plants and animals or their products.

Estimated annual number of respondents: 6,980.

Estimated annual number of responses per respondent: 200.

Estimated annual number of responses: 1,395,559.

Estimated total annual burden on respondents: 88,025 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 27th day of May 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–11738 Filed 5–29–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–2029]

Notice of Request for Revision to and Extension of Approval of an Information Collection; APHIS Pest Reporting and Asian Longhorn Beetle Program

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's (APHIS') intention to request a revision to and extension of approval of an information collection that allows the public to report sightings of plant pests and diseases and APHIS to conduct Asian Longhorn Beetle Program activities.

DATES: We will consider all comments that we receive on or before July 31, 2020.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-2029.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–2029, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-2029* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on pest reporting and Asian Longhorn Beetle Program activities, contact Mr. Paul Chaloux, National Policy Manager, PPQ, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737–1231; (301) 851–2064. For information on the information collection process, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: APHIS Pest Reporting and Asian Longhorn Beetle Program.

OMB Control Number: 0579–0311.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Animal and Plant Health Inspection Service (APHIS), either independently or in cooperation with States, may carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and diseases that are new to or not widely distributed within the United States. This authority allows APHIS to establish control programs for a number of pests and diseases of concern, including Asian longhorned beetle (ALB), emerald ash borer beetle, and citrus greening, to name a few.

APHIS relies on various entities, such as individuals, households, businesses, and State departments of agriculture to report sightings of pests of concern or suspicious signs of pest or disease damage they may see in their local areas and provide information needed to conduct Asian Longhorned Beetle Program activities. This reporting and the detection and verification methods involved include information collection activities, such as the online pest reporting form, inspection and ALB unified survey form, cooperative agreement for inspection, State compliance training workshop records, contract for inspection, homeowner permission or refusal to inspect, tree removal agreement, litigation and warrants and associated letters, removal and monitoring, removal and disposal, disposal/Marshalling Yard, tree warrant, treatment agreement, contract for treatment, and certificate/permit cancellation.

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

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

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.637 hours per response.

Respondents: Individuals and households, businesses, and State departments of agriculture.

Estimated annual number of respondents: 7,055.

Estimated annual number of responses per respondent: 98.

Estimated annual number of responses: 688,755.

Estimated total annual burden on respondents: 438,715 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 27th day of May 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–11737 Filed 5–29–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

2020 Dietary Guidelines Advisory Committee

AGENCY: U.S. Department of Agriculture, Food, Nutrition, and Consumer Services; Department of Health and Human Services.

ACTION: Notice; announcement of meeting on Draft Report and public comment.

SUMMARY: The Departments of Agriculture (USDA) and Health and Human Services (HHS) announce a meeting of the 2020 Dietary Guidelines Advisory Committee (the Committee) on its Draft Report. The period for written public comments to the Committee will remain open through Wednesday, June 10, 2020. After the Committee submits its Final Advisory Report to USDA and HHS, the public is invited to provide written and oral comments to USDA and HHS on the Scientific Report of the 2020 Dietary Guidelines Advisory Committee (the Advisory Report).

DATES: This notice is being provided to the public on June 1, 2020. The meetings and comment collection dates are scheduled as follows:

- A webcast meeting during which the Committee will discuss its Draft Advisory Report will be on Wednesday, June 17, 2020, 11 a.m. to 7 p.m. ET.
- The period for written public comments to the Committee will remain open until 11:59 p.m. ET on Wednesday, June 10, 2020.
- The Final Advisory Report is expected to be available for review online on or around Wednesday, July 15, 2020. Once the Final Advisory Report is online, the 30-day period begins for written comments to USDA and HHS on the Final Report; it closes on the 30th day at 11:59 p.m. ET. Specific dates will be announced at *www.DietaryGuidelines.gov.*
- The public is invited to present oral comments to USDA and HHS on Tuesday, August 11, 2020, 8:30 a.m. to 1 p.m. ET. Registration for the opportunity to present oral comments will be announced and available at *www.DietaryGuidelines.gov* before Monday, July 27, 2020.

ADDRESSES: (a) The meeting to discuss the Draft Advisory Report will be via webcast; attendees are asked to register prior to the meeting. Registrants will receive the webcast information prior to the meeting.

(b) The Final Advisory Report will be available at *www.DietaryGuidelines.gov.*

(c) The meeting to provide oral comments to USDA and HHS will be either in person or via webcast. Notice will be given in advance of the meeting at *www.DietaryGuidelines.gov.* If the meeting is in person, those providing oral comments are required to attend the public meeting at the U.S. Department of Agriculture, South Building, Jefferson Auditorium, 1400 Independence Ave. SW, Washington, DC 20250. Others wanting to participate by listening to the oral comments can do so in person or via webcast. Regardless as to if the meeting is in person or via webcast, registrants will receive the webcast information prior to the meeting.

(d) The public may continue to send written comments to the Committee, identified by Docket FNS–2019–0001, until June 10, 2020, 11:59 p.m. Once the Committee's Final Advisory Report is posted for the public, written comments to USDA and HHS on this report are to be identified by Docket FNS–2020–0015. Use either of the following methods:

- *Federal eRulemaking Portal: http://www.Regulations.gov.* Follow the instructions for sending comments. Preferred method.
- *Mail:* Kristin Koegel, USDA Food and Nutrition Service, Center for Nutrition Policy and Promotion; 1320 Braddock Place, Room 4094; Alexandria, VA 22314.

Instructions: All submissions received must include the agency name and Docket FNS–2019–0001 if comments are for the Committee, or Docket FNS–2020–0015 if comments are for USDA and HHS. For detailed instructions on sending written comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to Dockets FNS–2019–0001 and FNS–2020–0015 and to read background documents or comments received, go to *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer (DFO), 2020 Dietary Guidelines Advisory Committee, Eve Stoody, Ph.D.; USDA Food and Nutrition Service, Center for Nutrition Policy and Promotion; 1320 Braddock Place, Room 4032; Alexandria, VA 22314; Telephone (703) 305–7600. Additional information is available at *www.DietaryGuidelines.gov.*

SUPPLEMENTARY INFORMATION:

Authority and Purpose: The 2020 Dietary Guidelines Advisory Committee is governed under the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App). Under Section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III), the Secretaries of USDA and HHS are directed to jointly publish the Dietary Guidelines for Americans at least every five years. See 84 FR 8840, March 12, 2019, for notice of the first meeting of the 2020 Dietary Guidelines Advisory Committee, the complete Authority and Purpose, and the Committee's Task.

Purpose of the Meetings: The Committee will review, discuss, and approve its Draft Advisory Report at the June 17 meeting. At the public meeting on August 11, the public will offer oral comments to USDA and HHS on the Final Advisory Report.

Meeting Agendas: Specific agendas will be announced in advance of each public meeting at *www.DietaryGuidelines.gov.*

Meeting Registration for June 17: The meeting for the Committee to discuss its Draft Advisory Report on June 17 will be open to the public and will only be accessible by webcast. Attendees are asked to register prior to this meeting. Registration will open at least two weeks in advance of the meeting and will remain open throughout the meeting. Registration will be available at *www.DietaryGuidelines.gov* on the ''Work Under Way'' page and by clicking, ''Attend a Meeting.''

Meeting Registration for August 11: This meeting will be either in person or via webcast. Notice of the meeting venue will be provided on *www.DietaryGuidelines.gov* closer to the meeting date. Attendees are asked to register prior to this meeting, though registration to attend (either in person or via webcast) will remain open throughout the meeting. Registration will open at least two weeks in advance of this meeting. If providing oral comments, registration to provide oral comments will close once capacity is reached or at 5 p.m. ET on July 27, whichever comes first. Registration will be available at *www.DietaryGuidelines.gov* on the ''Work Under Way'' page and by

clicking, ''Attend a Meeting.'' To present up to three minutes of oral comments at the August 11 meeting, register online following the instructions on the meeting registration page. Additional information on providing oral comments is provided below. Those requesting to present oral comments will be asked to provide certain information, including their name, affiliation, email address, and a written outline of the intended remarks, in their request submitted online.

Registration by phone for June 17 and August 11 meetings: To register by phone or to request a sign language interpreter or other special accommodations, please call for registration and logistics assistance through USDA's Center for Nutrition Policy and Promotion, Susan Cole at (703) 305–7600.

Webcast Public Participation: After registration, individuals participating by webcast will receive webcast access information by email.

In-Person Public Participation and Building Access: If the August 11 meeting is held in person, it will be held in Washington, DC. Details regarding directions will be provided by email and posted on *www.DietaryGuidelines.gov.* For in-person (registered) participants, after going through USDA security at the building entrance, check-in at the on-site registration desk is required and will begin at 7:30 a.m. ET.

Oral Comments: The public may present up to three minutes of oral comments on August 11; pre-registration for presenting is required by 5 p.m. ET on July 27 or before capacity for the meeting has been reached, whichever comes first, and will be confirmed on a first-come, first-served basis. The number of presenters will be limited based on the time allotted. Oral comments are limited to one representative per organization. Requests to present oral comments can be made by visiting the ''Work Under Way'' page at *www.DietaryGuidelines.gov* and by clicking, ''Attend a Meeting.'' Individuals registering to provide oral comments must provide a written outline of the intended remarks, not exceeding one page in length. As space permits, confirmation to provide oral comments will be sent by email and will include further instructions for participation.

Written Comments and Meeting Documents: The period for written public comments to the Committee, which opened on March 12, 2019, will remain open until 11:59 p.m. ET on June 10, 2020. The 30-day comment period for written public comments to USDA and HHS on the Final Advisory Report will open on or around July 15, 2020, depending on the specific date the Final Advisory Report is made available, and will close on or around August 13, 2020. Specific dates will be posted to *www.DietaryGuidelines.gov.*

- *Electronic submissions:* Preferred method. Follow the instructions for submitting comments at *www.Regulations.gov.* Comments electronically submitted to the Committee, including attachments, will be posted to Docket FNS–2019–0001. If comments are for USDA and HHS on the Final Advisory Report, they will be posted to Docket FNS–2020–0015.
- *Written/paper submissions:* Mail/courier to Kristin Koegel, USDA Food and Nutrition Service, Center for Nutrition Policy and Promotion (CNPP); 1320 Braddock Place, Room 4094; Alexandria, VA 22314. For written/paper submissions, CNPP will post the comment, as well as any attachments, to *www.Regulations.gov.*

Meeting materials will be available for public viewing at *www.DietaryGuidelines.gov* approximately one month following each meeting (June 17 and August 11) and at the USDA Food and Nutrition Service, Center for Nutrition Policy and Promotion; 1320 Braddock Place, Room 4094; Alexandria, VA 22314. Materials may be requested by: Telephone (703) 305–7600 and email *DietaryGuidelines@usda.gov.*

Pamilyn Miller,

Administrator, Food and Nutrition Service, U.S. Department of Agriculture.

[FR Doc. 2020–11627 Filed 5–29–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Collaborative Forest Restoration Program Technical Advisory Panel (Panel) will hold a virtual meeting. The Panel is established consistent with the Federal Advisory Committee Act of 1972 (FACA), and Title VI of the Community Forest Restoration Act (the Act). Additional information concerning the Panel, including the meeting summary/minutes, can be found by visiting the Panel's website at: *http://www.fs.usda.gov/goto/r3/cfrp.*

DATES: The meeting will be held on July 7–9, 2020 (Tuesday–Thursday), with meetings each day from 9:00 a.m. to 5:00 p.m.

All meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held with virtual attendance only. For virtual meeting information, please contact the person listed under the **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at USDA Forest Service Region 3 Regional Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Ian Fox, Designated Federal Officer, by phone at 505–842–3425 or via email at *ian.fox@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

(1) Review Panel Bylaws, Charter, and what it means to be a Federal Advisory Committee;

(2) Evaluate and score the 2019 and 2020 CFRP grant applications to determine which applications best meet the program objectives;

(3) Develop prioritized 2019 and 2020 CFRP project funding recommendations for the Secretary;

(4) Develop an agenda and identify members for the 2020 CFRP Sub-Committee for the review of multi-party monitoring reports from completed projects; and

(5) Discuss the proposal review process used by the Panel to identify what went well and what could be improved.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 8, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written

comments and requests for time to make oral comments must be sent to Ian Fox, Designated Federal Officer, USDA Forest Service, Region 3 Regional Office, 333 Broadway Bouleveard Southwest, Albuqueque, New Mexico 87102; or by email to *ian.fox@usda.gov.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: May 26, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–11674 Filed 5–29–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Office of the Secretary

Pacific Northwest National Scenic Trail Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Call for nominations for the Pacific Northwest National Scenic Trail Advisory Council.

SUMMARY: The United States Department of Agriculture (USDA) is seeking nominations for the Pacific Northwest National Scenic Trail Advisory Council (Council) pursuant to Section 5(d) of the National Trails System Act (NTSA), as amended. Additional information on the Council can be found by visiting the Forest Service's Pacific Northwest National Scenic Trail website at *https://www.fs.usda.gov/pnt.*

DATES: Nominations must be received by July 31, 2020. The timeframe may be extended if officials do not receive applications for vacancies. Nominations must contain a completed application packet that includes the nominee's completed form AD–755 (Advisory Committee or Research and Promotion Background Information), résumé, cover letter identifying which organization and/or interest group(s) they would represent and how they are qualified to represent the group(s), and, if applying to represent an organization, a letter of endorsement from the organization. The package must be sent to the address below.

ADDRESSES: Interested persons may submit nominations packets by U.S. Mail or express delivery to the Attention: Becky Blanchard, PNT Administrator, USDA Forest Service Pacific Northwest Region, 1220 Southwest Third Avenue, Suite 1700, Portland, Oregon 97204–2825.

FOR FURTHER INFORMATION CONTACT: Becky Blanchard, Designated Federal Officer, by phone at 503–808–2449; or by email at *SM.fs.pnnstcouncil@usda.gov.*

Individuals who use telecommunications devices or the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. an 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the NTSA and the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.2), the Secretary of Agriculture has renewed the Pacific Northwest National Scenic Trail Advisory Council, effective March 10, 2020, and is seeking nominations for the Council. The Council is a statutory advisory council. The Council will operate under the provisions of FACA and will report to the Secretary of Agriculture through the Chief of the Forest Service.

The purpose of the Council is to make recommendations on matters relating to the Pacific Northwest National Scenic Trail in accordance with Section 5(d) of the NTSA, which states,

> ''The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic trail to the system, ... establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its establishment, ... The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trail.''

Council Membership

The Council will be comprised of approximately of 25 and no more than 35 members. The members appointed to the Council will provide balanced and broad representation within each of the following interests:

(1) The head of each Federal department or independent agency administering lands through which the trail route passes, or their designee.

(2) A member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States.

(3) One or more members appointed to represent private organizations, including corporate and individual landowners and land users which, in the opinion of the Secretary, have an established and recognized interest in the trail. These members may represent social, environmental, or economic organizations (such as nationally or regionally recognized trails organizations, nationally or regionally recognized environmental organizations, nationally or regionally recognized wildlife organizations) and interests (hiking, equestrian, mountain biking, archaeological and historical, the timber industry, tourism and/or commercial outfitters, county governments and/or gateway communities, environmental education, youth engagement and employment); and/or private landowners.

(4) One or more members appointed to represent tribal interests.

Federal government members will serve as Regular Government Employees, appointed to provide the perspective of their agency or program. Non-federal members will serve as Representative members, appointed to provide the perspectives of a particular organization or interest. No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Council.

Representative (non-federal) members will serve without compensation but may be reimbursed for travel expenses while performing duties on behalf of the Council, subject to approval by the Designated Federal Officer (DFO). The Council will meet at least once annually or as often as necessary and at such times as designated by the DFO.

Nominations and Application Information

The appointment of members to the Council will be made by the Secretary of Agriculture. Any individual or organization may nominate one or more qualified and interested persons to represent the interest areas listed above. Individuals may also nominate themselves. To be considered for membership, nominees must submit:

(1) Complete form AD–755;

(2) Résumé focused on qualifications, experiences, and skills relevant to the Council;

(3) Cover letter identifying which organization and/or interest group(s) they would represent and how they are qualified to represent the group(s), their rationale for serving on the Council and what they can contribute, and their past

experience working successfully as part of a collaborative group; and

(4) If applying to represent an organization, a letter of endorsement from the organization.

Letters of recommendations may also be included as part of the nomination package but are not required. The form AD–755 and additional application information can be found by visiting the following website: *https://www.fs.usda.gov/pnt.* They may also be obtained by contacting Becky Blanchard, Designated Federal Officer, USDA Forest Service Pacific Northwest Region, 1220 Southwest Third Avenue, Suite 1700, Portland, Oregon 97204–2825; by phone at 503–808–2449; or by email at *SM.fs.pnnstcouncil@usda.gov.* Nominations and completed applications for the Council should be sent to the DFO at the mailing address or email address above.

All nominations will be vetted by USDA. The Secretary of Agriculture will appoint members to the Council from the list of qualified applicants.

Equal opportunity practices in accordance with USDA policies shall be followed in all appointments to the Council. To ensure that the recommendations of the Council have considered the needs of the diverse groups served by USDA, membership will, to the extent practicable, include individuals with demonstrated ability to represent all racial and ethnic groups, women and men, and persons with disabilities.

Dated: May 26, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–11677 Filed 5–29–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New Hampshire State Advisory Committee to the Commission will convene by conference call, on Monday, June 15, 2020 at 11:00 a.m. (EDT). The purpose of the meeting is to discuss the Committee's next steps for its civil rights project on solitary confinement.

DATES: Monday, June 15, 2020 at 11:00 a.m. (EDT).

Call-In Information: 1–206–800–4892 and conference call ID: 244562014#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov* or by phone at (312) 353–8311.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the telephone number and conference ID listed above. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call-in numbers: 1–206–800–4892 and conference call ID: 244562014#.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311. Records and documents discussed during the meeting will be available for public viewing as they become available at the FACA Link; click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Midwestern Regional Office at the above phone number or email address.

Agenda

Monday, June 15, 2020 at 11:00 a.m. (EDT)

I. Welcome and Rollcall

II. Approval of Meeting Minutes: May 8, 2020

III. Discuss Selection of Vice Chair

IV. Project Planning on Solitary Confinement

V. Next Steps

VI. Other Business

VII. Open Comment

VIII. Adjournment

Dated: May 26, 2020

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–11662 Filed 5–29–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Connecticut Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EDT) on Monday, June 22, 2020. The purpose of the meeting is for the Advisory Committee to begin planning its first civil rights project for its new appointment term.

DATES: Monday, June 22, 2020; 12:00 p.m. (EDT)

Public Call-In Information: Conference call-in number: 1–800–367–2403 and conference call 8864216.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–367–2403 and conference call 8864216. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–800–367–2403 and conference call 8864216.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written

comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: Connecticut FACA link; click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Monday, June 22, 2020 at 12:00 p.m. (EDT)

- Welcome and Introductions
- Presentation from USCCR
- Project Planning for its First Civil Rights Project
- Open Comment
- Adjournment

Dated: May 26, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–11666 Filed 5–29–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting via teleconference on Friday, June 19, 2020, at 2:00 p.m. Eastern Time, for the purpose of discussing civil rights issues in the state.

DATES: The meeting will be held on Friday, June 19, 2020, at 2:00 p.m. Eastern Time.

Public Call Information: Dial: 800–367–2403, Confirmation Code: 8377108.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll-free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at 202–618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call

Approval of April 14, 2020 minutes

Discussion: Civil Rights in Michigan

Public Comment

Adjournment

Dated: May 26, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–11661 Filed 5–29–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Generic Clearance Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Department of Commerce.

ACTION: Notice; request for comment.

SUMMARY: The Department of Commerce (DOC), as part of its commitment to improving customer service delivery, is announcing an opportunity for public comment on a new proposed Generic Clearance, ''Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)''. In accordance with the Paperwork Reduction Act of 1995 (PRA), we invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before July 31, 2020.

ADDRESSES: Submit comments identified by Information Collection 0690–NEW, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), by any of the following methods:

- *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.
- *E-Mail:* Department of Commerce PRA Clearance Officer at *PRAcomments@doc.gov,* Please reference OMB Control Number 0690–NEW A–11 Section 280 Improving Customer Experience.

Instructions: Please submit comments only and cite Information Collection 0690–NEW, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Amira Boland, Office of Management and Budget, 725 17th St. NW, Washington, DC 20006, or

via email to *amira.c.boland@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In March 2018, the Administration of President Trump launched the President's Management Agenda (PMA) and established new Cross-Agency Priority (CAP) Goals. Excellent service was established as a core component of the mission, service, stewardship model that frames the entire PMA, embedding a customer-focused approach in all of the PMA's initiatives. This model was also included in the 2018 update of the Federal Performance Framework in Circular A–11, ensuring 'excellent service' as a focus in future agency strategic planning efforts. The PMA included a CAP Goal on Improving Customer Experience with Federal Services, with a primary strategy to drive improvements within 25 of the nation's highest impact programs. This effort is supported by an interagency team and guidance in Circular A–11 requiring the collection of customer feedback data and increasing the use of industry best practices to conduct customer research.

This new request will enable the Department of Commerce to act in accordance with OMB Circular A–11 Section 280 to ultimately transform the experience of its customers to improve both efficiency and mission delivery, and increase accountability by communicating about these efforts with the public.

Commerce will collect, analyze, and interpret information gathered through this generic clearance to identify services' accessibility, navigation, and use by customers, and make improvements in service delivery based on customer insights gathered through developing an understanding of the user experience interacting with Government. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. DOC will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

All High Impact Service Providers listed at *https://www.performance.gov/cx/HISPList.pdf* are required to ask questions in these domains of their customers. However, all agencies are encouraged to conduct their customer experience measurement in line with these standard measures.

As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback. For the purposes of this collection, Federal customer experience will focus on real-time transaction-level measures.

The results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The Department of Commerce will only submit collections under this generic clearance if it meets the following conditions:

- The collections are voluntary.
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government.
- The collections are non-controversial and do not raise issues of concern to other Federal agencies.
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future.
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained.
- Information gathered is intended to be used for general service improvement and program management purposes.
- Upon agreement between OMB and the agency all or a subset of information may be released as part of A–11, Section 280 requirements only on *performance.gov.* Summaries of customer research and user testing activities may be included in public-facing customer journey maps.
- Additional release of data must be done coordinated with OMB.

These collections will allow for ongoing, collaborative, and actionable communications between the Agency, its customers and stakeholders, and OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

II. Method of Collection

The Department of Commerce will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions; and customer experience activities such as feedback surveys, focus groups, user testing, and in-person interviews. Department of Commerce may also utilize observational techniques to collect this information.

III. Data

OMB Control Number: 0690–NEW.

Form Number(s): None.

Type of Review: New.

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Estimated Number of Respondents: 752,925.

Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview or focus group.

Estimated Total Annual Burden Hours: 55,450.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Voluntary.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–11709 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2097]

Approval for Production Authority; Foreign-Trade Zone 158, MTD Consumer Group Inc. (Textile Grass-Catcher Bags), Verona, Mississippi

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing FTZs in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, has requested production authority on behalf of MTD Consumer Group Inc. (MTD), within FTZ 158 in Verona, Mississippi (B–20–2018, docketed April 4, 2018);

Whereas, notice inviting public comment has been given in the **Federal Register** (83 FR 15360, April 10, 2018 and 84 FR 32707, July 9, 2019) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restrictions listed below;

Now, therefore, the Board hereby orders:

The application for production authority under zone procedures within FTZ 158 on behalf of MTD, as described in the application and **Federal Register** notices, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to the following restrictions:

(1) The annual quantitative volume of textile grass-catcher bags that MTD may admit into FTZ 158 under non-privileged foreign status (19 CFR 146.42) is limited to no more than 2.3 million bags; and,

(2) the authority (with quantitative restriction) shall remain in effect for a period of five years from the date of approval by the Board.

Dated: May 26, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2020–11706 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–54–2020]

Approval of Subzone Status; Mitsubishi Electric Automotive America, Inc., Maysville, Kentucky

On April 2, 2020, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 47, requesting subzone status subject to the existing activation limit of FTZ 47, on behalf of Mitsubishi Electric Automotive America, Inc., in Maysville, Kentucky.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (85 FR 19726, April 8, 2020). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 47F was approved on May 26, 2020, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 47's 2,000-acre activation limit.

Dated: May 26, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–11707 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–32–2020]

Foreign-Trade Zone (FTZ) 277—Western Maricopa County, Arizona; Notification of Proposed Production Activity; Rauch North America, Inc. (Non-Alcoholic Beverages), Waddell, Arizona

Rauch North America, Inc. (RNA) submitted a notification of proposed production activity to the FTZ Board for its facility in Waddell, Arizona. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 15, 2020.

The RNA facility is located within FTZ 277. The facility is used for the production of energy drinks, soft drinks and other non-alcoholic beverages. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt RNA from customs duty payments on the foreign-status materials/components used in export production (estimated at five percent of production). On its domestic sales, for the foreign-status materials/components noted below, RNA would be able to choose the duty rates during customs entry procedures that apply to energy drinks, soft drinks and other non-alcoholic beverages (duty rate—0.2 cents/liter). RNA would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Powder mix

containing aspartame, acesulfame k and xanthan gum; powder mix containing sucralose, acesulfame k and xanthan gum; taurine crystals and crystalline powder; caffeine powder; liquid mixture for flavoring purposes containing flavor, alcohol and water; powder mix with taurine, caffeine and a mixture containing B vitamins; aluminum beverage cans; aluminum beverage can lids; aluminum beverage bottles; aluminum beverage bottle closures; citric acid; magnesium carbonate; foil (polymers of ethylene); coloring dyes: orange and blue; coloring agents of animal or vegetable origin: orange and purple; vitamin B2 (riboflavin); sodium citrate; neutral cloudifier additive containing gum and vegetable oil; and, tannic acid (duty rate ranges from duty free to 10%). The request indicates that citric acid and sodium citrate are subject to antidumping/countervailing duty (AD/CVD) orders if imported from certain countries. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). The request also indicates that certain materials/components are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is July 13, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: May 26, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–11708 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

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

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Applicable June 1, 2020.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–557–815	731–TA–1253	Malaysia	Steel Nails (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–523–808	731–TA–1254	Oman	Steel Nails (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–580–874	731–TA–1252	Republic of Korea	Steel Nails (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–552–818	731–TA–1257	Socialist Republic of Vietnam	Steel Nails (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
C–552–819	701–TA–521	Socialist Republic of Vietnam	Steel Nails (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–583–854	731–TA–1255	Taiwan	Steel Nails (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *https://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[6]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[7]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: May 26, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–11735 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See Temporary Rule Modifying AD/CVD Service Requirements Due to* COVID–19, 85 FR 29615 (May 18, 2020).

[7] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–108]

Ceramic Tile From the People's Republic of China: Antidumping Duty Order

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing an antidumping duty order on ceramic tile from the People's Republic of China (China).

DATES: Applicable June 1, 2020.

FOR FURTHER INFORMATION CONTACT: Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6312.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on April 7, 2020, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation of ceramic tile from China.[1] In addition, Commerce made an affirmative determination of critical circumstances, in part, pursuant to section 735(a)(3) of the Act, and 19 CFR 351.206.[2] On May 21, 2020, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of ceramic tile from China.[3] Further, the ITC determined that critical circumstances do not exist with respect to imports of ceramic tile from China.

Scope of the Order

The products covered by this order are ceramic tile from China. For a complete description of the scope of this order, *see* the appendix to this notice.

Antidumping Duty Order

On May 21, 2020, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of the LTFV imports of ceramic tile from China.[4] Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing this antidumping duty order. Because the ITC determined that imports of ceramic

[1] *See Ceramic Tile from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Partial Affirmative Critical Circumstances Determination,* 85 FR 19425 (April 7, 2020) (*Final Determination*).

[2] *Id.*

[3] *See* Letter to Jeffrey Kessler, Assistant Secretary of Commerce for Enforcement and Compliance, from David S. Johanson, Chairman of the U.S. International Trade Commission, dated May 21, 2020.

[4] *Id.*

tile from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of ceramic tile from China. Antidumping duties will be adjusted for export subsidies found in the final determination of the companion countervailing duty investigation.[5] Antidumping duties will be assessed on unliquidated entries of ceramic tile from China entered, or withdrawn from warehouse, for consumption on or after November 14, 2019, the date of publication of the *Preliminary Determination,*[6] but will not include entries occurring after the expiration of the provisional measures period and before publication in the **Federal Register** of the ITC's final injury determination under section 735(b) of the Act, as further described below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to reinstitute the suspension of liquidation of ceramic tile from China as described in the appendix to this notice, effective on the date of publication of the ITC's final determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 736(a)(1) of the Act, antidumping duties for each entry of the subject merchandise equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise, adjusted by the amount of export subsidies, where appropriate. We will also instruct CBP to require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit for each entry of subject merchandise equal to the rates noted below. These instructions suspending liquidation will remain in effect until further notice. The China-wide entity rate applies to all producers or exporters not specifically listed below.

BILLING CODE 3510–DS–P

[5] *See Final Determination,* 85 FR at 19433.

[6] *See Ceramic Tile from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination, and Postponement of Final Determination,* 84 FR 61877 (November 14, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM); *see also Ceramic Tile from the People's Republic of China: Notice of Correction to the Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 84 FR 68114 (December 13, 2019).

Exporter	Producer	Estimated Weighted-Average Dumping Margin (percent)	Cash Deposit Rate (Adjusted for Subsidy Offsets) (percent)
Anatolia Tile & Stone Inc.	Hubei ASA Ceramics Co., Ltd.	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd.	229.04	203.71
	Foshan Mona Decoration Material Co., Ltd. (DBA Guang Dong Bo Hua Ceramics Co., Ltd.)	229.04	203.71
	Heyuan Dongyuan Eagle Branch Ceramics Ltd.	229.04	203.71
	Foshan Gold Medal Ceramics International Trade Co., Ltd.	229.04	203.71
	Greens Patio Workshop Co., Ltd.	229.04	203.71
	Fujian Huatai Group Co., Ltd.	229.04	203.71
	Foshan Tianyao Ceramics Co., Ltd.	229.04	203.71
	Foshan Ibel Import and Export Ltd.	229.04	203.71
	Max Glory International Limited	229.04	203.71
	Foshan Leo Import and Export Trading Co., Ltd.	229.04	203.71
	Guangdong Mona Lisa Trading Co., Ltd.	229.04	203.71
	Foshan Amosa International Business Company	229.04	203.71
	Foshan Yonglie Export and Import Company Limited	229.04	203.71
	Elegance International Inc.	229.04	203.71

	Foshan International Trade Co., Ltd.	229.04	203.71
	Foshan Rhino Building Materials Co., Ltd.	229.04	203.71
	Foshan Romantic Ceramics Co., Ltd.	229.04	203.71
	Heyuan Romantic Ceramics Co., Ltd.	229.04	203.71
	Pingxiang Dacheng Ceramics Technology Co., Ltd.	229.04	203.71
	Jingdezhen Seed Ceramic Co., Ltd.	229.04	203.71
	Foshan Xinfu Imp. & Exp. Co., Ltd.	229.04	203.71
	Foshan Nah Hai Sky Glass Mosaic Limited	229.04	203.71
	Super Building Material Co., Ltd. (Xiamen)	229.04	203.71
	Foshan Tong Hai International Import and Export Trading Corporation Limited	229.04	203.71
	Rabbit Song Building Material Co., Ltd.	229.04	203.71
Avangarde Ceramiche	Fujian Nan'an Xinglong Ceramics Co., Ltd.	229.04	203.71
	Guangdong Jiajun Ceramics Co., Ltd.	229.04	203.71
Beijing Shiji Mingtai Inc.	Jinjiang Guoxing Ceramics Building Materials Co., Ltd.	229.04	203.71
	Fujian Honghua Group Co., Ltd	229.04	203.71
	Fujian Zhangzhou Jianhua Ceramics Co., Ltd.	229.04	203.71
	Foshan Dongpeng Ceramics Co., Ltd	229.04	203.71
	Fujian Huatai Group Co., Ltd	229.04	203.71
	Quanzhou Zhiran Ceramics Co., Ltd	229.04	203.71

	Quanzhou Yuanlong Building Materials Development Co., Ltd.	229.04	203.71
	Fujian Xindezhou Ceramics Co., Ltd	229.04	203.71
	Jinjiang Juntao Ceramics Industry Co., Ltd.	229.04	203.71
Bestview (Fuzhou) Import & Export Co. Ltd.	Foshan Lanyu Building Material Co. Ltd	229.04	203.71
	Tianjin Belite Ceramics Co., Ltd Foshan Branch	229.04	203.71
	Jingdezhen Leixi Building Material Factory	229.04	203.71
	Foshan Nanhai District Energy Building Material Co., Ltd	229.04	203.71
Buddy Mosaic Limited	Foshan Tanhua Building Material Co., Ltd.	229.04	203.71
China Stone Limited	Qingyuan MegaCera Ceramic Co., Ltd.	229.04	203.71
	Foshan Kovic Import and Export Co., Ltd.	229.04	203.71
Dongguan City Wonderful Ceramics Industrial Park Co., Ltd.	Dongguan City Wonderful Ceramics Industrial Park Co., Ltd.	229.04	203.71
Dongguan City Wonderful Decoration Materials Co., Ltd.	Dongguan City Wonderful Decoration Materials Co., Ltd.	229.04	203.71
Dox Building Materials Co., Limited	White Rabbit Ceramics Co., Ltd.	229.04	203.71
	Rabbit Song Building Material Co., Ltd.	229.04	203.71
Elegance International Inc.	Tegaote Ceramics Co., Ltd.	229.04	203.71
	Foshan Nanhai District Zhengbin New Materials Co., Ltd.	229.04	203.71
Everstone Industry (Qingdao) Co., Ltd.		229.04	203.71
Foshan Ant Buying Service Co., Ltd.	Foshan Xindonglong Ceramic Co., Ltd.	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co., Ltd.	229.04	203.71

	Heshan Heqiang Art China & Dinnerware Co., Ltd.	229.04	203.71
	Foshan Kingfer Building Material Co., Ltd.	229.04	203.71
	Luoding Junhua Ceramics Industrial Co., Ltd.	229.04	203.71
	Foshan Xinamei Material Co., Ltd.	229.04	203.71
	Foshan Be Tf Fu Decorative Material Co., Ltd.	229.04	203.71
	Foshan Verona Borde Co., Ltd.	229.04	203.71
	Jiangmen Xuri Ceramic Co., Ltd.	229.04	203.71
	Foshan Yongzhuo Material Co., Ltd.	229.04	203.71
	Sihui Jiefeng Material Co., Ltd.	229.04	203.71
	Foshan Caidian Material Co., Ltd.	229.04	203.71
Foshan Artist Ceramics Co., Ltd.	Sheng Taoju Ceramics	229.04	203.71
	Zhaoqing Langfeng Ceramics Co., Ltd.	229.04	203.71
	Zhong Rong Ceramic Building Materials Co., Ltd.	229.04	203.71
	Foshan Xindonglong Ceramic Co., Ltd.	229.04	203.71
	Guangxi Jinmen Building Material Co., Ltd.	229.04	203.71
	Fujian Lvdao Ecology Technology Co., Ltd.	229.04	203.71
	Guangdong Fangxiang Ceramic Co., Ltd.	229.04	203.71
	Foshan Nanhai Yuda Ceremics Co., Ltd.	229.04	203.71
	Xinxing County Jin Mali Ceramics Co., Ltd.	229.04	203.71
	Foshan Chancheng Lijiahua Ceramics Co., Ltd.	229.04	203.71

	Oyg Glass Spar Decoration Materials Co., Ltd.	229.04	203.71
Foshan Dongpeng Ceramic Co., Ltd.	Qingyuan Nafuna Ceramics Co., Ltd.	229.04	203.71
	Fengcheng Dongpeng Ceramics Co., Ltd.	229.04	203.71
	Lixian Xinpeng Ceramic Co., Ltd.	229.04	203.71
	Foshan Donghuashengchang New Material Co., Ltd.	229.04	203.71
Foshan Dongxin Economy And Trade Co., Ltd.	Zhangzhou Aoli Ceramic Development Co., Ltd.	229.04	203.71
Foshan Eiffel Ceramic Co., Ltd.	Foshan Bubuking Decorating Techniques Co., Ltd.	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd.	229.04	203.71
	Qingyuan Baoshima Ceramics Co., Ltd.	229.04	203.71
Foshan Eminent Industry Development Co., Ltd.	Foshan Huanqiu Ceramics Co., Ltd.	229.04	203.71
Foshan Everstone Import & Export Co., Ltd.	Foshan Gani Ceramics Co., Ltd.	229.04	203.71
Foshan Gani Ceramics Co., Ltd.	Qingyuan Gani Ceramics Co., Ltd.	229.04	203.71
Foshan Gold Medal Ceramics International Trade Co., Ltd.	Guangdong Goldmedal Ceramics Co., Ltd.	229.04	203.71
Foshan Griffiths Building Material Ltd.	Foshan Lihua Ceramics Co., Ltd.	229.04	203.71
Foshan Hudson Economics And Trade Co., Ltd.	Guangdong Kito Ceramics Group Co., Ltd.	229.04	203.71
	Foshan Shiwan Eagle Brand Ceramic Co., Ltd.	229.04	203.71
	Guangdong Overland Ceramics Co., Ltd.	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd.	229.04	203.71
	Foshan Yuanmei Craft Ceramics Factory	229.04	203.71

	Foshan City Nanhai Junhong Ceramic Decoration Material Co., Ltd.	229.04	203.71
Foshan Atpalas Ceramics Co., Ltd.	Foshan Yuanzhen Building Materials Co., Ltd.	229.04	203.71
Foshan CTC Group Co., Ltd.	Guangdong Jiajun Ceramics Co., Ltd.	229.04	203.71
Foshan Disong Trading Co., Ltd.	Zhaoqing Xinciyu Ceramics Co., Ltd.	229.04	203.71
Foshan Dolphin Trading Co., Ltd.	Foshan Shiwan Yulong Ceramic Co., Ltd.	229.04	203.71
	Si Hui Jiefeng Decoration Materials Co., Ltd.	229.04	203.71
	Dongguan City Wonderful Ceramics Industrial Park Co., Ltd.	229.04	203.71
	Luoding Junhua Ceramics Industrial Co., Ltd.	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd.	229.04	203.71
	Kaiping Tilee's Building Materials Co., Ltd.	229.04	203.71
	Zhuhai Xuri Ceramics Co., Ltd.	229.04	203.71
	Foshan Top Black Ceramics Co., Ltd.	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd.	229.04	203.71
	Heyuan Romantic Ceramics Co., Ltd.	229.04	203.71
	Guangdong Xiejin Ceramics Co., Ltd.	229.04	203.71
	Liling Dolphin Ceramics Co., Ltd.	229.04	203.71
	Foshan Oceano Ceramics Co., Ltd.	229.04	203.71
	Kaiping Lihang Building Materials Co., Ltd.	229.04	203.71
	Hunan Tianxin Technology Co., Ltd.	229.04	203.71

	Foshan Nanhai Yuheng Decorative Material Co., Ltd.	229.04	203.71
	Guangzhou Cowin New Materials Co., Ltd.	229.04	203.71
	Guangdong Kito Trading Co., Ltd.	229.04	203.71
Foshan International Trade Co., Ltd.	Foshan B&W Ceramics Co., Ltd.	229.04	203.71
	Fogang Tongqing Ceramics Co., Ltd.	229.04	203.71
Foshan Junjing Industrial Co., Ltd.	Guangdong Jialian Enterprise Ceramics Co., Ltd.	229.04	203.71
	Foshan Jinhong Ceramics Co., Ltd.	229.04	203.71
	Foshan Jinyi Ceramics Co., Ltd.	229.04	203.71
	Foshan Nanhai Longpeng Vitrified Brick Co., Ltd.	229.04	203.71
	Foshan Chancheng Oldenburg Ceramics Co., Ltd.	229.04	203.71
	Fujian Nan'an Baoda Building Material Co., Ltd.	229.04	203.71
	Guangdong Baiqiang Ceramics Co., Ltd.	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd.	229.04	203.71
	Foshan Huicheng Building Material Co., Ltd.	229.04	203.71
	Foshan Jialeshi Building Material Co., Ltd.	229.04	203.71
	Guangdong Jiamei Ceramics Co., Ltd.	229.04	203.71
	Jiangxi Shiwan Global Ceramics Co., Ltd.	229.04	203.71
	Xinxing County Jinmaili Ceramics Co., Ltd.	229.04	203.71
	Foshan Lailida Building Material Co., Ltd.	229.04	203.71

	Fujian Mingsheng Ceramic Development Co., Ltd.	229.04	203.71
	Foshan Qiangshengda Building Material Co., Ltd.	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd.	229.04	203.71
	Guangdong Xiejin Ceramics Co., Ltd	229.04	203.71
	Qingyuan Xinjinshan Ceramics Co., Ltd.	229.04	203.71
	Sihui Quanquan Ceramics Co., Ltd.	229.04	203.71
	Enping Xiangda Ceramics Co., Ltd.	229.04	203.71
	Foshan Xinhenglong Polishing Brick Co., Ltd.	229.04	203.71
	Enping Xinjincheng Ceramics Co., Ltd.	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd.	229.04	203.71
	Foshan Shiwan Yulong Ceramics Co., Ltd.	229.04	203.71
	Jiangmen Xinxingwei Building Material Co., Ltd.	229.04	203.71
	Jinjiang Zhongrong Ceramic Building Material Co., Ltd.	229.04	203.71
Foshan Kiva Ceramics Co., Ltd.	Guangdong Xinruncheng Ceramic Co., Ltd.	229.04	203.71
	Foshan Nanhai Yuda Ceramic Co., Ltd.	229.04	203.71
	Guangdong Shenghui Ceramic Co., Ltd.	229.04	203.71
	Guangdong Kito Ceramic Trading Co., Ltd.	229.04	203.71
	Zhaoqing Jincheng Ceramic Co., Ltd.	229.04	203.71
	Guangdong Yongsheng Ceramic Co., Ltd.	229.04	203.71
	Foshan Jialeshi Building Materials Co., Ltd.	229.04	203.71

	Guangxi Yaou Ceramics Co., Ltd.	229.04	203.71
	Foshan Nanhai Xinya Ceramic Co., Ltd.	229.04	203.71
Foshan Leo Import and Export Trading Co., Ltd.	Foshan Jingmeida Ceramics Procuct Co., Ltd.	229.04	203.71
	Fujian Yuekai Building Materials Industry Co., Ltd.	229.04	203.71
	Guangxi Hengxi Building Materials Co., Ltd.	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co., Ltd.	229.04	203.71
	Chaoyang Rongfu Ceramics Co., Ltd.	229.04	203.71
	Xianning Xianzhuanjiang Building Materials Co., Ltd.	229.04	203.71
	Jiangxi Jingcheng Ceramics Co., Ltd.	229.04	203.71
	Jiangxi Wifi Ceramics Co., Ltd.	229.04	203.71
	Guangdong Jiajun Ceramics Co., Ltd.	229.04	203.71
	Foshan Giania Ceramics Co., Ltd.	229.04	203.71
Foshan Ligaote Ceramics Co., Ltd.	Foshan Ligaote Ceramics Co., Ltd.	229.04	203.71
Foshan Livin Ceramics Co., Ltd.	Zhaoqing Jinhang Ceramics Co., Ltd.	229.04	203.71
	Cenxi Lianchuang Ceramics Co., Ltd.	229.04	203.71
Foshan Mainland Import and Export Co., Ltd.	Fujian Nanan Baoda Building Materials Co., Ltd.	229.04	203.71
	Fujian Jinjiang Baoda Ceramics Co., Ltd.	229.04	203.71
	Nan'an Xiejin Building Material Commercial Firm	229.04	203.71
	Nan'an Xiejin Building Materials Co., Ltd.	229.04	203.71

	Fujian Honghua Group Co., Ltd.	229.04	203.71
	Fujian Xindezhou Ceramics Co., Ltd.	229.04	203.71
Foshan Medici Building Material Co., Ltd	Chaoyang Rongfu Ceramic Tile Co., Ltd.	229.04	203.71
	Jianping Jinzheng Ceramic Tile Co., Ltd.	229.04	203.71
	Fujian Yuekai Building Material Co., Ltd.	229.04	203.71
	Fuzhou Hengyu Ceramic Tile Co., Ltd.	229.04	203.71
	Fujian Minqing Ouya Ceramic Tile Co., Ltd.	229.04	203.71
	Foshan Lazio Building Material Co., Ltd.	229.04	203.71
	Zhaoqing Gaoyao Guangfu Ceramic Tile Co., Ltd.	229.04	203.71
Foshan Muzzi Decor And Tile Co., Ltd.	Pingxiang Dacheng Ceramics Technologies Co., Ltd.	229.04	203.71
Foshan Oceanland Ceramics Co., Ltd.	Foshan Super Ceramics Co., Ltd.	229.04	203.71
	Qingyuan Baoshima Ceramic Co., Ltd.	229.04	203.71
	Xinxing Jianxing Ceramics Co., Ltd.	229.04	203.71
	Enping Quansheng Ceramics Co., Ltd.	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd.	229.04	203.71
Foshan Paramount Import and Export Co., Ltd.	Foshan Ligaote Ceramics Co., Ltd.	229.04	203.71
	Foshan Nanhai District Energy Building Material Co., Ltd.	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co., Ltd.	229.04	203.71
	Luoding Junhua Ceramics Industrial Co., Ltd.	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd.	229.04	203.71

Foshan Porcelain Plaza Trading Co., Ltd.	Foshan Ottima Ceramic Co., Ltd.	229.04	203.71
	Foshan Dongpeng Ceramic Co., Ltd.	229.04	203.71
	Jinjiang City Zhongrong Ceramic Building Material Co., Ltd.	229.04	203.71
	Foshan Bannilu Ceramic Co., Ltd.	229.04	203.71
	Foshan Yibaiwang Building Material Co., Ltd.	229.04	203.71
Foshan Qualicer Industrial Co., Ltd.	Guangzhou Cowin New Materials Co., Ltd.	229.04	203.71
Foshan Rainbow Color Export & Import Co., Ltd.	Foshan Baleno Ceramic Co., Ltd.	229.04	203.71
	Foshan Ligaote Ceramic Co., Ltd.	229.04	203.71
	Heshan Heqiang Art China & Dinnerware Co., Ltd.	229.04	203.71
	Jiangmen Xuri Ceramic Co., Ltd.	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co., Ltd.	229.04	203.71
	Foshan Jingmeida Ceramic Products Co., Ltd.	229.04	203.71
Foshan Rhino Building Materials Co., Ltd.	Guangdong Gold Medal Ceramics Co., Ltd.	229.04	203.71
	Chaoyang Rong Fu Ceramic Co., Ltd.	229.04	203.71
Foshan Romantic Ceramics Co., Ltd.	Heyuan Romantic Ceramics Co., Ltd.	229.04	203.71
	Pingxiang Dacheng Ceramics Technology Co., Ltd.	229.04	203.71
Foshan Saiguan Import & Export Co., Ltd	Saifei (Guangdong) New Materials Co., Ltd.	229.04	203.71
FoShan San Honore Imp & Exp Co., Ltd.	Quanzhou Zhiran Ceramics Company Ltd.	229.04	203.71
	Fujian Zunwei Ceramics Company Ltd.	229.04	203.71
Foshan Sanden Enterprise Co., Ltd.	Tegaote Ceramics Co., Ltd.	229.04	203.71

	Zhaoqing Langfeng Ceramics Co., Ltd.	229.04	203.71
	Guangzhou Cowin New Materials Co., Ltd.	229.04	203.71
	Foshan Chengke New Material Co., Ltd.	229.04	203.71
	Foshan Jingmeida Ceramics Co., Ltd.	229.04	203.71
Foshan Shangking Group Co., Ltd.	Guangdong Qianghui (QHTC) Ceramics Co., Ltd.	229.04	203.71
Foshan Shiwan Yulong Ceramic Co., Ltd.	Foshan Shiwan Yulong Ceramic Co., Ltd.	229.04	203.71
Foshan Sincere Building Materials Co., Ltd	Foshan City Lihua Ceramic Co., Ltd.	229.04	203.71
	Enping City Huachang Ceramic Co., Ltd.	229.04	203.71
Foshan Soaraway Industrial Co., Ltd.	Foshan Shiwan Yulong Ceramic Co., Ltd.	229.04	203.71
	Foshan Tai-Decor Decoraiton Materials Co., Ltd.	229.04	203.71
Foshan Sumso Construction Materials Co., Ltd	Foshan Laili Ceramics Co., Ltd.	229.04	203.71
Foshan Sundare Building Materials Co., Ltd.	Foshan Qingyuan Baoshima Co., Ltd.	229.04	203.71
	Foshan New Henglong Polished Tiles Co., Ltd.	229.04	203.71
	Foshan Nanhai Xinyiya Decoration Materials Co., Ltd.	229.04	203.71
Foshan Sunvin Ceramics Co., Ltd.	Sihui Jie Feng Decoration Materials Co., Ltd.	229.04	203.71
Foshan Tbs Trading Co., Ltd.	Foshan Jiameisheng Ceramic Co., Ltd.	229.04	203.71
	Qingyuan Xinjinshan Ceramics Co., Ltd.	229.04	203.71
	Zhuhai Xuri Ceramics Co., Ltd.	229.04	203.71
	Foshan Elephome Ceramics Co., Ltd.	229.04	203.71
	Jinjiang Zhongrong Ceramics Of Build Material Co., Ltd.	229.04	203.71

	Quanzhou Yuanlong Building Materials Development Co., Ltd.	229.04	203.71
	Fujian Honghua Group Co., Ltd.	229.04	203.71
	Foshan Nanhai Jinzhilan Decoration Material Co., Ltd.	229.04	203.71
	Jinjiang Guoxing Ceramic Building Material Co., Ltd.	229.04	203.71
	Guangdong Yongsheng Ceramics Co., Ltd.	229.04	203.71
	Heyuan Romanic Ceramics Co., Ltd.	229.04	203.71
	Zhaoqing Jinhang Ceramics Co., Ltd.	229.04	203.71
	Foshan Yibao Ceramics Co., Ltd.	229.04	203.71
	Qingyuan Ouya Ceramic Co., Ltd.	229.04	203.71
	Foshan Top Black Ceramics Co., Ltd.	229.04	203.71
	Guangdong Jialian Enterprise Ceramics Co., Ltd.	229.04	203.71
	Sihui City Xin Quan Ye Ceramics Co., Ltd.	229.04	203.71
	Guangdong Hemei Ceramic Co., Ltd.	229.04	203.71
	Fujian Jinjiang Lianxing Building Materials Co., Ltd.	229.04	203.71
	Foshan New Yidian Ceramic Co., Ltd.	229.04	203.71
Foshan Tianyao Ceramics Co., Ltd	Guangdong Sihui Kedi Ceramics Co., Ltd.	229.04	203.71
Foshan Uni-Depot Porcelanico Co., Ltd.	Guangdong Tianbi Ceramicsco., Ltd.	229.04	203.71
Foshan United Export Co., Ltd.	Guangdong Shenghui Ceramics Co., Ltd.	229.04	203.71
	Guangdong Zhongsheng Ceramics Co., Ltd.	229.04	203.71
	Fujian Honghua Group Co., Ltd.	229.04	203.71

	Guangdong Godbet Ceramics Co., Ltd.	229.04	203.71
	Fujian Nan'an Baoda Building Material Co. Ltd.	229.04	203.71
	Zhangzhou City Aoli Ceramic Development Co., Ltd.	229.04	203.71
Foshan Viewgres Co., Ltd.	Guangdong Bohua Ceramics Co., Ltd.	229.04	203.71
	Shandong Tongyi Ceramics Science & Technology Co., Ltd.	229.04	203.71
	Shandong Green Ceramics Co., Ltd.	229.04	203.71
	Ginca Ceramics Co., Ltd.	229.04	203.71
	Xiejin Ceramics Co., Ltd.	229.04	203.71
	Foshan Yigao Ceramic Co., Ltd.	229.04	203.71
	Enping City Huachang Ceramic Company Limited	229.04	203.71
	Guangzhou Cowin New Materials Co., Ltd.	229.04	203.71
	Kaiping Kunen Building Materials Co., Ltd.	229.04	203.71
Foshan Walton Building Materials Co., Ltd	Belite Ceramics (Anyang) Co., Ltd.	229.04	203.71
	Lianxing Ceramics Co., Ltd.	229.04	203.71
	Foshan Yibao Ceramics Co., Ltd.	229.04	203.71
	Foshan Gaosheng Building Materials Co., Ltd.	229.04	203.71
	Foshan Shiwan Eagle Brand Ceramic Co., Ltd.	229.04	203.71
	Xingning Toscana Ceramics Co., Ltd.	229.04	203.71
Foshan Winbill Trading Company Limited	Guangdong Yonghang Advanced Materials Industrial Co., Ltd	229.04	203.71

Foshan Yinghui Industrial Co., Ltd.	Heshan Heqiang Art China & Dinnerware Co., Ltd.	229.04	203.71
Fujian Minmetals Cbm Co., Ltd.	Fujian Minqing Ouya Ceramic Tile Co., Ltd	229.04	203.71
	Xinxing Jianxing Ceramics Co., Ltd.	229.04	203.71
	Tianjin Belite Ceramics Co., Ltd. Foshan Branch	229.04	203.71
Fujian Minqing Hao Ye Ceramics Co., Ltd	Fujian Minqing Hao Ye Ceramics Co., Ltd.	229.04	203.71
Fuzhou Shuangxin Ceramic Co., Ltd	Fujian Xindezhou Ceramic Co., Ltd	229.04	203.71
	Fujian Nan'an Baoda Building Material Co., Ltd.	229.04	203.71
	Fujian Zhuangyi Building Material Co., Ltd.	229.04	203.71
	Zhangzhou Aoli Ceramic Development Co., Ltd.	229.04	203.71
Gearex Corporation	Kaiping Tilee's Building Materials Co., Ltd.	229.04	203.71
	Foshan Oceano Ceramics Co., Ltd.	229.04	203.71
	Jingdezhen Oceano Ceramics Co., Ltd.	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd.	229.04	203.71
	Foshan Kioro Trade Co., Ltd.	229.04	203.71
	Zhaoqing Xinhe Ceramics Co., Ltd.	229.04	203.71
	Fogang Tongqing Ceramics Co., Ltd.	229.04	203.71
	Foshan Bolier Building Materials Co., Ltd.	229.04	203.71
	Guandong Kasor Ceramics Technology Co., Ltd.	229.04	203.71
	Max Glory International Ltd.	229.04	203.71
	Rongfu Ceramics Co., Ltd.	229.04	203.71

	Tegaote Ceramics Co., Ltd.	229.04	203.71
	Elegance International Inc.	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co., Ltd.	229.04	203.71
	Foshan Top-Black Ceramic Co., Ltd.	229.04	203.71
	Kim Hin Ceramics (Shanghai) Co., Ltd.	229.04	203.71
	Jiangxi Province Shiwan Huanqiu Ceramics Co., Ltd.	229.04	203.71
	Foshan Huanqiu Ceramics Co., Ltd.	229.04	203.71
	Foshan Leo Import And Export Trading Co., Ltd.	229.04	203.71
	Gearex Technical Ceramic Kun Shan Co., Ltd.	229.04	203.71
Global Trading Co., Ltd.	Guangdong Kito Ceramic Trading Co., Ltd.	229.04	203.71
Guangdong Bode Fine Building Material Co.	Guangdong Bode Fine Building Material Co.	229.04	203.71
Guangdong Jiajun Ceramics Co., Ltd.	Guangdong Jiajun Ceramics Co., Ltd.	229.04	203.71
Guangdong Jiamei Ceramics Co., Ltd.	Guangdong Jiamei Ceramics Co., Ltd.	229.04	203.71
Guangdong Jinying Import & Export Co., Ltd.	Guangdong Sheng Hui Ceramics Co., Ltd.	229.04	203.71
	Xingning Toscana Ceramics Co., Ltd.	229.04	203.71
	Guangdong Jialian Enterprise Ceramics Co., Ltd.	229.04	203.71
	Jiangxi Shiwan Huanqiu Ceramics Co., Ltd.	229.04	203.71
Guangdong Kito Ceramics Group Co., Ltd.	Jingdezhen Kito Ceramic Co., Ltd.	229.04	203.71
	Foshan Sanshui Kito Ceramic Co., Ltd.	229.04	203.71
	Guangdong Gold Medal Ceramics Co., Ltd.	229.04	203.71
Guangdong Monalisa Trading Co., Ltd.	Monalisa Group Co., Ltd.	229.04	203.71

Guangdong Overland Ceramics Co., Ltd.	Guangdong Overland Ceramics Co., Ltd.	229.04	203.71
Guangdong Winto Ceramics Co., Ltd.	Guangdong Homeway Ceramics Co., Ltd.	229.04	203.71
Hangzhou Nabel China Co., Ltd	Deqing Nabel Co., Ltd.	229.04	203.71
Heyuan Dongyuan Eagle Brand Ceramic Co., Ltd.	Heyuan Dongyuan Eagle Brand Ceramic Co., Ltd.	229.04	203.71
Hoe Hin Building Materials Co., Limited	Foshan liangjian ceramics Co., Limited	229.04	203.71
	Guangdong Bode Fine Building Material	229.04	203.71
	Kaipingkunenbuilding Materials Co., Ltd.	229.04	203.71
	Zhaoqing Langfeng Ceramics Co., Ltd.	229.04	203.71
	Kaiping Tilee's Building Materials Co.	229.04	203.71
	Foshan Shanghui decoration material Co., Ltd.	229.04	203.71
	Tegaote Ceramics Co., Ltd	229.04	203.71
	Fogang Tongqing Ceramics Co., Ltd.	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd.	229.04	203.71
	Guangdong Simpire Building Material Co., Ltd.	229.04	203.71
	Foshan Newyidian Ceramic Co., Ltd	229.04	203.71
	Foshan Shiwan Yulong Ceramic Co; Ltd.	229.04	203.71
Hong Kong Kito Cerarnic Co., Limited	Guangdong Kito Ceramics Group Co., Ltd.	229.04	203.71
	Jingdezhen Kito Ceramic Co., Ltd.	229.04	203.71
	Foshan Sanshui Kito Ceramic Co., Ltd.	229.04	203.71
	Guangdong Gold Medal Ceramics Co., Ltd.	229.04	203.71

JDD Industry Co., Limited	Guangdong KITO Ceramics Group Co., Ltd.	229.04	203.71
	Guangdong KITO Trading Co., Ltd.	229.04	203.71
	Guangdong Bode Fine Building Material Co., Ltd.	229.04	203.71
	White Rabbit Ceramics Co., Ltd.	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd.	229.04	203.71
	Heyuan Dongyuan Eagle Brand Ceramic Co., Ltd.	229.04	203.71
	Enping Jingye Ceramic Co., Ltd.	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd.	229.04	203.71
	Zhaoqing Guoshi Enterprise Mingjia Ceramics Co., Ltd.	229.04	203.71
	Fogang Tongqing Ceramics Co., Ltd.	229.04	203.71
	Guangdong Overland Ceramics Co., Ltd.	229.04	203.71
	Dongguan City Wonderful Ceramics Industrial Park Co., Ltd.	229.04	203.71
	Dongguan City Wonderful Decoration Materials Co., Ltd.	229.04	203.71
	Guangdong Jiamei Ceramics Co., Ltd.	229.04	203.71
	Jiangxi Hemei Ceramics Co., Ltd.	229.04	203.71
	GuangDong Simpire Building Materials Co., Ltd.	229.04	203.71
	Fujian Chaosheng Ceramics Co., Ltd.	229.04	203.71
	Guangdong Tianbi Ceramics Co., Ltd.	229.04	203.71
Jiangxi Wifi Ceramics Co., Ltd.	Jiangxi Sun Ceramics Co., Ltd.	229.04	203.71

Jingdezhen Kito Ceramic Co., Ltd.	Jingdezhen Kito Ceramic Co., Ltd.	229.04	203.71
	Guangdong Gold Medal Ceramic Co., Ltd.	229.04	203.71
Jingdezhen Seed Ceramic Co., Ltd.	Jingdezhen Seed Ceramic Co., Ltd.	229.04	203.71
Kaiping City China Trade Import & Export Co., Ltd	Kaiping Tilee's Building Materials Co., Ltd.	229.04	203.71
Kertiles (Foshan) Inc.	Guangdong Shenghui Ceramics Co., Ltd.	229.04	203.71
	Bite Mosaic Co., Ltd.	229.04	203.71
	Foshan Nanhai Suode Mosaic Co., Ltd.	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd.	229.04	203.71
	Foshan Jialeshi Building Co., Ltd.	229.04	203.71
	Foshan Lailida Ceramics Co., Ltd.	229.04	203.71
	Love Song Mosaic Co., Ltd.	229.04	203.71
	Linyi Aoda Ceramic Co., LTD.	229.04	203.71
	Toptiles International Shangdong Limited	229.04	203.71
	Linyi Lianshun Cermaics Co., Ltd.	229.04	203.71
	Foshan Nanhai Yuda Ceramics Co., Ltd.	229.04	203.71
	Guangdong Yonghang New Materials Industry Co., Ltd.	229.04	203.71
	Guangdong Yongsheng Ceramics Co., Ltd.	229.04	203.71
	Foshan Viewgres Co., Ltd.	229.04	203.71
	Shandong Lion king Ceramics Science & Technology Company., Ltd.	229.04	203.71
	Quanzhou Minmetals Huayi Trading Co., Ltd.	229.04	203.71
	Heyuan Dongyuan Eagle Brand Ceramics Co., Ltd.	229.04	203.71

	Foshan Liangjian Ceramics Co., Ltd.	229.04	203.71
	Foshan Bull Ceramics Co., Ltd.	229.04	203.71
	Foshan Huiya Ceramics Co., Ltd.	229.04	203.71
	Foshan Jinmali Ceramics Co., Ltd.	229.04	203.71
	Shandong Qidu Ceramics Co., Ltd.	229.04	203.71
	Shandong Jiabao Ceramics Co., Ltd.	229.04	203.71
	Foshan Huan Qiu Ceramics	229.04	203.71
	Jiangmen Xuri Ceramics Co., Ltd.	229.04	203.71
Kim Hin Ceramics (Shanghai) Co., Ltd.	KIM HlN CERAMICS (SHANGHAI) CO., LTD.	229.04	203.71
McMarmocer Ceramics Limited	Guangdong Overland Ceramics Co., Ltd.	229.04	203.71
	Guangdong Yonghang New Materials Industry Co., Ltd.	229.04	203.71
	Guangdong Owenlai Ceramics Co., Ltd.	229.04	203.71
	Guangdong High Microcrystal Technology Co., Ltd.	229.04	203.71
	Foshan Shiwan Yulong Ceramics Co., Ltd.	229.04	203.71
Megacera Incorporation Limited	Foshan Giance Trading Co., Ltd.	229.04	203.71
	Foshan Accuwealth Trading Co., Ltd.	229.04	203.71
Modern Home Ceramics Co., Limited	Zibo Fengxia Ceramics Co., Ltd.	229.04	203.71
	Zibo Jin Yi Ceramics Co., Ltd.	229.04	203.71
Nanning Ying Jin Ling Trade Co., Ltd.	Saifei (Guangdong) New Materials Co., Ltd.	229.04	203.71
	Guangdong Fuqiang Ceramic Co., Ltd.	229.04	203.71

	Foshan Rongyi Construction Materials Co., Ltd.	229.04	203.71
	Foshan Cizun Ceramics Co., Ltd.	229.04	203.71
	Guangdong Xie Jin Ceramics Co., Ltd.	229.04	203.71
New Zhong Yuan Ceramics Import&Export Co., Ltd. of Guangdong	Southern Building Materials and Sanitary Co., Ltd of Qingyuan City	229.04	203.71
	Guangdong Luxury Micro-Crystal Stone Technology Co., Ltd.	229.04	203.71
	Jiangxi Fuligao Ceramics Co., Ltd.	229.04	203.71
	Hubei Baojiali Ceramics Co., Ltd.	229.04	203.71
Porschelain Building Materials Co., Ltd.	Guangdong Gold Medal Ceramics Co., Ltd.	229.04	203.71
Qingdao Oriental Bright Trading Co., Ltd.	Zibo Fengxia Ceramics Co., Ltd.	229.04	203.71
	Zibo Jin Yi Ceramics Co., Ltd.	229.04	203.71
Quanzhou Lans Ceramic Products Co., Ltd	Fujian Tilechina Industrial Co., Ltd.	229.04	203.71
	Quanzhou Yuanlong Building Materials Development Co., Ltd.	229.04	203.71
	Fujian Likai Ceramic Co., Ltd.	229.04	203.71
	Fujian Jinjiang Jincheng Ceramics Co., Ltd.	229.04	203.71
Rabbit Song Building Material Co., Ltd.	White Rabbit Ceramics Co., Ltd.	229.04	203.71
Shandong Kingstone Ceramics Co., Ltd.	Shandong Lianzhong Ceramics Co., Ltd.	229.04	203.71
	Shandong Shunwei Ceramics Co., Ltd.	229.04	203.71
	Zibo Xinyijin Ceramic Technology Co., Ltd.	229.04	203.71
Shanghai Gaudimila Import & Exporter Co., Ltd.	Shanghai Gaudimila Construction Materials Co., Ltd.	229.04	203.71

Sinorock (Jiangxi) Co., Ltd	Fujian Huatai Group Co., Ltd.	229.04	203.71
Stota Ceramics Co., Ltd.	Xingning Toscana Ceramics Co., Ltd.	229.04	203.71
	Foshan Xinyidian Colored Ceramics Co.,Ltd.	229.04	203.71
	Foshan Sanshui Kaililai Craft Products Co., Ltd.	229.04	203.71
	Gaoyao Tegaote Chinaware Co., Ltd.	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd.	229.04	203.71
	Foshan Yitao Building Materials Co., Ltd.	229.04	203.71
	Foshan Hangxin Building Materials Co., Ltd.	229.04	203.71
	Foshan Saize Decorative Materials Co., Ltd.	229.04	203.71
	Foshan Nanhai Suode Glass Technics Co., Ltd.	229.04	203.71
	Jiangmen Huatao Ceramics Co., Ltd.	229.04	203.71
Temgoo International Trading Limited	Xinxing Jianxing Ceramics Co., Ltd.	229.04	203.71
	Xinxingxian Yinghao Ceramics Co., Ltd.	229.04	203.71
	Zhaoqingshi Gaoyaoqu Xingda Ceramics Co., Ltd.	229.04	203.71
	Foshan Skyplanet Import & Export Co., Ltd.	229.04	203.71
The Tile Shop (Beijing) Trading Company, Ltd.	Belite Ceramics (Anyang) Co., Ltd.	229.04	203.71
	Foshan Xindonglong Ceramic Co., Ltd	229.04	203.71
	Quality Tile Co., Ltd.	229.04	203.71
Super Building Material Co., Ltd. (Xiamen)	Xiamen Aidi Building Materials Industry Co., Ltd.	229.04	203.71
	Zhangzhou Sage Building Material Technology Co., Ltd.	229.04	203.71

	Zhangzhou Huitai Building Materials Technology Co., Ltd.	229.04	203.71
	Quanzhou Zhengyifang Ceramic Technology Co., Ltd	229.04	203.71
	Foshan Nanhai Meitian Glass Technology Co., Ltd.	229.04	203.71
	Yunfu Jiapeng Stone Co., Ltd.	229.04	203.71
	Foshan Debang Building Material Co., Ltd.	229.04	203.71
	Foshan Longjing Decoration Materials Co., Ltd.	229.04	203.71
Yekalon Industry Inc.	Fujian Minqing Tenglong Ceramics Co., Ltd.	229.04	203.71
	Romantic Ceramics Co., Ltd.	229.04	203.71
	Foshan Shiwan Eagle Brand Ceraminc Ltd.	229.04	203.71
	Fujian Hongxing Ceramic Development Co., Ltd.	229.04	203.71
	Fujian Zhangzhou Ruicheng Ceramics Co., Ltd.	229.04	203.71
	Foshan Nanhai District Traven Development Decorative Tiles Co., Ltd.	229.04	203.71
	Foshan Czun Ceramics Co., Ltd.	229.04	203.71
	Foshan Qiangguan Building Materials Co., Ltd.	229.04	203.71
	Foshan Jiana Ceramics Co., Ltd.	229.04	203.71
	Foshan GIANIA Ceramics	229.04	203.71
	Guangdong Shenghui Ceramics Co., Ltd.	229.04	203.71

	Foshan Tai-Decor Decoration Materials Co., Ltd.	229.04	203.71
	Fujian Minqing Jintao Ceramic Co., Ltd.	229.04	203.71
	Foshan Lihua Ceramics Co., Ltd.	229.04	203.71
	Xingning Toscana Ceramics Co., Ltd.	229.04	203.71
	Foshan Nanhai Shengguan Building Materials Co., Ltd.	229.04	203.71
	Jinjiang Zhongrong Ceramic Building Material Co., Ltd.	229.04	203.71
	Foshan Yangguang Ceramics Co., Ltd.	229.04	203.71
	Xindonglong Ceramices Co., Ltd.	229.04	203.71
	Jinshajiang Ceramics Co., Ltd.	229.04	203.71
	Enping Yijian Ceramics Co., Ltd.	229.04	203.71
	Jiangmen Huatao Ceramic Co., Ltd.	229.04	203.71
	Guangdong Jialian Enterprise Ceramics Co., Ltd.	229.04	203.71
	Guangdong Xinruncheng Ceramics Co., Ltd.	229.04	203.71
	Fujian Huatai Group Co., Ltd.	229.04	203.71
	Fujian Honghua Group Co., Ltd.	229.04	203.71
	Guangdong Yonghang New Materials Industry Co., Ltd.	229.04	203.71
	Jiangxi Jingcheng Ceramics Co., Ltd.	229.04	203.71
	Zhaoqing Langfeng Ceramics Co., Ltd.	229.04	203.71
	Foshan Top-Black Ceramic Co., Ltd.	229.04	203.71
	Zhaoqing Xinhe Ceramics Co., Ltd.	229.04	203.71

Yingfei International Limited	Foshan Shuangou Ceramics Co., Ltd.	229.04	203.71
Foshan Yinghui Industrial Co., Ltd.	Heshan Heqiang Art China & Dinnerware Co., Ltd.	229.04	203.71
Zhuhai Xuri Star Trading Co., Ltd.	Zhuhai City Doumen District Xuri Pottery and Porcelain Company Limited	229.04	203.71
Zi Bo Teng Chen International Trade Co., Ltd.	Zibo Jinhao Ceramics Co., Ltd.	229.04	203.71
	Shandong Yuan Feng Ceramics Co., Ltd.	229.04	203.71
Zibo Belin Trading Co., Ltd.	Shandong Lion King Ceramic Technology & Science Co., Ltd.	229.04	203.71
	Shandong Yuanfeng Ceramic Co., Ltd.	229.04	203.71
	Shandong Shunwei Ceramic Co., Ltd.	229.04	203.71
Zibo Jiaxi Group Co., Ltd.	Shandong Lionking Ceramics Co., Ltd.	229.04	203.71
	Shandong Gengci Group Co., Ltd.	229.04	203.71
	Shandong Lianzhong Ceramics Co., Ltd.	229.04	203.71
	Shandong Greenkey Ceramics Co., Ltd.	229.04	203.71
	Shandong Yuxi Ceramics Co., Ltd.	229.04	203.71
	Zibo Jinhao Ceramics Co., Ltd.	229.04	203.71
	Shandong Shunyuan Ceramics Co., Ltd.	229.04	203.71
	Shandong Yuma Ceramics Co., Ltd.	229.04	203.71
	Shandong Shunwei Ceramics Co., Ltd.	229.04	203.71
	Zibo New Jinyi Ceramic And Technoogy Co., Ltd.	229.04	203.71
	Zibo Ginca Ceramics Co., Ltd.	229.04	203.71
	Linyi Aoda Ceramics Co., Ltd.	229.04	203.71

Zibo Lipin Ceramic Co., Ltd.	Shandong Shunwei Ceramics Co., Ltd.	229.04	203.71
	Shandong Yuanfeng Ceramics Co., Ltd.	229.04	203.71
	Shandong Shiziwang Ceramics Technology Co., Ltd.	229.04	203.71
	Shandong Zibo Luzhong Construction Materials Plant	229.04	203.71
	Shandong Mingyu Ceramics Technology Co., Ltd.	229.04	203.71
	Zibo Xinjinyi Ceramics Technology Co., Ltd.	229.04	203.71
	Shandong Guorun Ceramics Co., Ltd.	229.04	203.71
	Zibo Jinyi Ceramics Co., Ltd.	229.04	203.71
	Anyang Fuerjia Ceramics Technology Co., Ltd.	229.04	203.71
	Shandong Gengci Group Co., Ltd.	229.04	203.71
	Zhangzhou Aoli Ceramics Development Co., Ltd.	229.04	203.71
	Nan'an Kuoda Construction Materials Co., Ltd.	229.04	203.71
	Foshan Modern Mingshi Ceramics Co., Ltd.	229.04	203.71
China-Wide Entity[7]		356.02	330.69

BILLING CODE 3510–DS–C

Provisional Measures

Section 733(d)of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of ceramic tile from China, Commerce extended the four-month period to six-months.[8] Commerce published the *Preliminary Determination* on November 14, 2019. Accordingly, the six-month period, beginning on the date of publication of the *Preliminary Determination,* ended on May 11, 2020. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rates listed above will begin on the date of publication of the ITC's final injury determination in the **Federal Register**.

Therefore, in accordance with section 733(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of ceramic tile from China entered, or withdrawn from warehouse, for consumption, after May 11, 2020, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of ceramic tile from China discussed above, we will instruct CBP to lift suspension and to refund any cash

[7] Including: Belite Ceramics (Anyang) Co., Ltd., Beilitai (Tianjin) Tile Co., Ltd., Tianjin Honghui Creative Technology Co., Ltd., Foshan Sanfi Import & Export Co., Ltd., Foshan Sanfi Import & Export Co., Ltd., Foshan Foson Tiles Co., Ltd., and Foshan Ibel Import and Export Ltd.

[8] *See Preliminary Determination,* 85 FR at 61886–87.

deposits made to secure the payment of estimated antidumping duties with respect to entries of ceramic tile from China entered, or withdrawn from warehouse, for consumption on or after August 16, 2019 (*i.e.,* 90 days prior to the date of publication of the *Preliminary Determination*), but before November 14, 2019 (*i.e.,* the date of publication of the *Preliminary Determination*).

Notifications to Interested Parties

This notice constitutes the antidumping duty order with respect to ceramic tile from China pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is published in accordance with section and 736(a) of the Act and 19 CFR 351.211(b).

Dated: May 26, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

APPENDIX

Scope of the Order

The merchandise covered by the order is ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, flags, finishing tile, and the like (hereinafter ceramic tile). Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm in actual thickness. All ceramic tile is subject to the scope regardless of end use, surface area, and weight, regardless of whether the tile is glazed or unglazed, regardless of the water absorption coefficient by weight, regardless of the extent of vitrification, and regardless of whether or not the tile is on a backing. Subject merchandise includes ceramic tile with decorative features that may in spots exceed 3.2 cm in thickness and includes ceramic tile ''slabs'' or ''panels'' (tiles that are larger than 1 meter^2 (11 ft.^{2})).

Subject merchandise includes ceramic tile that undergoes minor processing in a third country prior to importation into the United States. Similarly, subject merchandise includes ceramic tile produced that undergoes minor processing after importation into the United States. Such minor processing includes, but is not limited to, one or more of the following: Beveling, cutting, trimming, staining, painting, polishing, finishing, additional firing, or any other processing that would otherwise not remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope product.

Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings of heading 6907: 6907.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000, 6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000, 6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.8000, 6914.90.8000, 6905.10.0000, and 6905.90.0050. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

[FR Doc. 2020–11721 Filed 5–28–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–114]

Certain Glass Containers from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) is amending the preliminary determination in the less-than-fair-value (LTFV) investigation of certain glass containers (glass containers) from the People's Republic of China (China) to correct certain significant ministerial errors.

DATES: Applicable June 1, 2020.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Aleksandras Nakutis, 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) 482–6412 or (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 2020, the Department of Commerce (Commerce) published in the **Federal Register** the *Preliminary Determination* in the LTFV investigation of glass containers from China.[1] On May 5, 2020, separate rate applicants, Zibo Modern International Co., Ltd (Zibo Modern), Zibo Shelley Trading Co., Ltd (Zibo Shelley), and Zibo Sunfect International Trade Co., Ltd. (Zibo Sunfect) alleged that Commerce made certain ministerial errors in its *Preliminary Determination.*[2] On May 7, 2020, the American Glass Packaging Coalition (the petitioner), also submitted ministerial error comments.[3] On May 8, 2020, Guangdong Huaxing Glass Co., Ltd. (Huaxing), rebutted the petitioner's ministerial error comments.[4]

Period of Investigation

The period of investigation is January 1, 2019 through June 30, 2019.

Scope of Investigation

The product covered by this investigation is glass containers from China. For a complete description of the scope of this investigation, *see* the appendix to this notice.

Legal Authority

When ministerial errors are alleged with respect to preliminary determinations in LTFV investigations, 19 CFR 351.224(e) provides that Commerce will analyze any allegations received and, if appropriate, correct any significant ministerial error by amending the preliminary determination. A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' A significant ministerial error is defined as a ministerial error, the correction of which, either singly or in combination with other errors, would result in: (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping

---

[1] *See Certain Glass Containers From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Postponement of Final Determination and Extension of Provisional Measures,* 85 FR 23759 (April 29, 2020) (*Preliminary Determination*).

[2] *See* Zibo Modern's Letter, ''Glass Containers from China—Ministerial Error Comment,'' dated May 5, 2020 (Zibo Modern's ME Allegation); *see also* Zibo Shelley's Letter, ''Glass Containers from China—Ministerial Error Comment,'' dated May 5, 2020 (Zibo Shelley's ME Allegation); and Zibo Sunfect's Letter, ''Glass Containers from China—Ministerial Error Comment,'' dated May 5, 2020 (Zibo Sunfect's ME Allegation).

[3] *See* Petitioner's Letter, ''*Certain Glass Containers from the People's Republic of China:* Ministerial Error

Comments,'' dated May 7, 2020 (Petitioner's ME Allegation).

[4] *See* Huaxing's Letter, ''*Certain Glass Containers China:* Comment on Petitioner's Ministerial Error Allegation,'' dated May 8, 2020.

margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa.[5]

Analysis of Ministerial Error Allegations

Zibo Modern, Zibo Shelley, and Zibo Sunfect allege that Commerce made ministerial errors in identifying certain of their producers in the exporter-producer combinations listed in the *Preliminary Determination* notice (*i.e.,* Commerce used incorrect producer names or omitted certain producers). The petitioner alleges that Commerce failed to convert free-on-board Global Trade Atlas import values that were used as surrogate values into cost, insurance, and freight import values.

We agree with the allegations regarding the producers' names and have listed the correct producers' names (Xuzhou Supengyongxu Glass Products Co., Ltd. and Zibo Shelley Light Industrial Products Co., Ltd.) and included the omitted export-producer combinations for the exporter Zibo Sunfect International Trade Co., Ltd. in the rate table below. However, we find the petitioner's allegation is methodological, rather than ministerial, in nature as it relates to a calculation methodology. Hence, we have not made any changes to the *Preliminary Determination* based upon the petitioner's allegation. For details regarding these decisions, *see* the Ministerial Error Memorandum.[6]

Commerce's regulations do not permit rebuttals to ministerial error comments with respect to preliminary determinations.[7] Therefore, we have not considered Huaxing's rebuttal comments.

Amended Preliminary Determination

Commerce has amended its *Preliminary Determination* to reflect the correct name of Zibo Modern's producer, Xuzhou Supengyongxu Glass Products Co., Ltd., and the correct name of Zibo Shelley's producer, Zibo Shelley Light Industrial Products Co., Ltd., and to add four exporter-producer combinations for the exporter Zibo Sunfect International Trade Co., Ltd. that were inadvertently omitted from the *Preliminary Determination.* The weighted-average dumping margin and cash deposit rate determined in the *Preliminary Determination* for the separate rate recipients, other than the mandatory respondents, apply to the exporter-producer combinations listed below. Specifically, Commerce is amending its *Preliminary Determination* by assigning the following weighted-average dumping margins to the exporter-producer combinations listed below:

Producer	Exporter	Estimated weighted average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Xuzhou Supengyongxu Glass Products Co., Ltd	Zibo Modern International Co., Ltd	13.76	3.22
Zibo Shelley Light Industrial Products Co., Ltd	Zibo Shelley Trading Co., Ltd	13.76	3.22
Deqing Hangxiang Glass Products Co., Ltd	Zibo Sunfect International Trade Co., Ltd	13.76	3.22
Shandong Mounttai Sheng Li Yuan GLA	Zibo Sunfect International Trade Co., Ltd	13.76	3.22
Wendeng Wensheng Glass Co., Ltd	Zibo Sunfect International Trade Co., Ltd	13.76	3.22
Yantai NBC Glass Packaging Co. Ltd	Zibo Sunfect International Trade Co., Ltd	13.76	3.22

Amended Cash Deposits and Suspension of Liquidation

The collection of cash deposits and suspension of liquidation will be revised for the exporter-producer combinations listed in the table above, in accordance with sections 733(d) and (f) of the Act, and 19 CFR 351.224. Because the rates are decreasing from the *Preliminary Determination,* the amended cash deposit rates will be effective retroactively to April 29, 2020, the date of publication of the *Preliminary Determination.* Parties will be notified of this determination, in accordance with sections 733(d) and (f) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the International Trade Commission of our amended preliminary determination.

Notification to Interested Parties

This amended preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: May 22, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is certain glass containers with a nominal capacity of 0.059 liters (2.0 fluid ounces) up to and including 4.0 liters (135.256 fluid ounces) and an opening or mouth with a nominal outer diameter of 14 millimeters up to and including 120 millimeters. The scope includes glass jars, bottles, flasks and similar containers; with or without their closures; whether clear or colored; and with or without design or functional enhancements (including, but not limited to, handles, embossing, labeling, or etching).

Excluded from the scope of the investigation are: (1) Glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; (2) glass containers without ''mold seams,'' ''joint marks,'' or ''parting lines;'' and (3) glass containers without a ''finish'' (*i.e.,* the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure to seal the container's contents, including but not limited to a lid, cap, or cork).

Glass containers subject to the investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7010.90.5005, 7010.90.5009, 7010.90.5015, 7010.90.5019, 7010.90.5025, 7010.90.5029, 7010.90.5035, 7010.90.5039, 7010.90.5045, 7010.90.5049, and 7010.90.5055. The HTSUS subheadings are provided for convenience and customs purposes only. The written

[5] *See* 19 CFR 351.224(g).

[6] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Certain Glass Containers from the People's Republic of China: Allegations of Ministerial Errors in the Preliminary Determination,'' dated concurrently with this notice (Ministerial Error Memorandum).

[7] *See* 19 CFR 351.224(c)(3).

description of the scope of the investigation is dispositive.

[FR Doc. 2020–11746 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for July 2020

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in July 2020 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Hand Trucks from China (A–570–891) (3rd Review)	Jacqueline Arrowsmith, (202) 482–5255.
Passenger Vehicle and Light Truck Tires from China (A–570–016) (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
Countervailing Duty Proceedings	
Passenger Vehicle and Light Truck Tires from China (C–570–017) (1st Review)	Jacqueline Arrowsmith (202) 482–5255.
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in July 2020.	

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 26, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–11745 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–109]

Ceramic Tile From the People's Republic of China: Countervailing Duty Order

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing a countervailing duty order on ceramic tile from the People's Republic of China (China).

DATES: Applicable June 1, 2020.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas, Moses Song, or John McGowan, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3813, (202) 482–7885, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(d) of the Tariff Act of 1930, as amended (Act), on February 28, 2020, Commerce published its affirmative final determination that countervailable subsidies are being provided to producers and exporters of ceramic tile from China.[1] On May 21, 2020, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of 705(b)(1)(A)(i) of the Act by reason of subsidized imports of subject merchandise from China.[2]

Scope of the Order

The products covered by this order are ceramic tile from China. For a complete description of the scope of this order, *see* the appendix to this notice.

Countervailing Duty Order

On May 21, 2020, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020).

[1] *See Ceramic Tile from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Negative Critical Circumstances Determination,* 85 FR 19440 (April 7, 2020) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See* Letter to Jeffrey Kessler, Assistant Secretary of Commerce for Enforcement and Compliance, from David S. Johanson, Chairman of the U.S. International Trade Commission, dated May 21, 2020.

reason of subsidized imports of ceramic tile from China.[3] Therefore, in accordance with section 705(c)(2) of the Act, Commerce is issuing this countervailing duty order. Because the ITC determined that imports of ceramic tile from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of ceramic tile from China, which are entered, or withdrawn from warehouse, for consumption on or after September 12, 2019, the date of publication of the *Preliminary Determination,*[4] but will not include entries occurring after the expiration of the provisional measures period and before the publication of the ITC's final injury determination under section 705(b) of the Act, as further described below.

Suspension of Liquidation

In accordance with section 706 of the Act, we will instruct CBP to reinstitute the suspension of liquidation of ceramic tile from China as described in the appendix to this notice, effective on the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates below for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below. The all-others rate applies to all producers or exporters not specifically listed below.

Company	Subsidy Rate (percent)
Temgoo International Trading Limited	358.81
Foshan Sanfi Imp & Exp Co., Ltd.[5]	358.81
All Others	358.81

Provisional Measures

Section 703(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. In the underlying investigation, Commerce published the *Preliminary Determination* on September 12, 2019. As such, the four-month period beginning on the date of the publication of the *Preliminary Determination* ended on January 9, 2020. Furthermore, section 707(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 703(d) of the Act, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of ceramic tile from China entered, or withdrawn from warehouse, for consumption, after January 9, 2020, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to ceramic tile from China pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: May 26, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by the order is ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, flags, finishing tile, and the like (hereinafter ceramic tile). Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm in actual thickness. All ceramic tile is subject to the scope regardless of end use, surface area, and weight, regardless of whether the tile is glazed or unglazed, regardless of the water absorption coefficient by weight, regardless of the extent of vitrification, and regardless of whether or not the tile is on a backing. Subject merchandise includes ceramic tile with decorative features that may in spots exceed 3.2 cm in thickness and includes ceramic tile ''slabs'' or ''panels'' (tiles that are larger than 1 meter^2 (11 ft.^{2})).

Subject merchandise includes ceramic tile that undergoes minor processing in a third country prior to importation into the United States. Similarly, subject merchandise includes ceramic tile produced that undergoes minor processing after importation into the United States. Such minor processing includes, but is not limited to, one or more of the following: beveling, cutting, trimming, staining, painting, polishing, finishing, additional firing, or any other processing that would otherwise not remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope product.

Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings of heading 6907: 6907.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000,

[3] *Id.*

[4] *See Ceramic Tile from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 84 FR 48125 (September 12, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[5] As discussed in the PDM, Commerce found that Foshan Sanfi Imp & Exp Co., Ltd. to be crossed-owned with Guangdong Sanfi Ceramics Group Co., Ltd. *See Preliminary Determination,* 84 FR at 48126, and PDM at 8–9 (unchanged in *Final Determination,* 85 FR at 19442, and IDM at 4).

6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000, 6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.8000, 6914.90.8000, 6905.10.0000, and 6905.90.0050. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

[FR Doc. 2020–11722 Filed 5–28–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award and Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Board of Overseers of the Malcolm Baldrige National Quality Award (Board of Overseers) and the Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet in open session on Thursday, June 11, 2020, from 11:00 a.m. to 4:00 p.m. Eastern time. The Board of Overseers, appointed by the Secretary of Commerce, reports the results of the Malcolm Baldrige National Quality Award (Award) activities to the Director of the National Institute of Standards and Technology (NIST) each year, along with its recommendations for the improvement of the Award process. The Judges Panel, also appointed by the Secretary of Commerce, ensures the integrity of the Award selection process and recommends Award recipients to the Secretary of Commerce. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology and from the Chair of the Judges Panel. The agenda will include: Baldrige Program Update, Baldrige Foundation Update, Baldrige Judges Panel Update, Ethics Review, Baldrige Award Process, and New Business/Public Comment.

DATES: The meeting will be held on Thursday, June 11, 2020 from 11:00 a.m. Eastern Time until 4:00 p.m. Eastern Time. The meeting will be open to the public.

ADDRESSES: The meeting will be a virtual meeting by webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, by email at *robert.fangmeyer@nist.gov,* or Robyn Verner at *robyn.verner@nist.gov* or 301–975–2361.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Board of Overseers and the Judges Panel will meet in open session on Thursday, June 11, 2020 from 11:00 a.m. to 4:00 p.m. Eastern Time. The Board of Overseers (Board), composed of approximately twelve members preeminent in the field of organizational performance excellence and appointed by the Secretary of Commerce, makes an annual report on the results of Award activities to the Director of the National Institute of Standards and Technology (NIST), along with its recommendations for improvement of the Award process. The Judges Panel consists of no less than nine, and not more than twelve, members with balanced representation from U.S. service, manufacturing, small business, nonprofit, education, and health care industries. The Panel includes members who are familiar with the quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions. The Judges Panel recommends Malcolm Baldrige National Quality Award recipients to the Secretary of Commerce.

The purpose of this meeting is to discuss and review information received from NIST and from the Chair of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Baldrige Program Update, Baldrige Foundation Update, Baldrige Judges Panel Update, Ethics Review, Baldrige Award Process, and New Business/Public Comment. The agenda may change to accommodate the Judges Panel and Board of Overseers business. The final agenda will be posted on the NIST Baldrige Performance Excellence website at *http://www.nist.gov/baldrige/community/overseers.cfm.* The meeting is open to the public.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Board's affairs and/or the Panel of Judges' general process are invited to request a place on the agenda. On June 11, 2020, approximately one-half hour will be reserved in the afternoon for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the Baldrige Performance Excellence Program website at *http://www.nist.gov/baldrige/community/overseers.cfm.* Questions from the public will not be considered during this period. Requests must be submitted by email to Robyn Verner at *robyn.verner@nist.gov* and must be received by 4:00 p.m. Eastern Time, May 28, 2020 to be considered. Speakers who wish to expand upon their oral statements, those who had wished to speak, but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements by email to *robyn.verner@nist.gov.*

Admittance instructions: All participants will be attending via webinar. Please contact Ms. Verner by telephone at (301) 975–2785 or by email at *robyn.verner@nist.gov* for detailed instructions on how to join the webinar. All requests must be received by 4:00 p.m. Eastern Time, May 28, 2020.

Pursuant to 41 CFR 102–3.150(b), this **Federal Register** notice for this meeting is being published fewer than 15 calendar days prior to the meeting as exceptional circumstances exist due to COVID–19.

Authority: 15 U.S.C. 3711a(d)(1), 15 U.S.C. 3711a(d)(2)(B) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–11637 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: The Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet on

Wednesday, June 10, 2020, from 11:00 a.m. to 4:00 p.m. Eastern time. The purpose of this meeting is to discuss and review the role and responsibilities of the Judges Panel and information received from the National Institute of Standards and Technology (NIST) in order to ensure the integrity of the Malcolm Baldrige National Quality Award (Award) selection process. The agenda will include: Judges Panel roles and processes; Baldrige Program updates; new business/public comment; lessons learned from the 2019 judging process; and the 2020 Award process. A portion of this meeting is closed to the public in order to protect the proprietary data to be examined and discussed.

DATES: The Judges Panel will meet on Wednesday, June 10, 2020 from 11:00 a.m. Eastern Time until 4:00 p.m. Eastern Time. The portion of the meeting that is closed to the public will take place on Wednesday, June 10, 2020 from 2:00 p.m. to 4:00 p.m.

ADDRESSES: The meeting will be a virtual meeting by webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, by email at *robert.fangmeyer@nist.gov,* or Robyn Verner at *robyn.verner@nist.gov* or 301–975–2361.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet on Wednesday, June 10, 2020 from 11:00 a.m. to 4:00 p.m. Eastern Time. The Judges Panel is composed of twelve members, appointed by the Secretary of Commerce, chosen for their familiarity with quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions. The primary purpose of this meeting is to assemble to discuss and review the role and responsibilities of the Judges Panel and information received from NIST in order to ensure the integrity of the Malcolm Baldrige National Quality Award selection process. During the closed session on June 10, 2020 from 2:00 p.m. to 4:00 p.m. the Judges Panel will discuss lessons learned from the 2019 judging process and the 2020 Award process. The agenda may change to accommodate Judges Panel business. The final agenda will be posted on the NIST website at *https://www.nist.gov/baldrige/how-baldrige-works/baldrige-community/judges-panel.*

The open portion of the meeting from 11:00 a.m. to 2:00 p.m. Eastern Time will include discussions on the Judges Panel roles and processes and Baldrige program updates and is open to the public. Individuals and representatives of organizations who would like to offer comments and suggestions related to the Panel's business are invited to request a place on the agenda. Approximately 30 minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received but is likely to be about three minutes each. Questions from the public will not be considered during this period. Requests must be submitted by email to Robyn Verner at *robyn.verner@nist.gov* and must be received by 4:00 p.m. Eastern Time, May 27, 2020 to be considered. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to participate are invited to submit written statements by email to *robyn.verner@nist.gov.*

Admittance instructions: All participants will be attending via webinar. Please contact Ms. Verner by email at *robyn.verner@nist.gov* for detailed instructions on how to join the webinar. All requests must be received by 4:00 p.m. Eastern Time, Wednesday, May 27, 2020.

The portion of the meeting from 2:00 p.m. to 4:00 p.m. Eastern Time will include discussions on lessons learned from the 2019 judging process and on the 2020 Award process, and is closed to the public in order to protect the proprietary data to be examined and discussed. The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the Assistant General Counsel for Employment, Litigation and Information, formally determined on May 25, 2020, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409, that a portion of the meeting of the Judges Panel may be closed to the public in accordance with 5 U.S.C. 552b(c)(4) because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential and 5 U.S.C. 552b(c)(9)(B) because for a government agency the meeting is likely to disclose information that could significantly frustrate implementation of a proposed agency action. Portions of the meeting involve examination of prior year Award applicant data. Award applicant data are directly related to the commercial activities and confidential information of the applicants.

Pursuant to 41 CFR 102–3.150(b), this **Federal Register** notice for this meeting is being published fewer than 15 calendar days prior to the meeting as exceptional circumstances exist due to COVID–19.

Authority: 15 U.S.C. 3711a(d)(1) as amended, and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–11638 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA209]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting via webinar of its Groundfish Recreational Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Monday, June 15, 2020 at 9:30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/7757705956742892560.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Recreational Advisory Panel will follow-up from the April Council meeting regarding the impact of COVID–19 on the recreational groundfish fishery, including a discussion of

revisiting possible recommendations for Gulf of Maine cod and Gulf of Maine haddock management measures for fishing year 2020. The Panel will receive an overview of groundfish specifications and management measures anticipated to be included in the action, which will be initiated at the June 2020 Council meeting as well as an overview from the Northeast Fisheries Science Center regarding the management track assessment plans and Assessment Oversight Panel results from their May 27 meeting. They will also receive an introduction of the Executive Order on Promoting Seafood Competitiveness and Economic Growth. The Panel will provide recommendations to the Groundfish Committee, as appropriate. Other business will be discussed, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: May 26, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–11669 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XP012]

Permanent Advisory Committee to Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a public meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) on July 7, 2020. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the PAC will be held via conference call on July 7, 2020, from 10 a.m. to 12 p.m. Hawaii Standard Time (HST) (or until business is concluded). Members of the public may submit written comments on meeting topics or materials; comments must be received by July 2, 2020.

ADDRESSES: The public meeting will be conducted via conference call. For details on how to call in to the conference line or to submit comments, please contact Emily Reynolds, NMFS Pacific Islands Regional Office; telephone: 808–725–5039; email: *emily.reynolds@noaa.gov.* Documents to be considered by the PAC will be sent out via email in advance of the conference call. Please submit contact information to Emily Reynolds (telephone: 808–725–5039; email: *emily.reynolds@noaa.gov)* at least 3 days in advance of the call to receive documents via email.

FOR FURTHER INFORMATION CONTACT: Emily Reynolds, NMFS Pacific Islands Regional Office; 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone: 808–725–5039; facsimile: 808–725–5215; email: *emily.reynolds@noaa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), the PAC, has been formed to advise the U.S. Commissioners to the WCPFC. The PAC is composed of: (i) Not less than 15 nor more than 20 individuals appointed by the Secretary of Commerce in consultation with the U.S. Commissioners to the WCPFC; (ii) the chair of the Western Pacific Fishery Management Council's Advisory Committee (or the chair's designee); and (iii) officials from the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees). The PAC supports the work of the U.S. National Section to the WCPFC in an advisory capacity. The U.S. National Section is made up of the U.S. Commissioners and the Department of State. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. More information on the WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, can be found on the WCPFC website: *http://www.wcpfc.int.*

Meeting Topics

The purpose of the July 7, 2020, conference call is to discuss U.S. priorities leading up to the 2020 regular session of the WCPFC (WCPFC17) and potential management measures for tropical tunas and other issues of interest.

Special Accommodations

The conference call is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Emily Reynolds at 808–725–5039 by June 23, 2020.

(Authority: 16 U.S.C. 6902 *et seq.*)

Dated: May 26, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–11632 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Intent To Prepare a Draft Environmental Impact Statement and Draft Management Plan for the Proposed Connecticut National Estuarine Research Reserve

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice of intent.

SUMMARY: NOAA and the State of Connecticut (State) intend to prepare a Draft Environmental Impact Statement (DEIS) and Draft Management Plan (DMP) for the proposed Connecticut National Estuarine Research Reserve (NERR). The DEIS will consider the human and environmental consequences of federally designating the State's proposed site and alternatives, and identify a final boundary. The DMP will provide a framework for operating the proposed site if approved by NOAA and will include plans for administration, research, education, and facilities.

FOR FURTHER INFORMATION CONTACT: Erica Seiden, Office for Coastal Management, National Ocean Service, NOAA, 1305 East West Highway, N/OCM, Silver Spring, MD 20910, Phone: 240–533–0781 or Email: *erica.seiden@noaa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 315 of the Coastal Zone Management Act of 1972, as amended, and its implementing regulations (15 CFR part 921), and the National Environmental Policy Act of 1969, as amended, NOAA and the State intend to prepare a DEIS and DMP for the proposed Connecticut NERR.

NOAA received the State's nomination of the proposed site on January 3, 2019. NOAA evaluated the nomination package and found that the proposed site met the NERR System requirements. (*See* 16 U.S.C. 1461(b).) NOAA informed the State on September 27, 2019, that it was accepting the nomination and that the next step would be to prepare a DEIS and DMP. The DEIS will consider the human and environmental consequences of designating the State's recommended site and alternatives, as well as identify a final boundary. The DMP will set a course for operating the reserve once approved and will include plans for administration, research, education, and facilities of the proposed site. (*See* 15 CFR 921.13.)

The proposed site consists of the following State-owned properties: Lord Cove Wildlife Management Area; Great Island Wildlife Management Area; Bluff Point State Park and Coastal Reserve and Natural Area Preserve; Haley Farm State Park; and public trust waters including portions of Long Island Sound, the lower Thames River, and the lower Connecticut River.

The proposed site resulted from a comprehensive evaluation process that sought the views of the public, affected landowners, and other interested parties. The State held an informal, widely-publicized kick-off meeting on April 12, 2016, to describe the NERR System, explain the rationale for establishing a reserve in Connecticut, and identify a process for selecting and nominating a site to NOAA. Following the kick-off meeting, the State assembled a Site Selection Team composed of State agency representatives, academia, non-governmental organizations, members of the public, and federal agencies. The team conducted preliminary screening, detailed screening, and scoring of potential sites that led to the preferred site. The State and NOAA held a public meeting on November 13, 2018, to solicit comments on the preferred site. (*See* 83 FR 54572.)

A separate **Federal Register** notice will be published to announce a public scoping meeting to solicit comments on issues related to the proposed action. (*See* 15 CFR 921.13(c).) Options for the type, location, and date of a public scoping meeting are being evaluated.

Federal Domestic Assistance Catalog Number 11.420

(Coastal Zone Management) Research Reserves

Jeffrey L. Payne,

Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–11680 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA169]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Renewal of U.S. Navy Target and Missile Launch Activities on San Nicolas Island

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

ACTION: Notice; request for comments on proposed Renewal incidental harassment authorization.

SUMMARY: NMFS received a request from the U.S. Navy (Navy) for the Renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to target and missile launch activities on San Nicolas Island (SNI). These activities are identical to those covered in the current authorization. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The Renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed Renewal not previously provided during the initial 30-day comment period. The Navy's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA).

DATES: Comments and information must be received no later than June 16, 2020.

ADDRESSES: Comments 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.DeJoseph@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. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act 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: Bonnie DeJoseph, Office of Protected Resources, NMFS, (301) 427–8401.

Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the

MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Description of the Specified Activities and Anticipated Impacts section of the notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential Renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA Renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested Renewal, and agency responses will be summarized in the final notice of our decision.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.'' The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

History of Request

On June 19, 2019, NMFS issued an IHA to the Navy to take marine mammals incidental to U.S. Navy Target and Missile Launch Activities on San Nicolas Island, California (84 FR 28462; June 19, 2019), effective from June 12, 2019 through June 11, 2020. On April 14, 2020, NMFS received an application for the Renewal of that initial IHA. As described in the application for Renewal IHA, the activities for which incidental take is requested are identical. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-target-and-missile-launch-activities-san-nicolas-0)* which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

The Navy proposes to continue a target and missile launch program from two launch sites on SNI. Missiles vary from tactical and developmental weapons to target missiles used to test defensive strategies and other weapons systems. Some launch events involve a single missile, while others involve the launch of multiple missiles in quick succession. The Navy proposes to conduct a maximum of 40 missile launch events from SNI, but the total may be less than 40 depending on

operational requirements. No more than 25 launches have occurred in any single year since 2001 (Table 1).

TABLE 1—THE TOTAL NUMBER OF LAUNCHES THAT HAVE OCCURRED SINCE 2001 AT SNI

Time period	Number of launches
August 2001 to October 2005	69
February 2006 to December 2009	11
January 2010 to December 2014	36
December 2015 to November 2018	30
June 2019 to March 2020	12

Launch timing will be determined by operational, meteorological, and logistical factors. Up to 10 of the 40 launches may occur at night; night launches are also dependent on operational requirements and will only be conducted when required by test objectives. These proposed activities are identical to those in the Initial IHA and are described in detail in the Initial Proposed IHA (84 FR 18809; May 2, 2019).

Anticipated impacts, which would consist of Level B harassment of marine mammals, would also be identical to those analyzed and authorized in the Initial IHA (84 FR 28462; June 19, 2019). The Navy's request is for take of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) by Level B harassment only. All flights over SNI would be subsonic; therefore, there would be no sonic booms that could affect pinnipeds hauled out at sites on SNI. Neither Navy nor NMFS expects serious injury or mortality to result from this activity.

Detailed Description of the Activity

A detailed description of the target and missile launch activities for which take is proposed here may be found in the Notices of the Proposed and Final IHAs for the initial authorization. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. The proposed Renewal would be effective for a period of one year from the date of issuance.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the Notices of the Proposed and Final IHAs for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities section contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the Notices of the Proposed IHA for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of the Proposed and Final IHAs for the initial authorization. Specifically, the source levels, days of operation, and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Further, the 2019 monitoring data received from the Navy suggests that the actual number of marine mammals taken during the Navy launches remained well under the number authorized in the initial IHA and proposed in this Renewal IHA. The stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes, which are indicated below in Table 2.

TABLE 2—PROPOSED LEVEL B HARASSMENT TAKE FOR PINNIPEDS ON SNI

Species	Authorized Level B harassment	Percent of stock abundance taken by Level B harassment (assuming each instance is different individual)
California sea lion	11,000	257,606 (4.27 percent).
Harbor seal	480	30,968 (less than 2 percent).
Northern elephant seal	40	179,000 (less than 1 percent).

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** Notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this renewal:

Proposed Mitigation

Operation Restrictions

Personnel must not enter pinniped haulouts. Personnel may be adjacent to pinniped haulouts prior to and following a launch for monitoring purposes. All aircraft and helicopter flight paths must maintain a minimum distance of 305 meters (m) from recognized seal haulouts and rookeries, to the maximum extent practicable. Missiles must not cross over pinniped haulouts at elevations less than 305 m (1,000 ft).

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, the Navy must consult with NMFS before the next launch event.

The Navy must review the launch procedure and monitoring methods, in cooperation with NMFS, if any incidents of injury or mortality of a pinniped are discovered during post-launch surveys, or if surveys indicate possible effects to the distribution, size, or productivity of the affected pinniped populations as a result of the specified

activities. If necessary, appropriate changes must be made through modification to this Authorization prior to conducting the next launch of the same vehicle.

Timing Restrictions

The Navy may not conduct more than 10 launch events at night. Launches must not occur during February through April, to the maximum extent practicable. Launches must be limited during January through February and June through July, to the maximum extent practicable.

Proposed Monitoring Measures

The Navy must obtain visual, video and audio, and acoustic data from up to three pinniped haulout monitoring sites during each launch event, to the maximum extent practicable. The holder of this IHA is required to abide by the following marine mammal and acoustic monitoring requirements:

Visual Monitoring

Marine mammal monitoring must be conducted by qualified, trained protected species observers. The following visual monitoring measures will be conducted during preparations for video and acoustic monitoring, as described in *Video and Audio Monitoring* section below: (1) Visual monitoring must be conducted before and after launches, including scanning the affected haulout beaches and counting the number and species of pinnipeds over a 15–30 minute period; (2) Prior to a launch event, Navy personnel must make observations of the monitored pinniped haulout and record the numbers and species of pinnipeds observed on field data sheets; and (3) After a launch event, Navy personnel must return to the monitored pinniped haulout and record the numbers and species of pinnipeds that remain on the haulout sites and any notable changes.

Video and Audio Monitoring

Before each launch, Navy personnel must set up or activate up to three video cameras (either high-definition video cameras, or Forward-Looking Infrared Radiometer (FLIR) thermal imaging cameras for night launch events) such that they overlook the monitoring sites. Each camera will be set to record a focal group of pinnipeds within the haulout for the maximum recording time permitted by the camera capacity. Video and audio monitoring must be conducted by recording continuously from a minimum of two hours before the event to approximately one hour after the event in order to:

Determine the composition of the focal subgroup of pinnipeds (approximate numbers and sexes of each age class).

Describe the launch event, including documenting the occurrence of a launch event, the type of target/missile launched, the timing of the event, and duration of audibility.

Document movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement (slow or vigorous). In addition, the following variables concerning the circumstances of the observations must also be recorded from the videotape or from direct observations at the site:

1. Study location,
2. Local time,
3. Weather (including an estimate of wind strength and direction, and presence of precipitation), and
4. Tide state.

Identify and document any change in behavior or movements of pinnipeds that occurs at the time of the launch event.

Compare received levels of launch sound with pinniped responses, based on acoustic and behavioral data from up to three monitoring sites at different distances from the launch site and missile path during each launch; from the data accumulated across a series of launches, to attempt to establish the ''dose-response'' relationship for launch sounds under different launch conditions if possible.

Ascertain periods or launch conditions when pinnipeds are most and least responsive to launch activities. Lastly, document take by harassment: (1) Pinnipeds that are exposed to launch sounds strong enough to cause a temporary threshold shift (TTS); or (2) Pinnipeds that leave the haulout site, or exhibit prolonged movement (greater than 10 m) or prolonged behavioral changes (such as pups separated from mothers) relative to their behavior immediately prior to the launch.

Acoustic Monitoring

The Navy must use up to four autonomous audio recorders to make acoustical measurements. During each launch, these must be located as close as practicable to pinniped haulout monitoring sites and near the launch pad itself. The monitored pinniped haulout sites must typically include one site as close as possible to the missile's planned flight path and one or two locations farther from the flight path within the area of potential impact with pinnipeds present. Autonomous Terrestrial Acoustic Recorders must be deployed at the recording locations on the launch day well before the launch time, and must be retrieved later the same day. Acoustic measurements must be collected and reported consistent with section 13.2 of the Navy's application.

Reporting

A draft report on all monitoring conducted under the IHA must be submitted within 90 calendar days of the completion of marine mammal and acoustic monitoring or 60 days prior to the issuance of any subsequent IHA or incidental take regulations for this project, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in Section 5 of the Authorization.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as serious injury, or mortality, the Navy must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources (301–427–8401) and the West Coast Stranding Coordinator (562–980–3230). The report must include the following information:

1. Time and date of the incident;
2. Description of the incident;
3. Environmental conditions (*e.g.,* wind speed and direction, cloud cover, and visibility);
4. Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
5. Species identification or description of the animal(s) involved;
6. Fate of the animal(s); and
7. Photographs or video footage of the animal(s).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy may not resume their activities until notified by NMFS.

In the event the Navy discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), the Navy must immediately report the incident to the Office of Protected Resources, NMFS,

and the West Coast Region Stranding Coordinator, NMFS. The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that the Navy discovers an injured or dead large whale or other cetaceans, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Navy must report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS, within 24 hours of the discovery.

This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Public Comments

As noted previously, NMFS published a notice of a proposed IHA (84 FR 18809; May 2, 2019) and solicited public comments on both our proposal to issue the initial IHA for target and missile launch activities and on the potential for a Renewal IHA, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the initial IHA (84 FR 28462; June 19, 2019). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the Renewal of the 2019 IHA.

Comment: The Marine Mammal Commission (the Commission) questioned whether the public notice provisions for IHA Renewals fully satisfy the public notice and comment provision in the MMPA and discussed the potential burden on reviewers of reviewing key documents and developing comments quickly. Additionally, the Commission recommended that NMFS use the IHA Renewal process sparingly and selectively for activities expected to have the lowest levels of impacts to marine mammals and that require less complex analysis.

Response: The Commission has submitted this comment multiple times, and NMFS has responded multiple times, including, for example, more recently in the notice of issuance of an IHA to Ørsted Wind Power LLC (84 FR 52464, October 2, 2019), and we refer the Commission to that response. We also include NMFS' original response to the comment received on the 2019 Chevron proposed IHA here:

NMFS has taken a number of steps to ensure the public has adequate notice, time, and information to be able to comment effectively on Renewal IHAs within the limitations of processing IHA applications efficiently. **Federal Register** notices for the proposed initial IHAs identified the conditions under which a one-year Renewal IHA might be appropriate. This information is presented in the Request for Public Comments section and thus encourages submission of comments on the potential of a one-year renewal as well as the initial IHA during the 30-day comment period. In addition, when we receive an application for a Renewal IHA, we will publish notice of the proposed IHA Renewal in the **Federal Register** and provide an additional 15 days for public comment, making a total of 45 days of public comment. We also directly contact all commenters on the initial IHA by email, phone, or, if the commenter did not provide email or phone information, by postal service to provide them the opportunity to submit any additional comments on the proposed Renewal IHA. Where the commenter has already had the opportunity to review and comment on the potential for a Renewal in the initial proposed IHA for these activities, the abbreviated additional comment period is sufficient for consideration of the results of the preliminary monitoring report and new information (if any) from the past year.

NMFS also strives to ensure the public has access to key information needed to submit comments on a proposed IHA, whether an initial IHA or a Renewal IHA. The agency's website includes information for all projects under consideration, including the application, references, and other supporting documents. Each **Federal Register** notice also includes contact information in the event a commenter has questions or cannot find the information they seek.

For more information, NMFS has published a description of the Renewal process on our website (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals*).

Preliminary Determinations

The proposed action of this Renewal IHA, target and missile launch activities, would be identical to the activities analyzed in the Initial IHA. Based on the analysis detailed in the Notice of the Initial IHA authorization of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS found that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will affect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a Renewal IHA to the Navy for conducting target and missile launch activities on SNI, California from June 12, 2020 through June 11, 2021, provided the previously described

mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request comment on our analyses, the proposed Renewal IHA, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: May 26, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–11719 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR106]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Floating Dry Dock Project at Naval Base San Diego in San Diego, California

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

ACTION: Notice; Issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally take, by Level B harassment, one species of marine mammal during the Floating Dry Dock Project at Naval Base San Diego in San Diego, California.

DATES: This Authorization is effective from September 15, 2020 through September 14, 2021.

FOR FURTHER INFORMATION CONTACT: Wendy Piniak, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the authorization, application, and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed IHA may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On November 26, 2019, NMFS received a request from the Navy for an IHA to take marine mammals incidental to the Floating Dry Dock Project at Naval Base San Diego in San Diego, California. We received a revised application on February 10, 2020. The application was deemed adequate and complete on March 17, 2020. The Navy's request is for take of a small number of California sea lions by Level B harassment only. Neither the Navy nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Activity

Overview

The Navy requested authorization for take of marine mammals incidental to in-water activities associated with the Floating Dry Dock Project at Naval Base San Diego in San Diego, California. The Navy plans to construct a floating dry dock and associated pier-side access in the south-central portion of San Diego Bay. The floating dry dock is needed to ensure the Naval Base San Diego's capability to conduct berth-side repair and maintenance of vessels. Implementation of the project requires installation of two mooring dolphins, including vertical and angled structural piles, as well as fender piles, installation of a concrete ramp wharf and vehicle bridge, and dredging at the floating dry dock location. In-water construction will include installation of a maximum of 56 24-inch concrete piles using impact pile driving and high-pressure water jetting and a maximum of 20 24-inch steel pipe piles using impact and vibratory pile driving. Sounds produced by these activities may result in take, by Level B harassment, of marine mammals located in San Diego Bay, California. In-water pile-driving activities are anticipated to occur for 60 days during the period from September 15, 2020 to September 14, 2021.

Dates and Duration

In-water activities (pile installation) associated with the project are anticipated to begin September 15, 2020, and be completed by September 14, 2021. Pile driving activities will occur for 60 days during the planned project dates. In-water activities will occur during daylight hours only.

Detailed Description of Specific Activity

A detailed description of the planned activities is provided in the **Federal Register** notice announcing the proposed IHA (85 FR 21179; April 16, 2020). Since that time, the Navy has revised the number of 24-inch steel pipe piles required for the project (and therefore the number of days required to complete the project), and the revised description of this component of the project (construction of two mooring dolphins) is provided below. No other revisions have been made to the Navy's planned activities. Please refer to the proposed IHA **Federal Register** notice for a detailed description of the activity.

The Navy will construct a floating dry dock and associated pier-side access in the south-central portion of San Diego Bay. Implementation of the project requires in-water activities that will produce sounds that may result in take of marine mammals located in the San Diego Bay including dredging, installation of two mooring dolphins, including vertical and angled structural

piles, as well as fender piles, and installation of a concrete ramp wharf and vehicle bridge. Two mooring dolphins will be located forward and aft of the dry dock. The mooring dolphins will each be supported by up to 16 vertical 24-inch octagonal concrete piles (32 total) installed using impact pile driving and high-pressure water jetting. The aft mooring dolphin would also require approximately two 24-inch angled steel pipe piles. Up to eight additional 24-inch steel pipe piles are anticipated to be required for each of the forward and aft mooring dolphins (16 total, rather than the 8 described in the **Federal Register** notice announcing the proposed IHA (85 FR 21179; April 16, 2020)). Cast-in-place reinforced concrete caps, 9.1 by 9.1 m (30 by 30 ft), will be installed at each mooring dolphin location. Grippers will be secured to the dolphins' concrete pile caps and used to hold the floating dry dock in position. Construction materials will be delivered by truck and the piles would be installed using a floating crane and an impact or vibratory pile driver aided by jetting methods. Fender piles associated with the aft mooring dolphin will consist of two steel pipe piles, 24-inches in diameter or less. All steel pipe piles will initially be installed using vibratory pile driving, followed by the use of an impact pile driver.

Pile driving activities are planned to occur from September 15, 2020 through September 14, 2021. The total number of pile driving days will not exceed 60 days (rather than the 50 days described in the **Federal Register** notice announcing the proposed IHA (85 FR 21179; April 16, 2020)) during this time period.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS' proposal to issue an IHA to the Navy was published in the **Federal Register** on April 16, 2020 (85 FR 21179). That notice described, in detail, the Navy's proposed activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, proposed amount and manner of take, and proposed mitigation, monitoring and reporting measures. During the 30-day public comment period NMFS received a comment letter from the Marine Mammal Commission (Commission); the Commission's recommendations and our responses are provided here, and the comments have been posted online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Comment 1: The Commission recommends that NMFS revise its standard condition for ceasing in-water heavy machinery activities (Condition 4(a) in the IHA) to include, as examples, movement of the barge to the pile location, positioning of the pile on the substrate, use of barge-mounted excavators, and dredging in all draft and final incidental take authorizations.

Response: NMFS appreciates the recommendation but disagrees that a comprehensive listing of potential activities for which the measure is appropriate is necessary, and does not adopt the recommendation.

Comment 2: The Commission notes that the Level B harassment zone is more than 2.5 km for vibratory pile driving and more than 1.8 km during impact driving of 24-inch piles. In both circumstances, California sea lions would not be sighted at the extents of the Level B harassment zones if only one Protected Species Observer (PSO) was located at the pile-driving location in the near field. They note that a second vessel-based PSO should monitor the extent of the Level B harassment zone during impact pile driving as well as during vibratory pile driving. Given that impact pile driving of 24-inch steel piles would occur after the piles have been driven with the vibratory hammer, it would be practicable for the vessel-based PSO to remain on station and continue to monitor until impact pile driving is finished and the pile is driven to depth. The Commission recommends that NMFS include in condition 5(a) of the final authorization the requirement that the Navy use one land-based and one-vessel-based PSO to monitor for marine mammals during both vibratory and impact pile driving of 24-inch steel piles.

Response: NMFS disagrees with the Commission's rationale and assertion that the measure is practicable, and does not adopt the recommendation. We have included in the authorization that the Navy must include extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible in the draft and final reports. Though as the Commission notes, vibratory and impact pile driving may occur in succession, this may not always be the case (for example, when switching hammer types). Given the condition to extrapolate takes, it is not necessary to require that the entire Level B zone be visible or monitored during all activities.

Comment 3: The Commission noted that NMFS indicated in the **Federal Register** notice that pile installation would only occur during daylight hours and that pile driving would only be conducted at least 30 minutes after sunrise and up to 30 minutes before sunset, when visual monitoring of marine mammals can be conducted. However, they stated that NMFS did not stipulate in the draft authorization that activities must occur during daylight hours only, nor that activities must be conducted during periods of good visibility and stated that, if poor environmental conditions restrict full visibility of the shutdown zone, pile installation must be delayed. The Commission recommends that NMFS include (1) in the final authorization the requirements that the Navy conduct pile-driving activities during daylight hours only and, if the entire shut-down zone(s) is not visible, delay or cease pile-driving activities until the zone(s) is visible and (2) standard conditions consistently in all draft and final authorizations involving pile-driving activities.

Response: We do not fully concur with the Commission's recommendations, or with their underlying justification, and do not adopt them as stated. While the Navy has no intention of conducting pile driving activities at night, it is unnecessary to preclude such activity should the need arise (*e.g.,* on an emergency basis or to complete driving of a pile begun during daylight hours, should the construction operator deem it necessary to do so). Further, as stated above, while acknowledging that prescribed mitigation measures for any specific action (and an associated determination that the prescribed measures are sufficient to achieve the least practicable adverse impact on the affected species or stocks and their habitat) are subject to review by the Commission and the public, any determination of what measures constitute ''standard'' mitigation requirements is NMFS' alone to make. Even in the context of measures that NMFS considers to be ''standard'' we reserve the flexibility to deviate from such measures, depending on the circumstances of the action. We disagree with the statement that a prohibition on pile driving activity outside of daylight hours is necessary to meet the MMPA's least practicable adverse impact standard, and the Commission does not justify this assertion.

Comment 4: The Commission states that it is unclear from both the preamble

and the draft authorization whether the Navy will keep a running tally of the total Level B harassment takes, including observed and extrapolated takes. They state that it is imperative that the Navy do so to ensure that the takes are within the authorized limits and the authorized numbers of takes are not exceeded to implement effectively condition 4(h) in the draft authorization. The Commission recommends that NMFS ensure that the Navy keeps a running tally of the total takes, based on observed and extrapolated takes, for Level B harassment consistent with condition 4(h) of the final authorization.

Response: We agree that the Navy must ensure they do not exceed authorized takes but do not concur with the recommendation. NMFS is not responsible for ensuring that the Navy does not operate in violation of an issued IHA.

Comment 5: The Commission recommended that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process, which is similarly expeditious and fulfills NMFS's intent to maximize efficiencies. If NMFS continues to propose to issue renewals, the Commission recommends that it (1) stipulate that a renewal is a one-time opportunity (a) in all **Federal Register** notices requesting comments on the possibility of a renewal, (b) on its web page detailing the renewal process, and (c) in all draft and final authorizations that include a term and condition for a renewal and, (2) if NMFS declines to adopt this recommendation, explain fully its rationale for not doing so.

Response: NMFS does not agree with the Commission and, therefore, does not adopt the Commission's recommendation. NMFS will provide a detailed explanation of its decision within 120 days, as required by section 202(d) of the MMPA.

Description of Marine Mammals in the Area of Specified Activities

A detailed description of the species likely to be affected by the Navy's project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (85 FR 21179; April 16, 2020). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to the proposed IHA **Federal Register** notice for these descriptions; we provide a summary of marine mammals that may potentially be present in the project area here (Table 1). Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and the Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific Stock Assessment Reports (*e.g.,* Carretta *et al.,* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 Final SARs (Carretta *et al.,* 2019) (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT WITHIN CENTRAL SAN DIEGO, CALIFORNIA DURING THE SPECIFIED ACTIVITY

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>321

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

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable. California sea lion population size was estimated from a 1975–2014 time series of pup counts (Lowry *et al.,* 2017), combined with mark-recapture estimates of survival rates (DeLong *et al.,* 2017, Laake *et al.,* 2018).

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

Habitat

No ESA-designated critical habitat or Biologically Important Areas overlap with the project area.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Underwater noise from impact and vibratory pile driving activities associated with the planned Floating Dry Dock Project at Naval Base San Diego have the potential to result in harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (85 FR 21179; April 16, 2020) included a discussion of the potential effects of such disturbances on marine mammals and their habitat, therefore that information is not repeated in detail here; please refer to the **Federal Register** notice (85 FR 21179; April 16, 2020) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will be by Level B harassment only, in the form of disruption of behavioral patterns for individual California sea lions resulting from exposure to pile driving activities. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown)—discussed in detail below in Mitigation section, Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 decibels (dB) re: 1 micropascal (μPa) root mean square (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re: 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Navy's activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re: 1 μPa (rms) thresholds are applicable. However, background (ambient) noise in the south-central San Diego Bay was measured at 126 dB re: 1 μPa (L50) in 2019 (Dahl and Dall'Osto 2019), therefore, 126 dB re: 1 μPa was used to calculate the Level B harassment isopleth.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Navy's planned activity includes the use includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{p,0\text{-}pk,flat}$: 219 dB; $L_{E,p,LF,24h}$: 183 dB	$L_{E,p,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{p,0\text{-}pk,flat}$: 230 dB; $L_{E,p,MF,24h}$: 185 dB	$L_{E,p,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{p,0\text{-}pk,flat}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	$L_{E,p,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{p,0\text{-}pk.flat}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	$L_{E,p,PW,24h}$: 201 dB.

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater)	$L_{p,0\text{-}pk,flat}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	$L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa²s. In this table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the project. Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. The maximum (underwater) area ensonified is determined by the topography of the San Diego Bay including hard structures directly to the south of the project site. Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_1/R_2),$$

Where

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions, such as the project site where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate distances to the Level A harassment and Level B harassment thresholds for the 24-inch octagonal concrete piles and the 24-inch steel pipe piles planned in this project, acoustic monitoring data from other locations were used. Empirical data from recent sound source verification (SSV) studies reported in CALTRANS (2015) were used to estimate sound source levels (SSLs) for impact pile driving. For impact pile driving of 24-inch octagonal concrete piles measurements from San Francisco Bay, California were used (SELs-s: 166 dB re: 1 μPa²s; SPLrms: 176 dB re: 1 μPa; SPLpeak: 188 dB re: 1 μPa) (CALTRANS, 2015). For impact pile driving of 24-inch steel pipe piles measurements from Carquinez Bay, California were used (SELs-s: 178 dB re: 1 μPa²s; SPLrms: 194 dB re: 1 μPa; SPLpeak: 207 dB re: 1 μPa) (CALTRANS, 2015). For vibratory pile driving of 24-inch steel pipe piles, average data collected from four projects (three in Washington and one in California) involving 16 and 24-inch piles reported by United States Navy (2015) were used. The highest project average SPLrms of 162 dB re: 1 μPa was selected as the most reasonable proxy for 24-inch steel pipe piles.

For piles requiring use of vibratory pile driving, it is anticipated that 10 minutes (min) per pile will be required. The number of final strikes via impact pile driving for each pile installed would be dependent on the underlying geology and the exact placement of the pile. For example, pile-driving activities associated with the Pier 12 replacement required between 500 and 600 blows per pile (Alberto Sanchez 2019, personal communication). To be conservative, 600 strikes per pile is estimated for impact pile driving.

Navy used NMFS' Optional User Spreadsheet, available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance,* to input project-specific parameters and calculate the isopleths for the Level A harassment zones for impact and vibratory pile driving. When the NMFS Technical Guidance (2018) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some

degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources pile driving, the User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS.

Table 3 provides the sound source values and input used in the User Spreadsheet to calculate harassment isopleths for each source type. For impact pile driving, isopleths calculated using the cumulative SEL metric (SELs-s) will be used as it produces larger isopleths than SPLpeak. Isopleths for Level B harassment associated with impact pile driving (160 dB) and vibratory pile driving (126 dB) were also calculated and can be found in Table 4.

TABLE 3—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING HARASSMENT ISOPLETHS

User Spreadsheet Parameter	Impact pile driving 24-inch octagonal concrete piles	Impact pile driving 24-inch steel pipe piles	Vibratory pile driving 24-inch steel pipe piles
Spreadsheet Tab Used	(E.1) Impact pile driving	(E.1) Impact pile driving	(A.1) Vibratory pile driving
Source Level (SELs-s or SPL rms)	166 SELs-s [a]	178 SELs-s [a]	162 dB SPL rms [b]
Source Level (SPLpeak)	188	207	N/A
Weighting Factor Adjustment (kHz)	2	2	2.5
Number of piles per day	3	1	1
Number of strikes per pile	600	600	N/A
Number of strikes per day	1,800	600	N/A
Estimate driving duration (min) per pile	N/A	N/A	10
Activity Duration (h) within 24-h period	N/A	N/A	0.167
Propagation (xLogR)	15 Log R	15 Log R	15 Log R
Distance of source level measurement (meters)	10	10	10

[a] CATRANS, 2015.
[b] United States Navy, 2015.

TABLE 4—CALCULATED DISTANCES TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS DURING PILE DRIVING

Source	Level A harassment zone (meters)	Level B harassment zone (meters)	Level B harassment zone ensonified area (km^2)
	Otariid pinnipeds	Pinnipeds	Pinnipeds
Impact Pile Driving 24-inch octagonal concrete piles	4	117	0.043
Impact Pile Driving 24-inch steel pipe piles	13	1,848	3.68
Vibratory Pile Driving 24-inch steel pipe piles	<1	2,512	6.94
Source	PTS onset isopleth—Peak (meters)		
Impact Pile Driving 24-inch octagonal concrete piles	N/A		
Impact Pile Driving 24-inch steel pipe piles	N/A		

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations, and how this information is brought together to produce a quantitative take estimate.

No California sea lion density information is available for south San Diego Bay. Potential exposures to impact and vibratory pile driving noise for each threshold for California sea lions were estimated using data collected during a 2010 survey as reported in Sorensen and Swope (2010). The Sorenson and Swope (2010) survey is the only known survey to provide marine mammal observation data below the San Diego Coronado Bridge (in mid San Diego Bay). The single survey was on February 16, 2010. During this survey one single sea lion was observed off Pier 3 and one single sea lion was observed ~600 m from the project site.

Level B Harassment Calculations

The following equation was used to calculate takes by Level B harassment:

Level B harassment estimate = N (number of animals in the ensonified area) * Number of days of noise generating activities.

The available survey data suggests from Sorenson and Swope (2010) suggests two California sea lions could be present each day in the project area, however given the limited data available, to be conservative we have estimated four California sea lions could be present each day.

Level B harassment estimate = 4 (number of animals in the ensonified area) * 60 (Number of days of noise generating activities) = 240.

Note that after the publication of the proposed IHA, the Navy reevaluated the number of required 24-inch steel pipe piles, increasing the maximum number from 10 to 20 24-inch steel pipe piles. This increased the maximum number of days of the project activity from 50 (as presented in the proposed IHA) to 60, and therefore has increased the estimated number of California sea lion takes by Level B harassment from 200 (as presented in the proposed IHA) to 240.

Level A Harassment Calculations

Navy intends to avoid Level A harassment take by shutting down activities if a California sea lion approaches with 25 m of the project site, which encompasses all Level A harassment (PTS onset) ensonification zones described in Table 4. Therefore, no take by Level A harassment is anticipated or authorized.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

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

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, Navy will employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- Though not required, Navy has indicated that in-water pile driving will only be conducted at least 30 minutes after sunrise and up to 30 minutes before sunset, when visual monitoring of marine mammals can be conducted;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile driving will shut down immediately if such species are observed within or entering the monitoring zone (*i.e.,* Level B harassment zone); and
- If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following measures apply to Navy's mitigation requirements:

Establishment of Shutdown Zone for Level A Harassment—For all pile driving activities, Navy will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Conservative shutdown zones of 25 m for impact and vibratory pile driving activities would be implemented for California sea lions. The placement of PSOs during all pile driving activities (described in detail in the Monitoring and Reporting section) will ensure shutdown zones are visible.

Establishment of Monitoring Zones for Level B Harassment—Navy will establish monitoring zones to correlate with Level B harassment zones which are areas where SPLs are equal to or exceed the 160 dB re: 1 μPa (rms) threshold for impact pile driving and the 126 dB re: 1 μPa (rms) threshold during vibratory pile driving (Table 5). Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone.

TABLE 5—MONITORING AND SHUTDOWN ZONES FOR EACH PROJECT ACTIVITY

Source	Monitoring zone (m)	Shutdown zone (m)
Impact Pile Driving 4-inch octagonal concrete piles	120	25
Impact Pile Driving 24-inch steel pipe piles	1,850	25
Vibratory Pile Driving 24-inch steel pipe piles	2,515	25

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of strikes from

the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and non-permitted species are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone will commence again.

Due to strong tidal fluctuations and associated currents in San Diego Bay, bubble curtains will not be implemented as they would not be effective in this environment.

Based on our evaluation of the applicant's planned measures, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

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

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

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

Marine Mammal Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Pile driving activities include the time to install a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

At least one land-based PSO will be located at the project site, and for the Navy has indicated that when possible and appropriate during vibratory pile driving activities, one additional boat-based PSO will be located at the edge of the Level B harassment isopleth (see Figure 1–2 of the Marine Mammal Monitoring Plan dated March, 2020).

PSOs will scan the waters using binoculars, and/or spotting scopes, and will use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs will be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Navy would adhere to the following PSO qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required;

(ii) At least one observer must have prior experience working as an observer;

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience;

(iv) Where a team of three or more observers are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

(v) Navy shall submit observer Curriculum vitaes for approval by NMFS. Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;

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

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Observers will be required to use approved data forms (see data collection forms in the applicant's Marine Mammal Mitigation and Monitoring Plan). Among other pieces of information, Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, Navy will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

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

• Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory);

• Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);

• The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;

• Age and sex class, if possible, of all marine mammals observed;

• PSO locations during marine mammal monitoring;

• Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

• Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;

• Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);

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

• Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals;

• An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible; and

• Submit all PSO datasheets and/or raw sighting data (in a separate file from the final report referenced immediately above).

A draft report will be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days (and associated PSO data sheets), and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder shall report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the West Coast Region Stranding Coordinator (562–980–3230) as soon as feasible. If the death or injury was clearly caused by the specified activity, the IHA-holder must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

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

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

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

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

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

• General circumstances under which the animal was discovered.

NMFS will work with Navy to determine what, if anything, is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Navy must not resume their activities until notified by NMFS.

Negligible Impact Analysis and Determination

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

sources of human-caused mortality, or ambient noise levels).

Pile driving activities associated with the Floating Dry Dock Project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) from underwater sounds generated from impact and vibratory pile driving. Potential takes could occur if individuals of California sea lions are present in the ensonified zone when these activities are underway.

No mortality or Level A harassment is anticipated or authorized given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

The Navy's activities are localized and of relatively short duration (a maximum of 60 days of pile driving for 76 piles). The project area is also very limited in scope spatially, as all work is concentrated on a single pier. Localized and short-term noise exposures produced by project activities may cause short-term behavioral modifications in pinnipeds. Moreover, the planned mitigation and monitoring measures are expected to further reduce the likelihood of injury, as it is unlikely an animal would remain in close proximity to the sound source, as well as reduce behavioral disturbances.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014; ABR, 2016). Most likely, individuals will move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in California, which have taken place with no known long-term adverse consequences from behavioral harassment. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory pile driving associated with the project may produce sounds above ambient at distances of several kilometers from the project site, thus intruding on some habitat, the project site itself is located in an industrialized bay, and sounds produced by the planned activities are anticipated to quickly become indistinguishable from other background noise in San Diego Bay as they attenuate to near ambient SPLs moving away from the project site. Therefore, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats.

The project is also not expected to have significant adverse effects on affected marine mammal habitat. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammal foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities, the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or Level A harassment is anticipated or authorized;
- The anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The specified activity and ensonification area is very small relative to the overall habitat ranges of California sea lions and does not include habitat areas of special significance (*e.g.,* biologically important areas); and
- The presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

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

Small Numbers

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

The *Marine Mammal Occurrence and Take Calculation and Estimation* section describes the number of California sea lions that could be exposed to received noise levels that could cause Level B harassment for the Navy's planned activities in the project area site relative to the total stock abundance. Based on the estimated stock abundance presented in the 2018 Final SARs (257,606), our analysis shows that less than 1 percent of the affected stock could be taken by harassment.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

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

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action with respect to environmental

consequences on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

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

Authorization

NMFS has issued an IHA to the Navy for the incidental take of marine mammals due to in-water construction activities associated with the Floating Dry Dock Project at Naval Base San Diego in San Diego, California from September 15, 2020 to September 14, 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 27, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–11732 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA208]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting via webinar of its Groundfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Monday, June 15, 2020 at 1:30 p.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/7775705956742892560.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will follow-up from the April Council meeting regarding the impact of COVID–19 on the recreational groundfish fishery, including a discussion of revisiting possible recommendations for Gulf of Maine cod and Gulf of Maine haddock management measures for fishing year 2020. The Committtee will receive an overview of groundfish specifications and management measures anticipated to be included in the action, which will be initiated at the June 2020 Council meeting as well as an overview from the Northeast Fisheries Science Center regarding the management track assessment plans and Assessment Oversight Panel results from their May 27 meeting. They will also receive an introduction of the Executive Order on Promoting Seafood Competitiveness and Economic Growth. The Panel will provide recommendations to the Council, as appropriate. Other business will be discussed, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: May 26, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–11668 Filed 5–29–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of the Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the New York New Jersey Harbor and Tributaries (NYNJHAT) Coastal Storm Risk Management Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent; withdrawal.

SUMMARY: The U.S. Army Corps of Engineers, New York District, Planning Division is notifying interested parties that it is withdrawing the Notice of Intent (NOI) to develop an EIS for the NYNJHAT Coastal Storm Risk Management (CSRM) Feasibility Study. The NOI to Prepare an EIS was published in the **Federal Register** on January 13, 2020.

ADDRESSES: U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Questions regarding the withdrawal of this NOI should be addressed to Cheryl R. Alkemeyer, NEPA Lead, Environmental Analysis Branch, Watershed Section, Planning Division, U.S. Army Corps of Engineers, New York District. Mail: Cheryl R. Alkemeyer, USACE Planning Environmental 17–421 c/o PSC Mail Center, 26 Federal Plaza, New York, NY 10278; phone: (917) 790– 8723; email: *Cheryl.R.Alkemeyer@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The NOI to prepare an EIS for the NYNJHAT CSRM Feasibility Study was published in the **Federal Register** on January 13, 2020 (85 FR 1807). The NYNJHAT CSRM Feasibility Study did not receive federal funding in the fiscal (FY) 2020 Work Plan (published Feb. 10, 2020), nor in the Administration's proposed

FY2021 budget. Under Executive Order 13807 titled ''Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects'', a goal was set for agencies to reduce the time for completing environmental reviews and authorization decisions to an agency average of not more than two years from publication of a NOI to prepare an EIS. Therefore, in order to align with E.O. 13807, it is necessary to withdraw the existing NOI to develop and re-scope a NEPA coordination/review schedule with the appropriate Federal and state resource agencies that have statutory jurisdiction over the review process for any action being contemplated in the course of the feasibility study and development of an environmental impact statement. Any future Federal-aided action associated with this Study will comply with the environmental review requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and related authorities, as appropriate. Comments and questions concerning this action should be directed to U.S. Army Corps of Engineers at the address provided above.

Study Website: Pertinent information about the study can be found at: *http://www.nan.usace.army.mil/Missions/Civil-Works/Projects-in-New-York/New-York-New-Jersey-Harbor-Tributaries-Focus-Area-Feasibility-Study/.*

Dated: May 22, 2020.

Karen J. Baker,

Programs Director, North Atlantic Division.

[FR Doc. 2020–11673 Filed 5–29–20; 8:45 am]

BILLING CODE 3720–58–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Memorandum of Understanding between the U.S. Nuclear Regulatory Commission and the Defense Nuclear Facilities Safety Board

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; memorandum of understanding.

SUMMARY: On May 18, 2020, the Defense Nuclear Facilities Safety Board (DNFSB) and U.S. Nuclear Regulatory Commission (NRC) entered into a Memorandum of Understanding (MOU) to revise and update an earlier agreement of June 22, 1990. The purpose of this MOU is to provide the basis for the DNFSB to receive assistance from the NRC on matters pertaining to the DNFSB's responsibilities, as well as administrative support.

FOR FURTHER INFORMATION CONTACT: Tara Tadlock, Manager of Board Operations, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016.

SUPPLEMENTARY INFORMATION: On June 22, 1990, DNFSB and NRC entered into a Memorandum of Understanding (1990 Agreement) to provide a process whereby the DNFSB can receive assistance from the NRC pursuant to the Atomic Energy Act of 1954, as amended. On November 28, 1990, DNFSB and NRC approved Appendix A to the 1990 Agreement to provide Employee Assistance Program support services to the DNFSB. On May 18, 2020, the DNFSB and the NRC entered into a new MOU to replace the 1990 Agreement and cancel Appendix A. The new agreement is reproduced in its entirety below.

Authority: 42 U.S.C. 2286b(f)

Dated: May 26, 2020.

Bruce Hamilton,

Chairman.

Memorandum of Understanding Between Defense Nuclear Facilities Safety Board and U.S. Nuclear Regulatory Commission

I. Purpose

The purpose of this memorandum of understanding (MOU) is to provide the basis for the Defense Nuclear Facilities Safety Board (DNFSB) to obtain assistance from the U.S. Nuclear Regulatory Commission (NRC) and the Advisory Committee on Reactor Safeguards (ACRS) on matters pertaining to the DNFSB's responsibilities as well as administrative support for the DNFSB's activities.

II. Authority and Background

The DNFSB was established by Chapter 21 of the Atomic Energy Act of 1954, as amended (AEA) (42 U.S.C. 2286–2286l). The DNFSB's mission is to provide independent analysis, advice, and recommendations to the Secretary of Energy with regard to the adequate protection of public health and safety at defense nuclear facilities. Section 2286b of the AEA authorizes the DNFSB to obtain the advice of the NRC staff and the ACRS on matters pertaining to the DNFSB's responsibilities, with the consent of and under appropriate support arrangements with the NRC. In addition, the NRC will, consistent with the NRC's mission, provide the DNFSB with requested administrative support. These technical and administrative support services are provided under the authority of the Economy Act of 1932, as amended (31 U.S.C. 1535).

III. Execution and Points of Contact

The NRC will provide technical and administrative support services to the DNFSB as agreed upon to meet the requirements of the AEA. The NRC and the DNFSB will each designate a liaison who will direct and monitor all interactions between the two organizations. The NRC liaison is the Assistant for Operations, Office of the Executive Director for Operations. The DNFSB liaison is the Executive Director of Operations or his/her designee. Execution of this MOU will proceed as follows:

1. The DNFSB will direct all requests for NRC or ACRS assistance to the NRC liaison.

2. Requests for NRC support of an ongoing nature (*e.g.,* contractual support) will be covered by an appendix to this MOU, which must be approved by the Commission.

3. Requests for NRC support of an ad hoc or one-time nature will be handled as follows:

a. Requests for assistance requiring 4 staff hours or less may be made orally to the NRC liaison. When support for a specific request exceeds a total of 16 hours in any one month, additional requests for support must be submitted to the NRC liaison in writing for approval.

b. Requests for assistance that are likely to require more than 4 staff hours will be submitted in writing and must be approved by the NRC Executive Director for Operations.

4. The NRC will evaluate all requests to determine the amount of time needed to fulfill each request and advise the DNFSB of the required staff hours. The NRC shall attempt to fulfill each request within the DNFSB's requested timeframe. To keep the Commission informed, the NRC staff shall notify the Commission of requests from the DNFSB.

5. The NRC liaison will forward requests for ACRS assistance to the Advisory Committee Management Officer (ACMO). The ACMO will inform the DNFSB liaison if and when the ACRS may provide advice or recommendations.

IV. Release of Information

The parties agree that information developed during the course of any service performed under this MOU should not be released except in accordance with the Freedom of Information Act (FOIA) (5 U.S.C. 552),

the Federal Advisory Committee Act (5 U.S.C. App. 2 10), the NRC and the DNFSB's respective FOIA regulations, and all other applicable laws. Decisions on disclosure of DNFSB information to the public under FOIA regarding services provided under this MOU shall be made by the DNFSB following consultation with the NRC.

Nothing in this MOU shall prevent or impair the parties' obligations to provide records and information to Congress or any cognizant congressional committee or subcommittee, the U.S. Government Accountability Office, or other Federal agencies, including the U.S. Department of Justice.

V. Amendments and Appendices

The NRC and the DNFSB, by mutual agreement, may amend this MOU or enter into any supplementary agreement as they deem appropriate.

VI. Duration

The provisions of this MOU shall be effective on the date of the last signature. This MOU may be terminated by either party by providing 90 days advance written notice to the other party.

VII. Miscellaneous

This MOU is not legally binding and shall not be construed to create any legal obligation on the part of either party. This MOU shall not be construed to provide a private right or cause of action for or by any person or entity.

This MOU sets forth the entire understanding of the parties and supersedes any and all prior agreements or understandings relating to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by either party that is not embodied in this MOU, and neither party shall be bound by or liable for any alleged representation, promise, inducement, or statement of intent not embodied in this MOU.

The section headings of this MOU are for convenience purposes only and shall not be given any substantive effect or otherwise affect the construction hereof.

Any issues arising from the interpretation or implementation of this MOU will be settled through consultations between the parties or such other means as they may mutually decide.

VIII. Agreement

Dated: May 18, 2020

Bruce Hamilton

Chairman, Defense Nuclear Facilities Safety Board.

Dated: May 14, 2020

Margaret M. Doane,

Executive Director for Operations, U.S. Nuclear Regulatory Commission.

[FR Doc. 2020–11633 Filed 5–29–20; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0051]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Written Application for the Independent Living Services for Older Individuals Who Are Blind Program

AGENCY: Department of Education (ED), Office of Special Education and Rehabilitative Services (OSERS).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 1, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact James Billy, 202–245–7273.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Written Application for the Independent Living Services for Older Individuals Who Are Blind Program.

OMB Control Number: 1820–0660.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 9.

Abstract: This application is used by States to request funds to administer the Independent Living Services for Older Individuals Who Are Blind (IL–OIB) program. The IL–OIB program is provided under Title VII, Chapter 2, Section 752 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), to assist individuals who are age 55 or older whose significant visual impairment makes competitive integrated employment difficult to attain, but for whom independent living goals are feasible.

Dated: May 26, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–11630 Filed 5–29–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; State Tribal Education Partnership Grants to Tribal Educational Agencies

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2020 for the State Tribal Education Partnership Grant Program (STEP), Catalog of Federal Domestic Assistance (CFDA)

number 84.415A. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: June 1, 2020.

Deadline for Notice of Intent to Apply: May 15, 2020.

Deadline for Transmittal of Applications: July 31, 2020.

Deadline for Intergovernmental Review: September 29, 2020.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Shahla Ortega, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W245, Washington, DC 20202–6450. Telephone: (202) 453–5602. Email: *Shahla.Ortega@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of STEP are to: (1) Promote Tribal self-determination in education; (2) improve the academic achievement of Indian children and youth; and (3) promote the coordination and collaboration of Tribal educational agencies (TEAs) (as defined in this notice) with State educational agencies (SEAs) and local educational agencies (LEAs) to meet the unique education and culturally related academic needs of Indian students.

Background: STEP was authorized under section 6132 of the Elementary and Secondary Education Act, as amended (ESEA), to include one-year grants to Tribes to create TEAs (STEP Development grants) and three-year grants to TEAs to coordinate and collaborate with SEAs and LEAs (STEP grants to TEAs: Next STEP Capacity-Building Grant Program).

Our intent for this competition is to award three-year STEP grants to TEAs to directly administer education programs (as defined in this notice), build capacity to administer and coordinate education programs, and receive training and support from and provide training and support to SEAs and LEAs. In addition, we are especially interested in approaches employed by TEAs to deliver services that will expand educational options for Native students, further promoting Tribal self-determination in education. Therefore, we are including Absolute Priority 1 to support proposed projects that are designed to do one or more of the following: recruit or retain educators; build capacity to promote the availability of work-based learning experiences (such as internships, apprenticeships, and fellowships); prepare the TEA to open a new charter school; or build capacity to enable the TEA to prepare to convert a BIE-operated school to a Tribally operated school.

A TEA must submit with its application for funding an agreement (as defined in this notice) with an SEA, one or more LEAs, or both the SEA and an LEA. For the purposes of this agreement, a school funded by the Bureau of Indian Education (BIE) is considered an LEA. However, if a TEA operates a BIE-funded school, the agreement must include at least one other LEA not run by the Tribe or an SEA. The agreement must document the commitment of the TEA, SEA, and LEA to work together and must include all required elements established in this notice. Letters of support from an SEA or LEA will not meet this requirement and will not be accepted as a substitute.

Because we believe that it will be critically important for TEAs receiving a three-year STEP grant to have project leadership in place at the start of the work, projects are required to have a project director in place as soon as possible but not later than 60 days after the project start date in order to successfully meet program outcomes. In addition, an applicant TEA must submit an agreement with the appropriate SEA or LEA to implement the activities described in the application. Within 120 days of receiving the award, a grantee must make any needed updates to the agreement. We also require that a grantee report annually on project progress and that, at the end of the three-year project, each grantee must demonstrate in its final performance report that the grantee met the program objectives.

In accordance with the Department's commitment to engage in regular and meaningful consultation and collaboration with Indian Tribes (as defined in this notice), the Office of Elementary and Secondary Education's (OESE) Office of Indian Education (OIE) and the White House Initiative on American Indian and Alaska Native Education (WHIAIANE) conducted two Tribal Consultation sessions regarding the STEP program, on December 13, 2018, and February 11, 2020, respectively. Consistent with the Department's trust responsibility to Tribes and its Tribal Consultation Policy, on those two dates, OESE consulted with elected officials of federally recognized Tribes to ensure that their views inform OESE's policy decisions related to the priorities, requirements, definitions, and selection criteria that govern this competition. At the 2018 Tribal Consultation, there was significant interest in providing opportunities for Tribes that do not have a TEA to create one. So, the FY 2019 competition focused on one-year grants to Tribes that wanted to establish TEAs.

On January 11, 2020, the Department notified Tribal leaders from each of the federally recognized Indian Tribes, all Tribal College or University (TCU) presidents, current grantees under ESEA Title VI formula and discretionary grant programs, and other stakeholders of the opportunity to provide input on the FY 2020 STEP competition via an email issued through OIE's listserve. The email notification provided information on how Tribal leaders could participate in a blended in-person and virtual Tribal consultation in Washington, DC, on February 11, 2020, and provide written Tribal comment through March 12, 2020, through the *tribalconsultation@ed.gov* mailbox.

The Department solicited feedback on five specific questions as part of this Tribal consultation. There were 60 total participants in attendance either in-person or virtually, and two written comments were submitted. A summary of the feedback to these questions and how the Department incorporated this feedback into the FY 2020 STEP notice inviting applications (NIA) follows.

The Department first asked: ''When partnering with SEAs and LEAs, what kinds of education programs are you most interested in administering? ESEA formula grants, State grants, local grants?'' The options for this multiple-choice question included formula grants under Title VI of the ESEA, other ESEA formula grants, State grants, and local grants.

Consultation participants, both in person, virtually, and via written comments, expressed significant interest in administering education programs, including interest in directly administering formula grants under Title VI of the ESEA and other ESEA programs including Title I, Part A (Improving the Academic Achievement of the Disadvantaged—Improving Basic Programs Operated by Local Educational Agencies); Title I, Part D (Prevention and Intervention Programs

for Children and Youth Who Are Neglected, Delinquent, or At-Risk); Title II (Preparing, Training, and Recruiting High-Quality Teachers, Principals, or Other School Leaders); the 21st Century Community Learning Center grant under Title IV; and the Rural and Low-Income School grant under Title V. Consultation participants also expressed interest in administering various State and local grants.

The Department elaborated on this question by asking, ''What actions do you want to take as part of directly administering education programs?'' Consultation participants offered actions including training school staff on culturally responsive and trauma-informed teaching, partnering with SEA staff, directing funding to close achievement and opportunity gaps, and holding public schools more accountable for the performance of American Indian students.

Next, the Department asked ''What kind of evidence should the Department require to meet the requirement that an applicant show evidence of existing capacity? Is having a Tribal Education Code enough evidence to demonstrate capacity of an applicant?'' Consultation participants indicated that having a Tribal Education Code may be one element of demonstrating evidence of capacity but that alone is not sufficient. Other evidence of capacity may include implementation of standard operating procedures of the TEA, three to five years of ''clean audits,'' Tribal consultation between the TEA and LEAs, and a prior written agreement between the TEA and LEA and/or SEA. We have taken this feedback into account in our definitions of ''established TEA'' and ''existing capacity'' in this NIA.

Third, the Department asked ''Are you interested in using a STEP grant to build capacity to expand educational options, such as expanding Tribal control over existing schools that serve Tribal students or opening new Tribally-operated schools, including new charter schools, in addition to the required activities (directly administering programs, building capacity, two-way training and support)? If yes, are you interested in any of the following options? (1) Taking over an existing school? (2) Opening a new school? Or (3) Other option?'' In response, the vast majority of consultation participants indicated interest in building capacity to expand educational options. Consultation participants expressed notable interest in opening new schools, such as charter schools or Tribal compact schools. We have incorporated feedback from Tribal consultation in the absolute priority for this competition that emphasizes building capacity to expand educational options, which may include opening new schools.

Next the Department asked ''Are you interested in using a STEP grant to build capacity to promote the availability of work-based learning experiences, such as by establishing partnerships to support internships, apprenticeships, or other career pathways, in addition to the required activities (directly administering programs, building capacity, two-way training and support)? If yes, which work-based learning experiences are you interested in building capacity to promote: (1) Internships; (2) Apprenticeships; (3) Other career pathways?'' All consultation participants indicated interest in building capacity to promote the availability of work-based learning experiences except one participant who was not sure; no participants said that they were not interested. One consulation participant was especially interested in using STEP funds to build capacity in this area. We have incorporated feedback from Tribal consultation in the absolute priority for this competition that emphasizes building capacity to expand educational options in one or more of several ways, which may include building capacity to promote work-based learning experiences.

Finally, the Department asked ''Are you interested in using a STEP grant to recruit and retain educators, including by offering support for transportation or housing, in addition to the required activities (directly administering programs, building capacity, two-way training and support)? If yes, which supports might you want to offer: (1) Transportation; (2) Housing; (3) Other?'' All consultation participants indicated interest in building capacity to recruit and retain educators. We have incorporated this Tribal input into the design of Absolute Priority 1.

Priorities: This notice contains three absolute priorities and one competitive preference priority. We are establishing these priorities for the FY 2020 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priorities: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet Absolute Priority 1 and either Absolute Priority 2 or 3.

Note: The Department intends to create two funding slates—one for applicants that meet Absolute Priorities 1 and 2 and another for applicants that meet Absolute Priorities 1 and 3. As a result, the Department may fund applications out of the overall rank order, provided applications of sufficient quality are submitted, but the Department is not bound to do so. Applicants must clearly identify the specific absolute priorities that the proposed project addresses in the project abstract.

These priorities are:

Absolute Priority 1—Building capacity to administer and coordinate education programs.

Applicants must propose a project, and include a plan and timeline, that is designed to do one or more of the following:

(a) Recruit or retain educators, including by supplementing efforts to recruit or retain educators employed by the TEA or by a partnering LEA.

(b) Promote the availability of work-based learning experiences (such as internships, apprenticeships, and fellowships) or career exploration opportunities for elementary and secondary students served by the TEA that align with in-demand industry sectors or occupations (as defined in section 3(23) of the Workforce Innovation and Opportunity Act of 2014), without providing direct services.

(c) For a TEA located in a State with a State statute specifically authorizing the establishment of charter schools, build TEA capacity necessary to open a new charter school, including a Tribally authorized charter school, such as by developing the charter school concept; writing a mission statement; defining an educational model; establishing a governance structure; developing a budget; establishing curriculum; choosing a location; developing partnerships with key stakeholders; or developing other materials related to applying for a charter from the appropriate authorizing entity.

(d) Build TEA capacity necessary to convert a BIE-operated school to a BIE-funded Tribally-operated school, such as by developing structures necessary to ensure smooth transition of instruction; ensuring necessary and appropriate facilities; developing processes and procedures for oversight of funds and compliance with statute and regulations; and preparing to hire teachers and staff.

Absolute Priority 2—Established TEAs.

To meet this priority, a TEA must be an established TEA (as defined in this notice).

Absolute Priority 3—TEAs with limited prior experience.

To meet this priority, a TEA must have limited prior experience, which means that the TEA is not an established TEA.

Competitive Preference Priority: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award zero or five points to an application, depending on whether the application meets this priority.

This priority is:

New Three-Year STEP Grantee (0 or 5 points).

Any applicant for a STEP grant that did not receive a STEP award from the Department in the FY 2012 or FY 2015 competitions.

Requirements: We are establishing these application and program requirements for the FY 2020 grant competition, and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1). We have indicated the source of the requirement in a parenthetical following the requirement.

Application Requirements: Each application must contain the following:

(a) A signed agreement, with the appropriate SEA, one or more LEAs, or both the SEA and an LEA. (ESEA Section 6132(d)(2)(C)(i))

Note: While an applicant may submit an agreement that includes multiple SEAs or LEAs, no additional consideration will be given to a project for doing so.

(b) Evidence of the TEA's existing capacity (as defined in this notice). (ESEA Section 6132(d)(2)(C)(ii))

(c) A detailed budget, including a budget narrative, adequate to complete the activities proposed in the STEP application, including funds requested in this application and specific information related to any other resources available to support the project. (Section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1))

(d) An explanation of how the STEP funds will be used to build on existing activities or add new activities rather than replace Tribal or other funds. (Section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1))

(e) Evidence that the applicant has consulted with other education entities, if any, within the territorial jurisdiction of the applicant that will be affected by the activities to be conducted under the grant. (ESEA Section 6132(d)(3)(A))

(f) A plan for ongoing consultation with other education entities regarding the operation and evaluation of the activities conducted under the grant. (ESEA Section 6132(d)(3)(B))

(g) A description of the method to be used for evaluating the effectiveness of the activities for which assistance is sought and for determining whether such objectives are achieved. (ESEA Section 6132(d)(2)(B))

(h) Written assurance that—

(1) The applicant will not use funds to provide direct services (ESEA Section 6132(e)(2)); and

(2) The applicant does not receive funds from the BIE Tribal Education Department (TED) grant funds under section 1140 of the Education Amendments of 1978 (25 U.S.C. 2020). (ESEA Section 6132(e)(1))

Program Requirements: Applicants that receive grants under this program must meet the following program requirements:

(a) Hire a project director as soon as possible but no later than 60 days after the beginning of the performance period. (Section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1))

(b) Finalize and sign any updates to the agreement with the partnering SEA(s) and LEA(s) within 120 days after the project start date. (Section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1))

(c) Directly administer education programs (as defined in this notice), which may include formula grant programs under ESEA, consistent with State law and under a written agreement between the parties. (ESEA Section 6132(c)(2)(A))

(d) Build capacity to administer and coordinate such education programs, and to improve the relationship and coordination between the TEA and the SEA(s) and LEA(s) that educate students from the Tribe. (ESEA Section 6132(c)(2)(B))

(e) Receive training and support from the SEA(s) and LEA(s), in areas such as data collection and analysis, grants management and monitoring, fiscal accountability, and other areas as needed. (ESEA Section 6132(c)(2)(C))

(f) Train and support the SEA(s) and LEA(s) in areas related to Tribal history, language, and culture. (ESEA Section 6132(c)(2)(D))

(g) Build on existing activities or resources rather than replacing other funds. (ESEA Section 6132(c)(2)(E))

(h) Carry out other activities consistent with the purposes of the program. (ESEA Section 6132(c)(2)(F))

(i) Comply with the Indian Self-Determination and Education Assistance Act (ISDEAA) hiring preference, which provides that awards that are primarily for the benefit of Indians [1] are subject to the provisions of section 7(b) of the ISDEAA. That section requires that, to the greatest extent feasible, a grantee give to—

(1) Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

Definitions: The definitions of ''Indian Tribe'' and ''Tribal educational agency'' are from section 6132 of the ESEA. The definitions of ''project component'' and ''relevant outcome'' are from 34 CFR 77.1(c). We are establishing the definitions of ''agreement,'' ''directly administer education programs,'' ''education program,'' ''established TEA,'' ''existing capacity,'' ''LEA-type function,'' and ''SEA-type function,'' for the FY 2020 grant competition, and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1). The following definitions apply to this competition:

Agreement means a signed written agreement between the TEA and one SEA; the TEA and one or more LEAs; or the TEA and both an SEA and one or more LEAs, that documents the commitment of the TEA, SEA, and LEA, as applicable, to work together. For the purposes of this agreement, a BIE-funded school is considered an LEA. If a TEA operates a BIE-funded school, such agreement must include at least one other LEA not run by the Tribe or an SEA.

The agreement must include—

(1) An explanation of how the parties will work collaboratively to directly administer education programs, including ESEA formula grant programs, consistent with State law and under written agreement between the parties;

(2) A description of the primary SEA-type functions (as defined in this notice) or LEA-type functions (as defined in this notice) that the TEA will assume;

(3) The training and other activities that the SEA or LEA, as appropriate, will provide for the TEA to gain the knowledge and skills needed to administer education programs in areas such as data collection and analysis, grants management and monitoring,

[1] For purposes of this paragraph (i), an Indian is a member of any federally recognized Indian Tribe.

fiscal accountability, and other areas as needed;

(4) The assistance that the TEA will provide to the SEA or LEA, as appropriate, to facilitate the project, in areas related to Tribal history, language, and culture; and

(5) A statement concerning student data that commits the parties to making their best efforts to reach consensus and finalize agreement, within 90 days after the start of the project, on a provision on data sharing that is consistent with FERPA, if data sharing is required by the project design;

(6) The goals, objectives, and outcomes to be achieved by the proposed project that are clearly specified and measurable;

(7) A timetable for accomplishing each of the objectives and activities that the applicant will undertake to achieve the program outcomes in the program requirements; and

(8) An assurance that all relevant parties will participate in each Tribal consultation required under Federal education programs.

Directly administer education programs means conducting SEA-type functions or LEA-type functions for education programs, including ESEA formula grant programs, consistent with State law and under the agreement.

Education program means any Federal, State, local, or private education program that supports elementary or secondary students.

Established TEA means a TEA that—

(1) Previously received a STEP grant in 2012 or 2015; or

(2) Has an existing prior relationship with an SEA or LEA as evidenced by a prior written agreement between the TEA and SEA or LEA, and meets two or more of the following criteria:

(i) Has an existing Tribal education code.

(ii) Has administered at least one education program within the past five years.

(iii) Has administered at least one Federal, State, local, or private grant within the past five years.

Existing capacity means meeting two or more of the following criteria:

(1) Has an existing Tribal education code.

(2) Has established standard operating procedures related to elementary or secondary education operations.

(3) Has administered at least one education program within the past five years.

(4) Has administered at least one Federal, State, local, or private grant within the past five years, which may include a one-year STEP Development grant received in 2019.

Indian Tribe means a federally-recognized or a State-recognized Tribe.

LEA-type function means the type of activity that LEAs typically conduct, such as direct provision of educational services to students, grant implementation, school district curriculum development, staff professional development pursuant to State guidelines, and data submissions.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component (as defined in this notice) is designed to achieve, consistent with the specific goals of the program.

SEA-type function means the type of activity that SEAs typically conduct, such as overall education policy development, supervision and monitoring of school districts, provision of technical assistance to districts, statewide curriculum development, collecting and analyzing performance data, and evaluating programs.

Tribal educational agency (TEA) means the agency, department, or instrumentality of an Indian Tribe that is primarily responsible for supporting Tribal students' elementary and secondary education.

Note: For purposes of this program, this term also includes an agency, department, or instrumentality of more than one Tribe, if the Tribes are in close geographic proximity to each other.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, requirements, and definitions. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 6132 of the ESEA (20 U.S.C. 7452), and, therefore, qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, requirements, and definitions under section 437(d)(1) of GEPA. These priorities, requirements, and definitions will apply to the FY 2020 competition, and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: Section 6132(c)(2) of the ESEA, Grants To Tribes For Education, Administrative Planning, Development, And Coordination, 20 U.S.C. 7452.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1.5 to $2 million.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000 to $500,000.

Estimated Average Size of Awards: $400,000.

Estimated Number of Awards: 4–6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to three years.

III. Eligibility Information

1. *Eligible Applicants:* TEAs, including a consortium of TEAs. An Indian Tribe that receives funds from the BIE under section 1140 of the Education Amendments of 1978 (25 U.S.C. 2020) is not eligible to receive funds under this program.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to

follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

Grants.gov has relaxed the requirement for applicants to have an active registration in the System for Award Management (SAM) in order to apply for funding during the COVID–19 pandemic. An applicant that does not have an active SAM registration can still register with *Grants.gov*, but must contact the *Grants.gov* Support Desk, toll-free, at 1–800–518–4726, in order to take advantage of this flexibility.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* Funding restrictions are outlined in section 6132 (20 U.S.C.7452(3)(e)): (1) An Indian Tribe may not receive funds under this section if such Tribe receives funds under section 1140 of the Education Amendments of 1978 (20 U.S.C. 2020); and (2) no funds under this section may be used to provide direct services. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

5. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. We will award up to 100 points to an application under the selection criteria; the total possible points for each selection criterion are noted in parentheses.

(a) *Quality of the Project Design.* (Maximum 30 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (up to 10 points)

(2) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (up to 10 points)

(3) The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes (as defined in this notice), using existing funding streams from other programs or policies supported by community, State, and Federal resources. (up to 10 points)

(b) *Quality of Project Services.* (Maximum 20 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of project services of the proposed project, the Secretary considers the following factors:

(1) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (up to 5 points).

(2) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (up to 15 points)

(c) *Adequacy of Resources.* (Maximum 30 points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (up to 5 points)

(2) The qualifications, including relevant training and experience, of the project director or principal investigator. (up to 10 points)

(3) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (up to 5 points)

(4) The extent to which the budget is adequate to support the proposed project. (up to 10 points)

(d) *Quality of the Management Plan.* (Maximum 20 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (up to 20 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs

or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program, the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case, the Secretary establishes a data collection period.

5. *Performance Measures: Note:* All grantees will report on measures a, b and c. A grantee will report on measures d, e, f and g, based on the part(s) of Absolute Priority 1 addressed in its application.

(a) The number of capacity building activities offered by the TEA for the SEA or LEA (*e.g.,* trainings, technical assistance in areas related to tribal history, language, or culture).

(b) The number of capacity building activities offered by the SEA or LEA for the TEA (*e.g.,* trainings, technical assistance in developing TEA capacity to administer and coordinate education programs).

(c) The number of education programs grantees directly administer.

(d) The number of teachers recruited or retained to serve students the TEA serves as a result of the STEP grant.

(e) The number of work-based learning experience programs created as a result of the capacity built using the STEP grant.

(f) The number of TEA actions taken to build capacity to open a charter school, such as by developing the charter school concept; writing a mission statement; defining an educational model; establishing a governance structure; developing a budget; establishing curriculum; choosing a location; developing partnerships with key stakeholders; or developing other materials related to applying for a charter from the appropriate authorizing entity.

(g) The number of TEA actions taken to build capacity to convert a BIE-operated school to a BIE-funded Tribally-operated school, such as by developing structures necessary to ensure smooth transition of instruction; ensuring necessary and appropriate facilities; developing processes and procedures for oversight of funds and compliance with statute and regulations; and preparing to hire teachers and staff.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable

to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2020–11729 Filed 5–29–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0026]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Vocational Rehabilitation Financial Report (RSA–17)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 1, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact David Steele, 202–245–6520.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Vocational Rehabilitation Financial Report (RSA–17)

OMB Control Number: 1820–0017

Type of Review: A revision of an existing information collection

Respondents/Affected Public: State, Local, and Tribal Governments

Total Estimated Number of Annual Responses: 312

Total Estimated Number of Annual Burden Hours: 10,193

Abstract: The Vocational Rehabilitation Financial Report (RSA–17) collects data on the State Vocational Rehabilitation Services (VR) program activities for agencies funded under the Rehabilitation Act of 1973, as amended (Rehabilitation Act). The RSA–2 captures the Federal and non-Federal administrative expenditures for the VR program; Services to Groups Federal and non-Federal expenditures; American Job Center Infrastructure Federal and non-Federal expenditures; receipt, use and/or transfer of VR program income; financial data necessary to ensure Federal award requirements are met (*e.g.,* match, maintenance of effort, and pre-employment transition services reservation of funds); and obligations and disbursements that occurred during the period of the award. The basic data comprising the RSA–17 are mandated by the Rehabilitation Act as specified in Section 101(a)(10)(D). Section 13 of the Rehabilitation Act requires the Commissioner of RSA to collect and report information to the Congress and the President through an Annual Report.

The substantive revisions to the form were necessary to: Add data elements in order to implement amendments to the Rehabilitation Act of 1973 (Rehabilitation Act) made by title IV of the Workforce Innovation and Opportunity Act (WIOA) (*e.g.,* those related to services to groups and pre-employment transition services); add data elements necessitated by the VR program's role as a core program in the one stop service delivery system and the jointly administered requirements of title I of WIOA (*e.g.,* those related to one-stop center infrastructure costs and reporting periods); incorporate VR program-specific financial data elements, previously reported on the SF–425, necessary to ensure VR agencies comply with program requirements (*e.g.,* match and maintenance of effort); and remove RSA–2 data elements that duplicated data collected in the RSA–911 Case Service Report. As a result of the revisions to this form, VR agencies will no longer be required to submit SF–425 reports for the VR program beginning with the FFY 2021 grant awards. Difference noted above does not include the reduced burden resulting from VR agencies no longer having to submit these forms.

RSA changed the numbering of the form to the RSA–17. This will assist VR agencies in making a clear distinction between the previous RSA–2 form submitted annually and the RSA–17 form that is submitted quarterly. Additionally, this will make the numbering of the form consistent with RSA's numbering of other forms using the last digits of the Office of Management and Budget's Control Number, which is 17.

Dated: May 27, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division Office of Chief Data Officer.

[FR Doc. 2020–11700 Filed 5–29–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0052]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; ED–524 Budget Information Non-Construction Programs Form and Instructions

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 1, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kelly Terpak, 202–205–5231.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: ED–524 Budget Information Non-Construction Programs Form and Instructions

OMB Control Number: 1894–0008.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 5,400.

Total Estimated Number of Annual Burden Hours: 94,500.

Abstract: The ED–524 form and instructions are included in U.S. Department of Education discretionary grant application packages and are needed in order for applicants to submit summary-level budget data by budget category, as well as a detailed budget narrative, to request and justify their proposed grant budgets which are part of their grant applications.

Dated: May 27, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–11744 Filed 5–29–20; 8:45 am]

BILLING CODE 4000–01–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: ER19–1276–002.

Applicants: Ameren Illinois Company.

Description: Compliance filing of Ameren Illinois.

Filed Date: 5/22/20.

Accession Number: 20200522–5351.

Comments Due: 5 p.m. ET 6/12/20.

Docket Numbers: ER20–1893–000..

Applicants: CenterPoint Energy Houston Electric, LLC.

Description: § 205(d) Rate Filing: TFO Tariff Rate Revision to Conform with PUCT-Approved Rate to be effective 5/15/2020.

Filed Date: 5/22/20.

Accession Number: 20200522–5293

Comments Due: 5 p.m. ET 6/12/20.

Docket Numbers: ER20–1894–000.

Applicants: Highlander IA, LLC.

Description: Baseline eTariff Filing: Highlander IA, LLC.—Shared Facilities Agreement to be effective 5/23/2020.

Filed Date: 5/22/20.

Accession Number: 20200522–5309

Comments Due: 5 p.m. ET 6/12/20.

Docket Numbers: ER20–1895–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–05–26_SA 3497 Duke Energy-Fairbanks Solar Energy GIA (J829) to be effective 5/11/2020.

Filed Date: 5/26/20.

Accession Number: 20200526–5068.

Comments Due: 5 p.m. ET 6/16/20.

Docket Numbers: ER20–1896–000.

Applicants: NSTAR Energy Company.

Description: Notice of cancellation of various transmission service agreements of NSTAR Energy Company.

Filed Date: 5/26/20.

Accession Number: 20200526–5106.

Comments Due: 5 p.m. ET 6/16/20.

Docket Numbers: ER20–1897–000.

Applicants: Pleinmont Solar 1, LLC.

Description: § 205(d) Rate Filing: Pleinmont Solar 1, LLC. Certificate of Concurrence with SFA to be effective 5/27/2020.

Filed Date: 5/26/20.

Accession Number: 20200526–5153.

Comments Due: 5 p.m. ET 6/16/20.

Docket Numbers: ER20–1898–000.

Applicants: Pleinmont Solar 2, LLC.

Description: § 205(d) Rate Filing: Pleinmont Solar 2, LLC. Certificate of Concurrence with SFA to be effective 5/27/2020.

Filed Date: 5/26/20.

Accession Number: 20200526–5159.

Comments Due: 5 p.m. ET 6/16/20.

Docket Numbers: ER20–1899–000.

Applicants: Richmond Spider Solar, LLC.

Description: § 205(d) Rate Filing: Richmond Spider Solar, LLC. Certificate of Concurrence with SFA to be effective 5/27/2020.

Filed Date: 5/26/20.

Accession Number: 20200526–5161.

Comments Due: 5 p.m. ET 6/16/20.

Docket Numbers: ER20–1900–000.

Applicants: Highlander Solar Energy Station 1, LLC.

Description: § 205(d) Rate Filing: Highlander Solar Energy Station 1, LLC. Certificate of Concurrence with SFA to be effective 5/27/2020.

Filed Date: 5/26/20.

Accession Number: 20200526–5177.
Comments Due: 5 p.m. ET 6/16/20.

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

Docket Numbers: ES20–23–000.
Applicants: Mississippi Power Company.
Description: Amendment to April 14, 2020 Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Mississippi Power Company.
Filed Date: 5/22/20.
Accession Number: 20200522–5292
Comments Due: 5 p.m. ET 5/27/20.

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: May 26, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–11686 Filed 5–29–20; 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: RP20–871–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Update Filing—Removal of Expired Agreements to be effective 6/14/2020.
Filed Date: 5/15/20.
Accession Number: 20200515–5000.
Comments Due: 5 p.m. ET 5/28/20.

Docket Numbers: RP20–882–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Manchester Street K511085 to be effective 6/1/2020.
Filed Date: 5/21/20.
Accession Number: 20200521–5095.
Comments Due: 5 p.m. ET 6/2/20.

Docket Numbers: RP20–883–000.
Applicants: White River Hub, LLC.
Description: Annual Fuel Gas Reimbursement Percentage Report of White River Hub, LLC under RP20–883.
Filed Date: 5/22/20.
Accession Number: 20200522–5131.
Comments Due: 5 p.m. ET 6/3/20.

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: May 26, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–11687 Filed 5–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15029–000]

SV Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 23, 2020, SV Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Itasca County Pumped Storage Project (Itasca County Project or project) to be located near the City of Marble, Itasca County, Minnesota. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project is a closed loop pumped storage project and would consist of the following: (1) A 50-foot-high, 120-acre-area circular upper reservoir constructed as a rockfill embankment with a total storage capacity of approximately 4,500 acre-feet at a maximum operating elevation of 1,455 feet mean sea level (msl); (2) an 18-foot-diameter upper intake; (3) a 2,800-foot-long, 16-foot-diameter vertical penstock excavated in granitic bedrock and lined with steel extending between the upper intake and the pump/turbines below; (4) a 5,400-foot to 4,200-foot-circular underground lower reservoir excavated in granitic bedrock, located 2,500 feet below the ground surface elevation of 1,410 msl with a usable storage capacity approximately the same as the upper reservoir and operational water elevations between minus 1,012.5 feet msl and minus 1,055 feet msl; (5) a 200-foot-long, 70-foot-wide, 130-foot-high powerhouse located 250 feet below the lower reservoir containing two vertical Francis reversible pump/turbine-motor/generator units rated for 333 megawatts each; (6) a 240-foot-long, 50-foot-wide, 40-foot-high underground transformer gallery; (7) a 200-foot-square above ground substation; (8) a 200 to 500-foot-long, 230 kilovolts (kV) transmission line extending from the substation to an existing 230 kV transmission line owned by others; and (9) appurtenant facilities. There would be no federal land within the proposed project boundary. The estimated annual generation of the Itasca County Project would be 1,500 gigawatt-hours.

Applicant Contact: Mr. Douglas Spaulding, P.E., Nelson Energy, 8441 Wayzata Blvd., Suite 101 Golden Valley, MN 55426; phone: (952) 544–8133.

FERC Contact: Sergiu Serban; phone: (202) 502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system

at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15029) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 26, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–11688 Filed 5–29–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2015–0436; FRL–10008–29]

Agency Information Collection Activities; Proposed Revisions to an Existing Collection (EPA ICR No. 1139.12; OMB Control No. 2070–0033); Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) revision to the Office of Management and Budget (OMB). The ICR, entitled: ''TSCA Section 4 Test Rules, Consent Orders, Enforceable Consent Agreements, Voluntary Testing Agreements, Voluntary Data Submissions, and Exemptions from Testing Requirements (Reinstatement)'' and identified by EPA ICR No. 1139.12 and OMB Control No. 2070–0033, represents an existing ICR that is scheduled to expire on October 31, 2021. This ICR is being revised to include TSCA section 4 program updates associated with TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act. Before submitting the ICR revision to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before July 31, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0436, 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/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Harlan Weir, Chemical Control Division, Mail Code 7405M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202 564–9885; email address: *weir.harlan@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: ''TSCA Section 4 Test Rules, Consent Orders, Enforceable Consent Agreements, Voluntary Testing Agreements, Voluntary Data Submissions, and Exemptions from Testing Requirements (Reinstatement),'' revised to now be ''TSCA Section 4 Test Rules, Test Orders, Enforceable Consent Agreements (ECAs), Voluntary Data Submissions, and Exemptions from Testing Requirement.''

ICR number: EPA ICR No. 1139.12.

OMB control number: OMB Control No. 2070–0033.

ICR status: This ICR is currently scheduled to expire on October 31, 2021. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under TSCA section 4, EPA has the authority to promulgate rules, issue orders, and enter into consent agreements requiring manufacturers and processors to develop information on chemical substances and mixtures. The revisions to this ICR cover the information collection activities associated with the submission of information to EPA pursuant to TSCA section 4, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act. Under TSCA section 4, EPA has the authority to issue regulatory actions designed to gather or develop information related to human and environmental health, including hazard and exposure information, on chemical substances and mixtures. This information collection addresses the

burden associated with industry activities involved in the reporting and recordkeeping pursuant to TSCA section 4. The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/affected entities: Entities potentially affected by this ICR are manufacturers (including importers) or processors of chemical substances or mixtures, which are mostly chemical companies classified under NAICS Codes 325 and 324.

Estimated total number of potential respondents: 175.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.5.

Estimated total annual burden hours: 32,147 hours. Burden is defined in 5 CFR 1320.3(b).

Estimated total annual costs: $7,650,663, includes no annualized capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is an overall increase of 29,020 hours in the total respondent burden that is currently approved by OMB for this ICR. This increase reflects changes in the number of actions, CBI substantiation requirements, and methodological updates. However, there is a reduction in annual cost estimates due to a change in the assumed battery of tests that may be required for this three-year period under potential testing actions. The assumption is based on statutory changes under the Lautenberg Act, such as the mandated tiered testing approach. Further details about these changes are included in this ICR supporting statement.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 15, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2020–11665 Filed 5–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2020–0077; FRL–10009–97]

Certain New Chemicals; Receipt and Status Information for April 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 04/01/2020 to 04/30/2020.

DATES: Comments identified by the specific case number provided in this document must be received on or before July 1, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0077, and the specific case number for the chemical substance related to your comment, 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/contacts.html.*

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 04/01/2020 to 04/30/2020. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

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

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL–4942–7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 04/01/2020 TO 04/30/2020

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–16–0206A	3	04/21/2020	Evonik Corporation	(S) Pigment Dispersing additive for pigment dispersions for industrial coatings.	(G) Formaldehyde ketone condensate polymer.
P–16–0509A	12	04/24/2020	CBI	(G) For packaging application	(G) Modified ethylene-vinyl alcohol copolymer.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 04/01/2020 TO 04/30/2020—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–17–0086A	7	03/20/2020	CBI	(G) Fragrance Chemical	(G) Cycloalkyl, bis(ethoxyalkyl)-, trans- Cycloalkyl, bis(ethoxyalkyl)-, cis-.
P–17–0294A	2	04/22/2020	CBI	(S) The PMN substance will be used as an organic peroxide polymerization initiator for unsaturated acrylic, unsaturated polyester and vinyl ester resins.	(S) 2-butanone, 3-methyl-, peroxide.
P–17–0333A	7	04/20/2020	Miwon North America, Inc	(S) Reactive diluent for optical film coating	(G) 2-Propenoic acid, mixed esters with heterocyclic dimethanol and heterocyclic methanol.
P–17–0389A	7	04/28/2020	CBI	(G) Polymer precursor	(G) Alkyl oil, polymer with 1,4-cyclohexanedimethanol, dehydrated Alkyl oil, hydrogentated rosin, phthalic anhydride and trimethylolpropane.
P–18–0019A	4	03/26/2020	Cabot Corporation	(S) Dispersive pigment	(G) Substituted Benzene, 4-[2-[2-hydroxy-3-[[(3-nitrophenyl)amino]carbonyl]-1-naphthalenyl]diazenyl]-, sodium salt (1:1).
P–18–0056A	9	04/17/2020	CBI	(S) Rubber Adhesion promoter. Use in the manufacturing process of tires.	(S) Cobalt Neodecanoate Propionate complexes.
P–18–0098A	2	04/02/2020	Allnex, USA Inc	(S) Dispersing additive for pigments	(G) Polyphosphoric acids, polymers with (alkoxyalkoxy)alkanol and substituted heteromonocycle.
P–18–0104A	8	03/18/2020	CBI	(S) Halogen free flame retardant in thermoplastic polymers.	(G) Acrylic acid, reaction products with pentaerythritol, polymerized.
P–18–0150A	5	03/24/2020	CBI	(G) Component of an industrial coating	(G) Tertiary amine, compounds with amino sulfonic acid blocked aliphatic isocyanate homopolymer.
P–18–0154A	9	04/23/2020	CBI	(G) Crosslinking agent for coatings	(G) IIsocyanic acid, polyalkylenepolycycloalkylene ester, 2-alkoxy alkanol and 1-alkoxy alkanol and alkylene diol blocked.
P–18–0258A	4	04/14/2020	CBI	(G) Copolyamide for Packaging Films, Molding Parts, and Monofilament.	(G) Dioic acids, polymers with caprolactam and alkyldiamines.
P–18–0259A	4	04/14/2020	CBI	(G) Copolyamide for Packaging Films, Molding Parts and Monofilament.	(G) Fatty acids, dimers, hydrogenated, polymers with caprolactam and alkyl diamine.
P–18–0262A	7	04/24/2020	Seppic	(S) Function: Stabilizer of suspensions Applications: Detergency.	(S) 2-Propenoic acid, 2-methyl-, dodecyl ester, polymer with ammonium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), N,N-dimethyl-2-propenamide and .alpha.-(2-methyl-1-oxo-2-propen-1-yl)-.omega.-(dodecyloxy)poly(oxy-1,2-ethanediyl).
P–18–0270A	5	04/27/2020	Specialty Elements, LLC	(S) Active co-solvent for solvent-based coatings, coalescent for industrial water-based coatings, coupling agent and solvent in industrial cleaners, rust removers, hard surface cleaners, and disinfectants, primary solvent-based silk screen printing, coupling agent for resins and dyes in water-based printing inks, and co-solvent for agricultural pesticides.	(G) Ethanol, 2-butoxy-, 1,1′-ester.
P–18–0271A	5	04/27/2020	Specialty Elements, LLC	(S) Active co-solvent for solvent-based coatings, coalescent for industrial water-based coatings, coupling agent and solvent in industrial cleaners, rust removers, hard surface cleaners, and disinfectants, primary solvent-based silk screen printing, coupling agent for resins and dyes in water-based printing inks, and co-solvent for agricultural pesticides..	(G) 2-Propanol, 1-butoxy-, 2,2′-ester.
P–18–0326A	8	04/27/2020	CBI	(G) Chemical Intermediate	(G) Alkanoic acid, alkyl ester, manuf. of, byproducts from, distn. residues.
P–18–0327A	6	04/20/2020	CBI	(G) Filler for non-dispersive resins	(G) Mixed Metal Oxide.
P–18–0329A	3	03/20/2020	CBI	(G) Component of lenses used in electronic applications.	(G) Substituted carbopolycyclic dicarboxylic acid dialkyl ester, polymer with alkanediol and carbopolycyclic bis (substituted carbopolycycle) bisalkanol.
P–18–0376A	5	03/30/2020	Sumitomo Chemical Advanced Technologies LLC.	(S) Substance used to improve physical properties in rubber products.	(G) Thiosulfuric acid, aminoalkyl ester.
P–18–0380A	6	04/07/2020	CBI	(G) Automotive brake parts (contained use)	(G) Butanoic acid ethyl amine.
P–18–0381A	3	03/30/2020	The Shepherd Color company.	(G) For use in exterior paints and plastics	(S) Indium manganese yttrium oxide.
P–18–0382A	2	04/08/2020	CBI	(G) Dye for printing ink	(G) Xanthylium, bis[dicarboxycyclic]sulfonylamino-alkylcyclicamino-disulfo-sulfocyclic-, inner salt, monocationic salt.
P–19–0019A	4	04/17/2020	CBI	(G) Intermediate	(G) Haloalkane.
P–19–0048A	6	03/18/2020	CBI	(G) Coating additive	(S) Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, mono-C12–14-alkyl ethers, phosphates, sodium salts.
P–19–0053A	8	03/23/2020	Wacker Chemical Corporation.	(S) Used as a surface treatment, sealant, caulk, and coating for mineral building materials such as concrete, brick, limestone, and plaster, as well as on wood, metal and other substrates.	(S) 1-Butanamine, N-butyl-N-[(triethoxysilyl)methyl]-.
P–19–0077A	12	03/31/2020	CBI	(G) agricultural	(G) alkenylamide.
P–19–0088A	5	04/13/2020	CBI	(G) Feedstock for amine recovery	(S) Ethanamine, N-ethyl-, 2-hydroxy-1,2,3-propanetricarboxylate (1:?).
P–19–0109A	9	04/07/2020	Arch Chemicals, Inc	(G) The chemical is used as a component of a cleaning formulation to improve the wettability of the overall cleaning solution on the substrate.	S) Copper, bis[2-(amino-.kappa.N)ethanolato-.kappa.O]-;.
P–19–0122A	2	03/31/2020	CBI	(G) Reactant monomer in a polymer for industrial use.	(G) 2-propenoic acid, 2-(hydrogenated animal-based nitrogen-substituted) ethyl ester.
P–19–0134A	6	04/02/2020	Conklin Co., Inc	(S) Binder for moisture cure coatings	(G) [5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane], [Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane], polymer with [Poly(oxy-1,4-butanediyl), .alpha.-hydro-.omega.-hydroxy-], [Cyclic amine—ketone adduct, reduced], and [1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-].

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 04/01/2020 TO 04/30/2020—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–19–0134A	7	04/15/2020	CBI	(S) Binder for moisture cure coatings	(G) [5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane], [Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane], polymer with [Poly(oxy-1,4-butanediyl), .alpha.-hydro-.omega.-hydroxy-], [Cyclic amine—ketone adduct, reduced], and [1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-].
P–19–0145A	7	03/30/2020	ARC Products, Inc	(S) Oil Field Drilling Fluid Additive, Oil Field Petroleum Production Fluid Additive, and Oilfield Fracturing Fluid Additive.	(G) Polyazaalkane with oxirane and methyloxirane, haloalkane.
P–19–0153A	5	03/17/2020	Wego Chemical Group	(S) Raw material in Flame Retardant product	(G) Dibromoalkyl ether Tetrabromobisphenol A.
P–19–0174A	5	03/18/2020	International Lubricants Inc	(G) Phosphorus antiwear compound	(G) Octadecanoic acid, (alkylphosphinyl), polyol ester.
P–19–0189A	2	03/24/2020	CBI	(S) Reactive polymer for use in adhesives and sealants.	(G) Fatty acids, polymers with alkanediol and 1,1'-methylenebis[4-isocyanatobenzene].
P–20–0010A	6	03/20/2020	CBI	(G) Polymerization auxiliary	(G) Carboxylic acid, reaction products with metal hydroxide, inorganic dioxide and metal.
P–20–0011A	6	04/22/2020	CBI	(G) Light stabilizer	(G) Tetraoxaspiro[5.5]alkyl-3,9-diylbis(alkyl-2,1-diyl) bis(2-cyano-3-(3,4-dimethoxyphenyl)acrylate).
P–20–0027A	6	04/03/2020	H.B. Fuller Company	(S) Industrial Adhesives	(G) Glycols, alpha, omega-, C2-6, polymers with adipic acid, dodecanedioic acid, hydracrylic acid polyester, isophthalic acid, 1,1′-methylenebis[4-isocyanatobenzene], neopentyl glycol and terephthalic acid.
P–20–0028A	6	04/03/2020	H.B. Fuller Company	(S) Industrial Adhesives	(G) Glycols, alpha, omega-, C2-6, polymers with adipic acid, aromatic polyester, dodecanedioic acid, hydracrylic acid polyester, isophthalic acid, 1,1′-methylenebis[4-isocyanatobenzene], neopentyl glycol and terephthalic acid.
P–20–0029A	4	03/20/2020	Kuraray America, Inc	(G) Oil soluble additive	(S) Octanal, 7(or 8)-formyl-.
P–20–0032A	4	03/26/2020	Engineered Bonded Structures and Composites.	(S) Talathol PO3, the material for which this notice is filed, is intended to be used as a copolymer in the production of urethane foam or coating.	(G) Polyethylene terephthalate polyol.
P–20–0039A	3	04/16/2020	Miwon North America, Inc	(S) Resins for Industrial coating	(G) Hexanedioic acid, polymer with alkyl(substituted-alkyl)-alkanediol and 1,3-isobenzofurandione, 2-propenoate.
P–20–0041A	3	03/25/2020	Kuraray America, Inc	(G) Chemical Intermediate for Coatings	(S) 1,3-Benzenedicarboxylic acid, polymer with 3-methyl-1,5-pentanediol.
P–20–0046A	2	04/09/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-terminated alkylalumuminoxanes and {[(pentaalkylphenyl-(pentaalkylphenyl) amino)alkyl]alkanediaminato}bis(aralkyl) transition metal coordination compound.
P–20–0046A	3	04/27/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-terminated alkylalumuminoxanes and {[(pentaalkylphenyl-(pentaalkylphenyl) amino)alkyl]alkanediaminato}bis(aralkyl) transition metal coordination compound.
P–20–0048	2	04/09/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-terminated alkylaluminoxanes and dihalogeno (alkylcyclopentadienyl)(tetraalkylcyclopentadienyl)transition metal coordination compound.
P–20–0048A	3	04/27/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-terminated alkylaluminoxanes and dihalogeno (alkylcyclopentadienyl)(tetraalkylcyclopentadienyl)transition metal coordination compound.
P–20–0049	2	04/09/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-aluminoxanes and bis (alkylcyclodialkylene)dihalogenozirconium.
P–20–0049A	3	04/27/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-aluminoxanes and bis (alkylcyclodialkylene)dihalogenozirconium.
P–20–0052A	2	04/15/2020	Evonik Corporation	(S) Liquid shrinkage reducing admixture for concrete.	(S) Oxirane, 2-methyl-, polymer with oxirane, mono(3,5,5-trimethylhexanoate).
P–20–0052A	3	04/17/2020	Evonik Corporation	(S) Liquid shrinkage reducing admixture for concrete.	(S) Oxirane, 2-methyl-, polymer with oxirane, mono(3,5,5-trimethylhexanoate).
P–20–0054A	3	04/06/2020	CBI	(G) Catalyst is used in a closed process	(S) Nitrile hydratase.
P–20–0056A	3	04/13/2020	CBI	(G) Pigment dispersant	(G) Polyphosphoric acids, 2-[(alkyl-1-oxo-alkene-1-yl)oxy]alkyl esters, polymers with acrylic acid, alkyl acrylate, alkyl methacrylate, hydroxyalkyl methacrylate and carbomonocycle, 2,2′-(1,2-diazenediyl)bis[2,4-dialkylalkanenitrogensubstituted]-initiated.
P–20–0066A	2	03/22/2020	CBI	(G) Antiwear additive for lubricants	(G) 2-Propenoic acid, 2-hydroxyethyl ester, reaction products with dialkyl hydrogen heterosubstituted phosphate and dimethyl phosphonate.
P–20–0073	2	03/26/2020	CBI	(G) Oil and gas production chemistry	(G) Dialkylamino-alkylamino-alkyloxycarbonic acid acetate.
P–20–0074A	2	04/17/2020	Clariant Corporation	(S) Surfactant for use in the formulation of pesticide products.	(S) Oxirane, 2-methyl-, polymer with oxirane, monoundecyl ether, branched and linear.
P–20–0075A	2	03/26/2020	CBI	(G) Pigment dispersant	(G) Phenol, 4,4′-(1-alkylalkylidene)bis-, polymer with 2-(2-aminoalkoxy)alcohol,2-(chloroalkyl)oxirane, N1,N1-dialkyl-1,3-alkanediamine and .alpha-hydro-.omega.-hydroxypoly[oxy(alkyl-1,2-alkanediyl)], branched 4-alkylphenyl ethers, acetates (salts).
P–20–0078	1	03/30/2020	Ascend Performance Materials.	(G) Stabilizer for industrial applications	(G) Dicarboxylic acid, compd. with aminoalkyl-alkyldiamine alkyldioate alkyldioate (1:2:1:1).
P–20–0079	1	03/30/2020	Ascend Performance Materials.	(G) Stabilizer for industrial applications	(G) Dicarboxylic acid, compd. with aminoalkyl-alkyldiamine (3:2).
P–20–0080	4	04/07/2020	Ascend Performance Materials.	(G) Stabilizer for industrial applications	(G) Alkyldiamine, aminoalkyl-, hydrochloride (1:3).
P–20–0081	4	04/07/2020	Ascend Performance Materials.	(G) Stabilizer for industrial applications	(G) Carboxylic acid, compd. with aminoalkyl-alkyldiamine (3:1).
P–20–0082	4	04/07/2020	Ascend Performance Materials.	(G) Stabilizer for industrial applications	(G) Alkyldiamine, aminoalkyl-, carboxylate (1:3).
P–20–0083	1	03/31/2020	CBI	(G) Reactant monomer in a polymer for industrial use.	(G) 2-propenoic acid, nitrogen-substituted alkyl, N-C16-18-acyl derivs.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 04/01/2020 TO 04/30/2020—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–20–0084	2	04/02/2020	CBI	(G) paper treatment additive	(G) 2-propenoic acid, 2-methyl, 2-(dimethylamino)ethyl ester, polymers with 2-(C16-18-acylamino)ethyl acrylate and hydroxyalkyl acrylate, acetates (salts).
P–20–0086	2	04/22/2020	Daicel Chemtech, Inc	(G) Component of polymers	(G) 2-Oxepanone, homopolymer, ester with hydroxyalkyl trioxo heteromonocyclic (3:1).
P–20–0087	2	04/24/2020	Evonik Corporation	(S) Component in Hard Surface Cleaners, and Laundry Detergent.	(S) Alcohols, C8-10-iso-, C9-rich, ethoxylated.
P–20–0090	2	04/23/2020	Clariant Corporation	(S) Surfactant for use in dishwashing detergents.	(G) Poly(oxy-1,2-ethanediyl), .alpha.-(alkyl-hydroxyalkyl)-.omega.-hydroxy-, .omega.-alkyl ethers.
SN–16–0013A	3	03/16/2020	CBI	(G) Surfactant	(G) Polyfluorinated alkyl quaternary ammonium chloride.
SN–20–0002	2	04/02/2020	Dover Chemical Corporation	(S) Lubricant in metal-working fluids, grease, oil and engine oils; Plasticizer/flame retardant in textiles, polymers, and paints, and Flame retardant in rubber compounds.	(S) Alkanes, C24-28, chloro.
SN–20–0003	4	04/13/2020	Dynax Corporation	(S) An anionic fluorosurfactant for main use (>98%) in firefighting foam concentrates such as AFFF (Aqueous Film Forming Foam) and AR–AFFF (Alcohol Resistant Aqueous Film. Forming Foam), and for very minor use (<2%) in coatings and ink applications.	(S) 1-Propanesulfonic acid, 2-methyl-2-[[1-oxo-3-[(3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl) thio]propyl]amino]-, sodium salt (1:1).
SN–20–0003A	5	04/15/2020	Dynax Corporation	(S) An anionic fluorosurfactant for main use (>98%) in firefighting foam concentrates such as AFFF (Aqueous Film Forming Foam) and AR–AFFF (Alcohol Resistant Aqueous Film. Forming Foam), and for very minor use (<2%) in coatings and ink applications.	(S) 1-Propanesulfonic acid, 2-methyl-2-[[1-oxo-3-[(3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl) thio]propyl]amino]-, sodium salt (1:1).
SN–20–0004	2	04/15/2020	Molecular Rebar Design	(S) For use as an additive in batteries and energy storage devices.	(S) single-walled carbon nanotubes.
SN–20–0004A	3	04/20/2020	Molecular Rebar Design	(S) For use as an additive for enhanced electrical conductivity and mechanical strength in both the cathode and anode of batteries and energy storage devices.	(S) single-walled carbon nanotubes.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90-day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 04/01/2020 TO 04/30/2020

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
J–19–0026	04/08/2020	02/25/2020	N	(G) Biofuel-producing modified microorganism(s), with chromosomally-borne modifications.
P–11–0311	04/02/2020	03/16/2020	N	(G) Hexanedioic acid, polymer with .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,1′-methylenebis[4-isocyanatobenzene], dihydroxydialkyl ether and dialkanol ether.
P–12–0146	04/28/2020	04/14/2020	N	(S) Phosphinous amide, n-(1,2-dimethylpropyl)-n-(diphenylphosphino)-p,p-diphenyl-.
P–16–0309	03/30/2020	02/29/2020	N	(G) 12-hydroxystearic acid, reaction products with alkylene diamine and alkanoic acid.
P–17–0005	04/01/2020	03/26/2020	N	(S) 1-tetradecene homopolymer hydrogenated
P–18–0058	04/20/2020	03/13/2020	N	(S) Phosphonium, trihexyltetradecyl-, salt with 1,1,1-trifluoro-n-[(trifluoromethyl)sulfonyl] methanesulfonamide (1:1).
P–18–0343	04/24/2020	03/24/2020	N	(G) Alkane dicarboxylic acid, polymer with alkoxylated polyalcohol, and alkyl dialcohol, (hydroxy alkyl) ester.
P–18–0344	04/27/2020	04/01/2020	N	(G) Aromatic dicarboxylic acid, polymer with alkane dicarboxylic acid, alkoxylated polyalcohol, and alkyl dialcohol.
P–18–0375	03/25/2020	01/18/2020	N	(S) Oils, vegetable, sulfonated, sodium salts.
P–18–0385	04/17/2020	03/20/2020	N	(S) D-glucopyranose, oligomeric, bu glycosides, polymers with epichlorohydrin, 2-hydroxy-3-sulfopropyl ethers, sodium salts.
P–18–0388	04/01/2020	03/07/2020	N	(G) 1,3,5-triazine-2,4,6-triamine, alkanediyl bis[alkyl-tris(alkyl-heterocycle)-, allyl derivs., oxidized, hydrogenated.
P–19–0164	04/13/2020	04/13/2020	N	(G) Bis-alkoxy substituted alkane, polymer with aminoalkanol.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 04/01/2020 TO 04/30/2020

Case No.	Received date	Type of test information	Chemical substance
L–19–0237	04/08/2020	Particle Size Distribution Analysis	(G) Phosphonium, [3-(acetyloxy)alkyl]triphenyl-, bromide (1:1).
P–14–0712	04/20/2020	PCDD/F Test of PMN Substance using EPA Test Method 8290A.	(G) Plastics, wastes, pyrolyzed, bulk pyrolysate.
P–16–0289	03/30/2020	Particle Size Distribution Analysis	(G) Semi-aromatic polyamide.
P–16–0543	04/10/2020	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P–16–0543	04/20/2020	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P–18–0203	03/30/2020	Fish Early-Life Stage Toxicity Test with Pimephales Promelas (Test Guidelines OECD 210).	(G) Trialkyl alkanal, polymer with alkylalkanal and phenol.
P–18–0205	03/31/2020	Fish Early-Life Stage Toxicity Test with Pimephales Promelas (Test Guidelines OECD 210).	(G) Alkyl alkanal, polymer with formaldehyde and phenol.
P–20–0018	04/02/2020	Gel-Permeation Cleanup and Molecular Weight Study using EPA method 3640A.	(G) Fatty acid dimers, polymers with glycerol and triglycerides.
SN–16–0013 ...	04/20/2020	Fish Acute Toxicity Test (OCSPP Test Guideline 850.1075), In Vitro Mammalian Cell Gene Mutation Tests Using the Thymidine Kinase Gene (OECD Test Guideline 490), Hydrolysis as a function of pH (OECD Test Guideline 111), Repeated Dose (21-Day) Dermal Toxicity Study (OECD Test Guideline 410), Daphnia Magna Test, Activated Sludge Respiration Inhibition Test (OECD Test Guideline 209), In Vitro Mammalian Cell Micronucleus Test (OECD Test Guideline 487), Acute Eye Irritation/Corrosion in Rabbits (Oryctolagus cuniculus) Test (OECD Test Guideline 405), Acute Dermal Toxicity in Rat (Rattus Norvegicus) Test (OECD Test Guideline 402), Acute Inhalation Toxicity Test in Rats (Rattus Norvegicus) OECD Test Guideline 403), Development of Human Health Toxicity Study Part 1 and 2.	(G) Polyfluorinated alkyl quaternary ammonium chloride.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

(Authority: 15 U.S.C. 2601 *et seq.*)

Dated: May 15, 2020.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2020–11635 Filed 5–29–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 18–122, DA 20–536; FRS 16792]

Wireless Telecommunications Bureau Seeks Comment on Joint Petition for Stay of 3.7–4.2 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireless Telecommunications Bureau (Bureau) seeks comment on a request that the Commission stay, pending judicial review, the rules adopted in the Report and Order and Order of Proposed Modification, filed by ABS Global Ltd., Empresa Argentina de Soluciones Satelitales S.A., and Hispamar Satélites S.A. and Hispasat S.A. (collectively, the Small Satellite Operators).

DATES: Comments are due on or before May 27, 2020 and reply comments are due on June 1, 2020.

ADDRESSES: You may submit comments and reply comments, identified by GN Docket No. 18–122, by any of the following methods:

- *Electronic Filers:* Elections may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

FOR FURTHER INFORMATION CONTACT: Becky Tangren, Wireless Telecommunications Bureau, at *Becky.Tangren@fcc.gov* or 202–418–7178.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, GN Docket No. 18–122, DA 20–536, released on May 20, 2020. The complete text of this *document* is available on the Commission's website at *https://www.fcc.gov/document/wtb-*

seeks-comment-petition-stay-37-42-ghz-band-ro or by using the search function for GN Docket No. 18–122 on the Commission's ECFS web page at *www.fcc.gov/ecfs.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file elections on or before the date indicated on the first page of this document.

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

Ex Parte Rules: This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml., .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

With the document, DA 20–536, the Bureau seeks comment on a request that the Commission stay, pending judicial review, the rules adopted in the *Report and Order,* filed by the Small Satellite Operators.[1] The Small Satellite Operators have challenged the *Report and Order* in the United States Court of Appeals for the D.C. Circuit and seek a stay from the Commission pending judicial review. The Small Satellite Operators sought confidential treatment for certain information contained in the Petition, pursuant to 47 CFR 0.459. Access to confidential information is governed by the policies and procedures established in the *Protective Order* for this proceeding.[2]

The Bureau seeks comment on the issues raised by the Small Satellite Operators' request for stay.

Federal Communications Commission.

Amy Brett,

Associate Division Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau.

[FR Doc. 2020–11842 Filed 5–29–20; 8:45 am]

BILLING CODE 6712–01–P

[1] Petition for Stay of Report and Order and Order of Proposed Modification Pending Judicial Review, GN Docket No. 18–122, Small Satellite Operators (filed May 15, 2020) (Petition).

[2] *Expanding Flexible Use of the 3.7 to 4.2 GHz Band,* GN Docket No. 18–122, Protective Order, 34 FCC Rcd 7700 (WTB 2019) (*Protective Order*).

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201344.

Agreement Name: The Global Shipping Business Network Agreement.

Parties: CMA CGM S.A.; COSCO SHIPPING Lines Co., Ltd.; Hapag-Lloyd AG; and Orient Overseas Container Line Limited.

Filing Party: Eric Jeffrey; Nixon Peabody.

Synopsis: The Agreement authorizes the parties to cooperate with respect to the operation of a platform for all shipping supply chain participants to work collaboratively to accelerate technology innovation and develop solutions through a blockchain-enabled, global trade digitized process.

Proposed Effective Date: 7/10/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/29502.

Dated: May 27, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–11694 Filed 5–29–20; 8:45 am]

BILLING CODE 6730–02–P

GENERAL SERVICES ADMINISTRATION

[Notice-MG–2020–03; Docket No. 2020–0002; Sequence No. 19]

Office of Federal High-Performance Buildings; Green Building Advisory Committee; Updated Notification of Upcoming Meeting

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Updated meeting notice.

SUMMARY: The General Services Administration (GSA) Office of Federal High-Performance Buildings within the Office of Government-wide Policy is announcing amendments to notice Notice–MG–2020–02, dated January 15, 2020. The public meeting originally announced as an in-person meeting for June 11, 2020, will now be held solely via Web conference.

DATES: The public meeting originally announced for June 11, 2020 will be held via Web conference on a slightly revised schedule, from 11 a.m. to 3:30 p.m. Eastern Time (ET).

June 11, 2020 Updated Meeting Agenda

- Updates and introductions
- Renewable energy outleasing task group findings & recommendations
- Embodied energy task group findings & recommendations
- Additional topics proposed by Committee members
- Public comment
- Next steps and closing comments

FOR FURTHER INFORMATION CONTACT: Mr. Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Buildings, Office of Government-wide Policy, General Services Administration, 1800 F Street NW, (Mail-code: MG), Washington, DC

20405, at *ken.sandler@gsa.gov.* Additional information about the Committee is available on-line at *http://www.gsa.gov/gbac.*

SUPPLEMENTARY INFORMATION:

Procedures for Attendance and Public Comment

Contact Mr. Ken Sandler at *ken.sandler@gsa.gov* to register to attend the Web meeting. To attend, submit your full name, organization, email address, and phone number. (GSA is unable to provide technical assistance to any listener experiencing technical difficulties. Testing access to the Web meeting site before the calls is recommended.) Requests to attend the June 11, 2020 meeting must be received by 5:00 p.m., ET, on June 8, 2020.

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Buildings, General Services Administration.

[FR Doc. 2020–11629 Filed 5–29–20; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)-CE20–006: Research Grants to Prevent Firearm-Related Violence and Injuries.

Date: July 6–10, 2020.

Time: 8:30 a.m.–4:30 p.m., EDT.

Place: Videoconference.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Mikel Walters, Ph.D., Scientific Review Official, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, Georgia 30341, Telephone (404) 639–0913, *MWalters@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–11736 Filed 5–29–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3384–CN]

Medicare and Medicaid Programs; Application From the Joint Commission (TJC) for Continued Approval of its Home Health Agency Accreditation Program; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice; correction.

SUMMARY: This document corrects technical errors that appeared in the notice published in the **Federal Register** on April 1, 2020 entitled ''Medicare and Medicaid Programs; Application from the Joint Commission (TJC) for Continued Approval of its Home Health Agency Accreditation Program.''

DATES: This correcting document is effective on June 1, 2020.

FOR FURTHER INFORMATION CONTACT: Sharon Lash (410) 786–9457. Caecilia Blondiaux, (410) 786–2190.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Errors

In FR Doc. 2020–06792 of April 1, 2020 (85 FR 18245), there were technical errors that we identified in the Provisions of the Final Notice section. On pages 18246 and 18247, we made technical errors in our description of one of The Joint Commission's (TJC's) revisions to its standards and certification processes made to meet our requirements.

II. Correction of Errors

In FR Doc. 2020–06792 of April 1, 2020 (85 FR 18245), make the following corrections:

1. On page 18246, third column, the last bulleted paragraph, line 2, the phrase ''educational and consultative nature of'' is corrected to read ''consultative nature of''.

2. On page 18247, first column, first partial paragraph, lines 6 and 7, the phrase ''safety standards, rather than any educational function'' is corrected to read ''safety standards''.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Seema Verma, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: May 20, 2020.

Evell J. Barco Holland,

Federal Register Liaison, Department of Health and Human Services.

[FR Doc. 2020–11701 Filed 5–29–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review: Title V State Sexual Risk Avoidance Education (SRAE) Program (New Collection)

AGENCY: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Request for public comment.

SUMMARY: The Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB) is accepting mandatory formula grant applications and State Plans from states and territories for the development of and implementation for Title V State Sexual Risk Avoidance Education (SRAE) Program. The Title V State SRAE Funding Opportunity Announcement sets forth the application requirements for the receipt of the following documents from applicants and awardees: Application, State Plan, and Performance Progress Report.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days

after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: This Notice is to solicit comments from the public on ACYF's proposed information collection documents (application, State Plan, and Performance Progress Report).

Purpose and Use of the Information Collections:

The application and State Plan will offer information about the proposed state project and it will be used as the primary basis to determine whether or not the project meets the minimum requirements for the award.

The Performance Progress Report will inform the monitoring of the grantees program design, program evaluation, management improvement, service quality, and compliance with agreed upon goals. ACYF/FYSB will use the information to assure effective service delivery. Finally, the data from this collection will be used to report outcomes and efficiencies and will provide valuable information to policy makers and key stakeholders in the development of program and research efforts.

Respondents: Fifty states and nine territories, to include the District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

ANNUAL BURDEN ESTIMATES

Information collection title	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Application	59	1	24	1,416	472
State Plan	59	3	40	7,080	2,360
Performance Progress Report	59	6	16	5,664	1,888

Estimated Annual Burden Total: 4,702.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 510 (42 U.S.C. 710), as amended by Section 50502 (Pub. L. 115–123).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–11628 Filed 5–29–20; 8:45 am]

BILLING CODE 4184–83–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; University Centers of Excellence in Developmental Disabilities Education, Research and Service Annual Report [OMB# 0985–0030]

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) 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 Proposed Revision and solicits comments on the information collection requirements related to the University Centers of Excellence in Developmental Disabilities (UCEDD) Education, Research and Service final 5-year report.

DATES: Submit written comments on the collection of information by July 1, 2020.

ADDRESSES: Submit electronic 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: Pamela O'Brien, Administration for Community Living, Washington, and DC 20201, (202)795–7417.

SUPPLEMENTARY INFORMATION: The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act of 2000) directs the Secretary of Health and Human Services to develop and implement a system of program accountability to monitor the grantees funded under the DD Act of 2000. The program accountability system shall include the National Network of University Centers for Excellence in Developmental Disabilities (UCEDD) Education, Research, and Service.

The DD Act of 2000 states that the UCEDD Annual Report should contain information on progress made in achieving the projected goals of the Center for the previous year.

Reporting on the extent to which the goals were achieved; a description of the strategies that contributed to achieving the goals; the extent to which the goals were not achieved, a description of factors that impeded the achievement;

and an accounting of the manner in which funds paid to the Center under this subtitle for a fiscal year were expended. Information on proposed revisions to the goals and a description of successful efforts to leverage funds, other than funds made available under the DD Act of 2000.

In addition, the DD Act of 2000 states those grantees must also report on data collected regarding:

(1) Consumer satisfaction with the advocacy;

(2) capacity building;

(3) systemic change activities initiated by the UCEDD;

(4) the extent to which the UCEDD's advocacy, capacity building, and systemic change activities provided results through improvements; and

(5) the extent to which collaboration was achieved in the areas of advocacy, capacity building, and systemic change.

The UCEDD program is a discretionary grant program that supports states and territories in the operation and administration of a national network of UCEDDs. UCEDDS are interdisciplinary education, research, and public service units of universities, public or not-for-profit entities associated with universities that engage in core functions. Currently, UCEDDs engage in four broad tasks: conducting interdisciplinary training, promoting community service programs including technical assistance, conducting research, and disseminating information to the field. They address areas of emphasis such as, quality assurance, education and early intervention, child care, health, employment, housing, transportation, recreation, and other services available or offered to individuals living in the community, including formal and informal community supports, that affect their quality of life.

UCEDD accomplishments include:

- Directing exemplary interdisciplinary training programs where faculty and trainees represent a variety of disciplines which expand opportunities for students to learn different perspectives from professionals serving individuals with intellectual and developmental disabilities and their families;
- providing community services and technical assistance to individuals with intellectual and developmental disabilities, family members, professionals, paraprofessionals, systems, support service organizations, volunteers among others; and
- contributing to the development of new knowledge through research and information dissemination including field testing models of service delivery and evaluating existing innovative practices to disseminate to the field.

Comments in Response to the 60-Day Federal Register Notice

A 60-day **Federal Register** Notice published on March 4, 2020 in 85 FR 12787–12788, ACL received five public comments from the comment period. Following are the public comments and ACL's responses, and the updated proposed data collection tools may be found on the ACL website for review at: *https://www.acl.gov/about-acl/public-input.*

Public Comment #1

(a) Based upon experiences where the estimated number of hours was very substantially less than the number of UCEDD hours invested in reporting, the estimated number of hours to adapt to and maintain the revised system seems quite low. For example, grantees' internal data collection methods will require substantial revision. All faculty, staff and trainees will need training in their new documentation responsibilities. Each year, training will be repeated for new faculty, staff, and trainees.

(b) The information published in the **Federal Register** estimates that data collection will take 143 hours. This has not been the IOD's experience. The IOD estimates that over 1,000 hours are spent annually entering data and creating IOD reports for ACL and AIDD. Although the work required is significant, we appreciate. Despite these recent improvements, an assessment of the proposed changes to the reporting requirements of the PPR predicts a net increase in effort in order to be in compliance.

(c) Our current estimated time burden for data collection, entry, cleaning and analysis as well as report writing annually is 1,200 hours for the PPR. This does not include writing the 5-year report. We estimate that it would take us an additional 40–60 hours to write the 5-year report, increasing the total estimated time burden for 5-year reporting years to almost 1,300 hours.

(d) Furthermore, reporting of the intermediate outcomes for Research, in particular, will be onerous for researchers who already have substantial reporting and publication requirements specified in their grants and contracts. This requirement seems redundant with the required reporting of publications.

ACL Response #1

ACL has reviewed and accepts your recommendations. The estimated burden hours will be corrected in the 30-day FRN public call for comments. In response to the concern about reporting intermediate research outcomes, the 5-year report language will be amended to require a research impact statement replacing the case example requirement. ACL will use the impact statement for communication, collaboration, and other purposes.

Comment #2

The following paragraph from Part (1.a.) Detailed Work Plan Progress Report (annual report) seems to refer to future activities (*e.g.,* ''individuals who will work'') and therefore is very confusing as an aspect of a report on progress in a past year.

Response #2

ACL reviewed and will delete the confusing paragraph in Part (1.a.) from the work plan progress report.

Comment #3

(a) AUCD would need to overhaul NIRS to ask all required questions and to provide single-year and cumulative reports summarizing the data. They would need a way to track issues encountered by grantees as they try to input the data into NIRS, and develop FAQs to respond to the issues.

(b) Additionally, as we begin to think about the IOD's 5-year report, significant cost and time savings could be realized if an intuitive and efficient structure for the 5-year report could be built into NIRS.

(c) Recommend building the 5-year report into the NIRS system to ease reporting burden of our and other UCEDDs' having to create our own templates for reporting.

(d) Currently, evaluation and demographic information of participants in all core functions must be manually entered into NIRS after completion. This is time consuming and leaves room for missing data and error data. Building electronic forms that would allow UCEDDs to collect their evaluation data directly in NIRS would be very helpful in reducing data error and time spend on data entry. Recommend development of customizable e-forms within NIRS by AUCD to support UCEDDs in collecting their evaluation within NIRS.

Response #3

The UCEDD Resource Center at AUCD will meet this need.

Comment #4

Overall, the proposed questions (especially those to be answered in narrative form) do help to highlight significant outcomes, and the extent to which each UCEDD has successfully

performed its core functions, independent of project-specific outcomes.

We do have some concerns regarding (1.b.1). Discuss CAC involvement in evaluating UCEDD activities, and in the development and review of the final program progress report.

At every CAC meeting, we provide updates on the UCEDDs activities, where CAC members are encouraged to comment and make suggestions. An in-depth annual report is provided at our full-day in person CAC meeting every November. If that coincides with a five-year renewal application earlier that year, then a 5-year cumulative report is shared.

Previously, there has been no requirement for CAC members to be directly involved in the development of this report. Essentially, this is a technical report, aggregating 5- years' worth of NIRS data with additional narrative and impact statements. As such, we feel it is both burdensome and somewhat irrelevant to involve the CAC in the development of a report that is submitted to AoD. Rather than ask about CAC involvement in the development, perhaps it would be more beneficial and direct to require that CAC members be surveyed about their experiences and satisfaction with the structure and function of their respective CACs over the preceding 5 years.

Response #4

Regarding Part (1.b1): ACL reviewed and accepts your recommendation to delete the requirement for CAC involvement in the development of the final five-year report.

Comment # 5

Recommend ensuring enough time is allocated between the year 5 annual report due date and the due date of the overall 5-year report.

Response # 5

The year 5 annual report is due July 30 and the 5-year closeout report is due 90 days after the end of the grant period or September 30 for time allocation.

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
UCEDD Annual Report	67	1	1,462	97,954

Dated: May 21, 2020.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2020–11685 Filed 5–29–20; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–0626]

Proprietary Names for New Animal Drugs; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry #240 entitled ''Proprietary Names for New Animal Drugs.'' This guidance provides recommendations to help new animal drug sponsors develop proprietary names for new animal drugs that do not contribute to medication errors, negatively impact safe use of the drug, or misbrand the drug. This guidance proposes a framework for evaluating proposed proprietary names before submitting them for review by the Center for Veterinary Medicine (CVM or we). It also explains how new animal drug sponsors can request that CVM evaluate a proposed proprietary name.

DATES: The announcement of the guidance is published in the **Federal Register** on June 1, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–0626 for ''Proprietary Names for New Animal Drugs.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the

claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/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, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: For questions regarding this document, contact Tom Modric, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7519 Standish Place, Rockville, Rockville, MD 20855, 240–402–5853, *tomislav.modric@fda.hhs.gov* or *AskCVM@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 12, 2018 (83 FR 10732), FDA published the notice of availability for a draft guidance entitled ''Proprietary Names for New Animal Drugs,'' giving interested persons until May 11, 2018, to comment on the draft guidance. FDA received comments on the draft guidance, and those comments were considered as the guidance was finalized. Changes made include revisions to the definitions. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated March 2018.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on proprietary names for new animal drugs. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

FDA concludes that there are no collections of information under the Paperwork Reduction Act of 1995. This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 514 have been approved under OMB control numbers 0910–0032 and 0910–0699; the collections of information in 21 CFR part 511 have been approved under OMB control number 0910–0117.

IV. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *https://www.regulations.gov.*

Dated: May 26, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–11679 Filed 5–29–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of vouchers as well as the approval of products redeeming a voucher. FDA has determined that NURTEC ODT (rimegepant), approved February 27, 2020, meets the redemption criteria.

FOR FURTHER INFORMATION CONTACT: Althea Cuff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4061, Fax: 301–796–9858, email: *althea.cuff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that NURTEC ODT (rimegepant), approved February 27, 2020, meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about NURTEC ODT (rimegepant), approved February 27, 2020, go to the ''Drugs@FDA'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: May 26, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–11681 Filed 5–29–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0837]

Rare Disease Clinical Trial Networks; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information and comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the establishment of a docket to obtain information and comments from patients, patient advocates, the scientific community, health professionals, other regulatory and health authorities in the global community, regulated industry, and the general public regarding practical steps and successful approaches to establish a rare disease clinical trials network.

DATES: Submit written or electronic comments and information on the notice by July 31, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 31, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 31, 2020. 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.

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–5464 for ''Rare Disease Clinical Trial Networks; Request for Information and 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.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/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 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Meghana Chalasani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6304, Silver Spring, MD 20993–0002, 240–402–6525, *meghana.chalasani@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Over the past decade, progress has been made in planning and conducting clinical trials for rare disease drug development. In 2018, for the first time ever, a majority of new molecular entities approved by the FDA were orphan drugs to treat rare diseases. However, of the approximately 7,000 known rare diseases, less than 10 percent have an FDA-approved treatment available. Rare disease drug development continues to be challenged by the small numbers of patients and limited understanding of the variability and progression of each disease.

To support innovation and quality in the drug development pipeline for rare diseases, FDA has proposed establishment of a ''Rare Disease Cures Accelerator.'' The Rare Disease Cures Accelerator would provide a more centralized infrastructure and common platform(s) and approaches to support: (1) Rare disease characterization, (2) development of standard core sets of clinical outcome assessments and endpoints relevant to rare conditions, and (3) support conduct of clinical trials in rare disease populations. Following FDA CDER receipt of $10 million in FY 2019 Congressional appropriations for investment and innovation for rare diseases, FDA launched a set of efforts to begin building capabilities for the first two of these three components. To learn more, please visit FDA's Rare Disease Cures Accelerator Homepage [*https://www.fda.gov/drugs/regulatory-science-research-and-education/rare-disease-cures-accelerator*].

With this request for information and comments, FDA is interested in understanding what work is currently being done and what work needs to be done to address the third component of its Rare Disease Cures Accelerator—improving the design, conduct, and completion of rare disease clinical trials. FDA is particularly interested in learning practical steps and successful approaches related to startup, implementation, and sustainment of clinical trials networks for rare diseases, including specific considerations for establishing such networks for a range

of rare diseases. Because of the small size of rare disease populations and global occurrence of rare conditions, it is considered that the networks needed to support rare disease drug development would also have global reach and operations.

II. Requested Information and Comments

FDA requests input on practical steps and successful approaches to startup, implement, and sustain global clinical trials networks, including specific considerations for establishing such networks for a range of rare diseases. Questions that could be addressed include, but are not limited to, those listed below. It is not necessary to answer all the questions below.

1. What should be the immediate (<3 years) and long-term objectives of a global clinical trials network?

2. How could a global clinical trials network for rare disease be organizationally structured (*e.g.,* what mix of scientific and clinical disciplines are engaged to staff it; what process or guidance is followed for study protocol design; what standard procedures are employed for conduct of trials, and related protection of study participants and study data, etc.)? For example:

• Are there experiences that can be shared regarding networks integrating a disease-specific development center with a disease-agnostic operations center?

• Are there experiences that can be shared regarding networks focused on a broad group of rare diseases and collaboration with regional or disease-specific networks?

3. What kind of investigator experience is needed to start up and expand to implement a global clinical trial network (*e.g.,* experience with clinical trial research administration, clinical trial operations, working with pharmaceutical companies in the design, conduct and management of clinical trials)?

4. What are successful models of governance for global clinical trial networks (*e.g.,* role, responsibilities, and composition of various governing bodies)?

5. What are potential opportunities to leverage and/or complement other existing networks (*e.g.,* Institute for Advanced Clinical Trials for Children Network, Duke Clinical Research Institute Pediatric Trial Network, National Institutes of Health (NIH) Rare Diseases Clinical Research Network, NIH Experimental Therapeutics Clinical Trials Network, European Network of Paediatric Research at the European Medicines Agency)?

6. What infrastructure is required to startup, implement, and sustain a global clinical trials network (*e.g.,* required administrative, financial and physical resources, centralized functions, data coordination and network operations, global interoperability)?

7. What level of funding would be needed to establish a network, potentially expand a network, and sustain the network over the long term (*e.g.,* at least 5 years and longer)? A a range of estimates (*e.g.,* startup costs, annual operating costs) and associated assumptions would be helpful.

8. What are the key milestones and associated timelines for starting up and expanding to implement a global clinical trials network?

9. What are potential challenges or barriers to starting up, implementing, and sustaining a global rare disease clinical trials network?

Dated: May 26, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–11655 Filed 5–29–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1069]

Approved Drug Products With Therapeutic Equivalence Evaluations (the "Orange Book"); 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 or Agency) is announcing the establishment of a public docket to solicit comments on FDA's publication entitled ''Approved Drug Products With Therapeutic Equivalence Evaluations'' (commonly known as the ''Orange Book''). The Orange Book identifies drug products approved by FDA under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and includes related information. As part of FDA's Drug Competition Action Plan and our continued effort to improve transparency and provide useful information to regulated industry and the public, we are seeking comments on how stakeholders and the public use the Orange Book and whether it can be improved.

DATES: Submit either electronic or written comments by August 31, 2020.

ADDRESSES: 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–2020–N–1069 for ''Approved Drug Products With Therapeutic Equivalence Evaluations (the 'Orange Book'); 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.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/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: Lisa Bercu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1672, Silver Spring, MD 20993, 240–402–6902, *Lisa.Bercu@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

As its core function, the Orange Book identifies drug products approved by FDA under the FD&C Act and includes patent and exclusivity information related to those drug products. The main criteria for the inclusion of a drug product in the Orange Book are that the drug product is the subject of an approved application and that FDA has not determined the drug product to have been withdrawn for safety or efficacy reasons. The Orange Book includes drug products approved prior to the 1962 amendments to the FD&C Act on the basis of safety and found to be effective through the Drug Efficacy Study Implementation process. However, pre-1938 drug products not subject to the premarket approval authorities of the FD&C Act are excluded from the Orange Book. In addition, drug products that were not marketed at the time of the first publication of the Orange Book or were discontinued between 1980 and 1987, prior to the identification of discontinued products, are also not included in the list.

The Orange Book also contains therapeutic equivalence evaluations for approved multisource prescription drug products. *Therapeutic equivalents* are approved drug products that FDA has determined are pharmaceutical equivalents for which bioequivalence has been demonstrated, and can be expected to have the same clinical effect and safety profile when administered to patients under the conditions specified in the labeling (§ 314.3(b) (21 CFR 314.3(b))). The therapeutic equivalence evaluations in the Orange Book serve as public information available to prescribers, pharmacists, Federal and State health agencies, and private formularies, among others, to promote public education in the area of drug product selection and to foster the containment of health care costs. Therapeutic equivalence evaluations in the Orange Book are not official FDA actions affecting the legal status of products under the FD&C Act.

The Orange Book is composed of four main parts: (1) The Prescription Drug Product List, which is a list of approved marketed prescription drug products with therapeutic equivalence evaluations; (2) the OTC Drug Product List, which is a list of marketed over-the-counter (OTC) drug products that have been approved in new drug applications (NDAs) or abbreviated new drug applications (ANDAs); (3) the Drug Products with Approval under section 505 of the FD&C Act (21 U.S.C. 355) administered by the Center for Biologics Evaluation and Research List; and (4) the Discontinued Drug Product List, which is a cumulative list of approved drug products that have never been marketed, are for exportation, are for military use, are not commercially distributed by a Federal or State government entity, have been discontinued from marketing and FDA has not determined that they were withdrawn from sale for safety or effectiveness reasons, or have had their approvals withdrawn for other than safety or efficacy reasons subsequent to being discontinued from marketing. The Orange Book also includes indices of prescription and OTC drug products by proprietary name (brand name or trade name) or, if no proprietary name exists, established name of the active ingredient and by applicant name, which have been abbreviated for this publication. The Addendum to the Orange Book provides patent information for certain listed drugs, and identifies drugs that qualify under the FD&C Act for periods of exclusivity, as described in detail below.

The Orange Book was first published on October 31, 1980. On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (Hatch-Waxman Amendments), which required that FDA make publicly available a list of approved drug products with monthly supplements (section 505(j)(7)(A) of the FD&C Act). The Orange Book and its monthly Cumulative Supplements satisfy this requirement.

Since that time, the Orange Book has played an essential administrative role in FDA's implementation of the FD&C Act. For example, the FD&C Act requires NDA holders to submit the patent number and expiration date of any patent which claims the drug or a method of using such drug and for which a claim of patent infringement could reasonably be asserted against a person engaged in the unlicensed manufacture, use, or sale of the drug (see section 505(b)(1) and 505(c)(2) of the FD&C Act; see also 21 CFR 314.50(h), 314.53, and 314.70(f)). The FD&C Act requires FDA to publish this patent information (see section 505(b)(1) and 505(c)(2) of the FD&C Act). This patent information submitted by NDA holders is listed in the Orange Book.

In addition, section 505(j)(7)(A)(i)(III) of the FD&C Act requires that FDA publish and make publicly available information to show whether in vitro or in vivo bioequivalence studies, or both studies, are required for ANDAs that refer to an NDA, and FDA has determined that the therapeutic equivalence codes for multisource products in the Orange Book satisfy this requirement.

The Orange Book also identifies drugs that qualify under the FD&C Act for periods of exclusivity. An NDA or ANDA holder is eligible for exclusivity if statutory and regulatory requirements are met. Exclusivities under the FD&C Act include pediatric exclusivity, Generating Antibiotic Incentives Now or GAIN exclusivity, 180-day exclusivity, competitive generic therapy exclusivity, new chemical entity exclusivity, 3-year exclusivity, and orphan drug exclusivity (see sections 505(c)(3)(E), 505(j)(5)(B)(iv), 505(j)(5)(B)(v),

505(j)(5)(F), 505A (21 U.S.C. 355a), 505E (21 U.S.C. 355f), 506H (21 U.S.C. 356h), and 527 (21 U.S.C. 360cc) of the FD&C Act; see also 21 CFR 314.108, 316.31, 316.34). The exclusivities identified above are set forth on a product-specific basis in the Orange Book. This information is used by a wide range of stakeholders, including applicants of ANDAs and 505(b)(2) applications, in planning product development.

The Orange Book also plays an essential administrative role in FDA's implementation of recent statutory provisions related to drug product regulation. For example, section 505(j)(12) of the FD&C Act, added by the FDA Reauthorization Act of 2017 (Pub. L. 115–52) (FDARA), requires FDA to publish on its website and update at least every 6 months a list of approved NDA products that are off-patent and off-exclusivity, and for which FDA has not approved an ANDA referencing that NDA drug product, and FDA uses the Orange Book to populate this list. Section 506I of the FD&C Act requires NDA and ANDA holders to provide a written notification to FDA 180 days prior to withdrawing an approved drug from sale, to provide written notification to FDA within 180 days of the date of approval of a drug if that drug will not be available for sale within 180 days of the date of approval, and to have reviewed information in the Orange Book and submitted a one-time marketing status report. This information is used by FDA to move drugs that are not available for sale from the ''Prescription Drug Product List'' to the ''Discontinued Drug Product List'' in the Orange Book (see section 506I(e) of the FD&C Act).

FDA has historically sought to update and enhance the Orange Book to make it more accessible and useful to regulated industry and the public. Below are examples of updates FDA has made to the publication:

- In 1985, FDA added to the Orange Book a list of OTC drug products that have been approved in NDAs or ANDAs.
- In 1997, FDA published the Orange Book on the internet.
- In 2003, FDA started publishing an indicator as to whether a listed patent contains drug substance and/or drug product claims.
- In 2005, FDA made the Orange Book available for download off the Agency's website.
- In 2005, FDA switched from publishing patent listings in a public docket to publishing them daily in the Orange Book.
- In 2005, FDA switched from publishing generic drug approvals monthly to publishing them daily.
- In 2015, FDA launched a mobile application, ''Orange Book Express,'' to put timely information in the hands of those using smartphones and tablets.
- In 2016, FDA redesigned the Orange Book website to include commonly used features on the home page and to allow users to better navigate the Orange Book and customize their search.
- In 2017, FDA revised the Orange Book so that drug listings now clarify which listed drugs are RLDs and which are reference standards (see § 314.3(b)), as well as to clarify which products in the ''Discontinued Drug Product List'' may be referred to as an RLD.
- In 2017, FDA revised the Orange Book to include listed patent submission dates, when available.
- In 2017, FDA added the patent disputes list to the Orange Book website, which informs stakeholders which patents have been disputed by an outside party to FDA.
- In 2018, FDA updated the Orange Book to include descriptions indicating which indication(s) are protected by orphan drug exclusivity.

As part of FDA's Drug Competition Action Plan [1] and our continued effort to provide more accessible and useful information in the Orange Book, FDA is considering whether there are other opportunities to enhance the publication. The Drug Competition Action Plan aims to facilitate more generic competition, promote patient access, and improve the economics of developing generic medicines. Soliciting public comment on this topic will help guide the Agency's priorities as we consider enhancing the Orange Book.

II. Establishment of a Public Docket and Request for Comments

FDA is establishing a public docket to solicit input from a broad group of stakeholders, including patients, health care providers, drug manufacturers, public policy makers (*e.g.,* Federal and State health agencies), individuals involved in patent litigation (*e.g.,* patent counsel), and any other interested parties, on whether and how the Orange Book can be improved. (To note, FDA intends to publish a separate **Federal Register** notice seeking public input specifically on patent listings in the Orange Book in the near future, and thus is not soliciting comment on that topic now.) In addition to general comments, FDA is interested in responses to the following questions:

- What types of people or entities use the Orange Book?
- What sections of the Orange Book do these different types of people or entities use?
- For what reasons do these people or entities use the Orange Book? What additional information or features (*e.g.,* additional search functions) could be incorporated into the Orange Book to make it more useful?
- Is the information in the Orange Book regarding therapeutic equivalence generally useful?
  - How useful is the second letter of a therapeutic equivalence evaluation code?
  - How could the therapeutic equivalence information be made more user-friendly or otherwise be tailored to meet the needs of people or entities that use the Orange Book (*e.g.,* the therapeutic equivalence evaluation code)?
  - If you use the information regarding therapeutic equivalence, how do you use it?
  - Does the information regarding therapeutic equivalence promote drug competition? And if so, how?
- Is there any other information regarding the Orange Book that would be useful for FDA to consider?

Dated: May 26, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–11683 Filed 5–29–20; 8:45 am]

BILLING CODE 4164–01–P

[1] Available at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/fda-drug-competition-action-plan.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1068]

Orange Book—Questions and Answers; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Orange Book—Questions and Answers.'' This guidance is intended to assist interested parties (including prospective drug product applicants, drug product applicants, and approved application holders) in utilizing the *Approved Drug Products with Therapeutic Equivalence Evaluations* (commonly known as the

Orange Book). This guidance provides answers to commonly asked questions FDA has received from interested parties regarding the Orange Book.

DATES: Submit either electronic or written comments on the draft guidance by August 31, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1068 for ''Orange Book—Questions and Answers.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Giaquinto Friedman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1670, Silver Spring, MD 20993–0002, 240–402–7930, *elizabeth.giaquinto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Orange Book—Questions and Answers.'' This guidance is intended to assist interested parties (including prospective drug product applicants, drug product applicants, and approved application holders) in utilizing the Orange Book. This guidance provides answers to commonly asked questions FDA has received from interested parties regarding the Orange Book.

The Orange Book identifies drug products approved by FDA under the Federal Food, Drug, and Cosmetic Act and related patent and exclusivity information. The main criteria for the inclusion of a drug product in the Orange Book are that the drug product is the subject of an approved application and that FDA has not determined the drug product to have been withdrawn from sale for safety or effectiveness reasons. In addition, the Orange Book contains therapeutic equivalence evaluations for approved multisource prescription drug products. These evaluations have been prepared to serve as public information and advice to state health agencies, prescribers, and pharmacists to promote public education on drug product selection and to foster containment of health care costs.

This guidance provides answers to questions that have been received by FDA staff that manage the Orange Book. The questions and answers cover the following topics: General inquiries about the content and format of the Orange Book, petitioned abbreviated new drug applications, the movement of drug products between different sections in the Orange Book, and patent listings.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Orange Book—Questions and Answers.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR 314.50(a) through (f), (i), (h), and (k) and 314.94 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR 314.50(h), 314.53, Form FDA 3542, and Form FDA 3542a, have been approved under OMB control number 0910–0513.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: May 26, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–11682 Filed 5–29–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1127]

Listing of Patent Information in the Orange Book; 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 or Agency) is announcing the establishment of a docket to solicit comments on the listing of patent information in the FDA publication, ''Approved Drug Products With Therapeutic Equivalence Evaluations'' (commonly known as the ''Orange Book''). We are soliciting comments on the types of patents currently listed in the Orange Book and the impact that any change to current patent listing practices may have on drug product development. This notice is not intended to communicate our regulatory expectations on these issues but is instead intended to seek early input from the public to inform further regulatory action if determined to be appropriate.

DATES: Submit either electronic or written comments by August 31, 2020.

ADDRESSES: FDA is establishing a docket for public comments on this document. The docket number is Docket No. FDA–2020–N–1127. The docket will close on August 31, 2020. Submit either electronic or written comments by that date. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 31, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 31, 2020. 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.

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–2020–N–1127 for ''Listing of Patent Information in the Orange Book.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/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: Elizabeth Giaquinto Friedman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1670, Silver Spring, MD 20993, 240–402–7930, *Elizabeth.Giaquinto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The Orange Book

On May 31, 1978, the FDA Commissioner sent a letter to officials of each state, in response to requests from State health agencies for FDA assistance in administering their laws relating to substitution of drug products, announcing FDA's intent to provide a list of all prescription drug products that had been approved by FDA for safety and effectiveness, along with therapeutic equivalence determinations for multisource prescription products. This list was distributed as a proposal in January 1979 (see 44 FR 2932, January 12, 1979). The proposed list, which later became known as the Orange Book, included only prescription drug products that had been approved by FDA and were marketed at the time of publication. On October 31, 1980, FDA published a final version of the list, which was the first Orange Book (45 FR 72582).

On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (Hatch-Waxman Amendments). The Hatch-Waxman Amendments require that FDA, among other things, make publicly available a list of approved drug products with monthly supplements. The Orange Book and its monthly Cumulative Supplements satisfy this requirement.

The Orange Book identifies drug products approved on the basis of safety and effectiveness by FDA under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The main criterion for the inclusion of a product is that it has a new drug application (NDA) or abbreviated new drug application (ANDA) that has been approved and that has not been withdrawn for safety or efficacy reasons.

B. Submission and Listing of Patent Information

The FD&C Act establishes requirements for FDA, NDA applicants, and NDA holders related to submission of patent information and the listing of patent information in the Orange Book. The FD&C Act requires NDA applicants to file with their application the patent number and expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug (see section 505(b)(1) of the FD&C Act; see also 21 CFR 314.53). An NDA applicant is required to amend its application to include this information if a patent that claims such drug or a method of using such drug is issued after the filing date but before approval of the application. After approval of an NDA (including certain types of supplements to an NDA) but within certain time frames prescribed in the FD&C Act and FDA's implementing regulations, NDA holders must submit the required information on any patent that claims the approved drug or an approved method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug, including information on patents that are issued after the application is approved (see section 505(c)(2) of the FD&C Act (21 U.S.C. 355(c)(2)) and 21 CFR 314.53). The FD&C Act requires FDA to regularly revise the Orange Book to include, among other things, patent information submitted under section 505(b)(1) or 505(c)(2) of the FD&C Act (see section 505(j)(7)(A)(iii) of the FD&C Act). We note that FDA has a ministerial role with regard to the listing of patent information (see, *e.g.,* ''Applications for FDA Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not be Infringed,'' final rule, 68 FR 36676 at 36683 (June 18, 2003)) (Indeed, the requirement of prompt publication (''upon submission''), combined with the 30-day timeframe for updating the Orange Book, are strong evidence that Congress did not intend us to undertake anything other than a ministerial action.)). Since enactment of the Hatch-Waxman Amendments, FDA has provided recommendations and issued regulations pertaining to patent listing requirements of the FD&C Act to facilitate implementation. Below is a brief summary of those efforts.

Following the enactment of the Hatch-Waxman Amendments, FDA provided NDA applicants and application holders with advice on how to comply with these new amendments, including the new requirements for submission of patent information, via letters to industry (see, *e.g.,* Letter from Harry M. Meyer, Jr., M.D. to the Pharmaceutical Manufacturers Association (March 26, 1985), available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM072884.pdf*). These letters demonstrated how FDA's thinking on the appropriateness of the listing of certain patents evolved, even after a short period following the implementation of the Hatch-Waxman Amendment's patent information submission requirements. For example, shortly after enactment the Agency indicated that formulation patents were not covered by the FD&C Act and therefore should not be submitted for listing in the Orange Book. However, in 1985, the Director of the Center for Drugs and Biologics issued a letter to industry stating, in part, that FDA reconsidered its original position and that FDA now intends to publish composition patents, including formulation patents, claiming the drug for which the NDA was submitted and for which a claim of patent infringement could reasonably be asserted in the event of unlicensed manufacture, use, or sale of the drug.

In 1989, FDA issued a proposed rule to implement the Hatch-Waxman Amendments, including proposed regulations detailing the types of patents that FDA regarded as covered by the requirements in section 505(b)(1) and 505(c)(2) of the FD&C Act. In particular, FDA proposed that to comply with section 505(b)(1) and 505(c)(2) of the FD&C Act, NDA applicants would be required to submit information on drug (ingredient) patents, drug product (formulation and composition) patents, and method-of-use patents (see ''Abbreviated New Drug Application Regulations,'' proposed rule, 54 FR 28872 at 28918 (July 10, 1989)). The proposed rule, though, specifically excluded process patents. When FDA issued a final rule in 1992, FDA declined to finalize those requirements, and stated that because the Agency would be issuing final regulations governing patent certification and marketing exclusivity requirements at a future date, FDA was revising or deleting cross-references to those provisions and, where possible, replacing them with statutory citations (see ''Abbreviated New Drug Application Regulations,'' final rule, 57 FR 17950 at 17951 (April 28, 1992)). In 1994, FDA finalized the regulations governing certain patent and exclusivity provisions of the Hatch-Waxman Amendments (see ''Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions,'' final rule, 59 FR 50338 (October 3, 1994)). In response to a comment suggesting proposed revisions to the regulations to

clarify that submission of patent information on patented manufacturing processes is not appropriate, the preamble to the final rule reiterated that the regulation at § 314.53(b) clearly states that information on process patents should not be submitted to FDA (59 FR 50338 at 50345).

In 2002, FDA issued a proposed rule in response to: (1) Disputes over whether certain listed patents met the regulatory requirements for listing in the Orange Book and (2) a request from the Federal Trade Commission to issue a regulation or guidance clarifying whether an NDA holder can list various types of patents in the Orange Book (see ''Applications for FDA Approval to Market a New Drug: Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not be Infringed,'' proposed rule, 67 FR 65448 at 65449 (October 24, 2002)). The proposed rule addressed: (1) The types of patents that must and must not be listed, including, among others, certain patents that claim methods of use; (2) the patent certification statement that NDA applicants must submit as part of an NDA or a supplement to an NDA; and (3) the 30-month stay of approval for a 505(b)(2) application or an ANDA set out in the Hatch-Waxman Amendments (see also section 505(c)(3)(C) and 505(j)(5)(B)(iii) of the FD&C Act). In addition to proposing to clarify that NDA holders and NDA applicants must not submit information on patents that claim methods of use that are not approved for the listed drug or are not the subject of the pending application, respectively, the proposed regulation at § 314.53(a) proposed to prohibit the listing of information on patents claiming packaging, patents claiming metabolites, and patents claiming intermediates (67 FR 65448 at 65451). The proposed rule, however, proposed to require NDA applicants and NDA holders to submit information on product-by-process patents (*i.e.,* patents that claim a product by using or listing process steps to wholly or partially define the claimed product) and patents that claim a drug substance even when the patented drug substance was a different form than the drug substance that is the subject of the pending or approved NDA as long as the drug substances are the same (67 FR 65448 at 65452).

FDA issued the final rule on patent listing requirements, with certain revisions, on June 18, 2003. The final rule revised FDA's regulations to: (1) Incorporate the proposals described above with certain revisions; (2) prohibit the submission of patents claiming packaging, intermediates, or metabolites; (3) require the submission of certain patents claiming a different polymorphic form of the active ingredient described in the NDA; and (4) add a requirement that for submission of polymorph patents, the NDA holder must have test data demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the NDA (see 68 FR 36676 at 36677). We also note that certain sections of the June 2003 final rule were superseded by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) and subsequently revoked (see ''Application of 30-Month Stays on Approval of ANDAs and Certain NDAs Containing a Certification That a Patent Claiming the Drug Is Invalid or Will Not Be Infringed; Technical Amendment'' (69 FR 11309 (March 10, 2004)). The preamble to the final rule addressed comments on the types of patents that must and must not be submitted, including comments stating that patents claiming devices or containers that are 'integral' to the drug product or require prior FDA approval should be submitted and listed (68 FR 36676 at 36680). The comments described a distinction between packaging and devices such as metered dose inhalers and transdermal patches, which are drug delivery systems used and approved in combination with a drug. In response to the comment, FDA agreed that patents claiming a package or container must not be submitted, and clarified that such packaging and containers are distinct from the drug product and thus fall outside of the requirements for patent submission (68 FR 36676 at 36680). FDA did not expressly address device-related patents, but clarified the rule to require submission of patents that claim the drug product as defined in FDA's regulation at § 314.3(b), which defines *drug product* as a finished dosage form, *e.g.,* tablet, capsule, or solution, that contains a drug substance, generally, but not necessarily, in association with one or more other ingredients. FDA explained that the ''key factor'' in determining whether the patent must or must not be submitted for listing is whether the patent claims the finished dosage form of the approved drug product. Patents must not be submitted for bottles or containers and other packaging, as these are not 'dosage forms' (68 FR 36676 at 36680).

In 2015, FDA proposed regulations to implement portions of Title XI of the MMA, which amended provisions of the FD&C Act that govern the approval of 505(b)(2) applications and ANDAs, and FDA also proposed to amend certain regulations, including regulations regarding the submission of patent information, to facilitate compliance with and efficient enforcement of the FD&C Act (''Abbreviated New Drug Applications and 505(b)(2) Applications,'' proposed rule, 80 FR 6802 (February 6, 2015)). Among other things, the final rule, issued in 2016, revised and streamlined the requirements for submission of patent information on: (1) Patents that claim the drug substance and/or drug product and meet the requirements for patent listing on that basis; (2) drug substance patents that claim only a polymorph of the active ingredient; and (3) certain NDA supplements (''Abbreviated New Drug Applications and 505(b)(2) Applications; Final Rule,'' 81 FR 69580 (October 6, 2016)) (MMA Final Rule). For example, FDA clarified that an applicant need only satisfy the requirements for patent listing set forth in section 505(b)(1) and (c)(2) of the FD&C Act and, subject to the requirements for submission of method-of-use patent information, need not identify each basis on which the patent claims the drug (see 81 FR 69580 at 69596). Accordingly, if a patent is eligible for listing as claiming both the drug substance and the drug product, an applicant would only be required to identify one of these two bases for listing (see § 314.53(c)(2)(i)(S) and (c)(2)(ii)(T)). The MMA final rule also codified FDA's longstanding position that the NDA holder's description of the patented method of use required for publication must contain adequate information to assist 505(b)(2) and ANDA applicants in determining whether a listed method-of-use patent claims a use for which the 505(b)(2) or ANDA applicant is not seeking approval (see § 314.53(c)(2)(ii)(P)(3)). For example, the rule requires that if the method(s) of use claimed by the patent does not cover an indication or other approved condition of use in its entirety, then the applicant must describe only the specific approved method of use claimed by the patent for which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product (see § 314.53(c)(2)(ii)(P)(3)).

C. Patent Certifications and Exclusivities—Timing of Approval of 505(b)(2) Applications and ANDAs

The timing of approval for a 505(b)(2) application and an ANDA (including a

petitioned ANDA) is subject to certain patent and marketing exclusivity protections.

A 505(b)(2) application and ANDA must include an appropriate patent certification or statement for each patent that claims the listed drug(s) relied upon or the reference listed drug (RLD), respectively, or a method of using such drug and for which information is required to be filed under section 505(b) or 505(c) of the FD&C Act. The 505(b)(2) or ANDA applicant must submit one or more of the following certifications or statements:

- That such patent information has not been filed (a paragraph I certification);
- that such patent has expired (a paragraph II certification);
- the date on which such patent will expire (a paragraph III certification);
- that such patent is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of the drug product for which the 505(b)(2) application or ANDA is submitted (a paragraph IV certification);
- that there are no patents that claim the listed drug(s) or that claim a use of such drug (a ''no relevant patents'' statement, which is submitted instead of a patent certification); or
- that a method-of-use patent does not claim a use for which the 505(b)(2) or ANDA applicant is seeking approval (a 505(b)(2)(B) or (j)(2)(A)(viii) statement).

An applicant that submits a paragraph IV certification is required to give notice of the paragraph IV certification to the NDA holder for the listed drug(s) relied upon or RLD and each owner of the patent that is the subject of the certification. Notice of a paragraph IV certification subjects the 505(b)(2) or ANDA applicant to the risk that it will be sued for patent infringement. If the NDA holder or patent owner initiates a patent infringement action within 45 days after receiving notice of the paragraph IV certification, there generally will be a statutory 30-month stay of approval of the 505(b)(2) application or ANDA while the patent infringement litigation is pending (see section 505(c)(3)(C) and (j)(5)(B)(iii) of the FD&C Act).

If a patent is timely listed in the Orange Book after a 505(b)(2) application or ANDA is submitted but before it is approved, the applicant generally must amend its application and provide an appropriate patent certification or statement to the newly listed patent, but a 30-month stay of approval will not be available (see section 505(c)(3)(C) and 505(j)(5)(B)(iii) of the FD&C Act).

D. ANDAs Subject to Risk Evaluation and Mitigation Strategies

The Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–85) created section 505–1 of the FD&C Act (21 U.S.C. 355–1), which authorizes FDA to require a risk evaluation and mitigation strategy (REMS) if FDA determines that a REMS is necessary to ensure that the benefits of the drug outweigh its risks. A REMS is a required risk management strategy that employs tools beyond prescribing information to ensure that the benefits of a drug outweigh its risks. A REMS may require a Medication Guide to provide risk information to patients (see section 505–1(e)(2) of the FD&C Act) and/or a communication plan to disseminate risk information to health care providers (see section 505–1(e)(3) of the FD&C Act). FDA may also require certain elements to assure safe use (ETASU) when such elements are necessary to mitigate specific serious risks associated with a drug (see section 505–1(f) of the FD&C Act). ETASU may include, for example, requirements that health care providers who prescribe the drug have particular training or experience, that patients using the drug be monitored, or that the drug be dispensed to patients with evidence or other documentation of safe-use conditions. An ANDA referencing a drug with a REMS with ETASU is subject to the same ETASU as its RLD. When a REMS with ETASU is required for the RLD, section 505–1(i)(1)(C) of the FD&C Act, as amended by the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94), requires that the holder of an ANDA approved under section 505(j) of the FD&C Act use a ''single, shared system'' with the RLD holder for the ETASU, or a ''different, comparable aspect'' of the ETASU. FDA is aware that some NDA holders have obtained patents claiming the way one or more of their REMS requirements have been implemented and that this can impact the ability of a prospective generic applicant to form a single, shared system with the NDA holder. The prospect of NDA holders obtaining patents for REMS was also contemplated by Congress in FDAAA, which, prior to the amendments made to section 505–1 of the FD&C Act by the Further Consolidated Appropriations Act, 2020, required the RLD and ANDA holders to use a single, shared system for the ETASU unless FDA waived the requirement, and provided that one of the grounds for which FDA could waive the single, shared system requirement is if an aspect of the ETASU were claimed by a patent and the ANDA applicant certified that it sought a license to that aspect and was unable to obtain one (see 21 U.S.C. 355–1(i)(1)(B)(ii), 2012 ed.). We note that section 505–1(f)(8) of the FD&C Act provides that no holder of an approved covered application shall use any ETASU to block or delay approval of an application under section 505(b)(2) or (j) of the FD&C Act or to prevent application of such element to a drug that is the subject of an ANDA.

II. Issues for Consideration and Request for Comments

Stakeholders have requested clarification on whether certain types of patents fall within the scope of required patent information that must be submitted for listing in the Orange Book (see, *e.g.,* Docket Nos. FDA–2005–A–0476, FDA–2006–A–0063, FDA–2007–A–0099, FDA–2011–A–0363, FDA–2012–A–1169), and FDA is aware that some NDA holders have submitted patents for listing in the Orange Book, including certain types of device-related patents and REMS-related patents, for which there may be uncertainty regarding whether these are in fact the type of patents that must be submitted. Stakeholders also have informed FDA that there are both benefits and challenges to the listing of certain types of patent information in the Orange Book as well as to the omission of potentially relevant patent information from the Orange Book. For example, the listing of a patent provides NDA holders with the opportunity to identify which patents in the categories described in the FD&C Act apply to its approved drug products. Patent listing can help 505(b)(2) and ANDA applicants assess the intellectual property assertions related to an NDA holder's product that could potentially block entry of their proposed follow-on drug product or generic drug product and determine their approach to these patents. Patent listing also provides 505(b)(2) and ANDA applicants the opportunity to challenge a patent while their applications are still under review by the Agency, so that such claims can be litigated prior to commercial marketing of the follow-on or generic drug product. However, this also creates the possibility of a stay of approval of the 505(b)(2) application or ANDA and implicates other statutory procedures and requirements under the Hatch-Waxman framework.

In light of these and other considerations, as part of an Agency-wide effort to modernize the Orange Book, we are examining whether FDA should further evaluate or provide additional clarity regarding the types of patent information listed in the Orange

Book. In particular, we are seeking comments on the following as they relate to the submission of patent information under section 505 of the FD&C Act and the listing of such patent information in the Orange Book: The listing of patents that claim a device constituent part of a combination product approved under section 505 of the FD&C Act (*e.g.,* a drug delivery device); the listing of patents that claim a device whose use is referenced in approved drug labeling; the listing of patents associated with an established REMS; and the listing of patents associated with digital applications (*e.g.,* clinical decision support software, software as a medical device). We note that the questions posed below are not meant to be exhaustive and we are interested in any other pertinent information that stakeholders and any other interested parties would like to provide on the types of patent information that should be included in the Orange Book.

A. General Questions

1. Do 505(b)(2) and ANDA applicants currently encounter any challenges because certain types or categories of patents are not listed in FDA's Orange Book?

2. Given the general increasing complexity of products approved in an NDA (*e.g.,* drug-device combination products, complex delivery systems, associated digital applications), are there any aspects of FDA's interpretation of the statutory requirement for NDA holders to submit information on a patent that claims the drug or a method of using such drug that are not sufficiently clear? If there is a lack of clarity, how could this be resolved?

3. How would NDA holders and prospective 505(b)(2) and ANDA applicants weigh any advantages that may result from listing of additional types or categories of patent in the Orange Book against the potential need to submit additional patent certifications that could result in a delay of approval of a 505(b)(2) application or ANDA?

4. If you think FDA should clarify the type of patents that must be listed in the Orange Book, what factors should FDA consider in implementing this clarification? For example, should FDA consider specific factors in evaluating the timeliness of patent information submitted after such clarification?

5. Are there other issues related to the listing of patent information that we should consider?

B. Drug Product Patents

1. Are there elements of FDA's regulatory definition of *drug product* or *dosage form* in § 314.3(b) that may be helpful to clarify to assist NDA holders in determining whether a patent claims the finished dosage form of an approved drug product?

2. What factors should FDA consider in providing any clarifications related to whether device-related patents need to be submitted for listing as a patent that claims the drug? For example, what are the advantages and disadvantages of requiring patents that claim a device constituent part of a combination product approved under section 505 of the FD&C Act to also claim and/or disclose the active ingredient or formulation of the approved drug product (or the drug product class) to fall within the type of patent information that is required to be submitted to FDA for listing in the Orange Book? Also, how, if at all, should this analysis be affected by considerations about whether the device or specific component of device claimed in the patent is ''integral'' (see 68 FR 36676 at 36680) to the administration of the drug?

C. Method-of-Use Patents

1. What information should FDA consider regarding when a patent that claims a method of using a device constituent part, or only a component of a device constituent part, might or might not meet the statutory standard for submission by the NDA holder for listing in the Orange Book as a method-of-use patent? Should FDA consider whether: (1) The patent claims and/or discloses the active ingredient or formulation of the approved drug product (or the drug product class)?; (2) the device constituent part is described in certain sections of the listed drug labeling?; or (3) use of the device is described in labeling for the listed drug, but the device is not a constituent part of the drug product? Should FDA consider whether the drug product labeling states that the drug is only for use with the specific device? Should FDA also consider device labeling, for example whether the device labeling indicates the device is for use with the specific drug?

2. What information should FDA consider regarding whether there are circumstances in which a patent claiming the way an approved drug product is administered would meet the statutory standard for submission by the NDA holder for listing in the Orange Book as a drug product patent rather than a method-of-use patent?

3. What information should FDA consider regarding whether there are circumstances in which a method-of-use patent claiming the way an approved drug product is administered that is not described in FDA-approved product labeling would meet the statutory standard for listing in the Orange Book?

D. REMS-Related Patents

1. What information should FDA consider regarding whether patents that claim how the sponsor has implemented a particular REMS requirement meet the statutory requirement for the type of patent information that is required to be submitted to FDA for listing in the Orange Book? What factors should be considered in making this determination?

2. Are there other issues related to patents that claim how the sponsor has implemented a particular REMS requirement that FDA should consider with regard to listing patent information in the Orange Book, including any potential impact listing such patents in the Orange Book could have on development of REMS for generic versions of products? For example, does listing patent information in the Orange Book for such patents pose difficulties for ANDA applicants in developing a single, shared system REMS for that product?

E. Patents for Digital Applications

1. If an approved drug product has an associated digital application (*e.g.,* a mobile application that accepts and records information from an ingestible sensor in a drug product), what factors should be considered in determining whether a patent that claims an aspect of that digital application meets the standards for listing in the Orange Book?

2. Are there other issues related to patents for digital applications associated with approved drugs that should be considered with regard to listing patent information in the Orange Book?

Dated: May 26, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–11684 Filed 5–29–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines Meeting Cancellation

AGENCY: Health Resources and Services Administration, Department of Health and Human Services.

ACTION: Notice of meeting cancellation.

SUMMARY: This is to notify the public that the June 4, 2020, and June 5, 2020, meeting of the Advisory Commission on Childhood Vaccines (ACCV) is canceled.

FOR FURTHER INFORMATION CONTACT: Tamara Overby, Designated Federal Officer, ACCV, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–6634 or email: *ACCV@HRSA.gov*

SUPPLEMENTARY INFORMATION: This meeting was announced in the **Federal Register**, Vol. 85, No. 1 on Thursday, January 2, 2020 (FR Doc. 2019–28294 Filed 12–31–2019). Future meetings will occur in September and December of calendar year 2020 and were announced through the **Federal Register**.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–11705 Filed 5–29–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0184]

National Commercial Fishing Safety Advisory Committee; Vacancy

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Request for applications; extension of application deadline.

SUMMARY: The Coast Guard is extending the application deadline for applications from persons interested in serving in membership on the National Commercial Fishing Safety Advisory Committee (Committee). This recently established Committee will advise the Secretary of the Department of Homeland Security on matters relating to national commercial fishing safety. Please read this notice for a description of the 18 Committee positions we are seeking to fill.

DATES: Your completed application should reach the Coast Guard on or before July 31, 2020.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the National Commercial Fishing Safety Advisory Committee and a resume detailing the applicant's experience and which specific position(s) applying for. We will not accept a biography. Applications should be submitted via one of the following methods:

- *By Email: CGfishsafe@uscg.mil* (preferred).
- *By Mail:* Commandant (CG–CVC–3), Attn: NCFSAC ADFO, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7501.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Wendland, Alternate Designated Federal Officer of the National Commercial Fishing Safety Advisory Committee; Telephone 202–372–1245 or Email at *CGfishsafe@uscg.mil*.

SUPPLEMENTARY INFORMATION: On February 21, 2020, the U.S. Coast Guard published a request in the **Federal Register** (85 FR 10179) for applications for membership in the National Commercial Fishing Safety Advisory Committee. The application in the notice is being extended. Applicants who responded to the initial notice do not need to reapply.

The National Commercial Fishing Safety Advisory Committee is a federal advisory committee. It will operate under the provisions of the *Federal Advisory Committee Act,* 5 U.S.C. Appendix, and the administrative provisions contained in Section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (specifically, 46 U.S.C. 15109).

The Committee was established on December 4, 2018, by the *Frank LoBiondo Coast Guard Authorization Act of 2018,* which added section 15102, National Commercial Fishing Safety Advisory Committee, to Title 46 of the U.S. Code (46 U.S.C. 15102). The Committee will advise the Secretary of Homeland Security on matters relating to national commercial fishing safety.

In accordance with 46 U.S.C section 15109(a), the Committee is required to hold meetings at least once a year, but it may meet more frequently as needs may require. The meetings are held at a location selected by the U.S. Coast Guard.

All members will serve at their own expense and receive no salary or other compensation from the Federal Government, with the exception that members may be reimbursed for travel and per diem in accordance with Federal Travel Regulations.

Under 46 U.S.C. 15109 (f) (6), membership terms expire on December 31 of the third full year after the effective date of appointment. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4). In this initial solicitation for Committee members, we will consider applications for all 18 positions:

(A) Ten members shall represent the commercial fishing industry and-

(i) as a group, shall together reflect a regional and representational balance; and (ii) as individuals each shall have experience –

(I) in the operation in which chapter 45 of this title applies; or

(II) as a crew member or processing line worker on a fish processing vessel.

(B) One member shall represent naval architects and marine engineers.

(C) One member shall represent manufacturers of equipment for vessels to which

Chapter 45 of this title applies.

(D) One member shall represent education and training professionals related to fishing vessels, fish processing vessels, and fish tender vessels safety and personnel qualifications.

(E) One member shall represent underwriters that insure vessels to which chapter 45 of this title applies.

(F) One member shall represent owners of vessels to which chapter 45 of this title applies.

(G) Three members shall represent the general public and to the extent possible, shall include—

(i) an independent expert or consultant in maritime safety,

(ii) a marine surveyor who provides services to vessels to which chapter 45 of this title applies; and

(iii) a person familiar with issues affecting fishing communities and the families of fishermen.

Each member of the Committee must have particular expertise, knowledge, and experience in matters relating to the function of the Committee, which is to advise the Secretary of Homeland Security on matters related to national commercial fishing safety.

If you are selected as a member drawn from the general public, you will be appointed and serve as a Special Government Employee as defined in 18 U.S.C. 202(a). Applicants for appointment as a Special Government Employee are required to complete a Confidential Financial Disclosure

Report (OGE Form 450) for new entrants and if appointed as a member must submit a new entrant OGE Form 450 annually. The Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal Court or as otherwise provided under the Privacy Act (5 U.S.C 552a). Only the Designated U.S. Coast Guard Ethics Official or his or her designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the website of the Office of Government Ethics (*www.oge.gov*), or by calling or emailing the individual listed above in the **FOR FURTHER INFORMATION CONTACT** section. Applications for member drawn from the general public must be accompanied by a completed OGE Form 450.

Registered lobbyists are not eligible to serve on Federal Advisory Committees in an individual capacity. See ''Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions'' (79 FR 47482, August 13, 2014). Registered lobbyists are ''lobbyists,'' as defined in 2 U.S.C. 1602, who are required by 2 U.S.C. 1603 to register with the Secretary of the Senate and the Clerk of the House of Representatives.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment selections.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Mr. Jonathan Wendland, Alternate Designated Federal Officer of the National Commercial Fishing Safety Advisory Committee via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice.

If you send your application to us via email, we will send you an email confirming receipt of your application.

Dated: May 26, 2020.

David C. Barata,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2020–11667 Filed 5–29–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2017]

Proposed Flood Hazard Determinations for Hays County, Texas and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for Hays County, Texas and Incorporated Areas.

DATES: This withdrawal is effective June 1, 2020.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–2017, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;*

SUPPLEMENTARY INFORMATION: On April 3, 2020, FEMA published a proposed notice at 85 FR 19010, proposing flood hazard determinations for Hays County, Texas and Incorporated Areas. FEMA is withdrawing the proposed notice.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2020–11728 Filed 5–29–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of July 8, 2020 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified

flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Bristol County, Massachusetts (All Jurisdictions) **Docket No.: FEMA–B–1842**	
City of Fall River	City Hall, 1 Government Center, Fall River, MA 02722.
City of New Bedford	City Hall, 133 William Street, New Bedford, MA 02740.
Town of Acushnet	Parting Ways Building, 130 Main Street, 2nd Floor, Acushnet, MA 02743.
Town of Dartmouth	Town Hall, 400 Slocum Road, Dartmouth, MA 02747.
Town of Fairhaven	Town Hall, 40 Center Street, Fairhaven, MA 02719.
Town of Freetown	Freetown Town Hall, 3 North Main Street, Assonet, MA 02702.
Town of Westport	Town Hall, 816 Main Road, Westport, MA 02790.
Lebanon County, Pennsylvania (All Jurisdictions) **Docket No.: FEMA–B–1903**	
Borough of Cleona	Borough Hall, 140 West Walnut Street, Cleona, PA 17042.
Borough of Cornwall	Borough Hall, 44 Rexmont Road, Cornwall, PA 17016.
Borough of Jonestown	Borough Building, 295 South Mill Street, Jonestown, PA 17038.
Borough of Mount Gretna	Borough Hall, 101 Chautauqua Drive, Mount Gretna, PA 17064.
Borough of Palmyra	Municipal Center, 325 South Railroad Street, Palmyra, PA 17078.
City of Lebanon	Municipal Building, 400 South 8th Street, Lebanon, PA 17042.
Township of Annville	Township Hall, 36 North Lancaster Street, Annville, PA 17003.
Township of Bethel	Bethel Township Office, 3015 South Pine Grove Street, Fredericksburg, PA 17026.
Township of East Hanover	East Hanover Township Office, 1117 School House Road, Annville, PA 17003.
Township of Heidelberg	Heidelberg Township Municipal Building, 111 Mill Road, Schaefferstown, PA 17088.
Township of Jackson	Jackson Township Municipal Building, 60 North Ramona Road, Myerstown, PA 17067.
Township of Millcreek	Millcreek Township Office, 81 East Alumni Avenue, Newmanstown, PA 17073.
Township of North Annville	North Annville Township Building, 1020 North Route 934, Annville, PA 17003.
Township of North Cornwall	North Cornwall Township Municipal Building, 320 South 18th Street, Lebanon, PA 17042.
Township of North Lebanon	North Lebanon Township Office, 725 Kimmerlings Road, Lebanon, PA 17046.
Township of North Londonderry	North Londonderry Township Municipal Center, 655 East Ridge Road, Palmyra, PA 17078.
Township of South Annville	South Annville Township Community Building, 1042 Horseshoe Pike, Lebanon, PA 17042.
Township of South Lebanon	South Lebanon Township Building, 1800 South 5th Avenue, Lebanon, PA 17042.
Township of South Londonderry	South Londonderry Municipal Township Building, 27 West Market Street, Palmyra, PA 17078.
Township of Swatara	Swatara Township Building, 68 Supervisors Drive, Jonestown, PA 17038.
Township of Union	Union Township Building, 3111 State Route 72, Jonestown, PA 17038.
Township of West Cornwall	West Cornwall Township Building, 73 South Zinns Mill Road, Lebanon, PA 17042.
Township of West Lebanon	West Lebanon Township Building, 322 North 22nd Street, Lebanon, PA 17046.

[FR Doc. 2020–11727 Filed 5–29–20; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2032]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before August 31, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2032, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
DeSoto County, Florida and Incorporated Areas **Project: 14–04–2183S Preliminary Date: July 12, 2019**	
Unincorporated Areas of DeSoto County	DeSoto County Planning Department, 201 East Oak Street, Arcadia, FL 34266.

Community	Community map repository address
Hendry County, Florida and Incorporated Areas Project: 14–04–2182S Preliminary Date: June 27, 2019	
City of LaBelle	Building Department, 481 West Hickpochee Avenue, LaBelle, FL 33935.
Unincorporated Areas of Hendry County	Hendry County Engineering Department, 99 East Cowboy Way, LaBelle, FL 33935.
Lee County, Florida and Incorporated Areas Project: 14–04–2182S Preliminary Date: June 28, 2019	
City of Bonita Springs	Community Development, 9220 Bonita Beach Road, Bonita Springs, FL 34135.
City of Cape Coral	Community Development, 1015 Cultural Park Boulevard, Cape Coral, FL 33990.
City of Fort Myers	Building Department, 1825 Hendry Street, Fort Myers, FL 33901.
City of Sanibel	City Hall, 800 Dunlop Road, Sanibel, FL 33957.
Town of Fort Myers Beach	Public Works Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.
Unincorporated Areas of Lee County	Lee County Community Development and Public Works Center, 1500 Monroe Street, Fort Myers, FL 33901.
Village of Estero	Community Development Department, 9401 Corkscrew Palms Circle, 1st Floor, Estero, FL 33928.
Hays County, Texas and Incorporated Areas Project: 16–06–1113S Preliminary Date: October 29, 2019	
City of San Marcos	Engineering Department, Municipal Building, 630 East Hopkins Street, San Marcos, TX 78666.
City of Wimberley	Planning and Development Department, 221 Stillwater Road, Wimberley, TX 78676.
Unincorporated Areas of Hays County	Hays County Development Services Department, 2171 Yarrington Road, Suite 100, Kyle, TX 78640.
Pulaski County, Virginia and Incorporated Areas Project: 18–03–0014S Preliminary Date: January 31, 2020	
Town of Pulaski	Municipal Building, 42 1st Street Northwest, Pulaski, VA 24301.
Unincorporated Areas of Pulaski County	Pulaski County Administration Building, 143 3rd Street Northwest, Pulaski, VA 24301.
Nicholas County, West Virginia and Incorporated Areas Project: 19–03–0002S Preliminary Date: November 22, 2019	
City of Richwood	J.H. Meadows Municipal Complex, 6 White Avenue, Richwood, WV 26261.
Unincorporated Areas of Nicholas County	Nicholas County Division of Homeland Security and Emergency Management, 511 Church Street, LO2, Summersville, WV 26651.
Summers County, West Virginia and Incorporated Areas Project: 19–03–0002S Preliminary Date: November 22, 2019	
City of Hinton	City Hall, 322 Summers Street, Hinton, WV 25951.
Unincorporated Areas of Summers County	Summers County Courthouse, 120 Ballengee Street, Suite 203, Hinton, WV 25951.

[FR Doc. 2020–11726 Filed 5–29–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed

communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–1978)..	City of Avondale, (19–09–1332X).	The Honorable Kenneth N. Weise, Mayor, City of Avondale, 11465 West Civic Center Drive, Avondale, AZ 85323.	Development & Engineering, Services Department, 11465 West Civic Center Drive, Avondale, AZ 85323.	Feb. 28, 2020	040058
Maricopa (FEMA Docket No.: B–1964)..	City of Glendale, (19–09–1678P).	The Honorable Jerry Weiers, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, AZ 85301.	City Hall, 5850 West Glendale Avenue, Glendale, AZ 85301.	Jan. 3, 2020	040045
Maricopa (FEMA Docket No.: B–1964)..	City of Goodyear, (19–09–1678P).	The Honorable Georgia Lord, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338.	Engineering and Development Services, 14455 West Van Buren Street, Suite D101, Goodyear, AZ 85338.	Jan. 3, 2020	040046
Maricopa (FEMA Docket No.: B–1971)..	City of Surprise, (19–09–0616P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Jan. 24, 2020	040053
Maricopa (FEMA Docket No.: B–1978)..	Unincorporated Areas of Maricopa County, (19–09–0243P).	The Honorable Bill Gates, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Mar. 6, 2020	040037
Maricopa (FEMA Docket No.: B–1971)..	Unincorporated Areas of Maricopa County, (19–09–0616P).	The Honorable Bill Gates, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Jan. 24, 2020	040037
Maricopa (FEMA Docket No.: B–1978)..	Unincorporated Areas of Maricopa County, (19–09–1332X).	The Honorable Bill Gates, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Feb. 28, 2020	040037
Maricopa (FEMA Docket No.: B–1964)..	Unincorporated Areas of Maricopa County, (19–09–1678P).	The Honorable Bill Gates, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Jan. 3, 2020	040037
Mohave (FEMA Docket No.: B–1978)..	City of Bullhead City, (18–09–2079P).	The Honorable Tom Brady, Mayor, City of Bullhead City, 2355 Trane Road, Bullhead City, AZ 86442.	Public Works Department, 2355 Trane Road, Bullhead City, AZ 86442.	Feb. 26, 2020	040125
Pinal (FEMA Docket No.: B–1980)..	Town of Florence, (19–09–2018P).	The Honorable Tara Walter, Mayor, Town of Florence, P.O. Box 2670, Florence, AZ 85132.	Public Works Department, 224 West 20th Street, Florence, AZ 85132.	Mar. 6, 2020	040084
Yavapai (FEMA Docket No.: B–1978)..	City of Prescott, (19–09–1057P).	The Honorable Greg Mengarelli, Mayor, City of Prescott, 201 South Cortez Street, Prescott, AZ 86303.	Public Works Department, 433 North Virginia Street, Prescott, AZ 86301.	Mar. 2, 2020	040098

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Yavapai (FEMA Docket No.: B–1971)..	City of Prescott, (19–09–1152P).	The Honorable Greg Mengarelli, Mayor, City of Prescott, City Hall, 201 South Cortez Street, Prescott, AZ 86303.	Public Works Department, 433 North Virginia Street, Prescott, AZ 86301.	Jan. 6, 2020	040098
Yavapai (FEMA Docket No.: B–1971)..	Unincorporated Areas of Yavapai County, (19–09–1152P).	The Honorable Randy Garrison, Chairman, Board of Supervisors, Yavapai County, 10 South 6th Street, Cottonwood, AZ 86326.	Yavapai County Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305.	Jan. 6, 2020	040093
California:					
Alameda (FEMA Docket No.: B–1980)..	City of Dublin, (19–09–0927P).	The Honorable David G. Haubert, Mayor, City of Dublin, 100 Civic Plaza, Dublin, CA 94568.	Public Works Department, 100 Civic Plaza, Dublin, CA 94568.	Mar. 16, 2020	060705
Alameda (FEMA Docket No.: B–1980)..	City of Pleasanton, (19–09–0927P).	The Honorable Jerry Thorne, Mayor, City of Pleasanton, P.O. Box 520, Pleasanton, CA 94566.	Engineering Department, 200 Old Bernal Avenue, Pleasanton, CA 94566.	Mar. 16, 2020	060012
Contra Costa (FEMA Docket No.: B–1978)..	City of Brentwood, (19–09–0148P).	The Honorable Robert Taylor, Mayor, City of Brentwood, 150 City Park Way, Brentwood, CA 94513.	Community Development, Building Division, 150 City Park Way, Brentwood, CA 94513.	Feb. 24, 2020	060439
Contra Costa (FEMA Docket No.: B–1980)..	Unincorporated Areas of Contra Costa County, (19–09–1287P).	The Honorable John M. Gioia, Chairman, Board of Supervisors, Contra Costa County, 11780 San Pablo Avenue Suite D, El Cerrito, CA 94530.	Contra Costa County, Public Works Department, 255 Glacier Drive, Martinez, CA 94553.	Mar. 13, 2020	060025
Lake (FEMA Docket No.: B–1971)..	Unincorporated Areas of Lake County, (19–09–1004P).	The Honorable Tina Scott, Chair, Board of Supervisors, Lake County, 255 North Forbes Street, Lakeport, CA 95453.	Lake County, Department of Public Works, 255 North Forbes Street Room 309, Lakeport, CA 95453.	Jan. 16, 2020	060090
Los Angeles (FEMA Docket No.: B–1980)..	City of Hidden Hills, (18–09–1642P).	The Honorable Larry G. Weber, Mayor, City of Hidden Hills, 6165 Spring Valley Road, Hidden Hills, CA 91302.	Building and Safety Department, 6165 Spring Valley Road, Hidden Hills, CA 91302.	Mar. 18, 2020	060125
Placer (FEMA Docket No.: B–1971)..	City of Roseville, (19–09–1696P).	The Honorable John B. Allard II, Mayor, City of Roseville, 311 Vernon Street, Roseville, CA 95678.	Engineering Department, 316 Vernon Street, Roseville, CA 95678.	Jan. 21, 2020	060243
Riverside (FEMA Docket No.: B–1971)..	Agua Caliente Band of Cahuilla Indian Reservation, (19–09–1172P).	The Honorable Jeff L. Grubbe, Chairman, Tribal Council, Agua Caliente Band of Cahuilla Indians, 5401 Dinah Shore Drive, Palm Springs, CA 92264.	Tribal Administrative Office, Planning and Natural Resources, 5401 Dinah Shore Drive, Palm Springs, CA 92264.	Jan. 31, 2020	060763
Riverside (FEMA Docket No.: B–1964)..	City of Cathedral City, (19–09–0367P).	The Honorable Mark Carnevale, Mayor, City of Cathedral City, 68700 Avenida Lalo Guerrero, Cathedral City, CA 92234.	Engineering Department, 68–700 Avenida Lalo Guerrero, Cathedral City, CA 92234.	Jan. 3, 2020	060704
Riverside (FEMA Docket No.: B–1964)..	City of Palm Springs, (19–09–0367P).	The Honorable Robert Moon, Mayor, City of Palm Springs, 3200 East Tahquitz Canyon Way, Palm Springs, CA 92262.	Public Works and Engineering Department, 3200 East Tahquitz Canyon Way, Palm Springs, CA 92262.	Jan. 3, 2020	060257
Riverside (FEMA Docket No.: B–1971)..	City of Palm Springs, (19–09–1172P).	The Honorable Robert Moon, Mayor, City of Palm Springs, 3200 East Tahquitz Canyon Way, Palm Springs, CA 92262.	Public Works and Engineering Department, 3200 East Tahquitz Canyon Way, Palm Springs, CA 92262.	Jan. 31, 2020	060257
San Bernardino (FEMA Docket No.: B–1978)..	City of San Bernardino, (19–09–2084P).	The Honorable John Valdivia, Mayor, City of San Bernardino, 290 North D Street, San Bernardino, CA 92401.	City Hall, 300 North D Street, San Bernardino, CA 92418.	Feb. 25, 2020	060281
San Diego (FEMA Docket No.: B–1980)..	Unincorporated Areas of San Diego County, (19–09–0630P).	The Honorable Dianne Jacob, Chair, Board of Supervisors, San Diego County, 1600 Pacific Highway Room 335, San Diego, CA 92101.	San Diego County Flood Control District, Department of Public Works, 5510 Overland Avenue Suite 410, San Diego, CA 92123.	Mar. 13, 2020	060284
Florida:					
Bay (FEMA Docket No.: B–1980)..	City of Panama City Beach, (19–04–4255P).	The Honorable Mike Thomas, Mayor, City of Panama City Beach, 110 South Arnold Road, Panama City Beach, FL 32413.	City Hall, 110 South Arnold Road, Panama City Beach, FL 32413.	Mar. 11, 2020	120013
Bay (FEMA Docket No.: B–1980)..	Unincorporated Areas of Bay County, (19–04–4490P).	Mr. Robert Majka, Jr., County Manager, Bay County, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning, 707 Jenks Avenue, Suite B, Panama City, FL 32401.	Mar. 11, 2020	120004
Duval (FEMA Docket No.: B–1964)..	City of Jacksonville, (19–04–2699P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Edward Ball Building Development Services, Room 2100, 214 North Hogan Street, Jacksonville, FL 32202.	Dec. 27, 2019	120077
Duval (FEMA Docket No.: B–1978)..	City of Jacksonville, (19–04–4237P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street Suite 400, Jacksonville, FL 32202.	Edward Ball Building Development Services, Room 2100, 214 North Hogan Street, Jacksonville, FL 32202.	Feb. 19, 2020	120077
Nassau (FEMA Docket No.: B–1980)..	Unincorporated Areas of Nassau County, (19–04–4060P).	The Honorable Daniel B. Leeper, Vice-Chairman, Nassau County Commissioner, 96135 Nassau Place, Suite 1, Yulee, FL 32097.	Nassau County, Building Department, 96161 Nassau Place, Yulee, FL 32097.	Mar. 12, 2020	120170
Hawaii:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Hawaii (FEMA Docket No.: B–1964)..	Hawaii County, (19–09–0188P).	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Suite 2603, Hilo, HI 96720.	Hawaii County Department of Public Works, Engineering Division, 101 Pauahi Street, Suite 7, Hilo, HI 96720.	Jan. 10, 2020	155166
Maui (FEMA Docket No.: B–1964)..	Maui County, (19–09–0247P).	The Honorable Michael P. Victorino, Mayor, County of Maui, 200 South High Street, Kalana O Maui Building 9th Floor, Wailuku, HI 96793.	County of Maui Planning Department, 2200 Main Street, Suite 315, Wailuku, HI 96793.	Jan. 8, 2020	150003
Idaho:					
Canyon (FEMA Docket No.: B–1971)..	City of Middleton, (19–10–0311P).	The Honorable Darin Taylor, Mayor, City of Middleton, City Hall, 1103 West Main Street, Middleton, ID 83644.	City Hall, 1103 West Main Street, Middleton, ID 83644.	Jan. 17, 2020	160037
Canyon (FEMA Docket No.: B–1971)..	Unincorporated Areas of Canyon County, (19–10–0311P).	The Honorable Pam White, Chair, Board of County Commissioners, County Courthouse, 1115 Albany Street, Room 101, Caldwell, ID 83605.	Canyon County Administration Building, 111 North 11th Avenue Room 101, Caldwell, ID 83605.	Jan. 17, 2020	160208
Illinois:					
DuPage (FEMA Docket No.: B–1980)..	City of Naperville, (19–05–3885P).	The Honorable Steve Chirico, Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60540.	City Hall, 400 South Eagle Street, Naperville, IL 60540.	Mar. 12, 2020	170213
DuPage (FEMA Docket No.: B–1971)..	City of Warrenville (19–05–2162P).	The Honorable David L. Brummel, Mayor, City of Warrenville, 28W701 Stafford Place, Warrenville, IL 60555.	City Hall, 28W701 Stafford Place, Warrenville, IL 60555.	Jan. 9, 2020	170218
DuPage (FEMA Docket No.: B–1978)..	City of West Chicago, (19–05–4566P).	The Honorable Ruben Pineda, Mayor, City of West Chicago, 475 Main Street West Chicago, IL 60185.	City Hall, 475 Main Street, West Chicago, IL 60185.	Mar. 6, 2020	170219
DuPage (FEMA Docket No.: B–1971)..	Unincorporated Areas of DuPage County, (19–05–2162P).	The Honorable Dan Cronin, Chairman, DuPage County Board, 421 North County Farm Road, Wheaton, IL 60187.	DuPage County Administration Building, Stormwater Management, 421 North County Farm Road, Wheaton, IL 60187.	Jan. 9, 2020	170197
DuPage (FEMA Docket No.: B–1978)..	Unincorporated Areas of DuPage County, (19–05–4566P).	The Honorable Dan Cronin, Chairman, DuPage County Board, 421 North County Farm Road, Wheaton, IL 60187.	DuPage County Administration Building, Stormwater Management, 421 North County Farm Road, Wheaton, IL 60187.	Mar. 6, 2020	170197
DuPage (FEMA Docket No.: B–1978)..	Village of Winfield, (19–05–4566P).	The Honorable Erik Spande, Village President, Village of Winfield, 27W465 Jewell Road, Winfield, IL 60190.	Village Hall, 27W465 Jewell Road, Winfield, IL 60190.	Mar. 6, 2020	170223
Kane (FEMA Docket No.: B–1978)..	City of Elgin, (19–05–0133P).	The Honorable Dave Kaptain, Mayor, City of Elgin, 150 Dexter Court, Elgin, IL 60120.	Public Works Department, Engineering Department, 150 Dexter Court, Elgin, IL 60120.	Feb. 27, 2020	170087
Marshall. (FEMA Docket No.: B–1971)..	City of Wenona, (19–05–3185P).	The Honorable Jamie Durham, Mayor, City of Wenona, P.O. Box 601, Wenona, IL 61377.	City Hall, 226 South Chestnut Street, Wenona, IL 61377.	Jan. 9, 2020	170462
Marshall (FEMA Docket No.: B–1971)..	Unincorporated Areas of Marshall County, (19–05–3185P).	The Honorable Gary R. Kroeschen, Chairman, Marshall County Board, P.O. Box 328, Lacon, IL 61540.	Marshall County Courthouse, 122 North Prairie Street, Lacon, IL 61540.	Jan. 9, 2020	170994
Williamson (FEMA Docket No.: B–1980)..	City of Carterville, (19–05–2993P).	The Honorable Bradley Robinson, Mayor, City of Carterville, 103 South Division Street, Carterville, IL 62918.	City Hall, 103 South Division Street, Carterville, IL 62918.	Mar. 13, 2020	170716
Indiana:					
Allen (FEMA Docket No.: B–1980)..	City of Fort Wayne, (19–05–4349P).	The Honorable Tom Henry, Mayor, City of Fort Wayne, 200 East Berry Street, Suite 420, Fort Wayne, IN 46802.	Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802.	Mar. 11, 2020	180003
Marion (FEMA Docket No.: B–1971)..	City of Indianapolis (18–05–2012P)	The Honorable Joe Hogsett, Mayor, City of Indianapolis, City-County Building, 200 East Washington Street #2501, Indianapolis, IN 46204.	City Hall, 1200 Madison Avenue Suite 100, Indianapolis, IN 46225.	Jan. 24, 2020	180159
Marion (FEMA Docket No.: B–1971)..	Town of Speedway, (18–05–2012P).	Mr. Jacob Blasdel, Town Manager, Town of Speedway, 1450 North Lynhurst Drive, Speedway, IN 46224.	Town Hall, 1450 North Lynhurst Drive, Speedway, IN 46224.	Jan. 24, 2020	180162
Morgan (FEMA Docket No.: B–1980)..	Unincorporated Areas of Morgan County, (19–05–3282P).	Mr. Norman Voyles, Morgan County Commissioner, 180 South Main Street Suite 112, Martinsville, IN 46151.	Morgan County Administration Building, 180 South Main Street, Martinsville, IN 46151.	Mar. 6, 2020	180176
Iowa: Black Hawk (FEMA Docket No.: B–1971).	City of Waterloo, (19–07–1540P).	The Honorable Quentin M. Hart, Mayor, City of Waterloo, 715 Mulberry Street, Waterloo, IA 50703.	City Hall, 715 Mulberry Street, Waterloo, IA 50703.	Jan. 28, 2020	190025
Kansas:					
Johnson (FEMA Docket No.: B–1964)..	City of Lenexa, (19–07–0874P).	The Honorable Michael Boehm, Mayor, City of Lenexa, 17101 West 87th Street Parkway, Lenexa, KS 66219.	City Hall, 12350 West 87th Street Parkway, Lenexa, KS 66215.	Jan. 15, 2020	200168

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Johnson (FEMA Docket No.: B–1964)..	City of, Overland Park, (19–07–0057P).	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	City Hall, 8500 Santa Fe Drive, Overland Park, KS 66212.	Jan. 8, 2020	200174
Johnson (FEMA Docket No.: B–1964)..	City of Prairie Village, (19–07–0057P).	The Honorable Erik Mikkelson, Mayor, City of Prairie Village, 7700 Mission Road, Prairie Village, KS 66208.	City Hall, 7700 Mission Road, Prairie Village, KS 66208.	Jan. 8, 2020	200175
Michigan:					
Bay (FEMA Docket No.: B–1978)..	Township of Bangor, (19–05–2130P).	The Honorable Glenn Rowley, Supervisor, Township of Bangor, Township Hall, 180 State Park Drive, Bay City, MI 48706.	Township Hall, 180 State Park Drive, Bay City, MI 48706.	Feb. 28, 2020	260019
Minnesota:					
Carver (FEMA Docket No.: B–1978)..	City of Watertown, (19–05–1618P).	The Honorable Steve Washburn, Mayor, City of Watertown, City Hall, 309 Lewis Avenue South, Watertown, MN 55388.	City Hall, 309 Lewis Avenue South, Watertown, MN 55388.	Mar. 6, 2020	270056
Carver (FEMA Docket No.: B–1978)..	Unincorporated Areas of Carver County, (19–05–1618P).	The Honorable Randy Maluchnik, Board Chairman, Carver County, 600 East 4th Street, Chaska, MN 55318.	Carver County Public Health and Environment, 600 East 4th Street, Chaska, MN 55318.	Mar. 6, 2020	270049
Hennepin (FEMA Docket No.: B–1971)..	City of Maple Grove, (18–05–4086P).	The Honorable Mark Steffenson, Mayor, City of Maple Grove, Government Center, 12800 Arbor Lakes Parkway North, Maple Grove, MN 55369.	Government Center, and Public Safety Facility, 12800 Arbor Lakes Parkway North, Maple Grove, MN 55369.	Jan. 31, 2020	270169
Missouri:					
Jackson (FEMA Docket No.: B–1964)..	City of Lee's Summit, (19–07–1150P).	The Honorable Bill Baird, Mayor, City of Lee's Summit, 220 Southeast Green Street, Lee's Summit, MO 64063.	Department of Public Works, 220 Southeast Green Street, Lee's Summit, MO 64063.	Jan. 2, 2020	290174
Scott (FEMA Docket No.: B–1971)..	City of Sikeston, (18–07–2115P).	The Honorable Steven Burch, Mayor, City of Sikeston, 105 East Center Street, Sikeston, MO 63801.	City Hall, 105 East Center Street, Sikeston, MO 63801.	Feb. 6, 2020	295270
Scott (FEMA Docket No.: B–1971)..	Unincorporated Areas of Scott County, (18–07–2115P).	The Honorable Jim Glueck, Presiding Scott County Commissioner, P.O. Box 188, Benton, MO 63736.	Scott County Courthouse, 131 South Winchester Street, Benton, MO 63736.	Feb. 6, 2020	290837
St. Charles (FEMA Docket No.: B–1971)..	City of St. Charles, (19–07–1154P).	The Honorable Dan Borgmeyer, Mayor, City of St. Charles, 200 North 2nd Street, 4th Floor, Room 400, St Charles, MO 63301.	City Hall, 200 North 2nd Street, St. Charles, MO 63301.	Jan. 28, 2020	290318
Nebraska: Lincoln (FEMA Docket No.: B–1971)..	City of North Platte, (19–07–0085P).	The Honorable Dwight Livingston, Mayor, City of North Platte, 211 West 3rd Street, North Platte, NE 69101.	City Hall, 211 West 3rd Street, North Platte, NE 69101.	Feb. 7, 2020	310143
Nevada:					
Clark (FEMA Docket No.: B–1978)..	Unincorporated Areas of Clark County, (19–09–1583P).	The Honorable Marilyn Kirkpatrick, Chair, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Clark County, Office of the Director of Public Works, 500 South Grand Central Parkway, 2nd Floor, Las Vegas, NV 89155.	Feb. 21, 2020	320003
Clark (FEMA Docket No.: B–1971)..	Unincorporated Areas of Clark County, (19–09–1976P).	The Honorable Marilyn Kirkpatrick, Chair, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Clark County, Office of the Director of Public Works, 500 South Grand Central Parkway, 2nd Floor, Las Vegas, NV 89155.	Jan. 13, 2020	320003
Washoe (FEMA Docket No.: B–1978)..	City of Reno, (19–09–0750P).	The Honorable Hillary Schieve, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	City Hall, 1 East 1st Street, Reno, NV 89501.	Mar. 2, 2020	320020
Washoe (FEMA Docket No.: B–1978)..	Unincorporated Areas of Washoe County, (19–09–0750P).	The Honorable Vaughn Hartung, Chairman, Board of Commissioners, Washoe County, 1001 East 9th Street, Reno, NV 89512.	Washoe County Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512.	Mar. 2, 2020	320019
New Jersey:					
Middlesex (FEMA Docket No.: B–1978)..	Township of Woodbridge, (19–02–1082P).	The Honorable John E. McCormac, Mayor, Township of Woodbridge, Township Municipal Building, 1 Main Street, Woodbridge, NJ 07095.	Township Municipal Building, 1 Main Street, Woodbridge, NJ 07095.	Mar. 4, 2020	345331
Morris (FEMA Docket No.: B–1978)..	Town of Dover, (19–02–0681P).	The Honorable James P. Dodd, Mayor, Town of Dover, 37 North Sussex Street, Dover, NJ 07801.	Engineering Department, 100 Princeton Avenue, Dover, NJ 07801.	Feb. 7, 2020	340340
New York:					
Essex (FEMA Docket No.: B–1964)..	Town of Willsboro, (19–02–0483P).	Mr. Shaun Gillilland, Town Supervisor, Town of Willsboro, 5 Farrell Road, Willsboro, NY 12996.	Town Hall, 5 Farrell Road, Willsboro, NY 12996.	Feb. 5, 2020	360267
Westchester (FEMA Docket No.: B–1980)..	Town of Bedford, (18–02–1615P).	The Honorable Chris Burdick, Supervisor, Town of Bedford, 321 Bedford Road, Bedford Hills, NY 12550.	Town Planning Office, 425 Cherry Street, Bedford, NY 10507.	Mar. 20, 2020	360903

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Westchester (FEMA Docket No.: B–1980)..	Village of Mount Kisco, (18–02–1615P).	The Honorable Gina D. Picinich, Mayor, Village of Mount Kisco, 104 Main Street, Mount Kisco, NY 10549.	Village Engineer, 104 Main Street, Mount Kisco, NY 10549.	Mar. 20, 2020	360918
Ohio:					
Butler (FEMA Docket No.: B–1964)..	City of Monroe, (18–05–4114P).	The Honorable Robert E. Routson, Mayor, City of Monroe, P.O. Box 330, Monroe, OH 45050.	Village Hall, 233 South Main Street, Monroe, OH 45050.	Jan. 2, 2020	390042
Butler (FEMA Docket No.: B–1971)..	Unincorporated Areas of Butler County, (18–05–6293P).	The Honorable Donald L. Dixon, President, Board of Commissioners, Butler County Government Services Center, 315 High Street, 6th Floor, Hamilton, OH 45011.	Butler County Administrative Center, Building and Zoning Department, 130 High Street, 1st Floor, Hamilton, OH 45011.	Jan. 27, 2020	390037
Franklin (FEMA Docket No.: B–1971)..	City of Grove City, (18–05–3157P).	The Honorable Richard L.''Ike'' Stage, Mayor, City of Grove City, 4035 Broadway, Grove City, OH 43123.	City Hall, 4035 Broadway, Grove City, OH 43123.	Jan. 10, 2020	390173
Warren (FEMA Docket No.: B–1971)..	City of Mason, (18–05–6293P).	The Honorable Victor Kidd, Mayor, City of Mason, Mason Municipal Center, 6000 Mason Montgomery Road, Mason, OH 45040.	Municipal Center, 6000 Mason Montgomery Road, Mason, OH 45040.	Jan. 27, 2020	390559
Oregon: Lane (FEMA Docket No.: B–1964)..	Unincorporated Areas of Lane County, (19–10–0523P).	Mr. Jay Bozievich, Commissioner, Lane County, Lane County Public Service Building, 125 East 8th Street, Eugene, OR 97401.	Lane County Planning Department, Public Service Building, 125 East 8th Street, Eugene, OR 97401.	Jan. 10, 2020	415591
Texas:					
Dallas (FEMA Docket No.: B–1978)..	City of Dallas, (19–06–1433P).	The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	Trinity Watershed Management Department, Floodplain and Drainage Management, 320 East Jefferson Boulevard, Room 307, Dallas, TX 75203.	Feb. 26, 2020	480171
Tarrant (FEMA Docket No.: B–1980)..	City of Fort Worth, (19–06–0709P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.	Mar. 12, 2020	480596
Tarrant (FEMA Docket No.: B–1978)..	City of Fort Worth, (19–06–2078P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	Feb. 21, 2020	480596
Tarrant (FEMA Docket No.: B–1978)..	City of Richland Hills, (19–06–2078P).	The Honorable Edward Lopez, Mayor, City of Richland Hills, 3200 Diana Drive, Richland Hills, TX 76118.	City Hall, 3200 Diana Drive, Richland Hills, TX 76118.	Feb. 21, 2020	480608
Washington: Mason (FEMA Docket No.: B–1964)..	Unincorporated Areas of Mason County, (19–10–1106P).	Mr. Kevin Shutty, County Commissioner Mason County, 411 North 5th Street, Shelton, WA 98584.	Mason County Public Works, 100 West Public Works Drive, Shelton, WA 98584.	Jan. 10, 2020	530115
Wisconsin:					
Brown (FEMA Docket No.: B–1978)..	Unincorporated Areas of Brown County, (19–05–1474P).	The Honorable Patrick Moynihan, Jr., Board Chairman, Brown County, 305 East Walnut Street, Green Bay, WI 54305.	Brown County Zoning Office, 305 East Walnut Street, Green Bay, WI 54301.	Feb. 24, 2020	550020
Brown (FEMA Docket No.: B–1978)..	Village of Ashwaubenon, (19–05–1474P).	The Honorable Mary Kardoskee, Village President, Village of Ashwaubenon, 2410 South Ridge Road, Green Bay, WI 54304.	Village Hall, 2155 Holmgren Way Ashwaubenon, WI 54304.	Feb. 24, 2020	550600
Ozaukee (FEMA Docket No.: B–1978)..	Village of Thiensville, (19–05–4351X).	The Honorable Van A. Mobley, President, Village of Thiensville Board, Village Hall, 250 Elm Street, Thiensville, WI 53092.	Village Hall, 250 Elm Street, Thiensville, WI 53092.	Feb. 21, 2020	550318

[FR Doc. 2020–11723 Filed 5–29–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2034]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and

revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado: Broomfield.	City and County of Broomfield (19–08–1004P).	The Honorable Patrick Quinn, Mayor, City and County of Broomfield, 1 DesCombes Drive, Broomfield, CO 80020.	Engineering Department, 1 DesCombes Drive, Broomfield, CO 80020.	*https://msc.fema.gov/portal/advanceSearch.*	July 6, 2020 ..	085073
Florida: Collier	Unincorporated areas of Collier County, (19–04–6241P).	Mr. Burt L. Saunders, Chairman, Collier County Board of Commissioners, 3299 Tamiami Trail East, Suite 303, Naples, FL 34112.	Collier County Growth Management Department, 2800 North Horseshoe Drive, Naples, FL 34104.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 14, 2020	120067
New Mexico: Lea	City of Hobbs, (19–06–2692P)	The Honorable Sam D. Cobb, Mayor, City of Hobbs, 200 East Broadway Street, Hobbs, NM 88240.	Engineering Department, 200 East Broadway Street, Hobbs, NM 88240.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 16, 2020	350029
Texas:						
Kendall	Unincorporated areas of Kendall County (19–06–2757P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Suite 122, Boerne, TX 78006.	Kendall County Engineering Department, 201 East San Antonio Avenue, Suite 122, Boerne, TX 78001.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 13, 2020	480417
Kerr	Unincorporated areas of Kerr County (19–06–2757P).	The Honorable Rob Kelly, Kerr County Judge, 700 East Main Street, Kerrville, TX 78028.	Kerr County Engineering Department, 3766 State Highway 27, Kerrville, TX 78028.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 13, 2020	480419
McLennan	City of Lacy Lakeview (20–06–0788P).	The Honorable Sharon Clark, Mayor, City of Lacy Lakeview, 501 East Craven Avenue, Lacy Lakeview, TX 76705.	City Hall, 501 East Craven Avenue, Lacy Lakeview, TX 76705.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 20, 2020	480927
McLennan	Unincorporated areas of McLennan County (20–06–0788P).	The Honorable Scott M. Felton, McLennan County Judge, 501 Washington Avenue, Suite 214, Waco, TX 76701.	McLennan County Engineering and Mapping Department, 215 North 5th Street, Suite 130, Waco, TX 76701.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 20, 2020	480456

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Tarrant	City of Grapevine (19–06–2895P).	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, TX 76099.	City Hall, 200 South Main Street, Grapevine, TX 76099.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 20, 2020	480598
Tarrant	Town of Flower Mound, (19–06–2895P).	The Honorable Steve Dixon, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Town Hall, 2121 Cross Timbers Road, Flower Mound, TX 75028.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 20, 2020	480777
Wyoming:						
Laramie	City of Cheyenne (19–08–0688P).	The Honorable Marian J. Orr, Mayor, City of Cheyenne, 2101 O'Neil Avenue, Cheyenne, WY 82001.	Planning and Development Department, 2101 O'Neil Avenue, Cheyenne, WY 82001.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 8 2020	560030
Laramie	Unincorporated areas of Laramie County (19–08–0688P).	The Honorable Gunnar Malm, Chairman, Laramie County Board of Commissioners, 310 West 19th Street, Suite 300, Cheyenne, WY 82001.	Laramie County Public Works Department, 13797 Prairie Center Circle, Cheyenne, WY 82001.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 8 2020	560029

[FR Doc. 2020–11724 Filed 5–29–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2031]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before August 31, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2031, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide

recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Lake County, Indiana and Incorporated Areas Project: 13–05–4208S Preliminary Date: September 26, 2019	
City of East Chicago	City Hall, 4525 Indianapolis Boulevard, East Chicago, IN 46312.
City of Gary	City Hall, 401 Broadway, Gary, IN 46402.
City of Hammond	City Hall, 5925 Calumet Avenue, Hammond, IN 46320.
City of Whiting	City Hall, 1443 119th Street, Whiting, IN 46394.
Unincorporated Areas of Lake County	Lake County Building, 2293 North Main Street, Crown Point, IN 46307.
Cherokee County, Iowa and Incorporated Areas Project: 16–07–2164S Preliminary Date: December 13, 2019	
City of Aurelia	City Hall, 236 Main Street, Aurelia, IA 51005.
City of Cherokee	City Hall, 416 West Main Street, Cherokee, IA 51012.
City of Larrabee	Community Center, 101 North Main Street, Larrabee, IA 51029.
City of Quimby	City Hall, 101 East 2nd Avenue, Quimby, IA 51049.
City of Washta	City Hall, 203 Main Street, Washta, IA 51061.
Unincorporated Areas of Cherokee County	Cherokee County Courthouse, 520 West Main Street, Cherokee, IA 51012.
Fremont County, Iowa and Incorporated Areas Project: 16–07–0307S Preliminary Date: June 29, 2018	
City of Farragut	City Hall, 518 Hartford Avenue, Farragut, IA 51639.
City of Hamburg	City Office, 1201 Main Street, Hamburg, IA 51640.
City of Imogene	Fremont County Courthouse, 2014 290th Avenue, Sidney, IA 51652.
City of Randolph	City Hall, 107 South Main Street, Randolph, IA 51649.
City of Riverton	City Hall, 803 Summer Avenue, Riverton, IA 51650.
City of Sidney	City Hall, 604 Clay Street, Sidney, IA 51652.
Town of Thurman	Fremont County Courthouse, 2014 290th Avenue, Sidney, IA 51652.
Unincorporated Areas of Fremont County	Fremont County Courthouse, 2014 290th Avenue, Sidney, IA 51652.
Lyon County, Iowa and Incorporated Areas Project: 16–07–2330S Preliminary Date: November 22, 2019	
City of Alvord	City Hall, 302 Main Street, Alvord, IA 51230.
City of Doon	City Hall, 100 3rd Avenue, Doon, IA 51235.
City of George	City Hall, 120 South Main Street, George, IA 51237.
City of Inwood	City Hall, 103 South Main Street, Inwood, IA 51240.
City of Lester	City Hall, 105 West 5th Street, Lester, IA 51242.
City of Little Rock	City Hall, 402 Main Street, Little Rock, IA 51243.
City of Rock Rapids	City Hall, 310 South 3rd Street, Rock Rapids, IA 51246.
Unincorporated Areas of Lyon County	Lyon County Courthouse, 206 South 2nd Avenue, Rock Rapids, IA 51246.
Van Buren County, Michigan (All Jurisdictions) Project: 13–05–4211S Preliminary Date: September 13, 2019	
Charter Township of South Haven	South Haven Charter Township Hall, 09761 Blue Star Memorial Highway, South Haven, MI 49090.
City of South Haven	City Hall, 539 Phoenix Street, South Haven, MI 49090.
Township of Covert	Township Hall, 73943 Lake Street, Covert, MI 49043.
Christian County, Missouri and Incorporated Areas Project: 19–07–0059S Preliminary Date: September 20, 2019	
City of Billings	City Hall, 202 Northeast US Highway 60, Billings, MO 65610.
City of Clever	City Hall, 304 South Clarke Avenue, Clever, MO 65631.
City of Fremont Hills	City Hall, 1953 Fremont Hills Drive, Fremont Hills, MO 65714.
City of Highlandville	City Office, 216 Kentling Avenue, Highlandville, MO 65669.

Community	Community map repository address
City of Nixa	City Hall, 715 West Mount Vernon Street, Nixa, MO 65714.
City of Ozark	City Hall, 205 North 1st Street, Ozark, MO 65721.
City of Sparta	City Hall, 200 North Avenue, Sparta, MO 65753.
Unincorporated Areas of Christian County	Christian County Courthouse, 100 West Church Street, Ozark, MO 65721.
Village of Saddlebrook	Village Hall, 776 Saddlebrooke Drive, Saddlebrooke, MO 65630.
Pettis County, Missouri and Incorporated Areas Project: 18–07–0018S Preliminary Date: October 4, 2019	
City of Houstonia	City Hall, 121 North Walnut Street, Houstonia, MO 65333.
City of Sedalia	City Hall, 200 South Osage Avenue, Sedalia, MO 65301.
Unincorporated Areas of Pettis County	Pettis County Courthouse, 415 South Ohio Avenue, Sedalia, MO 65301.
Stone County, Missouri and Incorporated Areas Project: 19–07–0060S Preliminary Date: September 27, 2019	
City of Branson West	City Hall, 110 Silver Lady Lane, Branson West, MO 65737.
City of Crane	City Hall, 120 North Commerce Street, Crane, MO 65633.
City of Galena	City Hall, 111 South Main Street, Galena, MO 65656.
City of Hurley	Stone County Courthouse, 108 East 4th Street, Galena, MO 65656.
City of Kimberling City	City Hall, 34 Kimberling Boulevard, Kimberling City, MO 65686.
City of Reeds Spring	City Hall, 22597 Main Street, Reeds Spring, MO 65737.
Unincorporated Areas of Stone County	Stone County Courthouse, 108 East 4th Street, Galena, MO 65656.
Village of Blue Eye	Stone County Courthouse, 108 East 4th Street, Galena, MO 65656.
Village of Coney Island	Stone County Courthouse, 108 East 4th Street, Galena, MO 65656.
Village of Indian Point	Indian Point Municipal Center, 957 Indian Point Road, Branson, MO 65616.
Village of McCord Bend	Stone County Courthouse, 108 East 4th Street, Galena, MO 65656.
Clinton County, Ohio and Incorporated Areas Project: 14–05–4202S Preliminary Date: June 28, 2019	
City of Wilmington	69 North South Street, Wilmington, OH 45177.
Unincorporated Areas of Clinton County	1326 Fife Avenue, Wilmington, OH 45177.
Village of Blanchester	318 East Main Street, Blanchester, OH 45107.
Erie County, Ohio and Incorporated Areas Project: 13–05–1797S Preliminary Date: October 11, 2019	
City of Sandusky	City Hall, 240 Columbus Avenue, Sandusky, OH 44870.
Greene County, Ohio and Incorporated Areas Project: 14–05–4202S Preliminary Date: September 13, 2019	
City of Beavercreek	1368 Research Park Drive, Beavercreek, OH 45432.
City of Bellbrook	15 East Franklin Street, Bellbrook, OH 45305.
City of Centerville	100 West Spring Valley Road, Centerville, OH 45458.
City of Fairborn	44 West Hebble Avenue, Fairborn, OH 45324.
City of Kettering	3600 Shroyer Road, Kettering, OH 45429.
City of Xenia	101 North Detroit Street, Xenia, OH 45385.
Unincorporated Areas of Greene County	667 Dayton-Xenia Road, Xenia, OH 45385.
Village of Cedarville	141 West Xenia Avenue, Cedarville, OH 45314.
Village of Clifton	100 North Street, Clifton, OH 45316.
Village of Jamestown	5 East Xenia Street, Jamestown, OH 45335.
Village of Spring Valley	7 West Main Street, Spring Valley, OH 45370.
Village of Yellow Springs	100 Dayton Street, Yellow Springs, OH 45387.
Highland County, Ohio and Incorporated Areas Project: 14–05–4202S Preliminary Date: June 28, 2019	
Unincorporated Areas of Highland County	119 Governor Foraker Place, Suite 211, Hillsboro, OH 45133.
Village of Lynchburg	Village Hall, 155 South Main Street, Lynchburg, OH 45142.

[FR Doc. 2020–11725 Filed 5–29–20; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–16]

60-Day Notice of Proposed Information Collection: HUD-Owned Good Neighbor Next Door Program; OMB Control No.: 2502–0570

AGENCY: Office of the Assistant Secretary for Housing- Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 31, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HUD-Owned Good Neighbor Next Door Program.

OMB Approval Number: 2502–0570.

Type of Request: Extension of currently approved collection.

Form Number HUD–9549, HUD–9549–A, HUD–9549–B, HUD–9549–C, HUD–9549–D, HUD–9549–E.

Description of the need for the information and proposed use: The information collected will be used to administer the Good Neighbor Next Door Sales program and to determine and document the eligibility to participate in the program. The forms are used in addition to the sales contracts and addenda that are used in binding contracts between purchasers of acquired single family assets and HUD through the Good Neighbor Next Door Sales program.

Respondents: law enforcement officers, teachers or firefighters/emergency medical technicians.

Estimated Number of Respondents: 738.

Estimated Number of Responses: 1,806.

Frequency of Response: 2.

Average Hours per Response: 5–6 minutes.

Total Estimated Burdens: 155.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond,; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Dated: May 27, 2020.

Nacheshia Foxx,

Federal Register Liaison Officer, Department of Housing and Urban Development.

[FR Doc. 2020–11702 Filed 5–29–20; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–18]

60-Day Notice of Proposed Information Collection: Mortgage Record Change; OMB Control No.: 2502–0422

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 31, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Mortgage Record Change.

OMB Approval Number: 2502–0422.

Type of Request: Extension.

Form Number: 92080 (FHA Connection).

Description of the need for the information and proposed use: Servicing of insured mortgages must be performed by a mortgagee that is approved by HUD to service insured mortgages. The Mortgage Record Change information is used by FHA-approved mortgagees to comply with HUD requirements for reporting the sale of a mortgage between investors and/or the transfer of the mortgage servicing responsibility, as appropriate.

Respondents (*i.e.,* affected public): Not-for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses: 3,500,000.

Frequency of Response: On occasion at sale or transfer.

Average Hours per Response: 1.

Total Estimated Burdens: 350,000.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond,; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

Authority: Section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Dated: May 27, 2020.

Nacheshia Foxx,

Federal Register Liaison, Department of Housing and Urban Development.

[FR Doc. 2020–11720 Filed 5–29–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7029–N–04]

60-Day Notice of Proposed Information Collection: The Outcomes Evaluation of the Choice Neighborhoods Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The U.S. Department of Housing and Urban Development (HUD) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 31, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: The Outcomes Evaluation of the Choice Neighborhoods Program.

OMB Approval Number: Pending.

Type of Request: New collection.

Form Number: N/A.

Description of the need for the information and proposed use: This request is for the collection of information for an outcomes evaluation of the Choice Neighborhoods Program (Choice). Choice leverages significant public and private dollars to support locally driven strategies that address struggling neighborhoods with distressed public or HUD-assisted housing through a comprehensive approach to neighborhood transformation; local leaders, residents, and stakeholders come together to create and implement a plan that revitalizes distressed HUD housing and addresses the challenges in the surrounding neighborhood. Launched in 2010, Choice provides direct investments through competitive grants targeted to neighborhoods marked by high rates of poverty with distressed public or HUD-assisted housing. Today, Choice remains one of HUD's primary tools to support planning and implementation efforts to catalyze redevelopment efforts in cities across the nation.

Under contract with HUD's Office of Policy Development and Research, the Urban Institute (Urban) is conducting an evaluation of Choice, focusing on the neighborhoods that received grants in 2011 and 2013: Quincy Corridor neighborhood in Boston, Massachusetts; Woodlawn neighborhood in Chicago, Illinois; Iberville/Tremé neighborhood in New Orleans, Louisiana; Eastern Bayview neighborhood in San Francisco, California; Yesler neighborhood in Seattle, Washington; Near East Side neighborhood in Columbus, Ohio; South Norwalk neighborhood in Norwalk, Connecticut; North Central Philadelphia neighborhood in Philadelphia, Pennsylvania; and Larimer/East Liberty neighborhood in Pittsburgh, Pennsylvania. The overarching goal of the current evaluation is to understand the impact of the Choice program and the investment it brings, with an emphasis on understanding the first cohort of grantees, funded in 2011 and four additional grantees from the third cohort of grantees, funded in 2013.

The evaluation will use qualitative and quantitative methods to answer the following overarching research question: Whether public and private dollars were successfully leveraged to (1) replace distressed public and

assisted housing with high-quality mixed-income housing that is well-managed and responsive to the needs of the surrounding neighborhood, (2) improve outcomes for households in the target housing, including employment and income, health, and education, and (3) create the conditions necessary for public and private reinvestment in distressed neighborhoods to improve amenities and assets. The evaluation is a follow-up to an initial evaluation completed by Urban in 2016, and will employ analysis of administrative/secondary data, including HUD data, as well as primary data collection in the form of a large household survey of households living in the Choice sites, and interviews and observations from stakeholders regarding the Choice program. In total, Urban expects to field the survey to up to 2,388 Choice residents and contact 257 respondents for qualitative interviews. This information is necessary to evaluate Choice and to understand differences across sites, over time, in different types of HUD-assisted housing, by grantee type, and for different contextual conditions.

Respondents: Residents who are living in Choice Neighborhoods (Choice) sites in the Quincy Corridor neighborhood in Boston, Massachusetts; Woodlawn neighborhood in Chicago, Illinois; Iberville/Tremé neighborhood in New Orleans, Louisiana; Eastern Bayview neighborhood in San Francisco, California; Yesler neighborhood in Seattle, Washington; Near East Side neighborhood in Columbus, Ohio; South Norwalk neighborhood in Norwalk, Connecticut; North Central Philadelphia neighborhood in Philadelphia, Pennsylvania; and Larimer/East Liberty neighborhood in Pittsburgh, Pennsylvania, as well as stakeholders who were, or remain, engaged with the Choice program. Stakeholders include the lead grantee, implementation leads for housing, people, and neighborhood pillars, HUD managers of Choice grants, city agency officials and staff, public housing and affordable-housing property management staff, housing developers, early education providers, case management providers, other service providers, community and resident leaders, local police precinct commanders, and staff from local anchor institutions.

Estimated Number of Respondents: 2,388 respondents to the household survey and 257 respondents to qualitative interviews.

Estimated Time per Response: The survey is designed to be completed in 35 minutes. We expect qualitative interviews to last 1 hour with 30 minutes of preparatory time needed per interview for review of materials related to the Choice Neighborhoods program.

Frequency of Response: 1 time.

Estimated Total Annual Burden Hours: 1,385 burden hours for the household survey and 385.5 burden hours for the qualitative interviews.

Estimated Total Annual Cost: $23,545.68 for the household survey and $13,836.48 for the qualitative interviews.

Respondent's Obligation: Voluntary.

Legal Authority: The survey is conducted under Title 12, United States Code, Section 1701z and Section 3507 of the Paperwork Reduction Act of 1995, 44, U.S.C., 35, as amended.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
Household survey	2,388	1	1	.58	1,385	$17.00	$23,545.68
Interviews with resident leaders	5	1	1	1.5	7.5	17.00	127.50
Interviews with High-level informants: Lead grantees, City officials and staff	45	1	1	1.5	67.5	42.30	2,855.25
Interviews with HUD staff	18	1	1	1.5	27	75.82	2,047.14
Interviews with housing informants: Housing implementation lead, Housing developers, Public housing and affordable-housing property management staff	54	1	1	1.5	81	35.39	2,866.59
Interviews with people informants: People implementation lead, Case management staff, Other service providers	72	1	1	1.5	108	23.92	2,583.36
Interviews with Neighborhood informants: Implementation lead, Local police precinct commanders, Local anchor institution staff, Community leaders	63	1	1	1.5	94.5	35.52	3,356.64
Total	2,645				1,770.5		37,382.16

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

The Assistant Secretary for Policy Development and Research, Seth Appleton, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

Dated: May 27, 2020.

Nacheshia Foxx,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–11731 Filed 5–29–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–17]

60-Day Notice of Proposed Information Collection: HUD Conditional Commitment/Direct Endorsement Statement of Appraised Value; OMB Control No.: 2502–0494

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comments from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 31, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone (202) 402–3400 (this is not a toll free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access the telephone number through TTY by calling the toll free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400 (this is not a toll free number). Persons with hearing or speech impairments may access the telephone number through TTY by calling the toll free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HUD Conditional Commitment/Direct Endorsement Statement of Appraised Value.

OMB Control Number, if applicable: 2502–0494.

Type of Request: Extension of currently approved collection.

Form Number: HUD 92800.5B.

Description of the need for the information and proposed use: Lenders must provide loan applicants a completed copy of Form HUD–92800.5B at or before loan closing. Form HUD–92800.5B serves as the mortgagee's conditional commitment/direct endorsement statement of appraised value of Federal Housing Administration (FHA) mortgage insurance on the property. The form provides a section for the statement of the property's appraised value and other required FHA disclosures to the borrower, including specific conditions that must be met before HUD can endorse a mortgage for FHA insurance. HUD uses the information to determine the eligibility of a property for mortgage insurance.

Respondents: Mortgagees.

Estimated Number of Respondents: 1,483.

Estimated Number of Responses: 1,059,459.

Frequency of Response: Yearly.

Average Hours per Response: 0.12.

Total Estimated Burdens: 127,135.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act (44 U.S.C. 3507).

The General Deputy Assistant Secretary for Housing, John L. Garvin, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the **Federal Register** Liaison for HUD, for purposes of publication in the **Federal Register**.

Dated: May 27, 2020.

Nacheshia Foxx,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–11713 Filed 5–29–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–FAC–2020–N013; FF03F43100–XXXF1611NR; OMB Control Number 1018–New]

Agency Information Collection Activities; Sea Lamprey Control Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection in use without Office of Management and Budget (OMB) approval.

DATES: Interested persons are invited to submit comments on or before July 31, 2020.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number ''1018–Sea Lampreys'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Sea Lamprey Control Program is administered and funded by the Great Lakes Fishery Commission (GLFC) and implemented by two control agents, the U.S. Fish and Wildlife Service and Fisheries and Oceans Canada, who often partner on larger projects. The sea lamprey (*Petromyzon marinus*), a parasitic fish species native to the Atlantic Ocean, parasitizes other fish species by sucking their blood and other bodily fluids. Having survived through at least four major extinction events, the species has remained largely unchanged for more than 340 million years. The sea lamprey differs from many other fishes, in that it does not have jaws or other bony structures, but instead has a skeleton made of cartilage. Sea lampreys prey on most species of large Great Lakes fish such as lake trout, salmon, lake sturgeon, whitefish, burbot, walleye, and catfish.

In the 1800s, sea lampreys invaded the Great Lakes system via manmade locks and shipping canals. Their aggressive behavior and appetite for fish blood wreaked havoc on native fish populations, decimating an already vulnerable lake trout fishery. The first recorded observation of a sea lamprey in the Great Lakes was in 1835 in Lake Ontario. For a time, Niagara Falls served as a natural barrier, confining sea lampreys to Lake Ontario and preventing them from entering the remaining four Great Lakes. However, in the early 1900s, modifications were made to the Welland Canal, which bypasses Niagara Falls and provides a shipping connection between Lakes Ontario and Erie. These modifications allowed sea lampreys access to the rest of the Great Lakes system. Within a short time, sea lampreys spread throughout the system: Into Lake Erie by 1921, Lakes Michigan and Huron by 1936 and 1937, and Lake Superior by 1938. Sea lampreys were able to thrive once they invaded the Great Lakes because of the availability of excellent spawning and larval habitat, an abundance of host fish, a lack of predators, and their high reproductive potential—a single female can produce as many as 100,000 eggs.

Service staff at the Marquette and Ludington biological stations fulfill U.S. obligations under the 1954 Convention on Great Lakes Fisheries between the United States and Canada and the Great Lakes Fishery Act of 1956. The Service works with State, Tribal, and other Federal agencies to monitor progress towards fish community objectives for sea lampreys in each of the Great Lakes, and also to develop and implement actions to achieve these objectives. Activities are closely coordinated with State, Tribal, and other Federal and provincial management agencies, nongovernmental organizations, private landowners, and the public. Our primary goal is to conduct ecologically sound and publicly acceptable integrated sea lamprey control.

The Sea Lamprey Control Program (SLCP) maintains an internal database. In existence for more than 20 years, it contains information critical to the delivery and evaluation of an integrated control program to manage invasive sea lamprey populations in the five Great Lakes. The storage of data in this database not only documents the history of the SLCP since inception in 1953, but it also provides data to steer assessment and control of invasive sea lamprey populations in the Great Lakes in partnership with the GLFC. We provide annual population data to Federal and State regulatory agencies to inform critical evaluations used to issue permits to allow sea lamprey control actions. The SLCP database maintains the points of contact for landowners to request landowner permission to access their land for treatment. The Service collects basic contact information for the landowner (name, home address, phone number, cell phone number, and email address), along with whether they allow access to their land, methods of transportation allowed over the land, and whether the landowner irrigates the land.

Title of Collection: Sea Lamprey Control Program.

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: Existing collection of information in use without an OMB Control Number.

Respondents/Affected Public: Individuals, private sector, and State/local/Tribal governments.

Total Estimated Number of Annual Respondents: 600.

Total Estimated Number of Annual Responses: 400.

Estimated Completion Time per Response: 15 Minutes.

Total Estimated Number of Annual Burden Hours: 150 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

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.*).

Dated: May 27, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–11671 Filed 5–29–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–R–2019–N036; FXRS12630900000/FF09R81000; OMB Control Number 1018–New]

Agency Information Collection Activities; U.S. Fish and Wildlife Service Concessions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service, we), will request Office of Management and Budget (OMB) approval of an existing collection in use without an OMB control number.

DATES: Interested persons are invited to submit comments on or before July 31, 2020.

ADDRESSES: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–Concessions in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Secretary of the Interior is authorized to ensure that we provide opportunities within the Service for compatible wildlife-dependent recreational uses across the National Wildlife Refuge System (System). Furthermore, the Secretary is authorized to award concessions contracts under the following Acts:

- The National Wildlife Refuge System Administration Act of 1966 (Administration Act, 16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, authorizes the Secretary of the Interior to negotiate and award contracts and issue regulations to carry out the Act.
- The Refuge Recreation Act of 1962 (16 U.S.C.–460k–460k–3) allows the use of refuges for public recreation when such use is not inconsistent with or does not interfere with the primary purpose(s) of the refuge.
- The Refuge Revenue Sharing Act (16 U.S.C. 715s) authorizes the Secretary to grant privileges and collect revenues from leases for public accommodations or facilities established for the System.

Specifically, the Administration Act provides that, with respect to the Refuge System, it is the policy of the United States that—

a. Each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established;

b. Compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges, and which generally fosters refuge management and through which the American public can develop an appreciation for fish and wildlife;

c. Compatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management; and

d. When the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated, subject to such restrictions or regulations as may be necessary, reasonable, and appropriate.

The Administration Act also provides that, in administering the Refuge System, the Secretary shall—

a. Recognize compatible wildlife-dependent recreational uses as the priority general public uses of the System, through which the American

public can develop an appreciation for fish and wildlife;

b. Ensure that opportunities are provided within the System for compatible wildlife-dependent recreational uses;

c. Ensure that priority general public uses of the System receive enhanced consideration over other general public uses in planning and management within the System; and

d. Provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting.

Private businesses and non-profit organization under contract to the Service provide recreational, educational, and interpretive enjoyment of our lands and waters by managing lodging, food, transportation, and supplies and equipment for the enjoyment of the visiting public. These services gross approximately $3,000,000 every year and provide jobs for more than 100 people annually.

The regulations at 50 CFR subpart F (§ 25.61) primarily implement the authorities governing public use facilities operated by concessionaires or cooperators under appropriate contact or legal agreement on national wildlife refuges where there is a demonstrated justified need for services or facilities, including but not limited to boat rentals, swimming facilities, conducted tours of special natural attractions, shelters, tables, trailer lots, food, lodging, and related service.

Service Manual chapters 630 FW 4–6 discuss the Service's current policy for concession management and provide guidance for permitting and administering concession operations on Service lands. We use concession contracts to assist us in providing wildlife-dependent recreation activities to the visiting public by using contracts between the Service and a private entity, where the private entity is allowed to charge a fee for services provided at a field station to the visiting public.

We collect information in both narrative (non-form) and form format. The amount of information or degree of detail requested varies widely, depending upon the size and scope of the business opportunity. For example, a much greater amount of detailed information would be required for a multi-unit camping and food service operation than would be required for a small bait sales operation. We use the information provided by prospective concessionaires to objectively evaluate offers received for a particular business opportunity, assure adequate protection of refuge resources, and to determine which offeror will provide the best service to visitors.

Below are examples of types of information the Service collects from a potential or current concessionaire.

General Concessionaire Information

- Description of how the respondent will conduct operations to minimize disturbance to wildlife; protect refuge resources; and provide visitors with a high-quality, safe, and enjoyable visitor experience.
- Proposal to protect, conserve, and preserve resources of the refuge. The proposal must respond to specific resource management objectives and issues at the refuge and regarding the contract in question.
- Proposal to provide necessary and appropriate visitor services at reasonable rates. This proposal must respond to specific visitor service questions at the refuge and regarding the contract in question.
- Experience and related background of the offeror, including past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the draft concession contract.
- Financial capability of the offeror to carry out its proposal. In particular, we require projected financials, including initial investments, startup expenses, income statement, operating assumptions, cash flow statement, recapture of investments, and all associated assumptions.
- The amount of the proposed minimum franchise fee and other forms of financial consideration.

Proposal for Concession Opportunity

- Offeror's transmittal letter, including the name and contact information of the entity offering a proposal to operate a concession contract.
- Business type of the offeror, such as corporation, limited liability company, partnership, etc.
- Business history information, including adverse history that could impact future operations under a concession contract.
- Credit report, so that we can understand the offeror's credit history and any risks of contracting with the entity.
- Proposed staffing/management operation information, including organization charts and delegations of authority, to ensure adequate staffing.
- Proof of indemnification, including public liability insurance that co-names the Government as co-insured.

Reporting Requirements

- Annual financial reports providing concessioner financial information, as required by each concession contract.
- Quarterly and annual progress reports to monitor performance.
- Inspections and inspection reports conducted in concert with the on-site concession manager.

Approval To Sell or Transfer Concession Operation

- Information to assess the transferee's ability to manage the business successfully and fulfill the terms of the concession contract, in order for the Regional Director to grant approval.

Recordkeeping Requirements

- In accordance with Service Manual chapter 630 FW 8.3, a concessioner (and any subconcessioner) must keep and make available to the Service records for the term of the concession contract.

Title of Collection: U.S. Fish and Wildlife Service Concessions.

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents/Affected Public: Businesses and nonprofit organizations.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for proposals, amendments, and appeals; annually for financial reports; and ongoing for recordkeeping.

Total Estimated Annual Nonhour Burden Cost: $70,000.

Activity	Total annual responses	Completion time per response (hours)	Total annual burden hours *
General Concessionaire Information:			
Inspection form	80	3	240
Proposal for Concessions Opportunities:			

Activity	Total annual responses	Completion time per response (hours)	Total annual burden hours *
Large Concessions	2	40	80
Small Concessions	1	16	16
Reporting Requirements:			
Annual Financial Report	10	16	160
Quarterly Progress Report	3	4	12
Annual Progress Report	10	16	160
Approval to Sell/Transfer A Concession Operation	1	8	8
Recordkeeping Requirements:			
Large Concessions	5	40	200
Small Concessions	5	20	100
Totals	117	.....	976

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: May 27, 2020.

Madonna L. Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–11672 Filed 5–29–20; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–521 and 731–TA–1252–1255 and 1257 (Review)]

Steel Nails From Korea, Malaysia, Oman, Taiwan, and Vietnam; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty order on steel nails from Vietnam and revocation of the antidumping duty orders on steel nails from Korea, Malaysia, Oman, Taiwan, and Vietnam would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted June 1, 2020. To be assured of consideration, the deadline for responses is July 1, 2020. Comments on the adequacy of responses may be filed with the Commission by August 13, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 13, 2015, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of steel nails from Korea, Malaysia, Oman, Taiwan, and Vietnam (80 FR 39994). On July 14, 2015, Commerce issued a countervailing duty order on imports of steel nails from Vietnam (80 FR 41006). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Korea, Malaysia, Oman, Taiwan, and Vietnam.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission found a single *Domestic Like Product* consisting of steel nails, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* to include all domestic producers of nails, except one producer for which appropriate circumstances were found to exclude from the domestic industry.

(5) The *Order Date* is the date that the orders under review became effective. In the reviews of the antidumping duty orders, the *Order Date* is July 13, 2015. In the review of the countervailing duty order, the *Order Date* is July 14, 2015.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is

sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2020. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is August 13, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 20–5–462, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under

the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) *(OPTIONAL)* A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree

with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 27, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–11692 Filed 5–29–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1202]

Certain Synthetic Roofing Underlayment Products and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 24, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of Kirsch Research and Development, LLC, of Simi Valley, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and/or the sale within the United certain synthetic roofing underlayment products and components thereof States after importation of certain synthetic roofing underlayment products and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,765,251 (''the '251 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov* . For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION: *Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 26, 2020, *Ordered That* —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–19 of the '251 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''synthetic materials that are installed between a roof support deck and the outer surface of a roof and incorporate an innovative multi-layer structure and compositions to provide improved slip-resistance, weather-resistance, and structural integrity that is safer, easier to install, and lasts longer.''

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Kirsch Research and Development, LLC, 1296 Patricia Avenue, Simi Valley, CA 93065.

(b) The respondents are the following entities alleged to be in violation of section 337, and is/are the parties upon which the complaint is to be served:

Atlas Roofing Corporation, 2000 RiverEdge Parkway, Atlanta, Georgia 30328.

CertainTeed Corporation, 20 Moores Road, Malvern, PA 19355.

Dupont De Nemours, Inc., 974 Centre Road, Wilmington, DE 19805.

E. I. Du Pont De Nemours and Company, 974 Centre Road, Wilmington, DE 19805.

Epilay, Inc., 21175 South Main Street, E1 Unit C, Carson, CA 90745.

GAF Corporation, 1 Campus Drive, Parsippany, NJ 07054.

InterWrap Corp., 1 Owens Corning Parkway, Toledo, OH 43659.

Owens Corning, 1 Owens Corning Parkway, Toledo, OH 43659.

Owens Corning Roofing & Asphalt, LLC, 1 Owens Corning Parkway, Toledo, OH 43659.

System Components Corporation, 50 SE Bush Street, Issaquah, WA 98027.

Tamko Building Products, LLC, 220 W. 4th Street, Joplin, MO 64801; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 26, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–11644 Filed 5–29–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0103]

Agency Information Collection Activities; Proposed eCollection eComments Requested Submission for Review: Electronic Submission Form for Requests for Corrective Action, Whistleblower Protection for Federal Bureau of Investigation Employees

AGENCY: Office of Attorney Recruitment and Management, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting this information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is a Request for Corrective Action Form, available on OARM's public website, for current and former employees of, or applicants for employment with, the Federal Bureau of Investigation (FBI) who wish to file a claim of whistleblower reprisal.

DATES: Comments are encouraged and will be accepted for 60 days until July 31, 2020.

SUPPLEMENTARY INFORMATION: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the U.S. Department of Justice, Office of Attorney Recruitment and Management, 450 5th Street NW, Suite 10200, Attn: Hilary S. Delaney, Washington, DC 20530. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Existing.

(2) *Title of Form/Collection:* Request for Corrective Action Form.

(3) *The agency form number, if any/the applicable component of the department sponsoring the collection:* No form number/Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract:* Individuals. The application form is submitted voluntarily by individuals who are current or former employees of, or applicants for employment with, the FBI who allege reprisal for their whistleblowing activities.

(5) *An estimate of the total number of respondents and the amount of time estimated to respond/reply:* An average of 15 respondents per year, and an average of three hours to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* About 45 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 27, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–11715 Filed 5–29–20; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2020–0003]

Advisory Committee on Construction Safety and Health (ACCSH): Notice of Meetings

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of ACCSH and ACCSH Workgroup meetings.

SUMMARY: The Advisory Committee on Construction Safety and Health (ACCSH) will meet July 1, 2020, by teleconference and WebEx. In conjunction with the ACCSH meeting, ACCSH Workgroups will also meet by teleconference and WebEx on June 30, 2020.

DATES:

ACCSH meeting: ACCSH will meet from 12:00 p.m. to 5:00 p.m., ET, Wednesday, July 1, 2020.

ACCSH Workgroup meetings: Prior to the full Committee meeting, ACCSH Workgroups will meet Tuesday, June 30, 2020. (For Workgroup meeting times, see the schedule under ''Workgroup Meetings'' in the **SUPPLEMENTARY INFORMATION** section of this notice).

ADDRESSES:

Submission of comments and requests to speak: Submit comments and requests to speak at the ACCSH and ACCSH Workgroup meetings by Thursday, June 25, 2020, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2020–0003), using of the following method:

Electronically: Comments and request to speak, including attachments, must be submitted electronically at: *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Requests for special accommodations: Please submit requests for special accommodations for this ACCSH meeting by Thursday, June 25, 2020, to Ms. Gretta Jameson, OSHA, Directorate of Construction, U.S. Department of Labor; telephone: (202) 693–2020; email: *jameson.grettah@dol.gov.*

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about ACCSH: Mr. Damon Bonneau, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2183; email: *bonneau.damon@dol.gov.*

Telecommunication requirements: For additional information about the telecommunication requirements for the meeting, please contact Ms. Veneta Chatmon, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2020; email: *chatmon.veneta@dol.gov.*

*For copies of this **Federal Register** Notice:* Electronic copies of this **Federal Register** Notice are available at: *http://www.regulations.gov.* This notice, as well as news releases and other relevant

information, are also available at OSHA's web page at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

ACCSH advises the Secretary of Labor and the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) (29 CFR 1911.10 and 1912.3). In addition, the CSA requires the Assistant Secretary to consult with ACCSH before the agency proposes any occupational safety and health standard affecting construction activities (40 U.S.C. 3704).

ACCSH operates in accordance with the CSA, the OSH Act, the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), and regulations issued pursuant to those statutes (29 CFR part 1912, 41 CFR part 102–3). ACCSH generally meets two times a year.

II. Meeting Information

Workgroup Meetings

Attending the meetings: Attendance at the ACCSH Workgroup meetings will be by teleconference and WebEx only. The dial-in number and passcode for the meeting are as follows: Dial-in number: 1–888–658–5408; Passcode: 2597686. Directions for signing into the WebEx portion of the meetings will be posted in the Docket and on the ACCSH web page, *https://www.osha.gov/advisory committee/accsh,* prior to the meeting.

- Education, Training, and Outreach Workgroup: 12:00 p.m. to 2:30 p.m., ET
  Meeting agenda:
  1. Trench Safety.
  2. Fall Prevention.
- Emerging and Current Issues Workgroup: 3:00 to 5:30 p.m., ET
  Meeting agenda:
  1. Opioids.
  2. Suicides in construction.

ACCSH workgroup meetings are open to the public. For additional information on ACCSH workgroup meetings or participating in them, please contact Mr. Bonneau (see ''*For general information about ACCSH*'' in the **FOR FURTHER INFORMATION CONTACT** section of this notice).

ACCSH Full Committee Meeting

Attending the meeting: Attendance at the ACCSH Workgroup meetings will be by teleconference and WebEx only. The dial-in number and passcode for the meeting are as follows: Dial-in number: 1–888–324–3487; Passcode: 9671553. Directions for signing into the WebEx portion of the meetings will be posted in the Docket and on the ACCSH web page, *https://www.osha.gov/advisory committee/accsh,* prior to the meeting.

Meeting agenda: The tentative agenda for this meeting includes:

- Principal Deputy Assistant Secretary's agency update and remarks;
- ACCSH's consideration of, and recommendation on, the following proposals:
  —Updating the design and construction requirements of the powered industrial trucks standards by adding an incorporation by reference to the applicable provisions of the most recent ANSI/ITSDF consensus standards;
  —Updating the Hazard Communication Standard to maintain alignment with the Globally Harmonized System of Classification and Labelling of Chemicals (GHS);
- Silica in construction update;
- ACCSH workgroup reports; and,
- Public comment period.

Requests to speak and speaker presentations: Attendees who wish to address ACCSH at either the full committee meeting or the workgroup meetings must submit a request to speak, as well as any written or electronic presentation, by Thursday, June 25, 2020, using one of the methods listed in the **ADDRESSES** section of this notice. The request must state:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of your presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats.

Alternately, you may request to address ACCSH briefly during the public-comment period. At his discretion, the ACCSH Chair may grant requests to address ACCSH as time and circumstances permit.

Docket: OSHA will place comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket without change, and those documents may be available online at: *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as Social Security Numbers and birthdates. OSHA also places in the public docket the meeting transcript, meeting minutes, documents presented at the meeting, and other documents pertaining to the ACCSH and ACCSH Workgroup meetings. These documents are available online at: *http://www.regulations.gov.* To read or download documents in the public docket for these ACCSH and ACCSH Workgroup meetings, go to Docket No. OSHA–2020–0003 at: *http://www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions are available for inspection and, when permitted, copying at the OSHA Docket Office at the above address. For information on using *http://www.regulations.gov* to make submissions or to access the docket, click on the ''Help'' tab at the top of the homepage. Contact the OSHA Docket Office for information about materials not available through that website and for assistance in using the internet to locate submissions and other documents in the docket.

Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(b), 40 U.S.C. 3704(a)(2), 5 U.S.C. App. 2, Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR part 1912.

Signed at Washington, DC, on May 26, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–11659 Filed 5–29–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2016–0005]

Preparations for the 39th Session of the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that OSHA will conduct a virtual public meeting in advance of certain international

meetings. The first meeting will be held in advance of the 39th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held as a virtual symposium in early July 2020, in Geneva, Switzerland. OSHA, along with the U.S. Interagency Globally Harmonized System of Classification and Labelling of Chemicals (GHS) Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S. Government positions for the UNSCEGHS meeting.

DATES: The virtual public meeting will take place approximately two weeks preceding the international meeting. Specific information for each meeting will be posted when available on the OSHA website at *https://www.osha.gov/dsg/hazcom/hazcom_international.html#meeting-notice.*

ADDRESSES: The meetings will be held virtually hosted through the DOT Headquarters Conference Center, 1200 New Jersey Avenue SE, Washington, DC 20590.

Written Comments: Interested parties may submit comments by July 3, 2020, on the Working and Informal Papers for the 39th sessions of the UNSCEGHS to the docket established for International/Globally Harmonized System (GHS) efforts at: *http://www.regulations.gov,* Docket No. OSHA–2016–0005.

Registration To Attend and/or To Participate in the Virtual Meeting: These meetings will be open to the public on a first-come, first served basis, as space is limited. Advanced meeting registration information will be posted on the PHMSA website. DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Attendees may use the same form to pre-register for both meetings. Failure to pre-register may delay your access into the DOT Headquarters conference call line. Conference call-in and ''Skype meeting'' capability will be provided for both meetings. Information on how to access the conference call and ''Skype meeting'' will be posted when available at: *https://www.phmsa.dot.gov/international-program/international-program-overview* under Upcoming Events. This information will also be posted on OSHA's Hazard Communication website on the international tab at: *https://www.osha.gov/dsg/hazcom/hazcom_international.html#meeting-notice.*

FOR FURTHER INFORMATION CONTACT:

At the Department of Transportation: Please contact Mr. Steven Webb or Mr. Aaron Wiener, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590, telephone: (202) 366–8553.

At the Department of Labor: Please contact Ms. Maureen Ruskin, OSHA Directorate of Standards and Guidance, Department of Labor, Washington DC 20210, telephone: (202) 693–1950, email: *ruskin.maureen@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA will conduct a virtual public meeting in advance of the 39th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held as a virtual symposium in early July 2020, in Geneva, Switzerland. This virtual meeting will occur jointly with the Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA) will conduct a public meeting (see FR Doc. 2020–09076 Filed 4–28–20) to discuss proposals in preparation for the 57th and 58th sessions of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCE TDG) to be held, in Geneva, Switzerland in 2020. Advanced meeting registration information will be posted on the PHMSA website.

For information on the Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA) will conduct a public meeting (see Docket No. PHMSA–2019–0224; Notice No. 2020–02) to discuss proposals in preparation for the 58th and 59th sessions of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCE TDG).

For each of these meetings, OSHA and PHMSA will solicit public input on U.S. government positions regarding proposals submitted by member countries in advance of each meeting.

The OSHA Meeting

OSHA is hosting an open informal public meeting of the 39th and 40th sessions of the UNSCE GHS will represent the third and fourth meetings scheduled for the 2019–2020 biennium. Information on the work of the UNSCEGHS including meeting agendas, working and informal papers, reports, and documents from previous sessions can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division website located at the following web address: *http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html.*

The PHMSA Meeting

Additional information regarding the UNSCE TDG and related matters can be found on PHMSA's website at: *https://www.phmsa.dot.gov/international-program/international-program-overview.*

Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice under the authority granted by sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), and Secretary's Order 1–2012 (77 FR 3912), (Jan. 25, 2012).

Signed at Washington, DC.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–11660 Filed 5–29–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Application for Longshore and Harbor Workers' Compensation Act Pre-Hearing Statement

AGENCY: Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Pre-Hearing Statement.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by July 31, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained for free by contacting Anjanette Suggs by telephone at 202–

354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; or by email at *suggs.anjanette@dol.gov.* Please note that comments submitted after the comment period will not be considered.

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers' injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the Longshore Act's coverage to certain other employees.

Title 20, CFR 702.317 provides for the referral of claims under the Longshore Act for formal hearings. This Section provides that before a case is transferred to the Office of Administrative Law Judges the district director shall furnish each of the parties or their representatives with a copy of a pre-hearing statement form. The form LS–18 is used to refer the case for formal hearing under the Act. Each party shall, within 21 days after receipt of each form, complete it and return it to the district director. Upon receipt of the forms, the district director, after checking them for completeness and after any further conferences that, in his/her opinion, are warranted, shall transmit them to the Office of the Chief Administrative Law Judge with all available evidence which the parties intend to submit at the hearing.

Legal authority for this information collection is found at 33 U.S.C. 939.

Regulatory authority is found at 20 CFR 702.317.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB No. 1240–0036.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-Office of Workers' Compensation Programs, DLHWC.

Type of Review: Extension of currently approved collection.

Title of Collection: Longshore and Harbor Workers' Compensation Act Pre-Hearing Statement.

Form: LS–18, Pre-Hearing Statement.

OMB Control Number: 1240–0036.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 3,800.

Frequency: On occasion.

Total Estimated Annual Responses: 3,800.

Estimated Average Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 646 hours.

Total Estimated Annual Other Cost Burden: $1,102.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2020–11664 Filed 5–29–20; 8:45 am]

BILLING CODE 4510–CF–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20–050)]

Heliophysics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Advisory Committee (HPAC). This Committee functions in an advisory capacity to the Director, Heliophysics Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, June 30, 2020, 11:00 a.m.–5:00 p.m.; Wednesday, July 1, 2020, 11 a.m.–4 p.m., Eastern Time.

ADDRESSES: Virtual meeting via dial-in teleconference and WebEx only.

FOR FURTHER INFORMATION CONTACT: Dr. Janet Kozyra, Designated Federal Officer, Science Mission Directorate, at *janet.kozyra@nasa.gov,* 202 358–1258.

SUPPLEMENTARY INFORMATION: As noted above, this meeting will be available telephonically and by WebEx only. You must use a touch-tone phone to participate in this meeting. Any interested person must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll free number 1–800–857–9728, or toll number 1–415–228–3890, passcode 5951905 followed by the # sign to participate in this meeting by telephone

on both days. The WebEx link is *https://nasaenterprise.webex.com/;* the meeting number for both days is 903 615 032 and the password is JuneHPAC2020! (case sensitive).

The agenda for the meeting includes the following topics:

- Heliophysics Division Updates and Mission Highlights
- Decadal Midterm Responses
- 2024 Decadal Planning Activities
- Heliophysics Space Weather Strategy

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–11698 Filed 5–29–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of National Council on the Humanities

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Council on the Humanities will meet to review applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 and make recommendations thereon to the Chairman of the National Endowment for the Humanities (NEH).

DATES: The meeting will be held on Thursday, June 4, 2020, from 11:00 a.m. until 1:00 p.m., and on Friday, June 5, 2020, from 11:00 a.m. until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at Constitution Center, 400 7th Street SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, 4th Floor, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The National Council on the Humanities is meeting pursuant to the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended). The following Committees of the National Council on the Humanities will convene by videoconference on June 4, 2020, from 11 a.m. until 1:00 p.m., to discuss specific applications for NEH Coronavirus Aid, Relief, and Economic Security (CARES) Act funding before the Council:

Digital Humanities/Research Programs;
Education Programs #1;
Education Programs #2;
Preservation and Access;
Public Programs #1; and
Public Programs #2.

The plenary session of the National Council on the Humanities will convene by videoconference on June 5, 2020, at 11 a.m., to hear reports on and consider applications for NEH CARES Act funding.

This meeting of the National Council on the Humanities will be closed to the public pursuant to sections 552b(c)(4), 552b(c)(6), and 552b(c)(9)(B) of Title 5 U.S.C., as amended, because it will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, and discussion of certain information, the premature disclosure of which could significantly frustrate implementation of proposed agency action. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: May 27, 2020.

Caitlin Cater,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2020–11757 Filed 5–29–20; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Medical Clearance Process for Deployment to the Polar Regions

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by July 31, 2020 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Medical Clearance Process for Deployment to the Polar Regions.

OMB Number: 3145–0177.

Expiration Date of Approval: September 30, 2020.

Type of Request: Revision to and extension of approval of an information collection.

Proposed Project: Presidential Memorandum No. 6646 (February 5, 1982) (available from the National Science Foundation, Office of Polar Programs, Suite 755, 4201 Wilson Boulevard, Arlington, VA 22230) sets forth the National Science Foundation's overall management responsibilities for the entire United States national program in Antarctica. Section 107(a) of Public law 98–373 [July 31, 1984; amended as Public Law 101–609-November 16, 1990] [available from the National Science Foundation, Office of Polar Programs, Suite 755, 4201 Wilson Boulevard, Arlington, VA 22230] designates the National Science Foundation as the lead agency responsible for implementing Arctic research policy, and the Director of the National Science Foundation shall ensure that the requirements of section 108 are fulfilled.

NSF Form 1700, Medical Clearance Process for Deployment to the Polar Regions furnishes information to the NSF regarding the physical, dental, and mental health status for all individuals (except DoD-uniformed service personnel) who anticipate deploying to Antarctica under the auspices of the United States Antarctic Program or to certain regions of the Arctic sponsored by the NSF/GEO/Office of Polar Programs. The information is used to determine whether an individual is physically and mentally suited to endure the extreme hardships imposed by the Arctic and Antarctic continents, while also performing specific duties as specified by their employers.

Respondents: All non-DoD uniformed personnel planning to deploy to U.S. stations in the Antarctic or to specified regions of the Arctic that are sponsored by the National Science Foundation's Office of Polar Programs.

The number of annual respondents: 3,500 to the Antarctic and 150 to the Arctic

Estimated Total Annual Burden on Respondents: 36,500 hours.

Frequency of Responses: This form is submitted upon an individual's first deployment to Antarctica (below 60° South) or to specified regions of the Arctic and annually thereafter for the duration of the individual's deployments.

Dated: May 26, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–11658 Filed 5–29–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of June 1, 8, 15, 22, 29, July 6, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of June 1, 2020

There are no meetings scheduled for the week of June 1, 2020.

Week of June 8, 2020—Tentative

There are no meetings scheduled for the week of June 8, 2020.

Week of June 15, 2020—Tentative

There are no meetings scheduled for the week of June 15, 2020.

Week of June 22, 2020—Tentative

There are no meetings scheduled for the week of June 22, 2020.

Week of June 29, 2020—Tentative

There are no meetings scheduled for the week of June 29, 2020.

Week of July 6, 2020—Tentative

There are no meetings scheduled for the week of July 6, 2020.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 28, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–11831 Filed 5–28–20; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–1032, 72–78, 50–317 and 50–318; NRC–2020–0109]

Exelon Generation Company, LLC; Calvert Cliffs Nuclear Power Plant; Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an exemption request from Exelon Generation Company, LLC (EGC) to allow the Calvert Cliffs Nuclear Power Plant (CCNPP) to load spent fuel with a larger pellet diameter than is authorized in the Holtec International, Inc. (Holtec) HI–STORM FW storage system in Certificate of Compliance No. 1032, Amendment No. 1, Revision 1. The NRC prepared an environmental assessment (EA) documenting its finding. The NRC concluded that the proposed action would have no significant environmental impact. Accordingly, the NRC staff is issuing a finding of no significant impact (FONSI) associated with the proposed exemption.

DATES: The EA and FONSI referenced in this document became available on May 22, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0109 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–2020–0109. Address questions about NRC docket IDs 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 in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

FOR FURTHER INFORMATION CONTACT: Chris Allen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–6877; email: *William.Allen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Calvert Cliffs Nuclear Power Plant has been storing PWR spent fuel in its specific licensed independent spent fuel storage installation (ISFSI) utilizing Special Nuclear Materials License No. SNM–2505, which was issued in November 1992. However, for the loading campaign commencing in early summer of 2021, CCNPP plans to store its PWR fuel at a separate on-site ISFSI using the HI–STORM FW storage system, Certificate of Compliance No. 1032, Amendment No. 1, Revision 1 (ADAMS Package Accession No. ML15152A358) under the general license provisions in part 72 of title 10

of the *Code of Federal Regulations* (10 CFR). The NRC is reviewing an exemption request from EGC dated October 3, 2019 (ADAMS Accession No. ML19276D398). EGC requested an exemption from the requirements of paragraph 72.212(b)(3) of title 10 of the *Code of Federal Regulations* (10 CFR), and the portion of 10 CFR 72.212(b)(11) that requires compliance with the terms, conditions, and specifications of the Certificate of Compliance No. 1032, for spent fuel storage at the Calvert Cliffs Nuclear Power Plant. In evaluating the request, the NRC is also considering, pursuant to authority in 10 CFR 72.7, exempting EGC from similar requirements in 10 CFR 72.212(a)(2), 10 CFR 72.212(b)(5)(i); and 10 CFR 72.214, ''List of approved spent fuel storage casks.''

Specifically, EGC requested an exemption to load and store Class 14x14C spent fuel with a larger maximum pellet diameter than authorized in Amendment No. 1, Revision 1 of Holtec Certificate of Compliance No. 1032 for the HI–STORM FW storage system.

II. Environmental Assessment Summary

Under the requirements of 10 CFR 51.21 and 10 CFR 51.30(a), the NRC staff developed an environmental assessment (ADAMS Accession No. ML20114E231) to evaluate the proposed action, which is for the NRC to grant an exemption to EGC to allow loading and storage of spent fuel with a larger maximum pellet diameter than that authorized in Amendment No. 1, Revision 1 of the Holtec Certificate of Compliance No. 1032 for the HI–STORM FW storage system.

The EA defines the NRC's proposed action (*i.e.,* to grant the exemption request per 10 CFR 72.7) and the purpose of and need for the proposed action. Evaluations of the potential environmental impacts of the proposed action and alternatives to the proposed action are presented, followed by the NRC's conclusion.

This EA evaluates the potential environmental impacts of granting the exemption to load and store spent fuel with a larger maximum pellet diameter than authorized in Certificate of Compliance No. 1032, Amendment No. 1, Revision 1 in the HI–STORM FW storage system at the Calvert Cliffs Nuclear Power Plant. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the EA for the rulemaking to provide for the storage of spent fuel under a general license on July 18, 1990 (55 FR 29181). The environmental assessment for the HI–STORM FW storage system, Certificate of Compliance No. 1032, Amendment No. 1, Revision 1, (80 FR 14291) tiers off the environmental assessment for the 1990 final rule.

The NRC staff finds that the environmental effects from this exemption request is bounded by the EA for Certificate of Compliance No. 1032, Amendment No. 1, Revision 1, and that there will be no significant environmental impacts from the proposed action. The proposed action does not change the types or quantities of effluents that may be released offsite, and it does not increase occupational or public radiation exposure. The request by EGC to increase the pellet diameter without a corresponding increase in the uranium oxide loading of fuel assemblies will not result in an inadvertent criticality event. Therefore, there are no significant radiological environmental impacts associated with the proposed action. There is no change to the non-radiological effluents. The proposed action will take place within the site boundary and does not have other environmental impacts. Thus, the proposed action will not have a significant effect on the quality of the human environment. Therefore, the environmental impacts of the proposed action are no greater than those described in the EA for the rulemaking to add the HI–STORM FW storage system, Certificate of Compliance No. 1032, Amendment No. 1, Revision 1 to 10 CFR 72.214.

III. Finding of No Significant Impact

The NRC staff has prepared an EA and associated FONSI in support of the proposed action. The NRC staff has concluded that the proposed action, for the NRC to grant the exemption requested for Calvert Cliffs Nuclear Power Plant, allowing storage of a larger pellet diameter in Amendment No. 1, Revision 1 for the HI–STORM FW storage system, will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative. The environmental impacts are bounded by the previous EA for the rulemaking to add the Certificate of Compliance No. 1032, Amendment No. 1, Revision 1 cask system to 10 CFR 72.214.

The NRC provided the Maryland Department of the Environment a draft copy of this EA for review in an email dated March 16, 2020 (ADAMS Accession No. ML20077J550).

The NRC staff has determined that this exemption would have no impact on historic and cultural resources or ecological resources and therefore no consultations are necessary under Section 7 of the Endangered Species Act or Section 106 of the National Historic Preservation Act.

Therefore, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a FONSI is appropriate.

Dated: May 27, 2020.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–11693 Filed 5–29–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0228, CSRS/FERS Documentation in Support of Disability Retirement Application, Standard Form 3112

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), CSRS/FERS Documentation in Support of Disability Retirement Application, Standard Form 3112.

DATES: Comments are encouraged and will be accepted until July 31, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

—*Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement

Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0228). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Standard Form 3112, CSRS/FERS Documentation in Support of Disability Retirement Application, collects information from applicants for disability retirement so that OPM can determine whether to approve a disability retirement under title 5, U.S.C. 8337 and 8455. The applicant will only complete Standard Forms 3112A, and 3112C. Standard Forms 3112B, 3112D and 3112E will be completed by the immediate supervisor and the employing agency of the applicant.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: CSRS/FERS Documentation in Support of Disability Retirement.

OMB Number: 3206–0228.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 13,450 [1,350 (SF 3112A) and 12,100 (SF 3112C)].

Estimated Time per Respondent: 30 minutes (SF 3112A) and 60 minutes (SF 3112C).

Total Burden Hours: 12,775 hours [675 hours (SF 3112A) and 12,100 hours (SF 3112C)].

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–11734 Filed 5–29–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0128, Application for Refund of Retirement Deductions (CSRS)—SF 2802 and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under CSRS—SF 2802A

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Application for Refund of Retirement Deductions Under the Civil Service Retirement System, SF 2802 and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under the Civil Service Retirement System, SF 2802A.

DATES: Comments are encouraged and will be accepted until July 31, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

—*Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0226). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Standard Form 2802 is used to support the payment of monies from the Retirement Fund. It identifies the applicant for refund of retirement deductions. Standard Form 2802A is used to comply with the legal requirement that any spouse or former spouse of the applicant has been notified that the former employee is applying for a refund.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Refund of Retirement Deductions (CSRS) and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions under the Civil Service Retirement System.

OMB Number: 3206–0128.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: SF 2802 = 3,741; SF 2802A = 3,389.

Estimated Time per Respondent: SF 2802 = 60 minutes; SF 2802A = 15 minutes.

Total Burden Hours: 4,588.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–11733 Filed 5–29–20; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–144; Order No. 5522]

Inbound Competitive Multi-Service Agreements With Foreign Postal Operators

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent filing by the Postal Service that it has entered into the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators (FPOs). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 9, 2020

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Commission Action
III. Ordering Paragraphs

I. Introduction

On May 21, 2020, the Postal Service filed a notice with the Commission pursuant to 39 CFR 3035.105 and Order No. 546,[1] giving notice that it has entered into an Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator (FPO). The Notice concerns the inbound portions of the competitive multi-product agreement entered into by the Postal Service and a FPO, referred to as ''FPO–USPS Agreement FY20–1.'' Notice at 1. The Postal Service seeks to include the FPO–USPS Agreement FY20–1 within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010–34) product. *Id.*

The Postal Service asserts that FPO–USPS Agreement FY20–1 ''is functionally equivalent to the baseline agreement filed in Docket No. MC2010–34 because the terms of this agreement are similar in scope and purpose to the terms of the CP2010–95 Agreement.'' *Id.* at 3. Concurrent with the Notice, the Postal Service filed supporting financial documentation and the following documents:

- Attachment 1—an application for non-public treatment;
- Attachment 2—the FPO–USPS Agreement FY20–1;
- Attachment 3—Governors' Decision No. 19–1;
- Attachment 4—a certified statement required by 39 CFR 3035.105(c)(2).

Id. at 4.

The Postal Service states it intends for FPO–USPS Agreement FY20–1 to take effect on July 1, 2020. *Id.* at 1. The Postal Service notes that FPO–USPS Agreement FY20–1 provides rates for inbound parcels, packets, and Express Mail Shipping. *Id.* at 5.

The Postal Service states that FPO–USPS Agreement FY20–1 is in compliance with 39 U.S.C. 3633 and is functionally equivalent to the inbound competitive portions of the CP2010–95 agreement, which was included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product (MC2010–34). *Id.* at 9. For these reasons, the Postal Service avers that FPO–USPS Agreement FY20–1 should be added to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

II. Commission Action

The Commission establishes Docket No. CP2020–144 to consider the Notice. Interested persons may submit comments on whether the FPO–USPS Agreement FY20–1 is consistent with 39 U.S.C. 3633 and 39 CFR 3035.105 and whether it is functionally equivalent to the inbound competitive portions of the Docket No. CP2010–95 agreement, which was included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product (MC2010–34). Comments are due by June 9, 2020.

The Notice and related filings are available on the Commission's website (*http://www.prc.gov*). The Commission encourages interested persons to review the Notice for further details.

The Commission appoints Katalin K. Clendenin to serve as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2020–144 for consideration of the matters raised by the Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator—FY20–1, filed on May 21, 2020.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due by June 9, 2020.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–11634 Filed 5–29–20; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–139 and CP2020–148]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 3, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

[1] Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operators—FY20–1, May 21, 2020 (Notice). Docket Nos. MC2010–34 and CP2010–95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Service Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–139 and CP2020–148; *Filing Title:* USPS Request to Add Priority Mail Contract 618 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 26, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 *et seq.,* and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* June 3, 2020.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–11696 Filed 5–29–20; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* June 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 22, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 3 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–137 and CP2020–146.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–11642 Filed 5–29–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Acy; Modified System of Records

AGENCY: Postal Service™.

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service™ (USPS™) is proposing to revise a Customer Privacy Act Systems of Records. These updates are being made to facilitate the implementation of web-based conferencing applications.

DATES: These revisions will become effective without further notice on July 1, 2020, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Privacy and Records Management Office, United States Postal Service, 475 L'Enfant Plaza SW, Room 1P830, Washington, DC 20260–1101. Copies of all written comments will be made available for public inspection upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records.

The Postal Service has determined that Customer Privacy Act Systems of Records (SORs), USPS 890.000, Sales, Marketing, Events, and Publications should be revised to support the implementation of web-based conferencing applications with enhanced functionality. These applications will further encourage collaboration, promote meeting efficiency, and facilitate the sharing of information.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect these amended systems of records to have any adverse effect on individual privacy rights. The notice for USPS 890.000, Sales, Marketing, Events, and Publications provided below in its entirety, is as follows:

SYSTEM NAME AND NUMBER:

USPS 890.000, Sales, Marketing, Events, and Publications.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Headquarters Marketing and Public Policy; Integrated Business Solutions Services Centers; National Customer Service Center; Area and District USPS facilities; Post Offices; and contractor sites.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Customer and Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404.

PURPOSE(S) OF THE SYSTEM:

1. To understand the needs of customers and improve USPS sales and marketing efforts.
2. To provide appropriate materials and publications to customers.
3. To conduct registration for USPS and related events.
4. To enable access to the USPS meeting and video web conferencing application.
5. To enhance your online meeting experience by utilizing enhanced features and functionality, including voluntary polling to gather responses from attendees to generate reports or the interactive chat feature.
6. To facilitate information sharing and cross-functional participation.
7. To share your personal image via your device camera during meetings and web conferences, if you voluntarily choose to turn the camera on, enabling virtual face-to-face conversations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers who interact with USPS sales personnel, respond to direct marketing messages, request publications, respond to contests and surveys, and attend USPS events.
2. Customers and other individuals who participate in web-based meetings and video conferences sponsored by the USPS.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Customer and key contacts' names, mail and email addresses, phone, fax and pager numbers; job descriptions, titles, and roles; other names and emails provided by customers.
2. *Identifying information:* Customer ID(s), D–U–N–S Numbers, USPS account numbers, meter numbers, and signatures.
3. *Business specific information:* Firm name, size, and years in business; number of employees; sales and revenue information; business sites and locations; URLs; company age; industrial classification numbers; use of USPS and competitor's products and services; types of customers served; customer equipment and services; advertising agency and spending; names of USPS employees serving the firm; and calls made.
4. *Information specific to companies that act as suppliers to USPS:* Contract start and end dates, contract award number, contract value, products and/or services sold under contract.
5. Information provided by customers as part of a survey or contest.
6. *Payment information:* Credit and/or debit card number, type, expiration date, and check information; and ACH information.
7. *Event information:* Name of event; role at event; itinerary; and membership in a PCC.
8. *Customer preferences:* Preferences for badge name and accommodations.
9. *Session data from web-based meetings and web conferences:* Participant name, participant's webcam-generated image (including presenters), recorded participant audio, video, and shared meeting screen content, chat interaction, polling questions and associated responses, participant join time and leave time, meeting duration, participant location, and participant media hardware information.
10. *Historical device usage data from web-based meetings and web conferences:* Device type (such as mobile, desktop, or tablet), Device Operating System, Operating System Version, MAC address, and IP address.

RECORD SOURCE CATEGORIES:

Customers, USPS personnel, and list providers.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated databases, computer storage media, and paper.

POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:

1. For sales, events, and publications, information is retrieved by customer name or customer ID(s), mail or email address, and phone number.
2. For direct marketing, information is retrieved by Standard Industry Code (SIC) or North American Industry Classification System (NAISC) number, and company name.
3. Report and tracking data created during web-based meetings and video conferences that pertain to individual participants, content shared, conference codes and other relevant session data and historical device usage data, are retrieved by meeting ID, host name or host email address.
4. Media recordings created during web-based meetings and video conferences are retrieved by meeting ID, host name or host email address.
5. Web-based meeting and video session recordings are retrieved by meeting ID, host name or host email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records relating to organizations and publication mailing lists are retained until the customer ceases to participate.
2. ACH records are retained up to 2 years. Records relating to direct marketing, advertising, and promotions are retained 5 years.
3. Other records are retained 3 years after the relationship ends.
4. Report and tracking data created during web-based meeting and video conferences, such as session data and historical device usage data, are retained for twenty-four months.
5. Web-based meeting and video session recordings are retained for twenty-four months.
6. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software. Online data transmission is protected by encryption.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURE:

For information pertaining to sales, inquiries should be addressed to: Sales

and Customer Relations, 475 L'Enfant Plaza SW, Washington, DC 20260.

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the Chief Customer and Marketing Officer and Executive Vice President, and include their name and address.

EXEMPTIONS PROMULGATED FROM THIS SYSTEM:

None.

HISTORY:

October 24, 2011, 76 FR 65756; April 29, 2005, 70 FR 22516.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–11639 Filed 5–29–20; 8:45 am]

BILLING CODE P

POSTAL SERVICE

Privacy Acy; Modified System of Records

AGENCY: Postal Service™.

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service™ (USPS™) is proposing to revise a General Privacy Act Systems of Records. These updates are being made to facilitate the implementation of web-based conferencing applications.

DATES: These revisions will become effective without further notice on July 1, 2020, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Privacy and Records Management Office, United States Postal Service, 475 L'Enfant Plaza SW, Room 1P830, Washington, DC 20260–1101. Copies of all written comments will be made available for public inspection upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records.

The Postal Service has determined that General Privacy Act Systems of Records (SORs), USPS 500.000, Property Management Records should be revised to support the implementation of web-based conferencing applications with enhanced functionality. These applications will further encourage collaboration, promote meeting efficiency, and facilitate the sharing of information.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect these amended systems of records to have any adverse effect on individual privacy rights. The notice for USPS 500.000, Property Management Records provided below in its entirety, is as follows:

SYSTEM NAME AND NUMBER:

USPS 500.000, Property Management Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All USPS facilities.

SYSTEM MANAGER(S):

For records of accountable property, carpool membership, and use of USPS parking facilities: Vice President, Facilities, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

For records of building access and Postal Inspector computer access authorizations: Chief Postal Inspector, Inspection Service, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

For other records of computer access authorizations: Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S) OF THE SYSTEM:

1. To ensure personal and building safety and security by controlling access to USPS facilities.

2. To ensure accountability for property issued to persons.

3. To assign computer logon IDs; to identify USPS computer users to resolve their computer access problems by telephone; and to monitor and audit the use of USPS information resources as necessary to ensure compliance with USPS regulations.

4. To enable access to the USPS meeting and video web conferencing application.

5. To enhance your online meeting experience by utilizing enhanced features and functionality, including voluntary polling to gather responses from attendees to generate reports or the interactive chat feature.

6. To facilitate information sharing and cross-functional participation.

7. To share your personal image via your device camera during meetings and web conferences, if you voluntarily choose to turn the camera on, enabling virtual face-to-face conversations.

8. To authenticate user identity for the purpose of accessing USPS information systems.

9. To provide parking and carpooling services to individuals who use USPS parking facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals who are granted regular access to USPS facilities through the issuance of a building access badge, or who are assigned accountable property.

2. Individuals with authorized access to USPS computers and information resources, including USPS employees, contractors, and other individuals; Individuals participating in web-based meetings and video conferences.

3. Individuals who are members of carpools with USPS employees or otherwise regularly use USPS parking facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Building access information: Records related to issuance of building access badges, including name, Social Security Number, Employee Identification Number, date of birth, photograph, postal assignment information, work contact information, finance number(s), duty location, and pay location.

2. Property issuance information: Records related to issuance of accountable USPS property, equipment, and controlled documents, including name, Social Security Number, equipment description, equipment serial numbers, and issuance date.

3. Computer access authorization information: Records related to computer users, including logon ID, Social Security Number, Employee Identification Number, or other assigned identifier, employment status information or contractor status information, and extent of access granted.

4. Session data from web-based meetings and web conferences: Participant name, participant's webcam-generated image (including presenters), recorded participant audio, video, and shared meeting screen content, chat interaction, polling questions and associated responses, participant join

time and leave time, meeting duration, participant location, and participant media hardware information.

5. Historical device usage data from web-based meetings and web conferences: Device type (such as mobile, desktop, or tablet), Device Operating System, Operating System Version, MAC address, and IP address.

6. Identity verification information: Question, answer, and email address.

7. Carpool and parking information: Records related to membership in carpools with USPS employees or about individuals who otherwise regularly use USPS parking facilities, including name, space number, principal's and others' license numbers, home address, and contact information.

RECORD SOURCE CATEGORIES:

Employees; contractors; subject individuals; and other systems of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:

1. Records about building access and issuance of accountable property are retrieved by name, Social Security Number, or Employee Identification Number.

2. Records about authorized access to computer and information resources are retrieved by name, logon ID, Employee Identification Number, or other unique identifier of the individual.

3. Report and tracking data created during web-based meetings and video conferences that pertain to individual participants, content shared, conference codes and other relevant session data and historical device usage data are retrieved by meeting ID, host name or host email address.

4. Media recordings created during web-based meetings and video conferences are retrieved by meeting ID, host name or host email address.

5. Records of carpools and parking facilities are retrieved by name, ZIP Code, space number, or parking license number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Building access and accountable property records are retained until termination of access or accountability.

2. Records of computer access privileges are retained 1 year after all authorizations are cancelled.

3. Report and tracking data created during web-based meeting and video conferences, such as other relevant session data and historical device usage data, are retained for twenty-four months.

4. Web-based meeting or video session recordings are retained for twenty-four months.

5. Records of carpool membership and use of USPS parking facilities are retained 6 years.

6. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Inquiries for records about building access, accountable property, carpool membership, and use of USPS parking facilities must be addressed to the facility head. Inquiries about computer access authorization records must be directed to the Manager, Corporate Information Security, 475 L'Enfant Plaza SW, Suite 2141, Washington, DC 20260. For Inspection Service computer access records, inquiries must be submitted to the Inspector in Charge, Information Technology Division, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201. Inquiries must include full name, Social Security Number or Employee Identification Number, and period of employment or residency at the location.

EXEMPTIONS PROMULGATED FROM THIS SYSTEM:

None.

HISTORY:

April 11, 2014, 79 FR 20249; June 27, 2012, 77 FR 38342; June 17, 2011, 76 FR 35483; April 29, 2005, 70 FR 22516.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–11640 Filed 5–29–20; 8:45 am]

BILLING CODE P

POSTAL SERVICE

International Product Change—Global Expedited Package Services—Non-Published Rates

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Global Expedited Package Services—Non-Published Rates 15 (GEPS–NPR 15) to the Competitive Products List.

DATES: *Date of notice:* June 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, 202–268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on May 21, 2020, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to add Global Expedited Package Services—Non-Published Rates 15 (GEPS–NPR 15) to the Competitive Products List and Notice of Filing GEPS–NPR 15 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–136 and CP2020–145.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–11641 Filed 5–29–20; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88945; File No. SR–FINRA–2020–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend the FINRA Code of Arbitration Procedure for Customer Disputes and the FINRA Code of Arbitration Procedure for Industry Disputes To Apply Minimum Fees To Requests for Expungement of Customer Dispute Information

May 26, 2020.

I. Introduction

On February 7, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA's Code of Arbitration Procedure for Customer Disputes and Code of Arbitration Procedure for Industry Disputes (collectively, the ''Codes'') to apply minimum fees to requests for the expungement of customer dispute information.

The proposed rule change was published for comment in the **Federal Register** on February 26, 2020.[3] The public comment period closed on March 18, 2020. The Commission received seven comment letters in response to the Notice.[4] On April 2, 2020, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to May 26, 2020. On May 18, 2020, FINRA responded to the comment letters received in response to the Notice.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change [6]

A. Background

1. Customer Dispute Information in the Central Registration Depository

Information regarding customer disputes involving associated persons is contained in the Central Registration Depository (''CRD'') system, the central licensing and registration system used by the U.S. securities industry and its regulators. The concept for CRD, as well as the policies pursuant to which FINRA operates CRD, were developed by FINRA jointly with NASAA.[7]

In general, the information in the CRD system is submitted by broker-dealers, associated persons, and regulators in response to questions on the uniform registration forms.[8] Among other things, these forms collect administrative, regulatory, criminal history, and disciplinary information about associated persons, including customer complaints, arbitration claims and court filings made by customers (*i.e.,* ''customer dispute information''). FINRA, state and other regulators use this information in connection with their licensing and regulatory activities, and broker-dealers use this information to help them make employment decisions.

Pursuant to rules approved by the SEC, FINRA makes specified current CRD information publicly available through BrokerCheck.[9] According to FINRA, BrokerCheck is part of its effort to help investors make informed choices about the broker-dealers and associated persons with which they may conduct business.[10] BrokerCheck maintains information on the approximately 3,600 registered broker-dealers and 628,000 associated persons. BrokerCheck also provides the public with access to information about formerly registered broker-dealers and associated persons.[11]

According to FINRA, the regulatory framework governing the CRD system and BrokerCheck has long contemplated the possibility of expunging certain customer dispute information from these systems in limited circumstances, such as where the allegations made about the associated person are factually impossible or clearly erroneous.[12] FINRA believes the expungement framework seeks to balance the important benefits of disclosing information about customer disputes to regulators and investors with the goal of protecting associated persons from the publication of false allegations against them.[13]

A broker-dealer or associated person can seek expungement of customer dispute information by going through the FINRA arbitration process or directly to court (without first going through arbitration). Regardless of whether expungement of customer dispute information is sought directly through a court or through arbitration, FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System), requires a member firm or associated person seeking expungement to obtain an order of a court of competent jurisdiction directing such expungement

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 88251 (Feb. 20, 2020), 85 FR 11165 (Feb 26, 2020) (File No. SR–FINRA–2020–005) (''Notice'').

[4] *See* Letter from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated Feb. 21, 2020 (''Caruso Letter''); letter from Samuel Edwards, President, Public Investors Arbitration Bar Association (''PIABA''), dated Mar. 18, 2020 (''PIABA Letter''); letter from Christopher Gerold, President & Chief, New Jersey Bureau of Securities, North American Securities Administrators Association (''NASAA''), dated Mar. 18, 2020 (''NASAA Letter''); letter from Dochtor D. Kennedy, President & Founder, AdvisorLaw LLC, dated Mar. 18, 2020 (''AdvisorLaw Letter''); letter from Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, Christina Buru, Legal Intern, Gia Fernicola, Legal Intern, and Lauren K. Peterson, Legal Intern, Securities Arbitration Clinic, St. John's University School of Law, dated Mar. 18, 2020 (''SJU Letter''); letter from Robin M. Traxler, Esq., Senior Vice President, Policy & Deputy General Counsel, Financial Services Institute (''FSI''), dated Mar. 18, 2020 (''FSI Letter''); and letter from Richard P. Ryder, Esq., President, Securities Arbitration Commenter, Inc. (''SAC''), dated Mar. 26, 2020 (''SAC Letter''). Comment letters are available on the Commission's website at *https://www.sec.gov.*

[5] *See* Letter from Mignon McLemore, Assistant General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, dated May 18, 2020 (''FINRA Letter''). The FINRA Letter is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA, on the Commission's website at *https://www.sec.gov/comments/sr-finra-2020-005/srfinra2020005-7214393-216896.pdf,* and at the Commission's Public Reference Room.

[6] The subsequent description of the proposed rule change is substantially excerpted from FINRA's description in the Notice. *See* Notice, 85 FR at 11165–73.

[7] *See* Notice at 11165 and n. 4. NASAA and state regulators remain involved with the ongoing development and implementation of CRD. *See* Notice at n. 4.

[8] The uniform registration forms are Form BD (Uniform Application for Broker-Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form BR (Uniform Branch Office Registration Form), Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration), and Form U6 (Uniform Disciplinary Action Reporting Form).

[9] There is a limited amount of information in the CRD system that FINRA does not display in BrokerCheck, including personal or confidential information. A detailed description of the information made available through BrokerCheck is available at *http://www.finra.org/investors/about-brokercheck.*

[10] *See* Notice at 11165.

[11] Formerly registered associated persons, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or may seek to attain other positions of trust with potential investors. BrokerCheck provides information on more than 16,800 formerly registered broker-dealers and 567,000 formerly registered associated persons. An associated person's records are available in BrokerCheck for 10 years after the associated person leaves the industry, and associated persons who are the subject of disciplinary actions and certain other events remain on BrokerCheck permanently.

[12] *See* Notice at 11166.

[13] *Id.*

or confirming an award containing expungement relief. FINRA will expunge customer dispute information only after the court orders it to execute the expungement.[14]

2. Current Fee Structure in FINRA Arbitration

Under the Codes, if a customer files a claim in arbitration against an associated person and a member firm, the customer is assessed a filing fee based on the claim amount.[15] The member firm is assessed a member surcharge and a process fee based on the claim amount.[16] The member firm is assessed only one surcharge and one process fee per arbitration.[17] When the associated person answers the claim,[18] the associated person is not assessed a fee if he or she does not add a claim to the answer.[19]

If the parties do not settle the arbitration, the panel will hold at least one hearing to decide the customer arbitration and, at the conclusion of the hearing(s), issue an award. In the award, the panel will allocate the fees incurred by the parties during the arbitration, including each party's portion of the hearing session fees,[20] which are also based on the amount of the customer's claim.[21] If the parties settle, the panel will not issue an award.

a. Current Fee Structure for Expungement Requests Made During a Customer Arbitration

Currently, even if the associated person's answer to a customer's claim includes a request for expungement, the associated person is not assessed a filing fee. The member firm, having been assessed the surcharge and process fee for the customer arbitration, will not incur additional charges because of the expungement request. If the customer's claim closes by award after a hearing,[22] the panel will decide the customer's claim and the expungement request (assuming the associated person pursues the request during the arbitration), and allocate the hearing session fees among the parties.

If the customer arbitration does not close by award after a hearing (*e.g.,* settles) and the associated person or requesting party, if it is an on-behalf-of request,[23] continues to pursue the expungement request, the panel from the customer arbitration will hold a separate expungement-only hearing to decide the expungement request. The hearing session fee for the expungement-only hearing will be based on the amount of the customer's claim. Under the Codes, fees for hearing sessions held solely to decide an expungement request must be charged to the party or parties requesting expungement.[24]

b. Current Fee Structure for an Expungement Requests Made in a Separate Arbitration (''Straight-In Request'')

An associated person may request expungement by filing a straight-in request rather than requesting expungement during a customer arbitration. The straight-in request may be filed against a former or current firm or the customer.[25] Any claim that does not request a dollar amount is considered a non-monetary or not specified claim (''nonmonetary claim'') under the Codes. An expungement request is a non-monetary claim; thus, under the Codes, the associated person must pay a $1,575 filing fee, and the member firm named as a respondent or that employed the associated person at the time the dispute arose must pay a $3,750 process fee.[26] A member firm named as a respondent or that employed the associated person at the time the dispute arose is also assessed a surcharge of $1,900.[27] These claims are decided by a three-person panel, unless the parties agree in writing to one arbitrator.[28] Further, the per-hearing session fee for a nonmonetary claim is $1,125, and is assessed against the party requesting expungement.

c. FINRA's Concerns With Fees for Certain Expungement Requests

As discussed above, an expungement request is a non-monetary claim, and FINRA believes that the parties requesting expungement should pay the fees associated with such requests under the Codes.[29] FINRA is concerned, however, that member firms and associated persons are engaging in

[14] FINRA Rule 2080 also requires that FINRA member firms or associated persons seeking a court order or confirmation of the arbitration award containing expungement relief name FINRA as a party. FINRA may, however, waive the requirement to name it as a party if it determines that the award containing expungement relief is based on affirmative judicial or arbitral findings that: (1) The claim, allegation or information is factually impossible or clearly erroneous; (2) the associated person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (3) the claim, allegation, or information is false. In addition, FINRA stated it has sole discretion ''under extraordinary circumstances'' to waive the requirement if the request for expungement relief and accompanying award are meritorious and expungement would not have a material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements. *See* Notice at n. 2; *see also* FINRA Rule 2080.

[15] Customers, associated persons, and other non-members who file a claim, counterclaim, cross claim or third party claim must pay a filing fee. *See* FINRA Rule 12900(a)(1); *see also* FINRA Rule 13900(a)(1).

[16] A member surcharge is assessed against a member firm if, for example, the member firm files an arbitration claim, is named as a respondent in a claim, or employed, at the time the dispute arose, an associated person who is named as a respondent; the amount of the surcharge is based on the amount of the claim. *See* FINRA Rules 12901(a)(1)(B) and 12901(a)(1)(C) and FINRA Rules 13901(a)(2) and 13901(a)(3).

Further, each member firm that is a party to an arbitration claim in which more than $25,000 is in dispute, or that is non-monetary or not specified, is required to pay a process fee based on the amount or nature of the claim. If an associated person of a member firm is a party, the member firm that employed the associated person at the time the dispute arose is charged the process fee. *See* FINRA Rules 12903(a) and (b) and FINRA Rules 13903(a) and (b).

[17] Under the Codes, no member firm is assessed more than a single surcharge or process fee in any arbitration. *See* FINRA Rules 12901(a)(4) and 12903(b) and FINRA Rules 13901(d) and 13903(b).

[18] The respondent must answer the statement of claim within 45 days and may include other claims and remedies requested. *See* FINRA Rules 12303(a) and (b) and FINRA Rules 13303(a) and (b).

[19] For example, an associated person is permitted to file a claim against the claimant requesting relief. Such counterclaim would require the associated person to pay a filing fee. *See* FINRA Rule 12303(d); *see also* FINRA Rule 13303(d).

[20] Parties are charged hearing session fees for each hearing session, based on the customer's claim amount. In the award, the panel determines the amount of each hearing session fee that each party is required to pay. *See* FINRA Rules 12902 and 13902.

[21] FINRA makes all arbitration awards publicly available. See *https://www.finra.org/arbitration-mediation/arbitration-awards.*

[22] The term ''hearing'' means the hearing on the merits of an arbitration under Rule 12600. *See* FINRA Rule 12100(o).

[23] In 2009, the Commission approved amendments to Forms U4 and U5 to require, among other things, the reporting of allegations of sales practice violations made against unnamed persons. *See* Exchange Act Release No. 59916 (May 13, 2009), 74 FR 23750 (May 20, 2009) (Order Approving SR–FINRA–2009–008). Specifically, Forms U4 and U5 were amended to add questions to elicit whether the applicant or registered person, though not named as a respondent or defendant in a customer-initiated arbitration, was either mentioned in or could be reasonably identified from the body of the arbitration claim as a registered person who was involved in one or more of the alleged sales practice violations. A party (typically, the firm) named in a customer arbitration may request expungement on-behalf-of an associated person who is a subject of, but not named in, the arbitration. Such on-behalf-of requests occur in customer-initiated arbitrations only.

[24] *See* FINRA Rules 12805(d) and 13805(d).

[25] FINRA notes, however, that straight-in requests filed against the customer are rare. *See* Notice at n. 19.

[26] *See supra* note 16. Some associated persons have independent contractor, rather than employment, relationships with their firms. In these circumstances, FINRA assesses applicable member surcharge or process fees against the firm at which the associated person was associated at the time the dispute arose.

[27] *See supra* note 16; *see also supra* note 17.

[28] *See* FINRA Rules 12401(c) and 13401(c).

[29] *See* Notice at 11167.

practices to avoid fees applicable to expungement requests, particularly expungement requests made as straight-in requests.[30] FINRA cited as an example associated persons who file a straight-in request adding a small monetary claim (typically, one dollar) to the expungement request with the intent of reducing the fees assessed against the associated person and qualify for an arbitration heard by a single arbitrator.[31] Further, FINRA stated that claims for small damages also reduce the member fees that the forum assesses against member firms when an arbitration claim is filed. Thus, adding a claim for one dollar in a straight-in request against a member firm reduces the fees that normally would be assessed to the associated person requesting expungement and member firm from $9,475 to $300.[32] FINRA noted that, often, the associated person will subsequently drop the claim for one dollar.[33] Adding a small damages claim also changes the default panel composition to a single arbitrator rather than a three-person panel.[34]

B. Proposed Amendments

As stated in the Notice, FINRA is proposing to amend the Codes to apply a minimum filing fee for all expungement requests to help ensure that parties requesting expungement pay the fees intended for such requests under the Codes, that the fees charged when expungement is requested are more consistent, and that more expungement requests are heard by a three-person panel.[35] Specifically, the same fees would apply to an expungement request irrespective of whether the request is made as part of the customer arbitration or the associated person files a straight-in request, or the requesting party adds a small damages claim.[36] The proposed rule change would also apply a minimum process fee and member surcharge to straight-in requests, as well as a minimum hearing session fee to expungement-only hearings held after a customer arbitration[37] or in connection with a straight-in request.[38]

1. Proposed Filing Fee

Under the proposed rule change, an associated person, or requesting party if it is an on-behalf-of request,[39] would be required to pay the filing fee for a non-monetary claim for an expungement request made during a customer arbitration[40] or filed as a straight-in request.[41] If the associated person or requesting party adds a monetary claim to the expungement request, the filing fee would be the fee for a non-monetary claim or the applicable filing fee based on the claim amount, whichever is greater.[42]

As discussed above, under the Codes, an expungement request that does not include a claim for damages is a non-monetary claim that is currently assessed a $1,575 filing fee and triggers review by a three-person panel. FINRA believes that all parties requesting expungement should pay the same minimum filing fee, and that parties should not be able to avoid the fee (or a three-person panel) simply by adding a small claim amount.

Accordingly, FINRA is proposing to impose the filing fee for all non-monetary claims as the minimum filing fee for expungement requests. Furthermore, FINRA is proposing to impose this minimum filing fee to expungement requests in customer arbitrations as well as to straight-in requests.[43]

FINRA also believes that the proposed minimum filing fee is commensurate with the additional steps that arbitrators should take when deciding an expungement request during a customer arbitration or in connection with a straight-in request.[44] Regardless of whether expungement is decided during a customer arbitration or separately, FINRA Rules 12805 and 13805 require the panel to hold one or more recorded hearing sessions regarding the appropriateness of expungement, to review settlement documents in cases involving settlements and consider the amount of payments made to any party and any other terms and conditions of the settlement, and to make a determination as to whether any of the Rule 2080 grounds for expungement have been established.

2. Proposed Member Surcharge for Straight-in Requests

The proposed rule change would apply a minimum member surcharge when an associated person files a

[30] *Id.*

[31] Whether the claimant specifies damages, and the amount specified, determines the fees assessed in arbitration cases and whether a single arbitrator or a three-person panel will decide the case. *See* FINRA Rules 12401 and 13401. If the amount of the claim is $50,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800. If the amount of the claim is more than $50,000, but less than $100,000, exclusive of interest and expenses, the panel will consist of one arbitrator unless the parties agree in writing to three arbitrators. If the amount of a claim is more than $100,000, exclusive of interest and expenses, or is non-monetary, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

[32] FINRA cited another example of an associated person filing a straight-in request against a member firm. If the associated person does not add a monetary claim, and assuming one prehearing conference and one hearing session on the merits, the associated person is assessed a filing fee of $1,575 and a hearing session fee of $2,250 ($1,125 for the prehearing conference and $1,125 for the hearing session on the merits). In addition, the respondent member firm is assessed a member surcharge of $1,900 and a process fee of $3,750. If the associated person adds a one dollar claim to the request, assuming one prehearing conference and one hearing session on the merits, the associated person is assessed a filing fee of $50 and a hearing session fee of $100 ($50 for the prehearing conference and $50 for the hearing session on the merits). The member firm is also assessed a member surcharge of $150 but no process fee. *See* Notice at n. 24.

[33] *See* Notice at 11167.

[34] *See supra* note 31.

[35] *See* Notice at 11167.

[36] *Id.*

[37] As an example, FINRA provided that under the current expungement process, if the customer arbitration settles, but an associated person seeks to pursue a request for expungement made during the customer arbitration, the panel from the customer arbitration will hold a separate expungement-only hearing to decide the expungement request and issue an award setting forth its decision on the expungement request. Under the proposed rule change, the associated person requesting expungement would be required to pay the minimum hearing session fee for this separate expungement-only hearing. *See* Notice at n. 26.

[38] The proposed rule change would apply to all members, including members that are funding portals or have elected to be treated as capital acquisition brokers (''CABs''), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

[39] *See supra* note 23.

[40] Under the proposed rule change, an associated person who requests expungement of customer dispute information during an industry arbitration would also be required to pay the filing fee for a non-monetary claim. FINRA notes, however, that these requests are rare. *See* Notice at n. 29.

[41] If the requesting party chooses to seek expungement in the customer arbitration, but later determines not to pursue the request and then files a straight-in request for expungement of the same customer dispute information, the requesting party would be required to pay the filing fee applicable to the straight-in request, notwithstanding the previous payment of the filing fee applicable to the expungement request during the customer arbitration.

[42] *See* Proposed Rules 12900(a)(3) and 13900(a)(3). An associated person could add a monetary or non-monetary claim to the expungement request. FINRA notes, however, that it is rare that significant dollar claims accompany expungement requests.

[43] Under the Codes, the Director of Dispute Resolution Services (''Director'') may defer payment of all or part of an associated person's filing fee on a showing of financial hardship. *See* FINRA Rules 12900(a)(1) and 13900(a)(1). The proposed rule change would make clear that this provision applies to expungement requests. Information on how to request an arbitration fee waiver is available at *https://www.finra.org/arbitrationmediation/arbitration-fee-waivers.* In addition, in the award, the panel may order a party to reimburse another party for all or part of any filing fee paid. *See* FINRA Rules 12900(d) and 13900(d).

[44] *See* Notice at 11167–68.

straight-in request against either a customer or a member firm.[45]

Under the proposed rule change, if an associated person files a straight-in request against a member firm, that firm would be assessed the member surcharge for a non-monetary claim under the Codes (currently $1,900). The proposed member surcharge is consistent with what a member firm should pay today for a straight-in request without an additional small monetary claim filed against a member firm.[46]

The proposed rule change would also provide that, for straight-in requests filed against a customer, each member firm that employed the associated person at the time the customer dispute arose would be assessed the member surcharge for a non-monetary claim under the Codes (currently $1,900).[47]

Under the Proposal, if the associated person adds a separate claim for damages to the straight-in request against the customer or member firm, the member surcharge would be the non-monetary member surcharge or the applicable surcharge under the Codes, whichever is greater. Under the Proposal, the surcharge would be due when the Director serves the Claim Notification Letter or the initial statement of claim under the Codes.[48]

3. Proposed Hearing Session Fees

The proposed rule change would apply the hearing session fee for a non-monetary claim heard by three arbitrators to each hearing session in which the sole topic is the determination of a request for expungement relief.[49] Thus, the proposed hearing session fee would apply to straight-in requests, and when a customer arbitration does not close by award after a hearing (*e.g.,* settles) and there is a separate hearing session held after the customer arbitration to decide an expungement request that was made during the customer arbitration.[50] If the requesting party adds a monetary claim to the expungement request, the hearing session fee would be the greater of the fee for a non-monetary claim with three arbitrators or the applicable hearing session fee under the Codes based on the claim amount.[51] In addition, consistent with the Codes today, the hearing session fee would be assessed against the party requesting expungement.[52]

4. Proposed Process Fees for Straight-In Requests

The proposed rule change would apply a minimum process fee when an associated person files a straight-in request against either a customer or member firm. Under the proposed rule change, if an associated person files a straight-in request against a member firm, that firm would be assessed the process fee for a non-monetary claim under the Codes (currently $3,750).[53]

The proposed rule change would also clarify that, for straight-in requests filed against a customer, the member firm that employed the associated person at the time the customer dispute arose would be assessed the process fee for a non-monetary claim under the Codes (currently $3,750).[54]

If the associated person adds a separate claim for damages to the straight-in request against the customer or member firm, the process fee would be the non-monetary process fee or the applicable process fee under the Codes, whichever is greater.[55] The proposed process fee is consistent with what member firms should pay today for straight-in requests without an additional small monetary claim filed against a customer or member firm.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 60 days following publication of the *Regulatory Notice* announcing Commission approval of the proposed rule change.

III. Comment Summary

As noted above, the Commission received seven comment letters on the proposed rule change.[56] One commenter fully supported the Proposal;[57] three commenters supported the Proposal but urged FINRA to make further changes;[58] two commenters were critical of the Proposal;[59] and one commenter supported the Proposal but sought clarification of its scope.[60]

Supportive of Proposal

In one commenter's view, the proposed rule changes ''would be a fair, equitable and reasonable approach that would expedite and facilitate the efficiency of the arbitration forum as well as the investor protection attributes that are all too often compromised through the improper application of the expungement process.''[61] This commenter believes that the changes ''should be approved by the SEC on an expedited basis.''[62] A second commenter was ''[g]enerally . . . supportive of the proposed rule changes,'' noting that ''[i]t is wholly unfair to allow some brokers to evade the expungement fees imposed by the Codes by claiming fictitious nominal damages.''[63]

Proposal Is Beneficial but Insufficient

One commenter was supportive of the Proposal but stated that expungement requests should be decided by a three-person panel in all instances.[64] Another commenter also supported the proposal ''as a general matter,'' but ''strongly urge[d] the Commission to require FINRA to enhance the proposal by requiring unanimous decisions by three-person arbitration panels,'' noting that ''[a] divided panel indicates that there is doubt that the broker has met the higher burden attendant to eligibility for extraordinary relief, and thus should not merit an expungement recommendation.''[65] This commenter also argued that ''further expungement reform is required to improve a failed

[45] *See* proposed Rule 13901(c). If the associated person files the straight-in request against another associated person, each member firm that employed the respondent associated person at the time the dispute arose would be assessed the member surcharge for a non-monetary claim under the Codes. *See* FINRA Rule 13901(a)(3) and proposed Rule 13901(c).

[46] Consistent with how the member surcharge is assessed today, under the proposal, FINRA would not assess a member firm more than a single surcharge in any arbitration. *See also supra* note 17.

[47] *See* proposed Rule 12901(a)(3).

[48] *See* proposed Rules 12901(a)(5) and 13901(e).

[49] FINRA notes that the proposed $1,125 hearing session fee for expungement hearings would apply if a party requests expungement as part of a Simplified Arbitration and no hearings are held to decide the underlying customer claim, regardless of whether a single arbitrator or a panel hears the Simplified Arbitration.

[50] *See* proposed Rules 12900(a)(3) and 13900(a)(3); *see also supra* note 37. If an associated person requests expungement during a customer arbitration, the customer arbitration closes by award after a hearing, and the arbitrator or panel decides the expungement request during the customer arbitration, the hearing session fee would be based on the amount of the customer's claim.

[51] *See* proposed Rules 12902(a)(5) and 13902(a)(4).

[52] *Id.*

[53] *See* proposed Rule 13903(c). Under the Proposal, if the associated person files the straight-in request against another associated person, the firm that employed the respondent associated person at the time the dispute arose would be assessed the process fee for a non-monetary claim under the Codes. *See* proposed Rules 13903(b) and 13903(c).

[54] *See* proposed Rule 12903(c).

[55] Consistent with how the process fee is assessed today, under the proposal, FINRA would not assess a member more than one process fee in any arbitration. *See also supra* note 17.

[56] *See supra* note 4.

[57] *See* Caruso Letter.

[58] *See* SJU Letter, PIABA Letter, NASAA Letter.

[59] *See* FSI Letter, AdvisorLaw Letter.

[60] *See* SAC Letter.

[61] Caruso Letter.

[62] *Id.*

[63] SJU Letter.

[64] *See id.*

[65] NASAA Letter.

system,'' and urged FINRA to ''continue to close gaps in the existing process and to initiate steps towards more meaningful expungement reform.'' [66] This commenter was concerned that, ''[i]n light of expungement's evolution from an extraordinary remedy into routinely granted relief, the integrity of the data on the CRD and IARD systems is suffering.'' [67]

A third commenter supported the proposed minimum fees, stating that ''the practice of adding a small monetary claim to a request for expungement in a 'straight in' expungement request'' is an ''egregious abuse of the process'' that has ''become the norm.'' This commenter also favored requiring three-person panels, stating that ''rather than hoping that the new rules 'should' result in more expungement requests [being] heard before three-person arbitration panels, FINRA should require this under the revised arbitration rules.'' [68]

In response, FINRA noted that while it believes that ''most expungement requests, particularly straight-in requests, should be decided by a three-person panel,'' it has determined not to revise this Proposal to require a three-person panel to decide expungement requests, or to require the unanimous consent of a three-person panel to decide expungement requests.[69] FINRA stated that it believes ''it is appropriate that this Proposal focus only on applying minimum fees to requests for expungement of customer dispute information, to help ensure that parties requesting expungement pay the fees intended for such requests under the Codes and that the fees charged when expungement is requested are more consistent.'' [70] At the same time, however, FINRA recognized the concerns raised by the commenters regarding the current expungement framework, and stated that it is separately developing other proposed changes to the framework, including codifying as rules the Notice to Arbitrators and Parties on Expanded Expungement Guidance (''Guidance''),[71] and establishing a roster of arbitrators with additional training and experience from which a three-person panel would be selected to decide straight-in requests and expungement requests in settled customer arbitrations.[72]

Critical of Proposal

One commenter argued that the Proposal ''will result in member firms bearing the increased costs associated with Straight-in Requests for expungement even though member firms do not have control over whether the associated person files a request for expungement,'' and even though ''an associated person's interest, and not necessarily a member firm's interest, is primarily served'' by a straight-in request for expungement.[73] This commenter recommended amending the Proposal to provide for a refund of the member firm surcharge and process fees where an associated person's straight-in request for expungement is denied, or on the member firm's showing of financial hardship.[74]

FINRA responded that the member surcharge and process fee are charged to member firms using the arbitration forum to help cover the costs of administering the forum.[75] FINRA noted further that the proposed member surcharge and process fee are consistent with what a member firm should pay today for a non-monetary claim, and what member firms currently pay for a straight-in request without an additional small monetary claim filed against a member firm.[76] FINRA stated that it has ''determined not to revise the Proposal to refund the member surcharge or process fee if a panel denies an associated person's straight-in request, or to waive these fees on a member firm's showing of financial hardship.'' [77] FINRA noted, however, that the Codes permit the Director to refund or waive the member surcharge under extraordinary circumstances, and to refund the member surcharge if the panel denies all of a customer's claims against the member firm or associated person, and allocates all hearing session fees assessed against the customer.[78] Thus, the Codes currently permit the Director to refund or waive the member surcharge in certain circumstances, although they do not currently permit the waiver or refund of the process fee; this would not change under the Proposal.[79]

FINRA also noted that, consistent with the current fee structure under the Codes, it believes that ''member firms, rather than associated persons or customers, should continue to bear the larger share of the costs of expungement.'' [80] However, FINRA states that it ''intends to monitor the impact of the fees on parties and consider if additional changes are warranted.'' [81]

Another commenter sought to explain the practice of claiming nominal damages, stating that the purpose and intent ''was never to 'reduce fees,' '' but rather to ''ensure that the Director does not impose egregious forum fees,'' as the Director is authorized to assess hearing session fees for non-monetary claims that exceed those for monetary claims.[82] In response, FINRA underscored that the Proposal is ''intended to help ensure that parties requesting expungement pay the fees associated with expungement requests by amending the Codes to apply minimum fees for all expungement requests, regardless of whether the requesting party adds a small damages claim to the request,'' and to ''add consistency to the fees charged across all expungement requests.'' [83] FINRA notes that the proposed minimum fees would result in the same filing and hearing session fees being assessed for an expungement claim in the absence of the addition of a small damages claim.[84] Moreover, FINRA noted that the proposed minimum fees for expungement requests (a non-monetary claim) would be the same as those fees applicable to any non-monetary claim under the Codes.[85]

This commenter also believes that FINRA's economic impact analysis is flawed in that it: Lacks a full accounting of FINRA's costs in connection with expungement claims; incorrectly assumes that all expungement claims are limited to two hearings (one pre-hearing conference and one hearing on the merits); and fails to account for the

[66] *Id.*

[67] *Id.*

[68] PIABA Letter.

[69] FINRA Letter.

[70] *Id.*

[71] See *https://www.finra.org/arbitrationmediation/notice-arbitrators-and-parties-expandedexpungement-guidance.*

[72] *See* FINRA Letter.

[73] FSI Letter.

[74] *See id.*

[75] *See* FINRA Letter.

[76] *See id.*

[77] FINRA Letter.

[78] *See id.*

[79] *See id.*

[80] FINRA Letter.

[81] *Id.* The commenter also urged FINRA to consider eliminating the requirement that member firms disclose on CRD customer complaints against their associated persons, even when the associated person is not named as a party. In response, FINRA noted that, as these concerns relate to the requirements to report information in the CRD system and its publication through BrokerCheck, rather than the application of fees related to requests to expunge customer dispute information already submitted in the CRD system and publicly available through BrokerCheck, FINRA would not address those concerns as part of this Proposal. *See* FINRA Letter.

[82] *See* AdvisorLaw Letter.

[83] FINRA Letter.

[84] *See id.*

[85] *Id.* The Commission also notes that the Director also has authority to defer the payment of all or part of an associated person's filing fee on a showing of financial hardship, and the Codes currently permit the Director to refund or waive the member surcharge in certain circumstances. *See* Notice at 11173

fact that a portion of filing fees are refundable.[86]

In response, FINRA reiterated that the cost and revenue information detailed in its original economic analysis accurately demonstrates ''the impact that the practice of adding a small damages claim to an expungement request has had on the forum.'' [87] FINRA explained that the assumption of one prehearing conference and one hearing session on the merits ''is based on the median number of prehearing conferences (one) and hearing sessions on the merits (one) associated with straight-in requests that were filed and closed during the sample period.'' [88] FINRA believes that this assumption is consistent with evidence provided by the commenter, which noted in its letter that the majority (78.8%) of claims in its sample were concluded with one prehearing conference and one hearing on the merits.[89] Finally, FINRA responded that because the Proposal only addresses the assessment of fees, the collection of fees (which includes crediting the refundable portion of the filing fees) is outside the scope of the Proposal.[90]

The commenter also argued that FINRA fails to fully support its contention that straight-in expungement requests should be heard by a three-person panel, and stated that it is unclear whether the parties to a straight-in request would be allowed to continue to agree to adjudication by a single arbitrator.[91] In response, FINRA clarified that the Proposal would not require a three-person panel to decide expungement requests, and that it would not change the parties' ability to request a single arbitrator.[92]

Finally, the commenter argues that the Proposal is inconsistent with the Exchange Act, and more specifically that it is not consistent with Sections 15(A)(b)(5) and 15(A)(b)(6) of the Exchange Act because it does not purport to address actual fraud, and because it will lead to false information in the CRD, which is not in the interests of investors or the public.[93]

FINRA responded that it believes that the Proposal is consistent with the provisions of Section 15A(b)(5) which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls, and Section 15A(b)(6), which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[94]

Specifically, FINRA stated that ''[t]he Proposal is intended to close gaps in the fee structure that have emerged in the existing expungement process, such as where parties add small dollar claims to their expungement requests to significantly lower the fees associated with expungement requests.'' [95] As a result, FINRA believes that the Proposal will apply fees consistently to all parties requesting expungement, consistent with what is intended under the existing fee structure in the Codes.[96] In addition, FINRA stated that ''as an expungement request is a separate relief request that an arbitrator or panel must consider and decide, the filing fees and related member and forum fees should reflect the general complexity of these requests, as well as the time and effort needed to administer, consider and decide them.'' [97] By consistently applying the fees to all parties requesting expungement, FINRA believes the Proposal will help ensure that the fees for expungement requests are assessed, and that the costs borne by the forum to administer expungement requests are allocated, as intended, to those requesting expungement under the Codes.[98]

FINRA also stated that, to the extent that the Proposal results in more expungement requests being heard by a three-person panel, particularly for straight-in requests that often do not include customer participation and can be complex to resolve, the Proposal would help ensure a complete factual record to support the arbitrators' decision, regardless of whether the arbitrators grant or deny the expungement request.[99] FINRA believes that this, in turn, will help protect investors and the public interest by helping to ensure the accuracy and integrity of information in the CRD system.[100]

Finally, FINRA stated that it disagrees with the commenter's suggestion that customers who choose to participate in expungement hearings, even though they are not a party to the arbitration, should be assessed fees under the Proposal.[101] FINRA believes that ''such fees could have a chilling effect on customer participation and would be

[86] *See* AdvisorLaw Letter.

The commenter also criticized FINRA's economic impact analysis by claiming that FINRA understated the level of BrokerCheck usage. *Id.* In response, FINRA stated that in 2017, it began using a different service provider to monitor BrokerCheck web traffic, and that differences in the monitoring methodology explain why the usage numbers from 2016 and earlier that are cited in the Notice are higher than the numbers from 2017 to the present. *See* FINRA Letter. The commenter also argued that FINRA's economic analysis relies on a study that overstates the predictive value of information currently in BrokerCheck. *See* AdvisorLaw Letter. In response, FINRA noted that the Proposal cites a second study with a different empirical methodology, and that this study also finds that past disciplinary and other regulatory events associated with a member firm or individual can be predictive of similar future events. FINRA believes ''the inferences from the [challenged study] are, therefore, consistent with other, similar studies using different sets of assumptions.'' FINRA Letter. Moreover, the commenter also suggested that the Proposal would discourage the removal of ''factually impossible or clearly erroneous'' allegations from the CRD system, compromising the integrity of the information therein, and raised concerns regarding the requirements to report information in the CRD system, and the accuracy and completeness of that information. *See* AdvisorLaw Letter. In response, FINRA noted that these concerns relate to the requirements to report information in the CRD system and its publication through BrokerCheck and not the application of fees related to requests to expunge customer dispute information already submitted in the CRD system and publicly available through BrokerCheck. Accordingly, FINRA did not address these concerns as part of this Proposal. *See* FINRA Letter.

[87] FINRA Letter.

[88] *Id.*

[89] *See* FINRA Letter (acknowledging that ''additional fees would have been assessed for cases with a greater number of pre-hearing conferences or a greater number of hearing sessions on the merits,'' but ''continues to believe that the use of the assumption results in a reasonable estimate for the additional fees that would have been assessed during the sample period.'' *See also* AdvisorLaw Letter.

[90] *See* FINRA Letter. Notwithstanding its position that the collection of fees is outside the scope of the proposal, FINRA offered additional information regarding the portion of the fees that is refundable. Specifically, FINRA stated that every filing fee contains a refundable portion and non-refundable portion. FINRA provided an illustration of how the proposal would impact the allocation of these two portions of the filing fee. In addition, FINRA clarified that the ''refundable'' portion is generally not refunded but rather used to offset expenses for which the party paying the hearing session fee would otherwise be responsible at the end of a claim (*e.g.,* to offset hearing session fees assessed against the party who paid the filing fee in the award).

[91] *See* AdvisorLaw Letter.

[92] *See* FINRA Letter.

[93] *See* Advisor Law Letter.

[94] *See* FINRA Letter.

[95] FINRA Letter. In response to the comment that the Proposal ''singles out'' expungement fees, FINRA notes that the Proposal only singles out those fees in order to help ensure that expungement requests are subject to the same minimum filing fee as other non-monetary claims. *See* FINRA Letter.

[96] *See* FINRA Letter.

[97] FINRA Letter.

[98] *See id.*

[99] *Id.* FINRA also stated that it is separately developing other proposed changes to the expungement framework, which would include establishing a roster of arbitrators with additional training and experience from which a three-person panel would be selected to decide straight-in requests and expungement requests in settled customer arbitrations. *See supra* notes 74–75 and accompanying text.

[100] *See* FINRA Letter.

[101] *Id.*

inconsistent with FINRA's long-held position of encouraging customer participation in expungement hearings.'' [102] FINRA asserted that ''[c]ustomer participation during an expungement hearing provides the panel with important information and perspective that it might not otherwise receive.'' [103] Therefore, FINRA ''seeks to encourage customer participation in expungement hearings, even if the customer is not a party.'' [104]

Proposal Requires Clarification

As noted above, one commenter was concerned that the Proposal does not distinguish between expungement requests relating to customer disputes, and requests from associated persons to expunge allegations that relate to regulatory, policy, or behavioral matters that did not directly impact customers, and which are alleged to be ''defamatory in nature.'' [105] This commenter noted that the expungement of these ''defamatory'' claims has historically been treated differently than the expungement of customer dispute information, and suggested that FINRA clarify whether or not they are included in the Proposal.[106] In response, FINRA clarified that the Proposal applies only to requests to expunge customer dispute information, and not to other types of expungement claims.[107]

IV. Discussion and Commission Findings

After careful review of the Proposal, the comment letters, and FINRA's response, the Commission finds that the Proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[108] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[109] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(5) of the Exchange Act, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

Proposed Minimum Filing Fee

The Proposal would require an associated person, or requesting party if it is an on-behalf-of request, to pay the current filing fee for a non-monetary claim for an expungement request made during a customer arbitration or filed as a straight-in request. If the associated person or requesting party adds a monetary claim, the filing fee would be the fee for a non-monetary claim or the applicable filing fee based on the claim amount, whichever is greater.[110]

The Commission believes that applying a minimum filing fee to all requests for expungement of customer dispute information will help ensure that the fees are equitably allocated because the parties requesting expungement will pay the fees intended for such requests under FINRA's Codes. Specifically, the Commission agrees that the proposed minimum filing fee will help eliminate the inconsistent allocation of fees that results when parties add small dollar claims to their expungement requests to avoid the fees otherwise applicable to expungement requests. The Commission also believes that the Proposal will help ensure that the fees charged when expungement is requested are consistent, irrespective of whether the request is made as a straight-in request or during a customer arbitration, or whether damages are included in the request; and that it will help ensure that parties requesting expungement pay the fees intended for such requests. For these reasons, the Commission believes the Proposal will help provide for the equitable allocation of reasonable dues and fees against those who would either file or be a party to an expungement request.

With respect to associated persons who would otherwise make a small damages claim in order to avoid the applicable fees, while the Commission acknowledges that the proposed rule changes will result in costs that are currently being avoided, the effect of the proposal is simply to apply the applicable fees that were intended for such requests under FINRA's Codes. This will help provide for the equitable allocation of reasonable dues and fees against those who would file or be a party to an expungement request.

The Commission acknowledges that Proposal would increase costs for member firms and associated persons who include a request for expungement in the answer to a customer's claim. However, the Commission also believes that these increased costs are consistent with the Exchange Act, because they will help ensure that the fees charged when expungement is requested are consistent across associated persons and member firms, regardless of whether the request for expungement is made during a customer arbitration or as a straight-in request, and that requests for expungement made during a customer arbitration are treated consistently with other types of claims. The Commission believes that this will provide for the equitable allocation of reasonable dues and fees against those who would file an expungement request.

The Commission notes also that the amount of the filing fees applicable to these requests is not the subject of the Proposal, which is instead addressing the equitable application of the existing filing fees applicable to non-monetary claims. Further, as FINRA notes, the Director may defer payment of all or part of an associated person's filing fee on a showing of financial hardship.[111]

Proposed Minimum Member Surcharge and Process Fee for Straight-In Requests

The Proposal would apply a minimum member surcharge and process fee when an associated person files a straight-in request against either a customer or a member firm. If an associated person files a straight-in request against a member firm, that firm would be assessed the member surcharge for a non-monetary claim under the Codes (currently $1,900) and the process fee for a non-monetary claim under the Codes (currently $3,750). These fees are consistent with what a member firm would pay today for a straight-in request without an additional small monetary claim filed against a member firm. For straight-in requests filed against a customer, the member firm that employed the associated person at the time the customer dispute arose would be assessed the member surcharge and process fee.[112] If the associated person adds a separate claim for damages to the straight-in request against the customer or member firm, the member surcharge would be the non-monetary member surcharge and process fee or the applicable surcharge and process fee under the Codes, whichever is greater.[113]

[102] FINRA Letter.

[103] *Id.*

[104] *Id.*

[105] SAC Letter.

[106] *Id.*

[107] FINRA Letter.

[108] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[109] 15 U.S.C. 78*o*–3(b)(6).

[110] *See* Notice at 11167.

[111] *See* Notice at 11173.

[112] FINRA notes, however, that straight-in requests filed against the customer are rare. *See* Notice at n. 19.

[113] *See* Notice at 11168.

The Commission agrees with FINRA that applying a minimum member surcharge and process fee to requests for expungement of customer dispute information will help ensure that member firms pay the fees intended for such requests under FINRA's Codes, and will help ensure that the fees charged when expungement is requested are consistent across member firms. As is the case with filing fees, the practice of adding small dollar claims to an expungement request significantly lowers the applicable member surcharge and process fee in a way not intended when those provisions of the FINRA Codes were adopted. The Commission acknowledges that, for member firms who are parties to requests that would otherwise include small dollar claims, the Proposal will increase costs. However, the Commission agrees with FINRA that eliminating this practice by applying the member surcharge and process fee consistently will help provide for the equitable allocation of reasonable dues and fees against those members who would be parties to an expungement request.

The Commission also acknowledges the concern expressed by a commenter that the Proposal ''will result in member firms bearing the increased costs associated with Straight-in Requests for expungement even though member firms do not have control over whether the associated person files a request for expungement,'' and that ''an associated person's interest, and not necessarily a member firm's interest, is primarily served'' by a straight-in request for expungement.[114] However, the Commission observes that the requirement that member firms bear some of the costs associated with straight-in requests for expungement, even where member firms do not have control over whether the associated person files a request for expungement, is not part of the Proposal, but instead is an existing requirement under FINRA's Codes. The Proposal would not change FINRA's rules with respect to member firms bearing some of the costs associated with straight-in requests for expungement, but rather, would eliminate the ability of associated persons and member firms to avoid paying the full amount intended for such requests under FINRA's Codes.[115]

Additionally, the Commission notes that, under FINRA's Codes, the Director can waive or refund the member surcharge under extraordinary circumstances.[116] In addition, under the Codes, the Director can refund the member surcharge if the panel denies all of a customer's claims against the member firm or associated person and allocates all fees assessed pursuant to Rule 12902(a) against the customer.[117] FINRA notes also in its response that these waivers and refunds would continue to be available under the Proposal, and that it intends to monitor the impact of the fees on parties and consider if additional changes are warranted.[118]

Proposed Minimum Hearing Session Fee

The Proposal would apply the hearing session fee for a non-monetary claim heard by three arbitrators to each hearing session in which the sole topic is the determination of a request for expungement relief. This fee would apply to straight-in requests, and when a customer arbitration does not close by award after a hearing (*e.g.,* settles) and there is a separate hearing session held after the customer arbitration to decide an expungement request that was made during the customer arbitration. If the requesting party adds a monetary claim to the expungement request, the hearing session fee would be the greater of the fee for a non-monetary claim with three arbitrators or the applicable hearing session fee under the Codes based on the claim amount.[119]

The Commission agrees with FINRA that applying a hearing session fee to requests for expungement of customer dispute information will help ensure that parties requesting expungement pay the fees intended for such requests under FINRA's Codes, and will help ensure that the fees charged when expungement is requested are consistent. As with the filing fees, member surcharge, and process fee, the practice of adding small dollar claims to an expungement request significantly lowers the applicable hearing session fee.

Other Issues Related to Minimum Fees for the Expungement of Customer Dispute Information

The Commission notes the concern, expressed by one commenter, that the proposed minimum fees may deter some member firms and associated persons from making meritorious expungement requests that they would have otherwise made.[120] As a result, the Commission agrees that the minimum fees may impact certain associated persons and member firms more than others.[121] However, the Commission agrees with FINRA that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As discussed above, some associated persons and member firms avoid paying the intended fees under the Codes by adding a small damages claim to their expungement requests, thus receiving a benefit not intended under the Codes. The Commission notes that these small damages claims do not necessarily reflect an actual claim against the member firm;[122] and, in fact, associated persons who file such monetary claims often drop them during the proceedings.[123] Therefore, the Commission agrees with another commenter who noted that it is ''unfair to allow some brokers to evade the expungement fees imposed by the Codes by claiming . . . nominal damages.''[124]

The Commission acknowledges the concerns of commenters who argue that the proposal should do more to reform the expungement process, including by requiring expungement requests to be decided by a three-person panel.[125] However, the Commission notes that FINRA has represented that it is separately developing other proposed changes to the current expungement framework, including codifying as rules the Guidance[126] and establishing a roster of arbitrators with additional training and experience from which a three-person panel would be selected to decide straight-in requests and expungement requests in settled customer arbitrations.[127] FINRA also states that it welcomes a continued dialogue with the commenters on these

[114] FSI Letter.

[115] Similarly, the Commission acknowledges that one commenter suggested that customers who choose to participate in expungement hearings, even though they are not a party to the arbitration, be assessed fees under the Proposal. *See* AdvisorLaw Letter. The Commission observes that this is outside the scope of the Proposal. Additionally, the Commission agrees with FINRA that customer participation during an expungement hearing provides the panel with important information and perspective that it might not otherwise receive, and that such fees could have a chilling effect on customer participation.

[116] *See* FINRA Letter.

[117] *Id.*

[118] *Id.*

[119] *See* Notice at 11168. This is consistent with the current fee structure, which provides that whether the claimant specifies damages, and the amount specified, determines the fees assessed in arbitration cases and whether a single arbitrator or a three-person panel will decide the case. *See* FINRA Rules 12401 and 13401.

[120] *See* AdvisorLaw Letter.

[121] *See* Notice at 11173.

[122] *See* AdvisorLaw Letter.

[123] *See* Notice at 11167.

[124] SJU Letter.

[125] *See* PIABA Letter, NASAA Letter, SJU Letter.

[126] *See supra* note 74.

[127] *See* FINRA Letter.

and other proposed changes to the expungement framework.[128]

Reliability of FINRA's Analysis

FINRA supports the Proposal with data regarding BrokerCheck usage and the predictive value of information therein, as well as an economic impact analysis that includes information on the costs of expungement hearings, the number of hearings in which a small claim for damages was made, and the shortfall between the total amount of fees assessed and the amount that would have been assessed if the fees for non-monetary claims were applied consistently. As set out in more detail above, one commenter criticized various aspects of FINRA's data and analysis.[129]

The Commission notes that the purpose of the Proposal is to help ensure that those who would either file or be a party to an expungement request pay the existing fees as required by the Codes. The fees established by the Proposal are not new; rather, they are the same fees currently applicable to non-monetary claims, applied on a more consistent basis to all, rather than some, expungement requests. Therefore, the question of whether the amount of the fees applicable to non-monetary claims is appropriate is beyond the scope of the Proposal. As noted above, the Commission believes that eliminating the practice of claiming nominal damages to avoid the existing fees, and applying the fees consistently to parties requesting expungement, is consistent with Section 15A(b)(5) of the Exchange Act, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA provided cost and revenue information, which demonstrate the negative impact that the practice of adding a small damages claim to an expungement request has had on the forum.[130] The Commission emphasizes that the fees established by the Proposal are not new,[131] and that the question of whether the amount of the fees is appropriate is beyond the scope of the Proposal. However, the Commission also notes that FINRA provides evidence that there is a shortfall between the cost of a typical expungement request and the fees assessed where parties claim a small amount in damages to reduce the applicable fees, which supports a regulatory need for the Proposal.[132] FINRA also provides sufficient evidence that the disparity in fees that would be assessed under the Proposal's more consistent approach and the fees currently assessed is significant.[133] Commenters generally did not challenge this evidence.[134]

One commenter also questioned the reliability of FINRA's data regarding BrokerCheck usage.[135] As noted above, FINRA clarified in its response that in 2017, it began using a different service provider to monitor BrokerCheck web traffic, and that differences in the monitoring methodology explain why the numbers from 2016 and earlier seem to indicate higher usage than the numbers from 2017 to the present.[136] The Commission believes that this explanation is reasonable, and that regardless, the specific number of unique users of BrokerCheck is not relevant to the application of the fees related to requests to expunge customer information already mentioned in the CRD system and publicly available through BrokerCheck, and is not necessary to the Commission's analysis of whether or not the Proposal is consistent with the Exchange Act.

The commenter also argued that FINRA's 2015 study overstates the predictive value of information currently in BrokerCheck because it excludes certain types of claims from its analysis.[137] In response, FINRA notes that the Proposal cites another study with a different empirical methodology that also finds past disciplinary and other regulatory events associated with a member firm or individual can be predictive of similar future events.[138] The Commission notes that the two studies cited by FINRA provide support for the contention that past disciplinary and other regulatory events associated with a firm or individual can be predictive of similar future events; the Commission also notes that the commenter does not point to any studies reaching a different conclusion. Regardless, the Commission believes that the utility of BrokerCheck as a tool for predicting future misconduct is not relevant to the application of the fees related to requests to expunge customer information already mentioned in the CRD system and publicly available through BrokerCheck, and is not necessary to the Commission's analysis of whether or not the Proposal is consistent with the Exchange Act.

Thus, for the reasons described above, the Commission believes that the Proposal, as filed with the Commission, is consistent with Sections 15(A)(b)(5) and 15(A)(b)(6) of the Exchange Act.

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act[139] that the proposal (SR–FINRA–2020–005) be, and hereby is, approved.

[128] *Id.*

[129] *See* AdvisorLaw Letter.

[130] *See* FINRA Letter.

[131] While none of these fees is a new forum fee, some fees, such as the filing fee, will be assessed more uniformly regardless of when the expungement request is made. *See* sections II.A.2.a and II.B.1 above.

[132] Specifically, FINRA explains that the costs to administer a straight-in request can include chairperson honoraria, travel expenses, conference room rental, and other costs to administer the forum. FINRA states that the cost of chairperson honoraria alone for a typical straight-in request is $725—more than double the total amount of the fees typically assessed for a straight-in request where a small damages claim is added ($300). *See* Notice at 11170.

[133] For example, FINRA notes that, for a sample period of January 2016–June 2019, 76% of straight-in requests for expungement included a small damages claim. FINRA also provides an estimate of the total amount of fees not assessed during the sample period as a result of: (1) Filings made during the customer arbitration that were not subject to a filing fee ($2.4 million) and (2) straight-in expungement requests that included a small damages claim ($7.3 million). *See* Notice at 11170.

[134] In calculating the overall shortfall in fees assessed, FINRA assumed that each straight-in expungement request would result in one prehearing conference and one hearing session on the merits. One commenter questioned this assumption. *See* AdvisorLaw Letter. FINRA responded that the assumption is based on the median number of prehearing conferences (one) and hearing sessions on the merits (one) associated with straight-in requests that were filed and closed during the sample period. *See* FINRA Letter. FINRA also stated that this assumption is consistent with evidence provided by the commenter, which noted in its letter that the majority (78.8%) of claims in its sample were concluded with one prehearing conference and one hearing on the merits. *Id.* The Commission does not believe that the exact amount of the shortfall is necessary to determine whether the Proposal is consistent with the Exchange Act; rather, the relevant consideration is whether the fees are currently assessed inconsistently across members and associated persons.

The commenter also asserted that the Proposal fails to account for the fact that a portion of filing fees are refundable. *See* AdvisorLaw Letter. FINRA responds that because the Proposal only addresses the assessment of fees, the collection of fees (which includes crediting the refundable portion of the filing fees) is outside the scope of the Proposal. *See* FINRA Letter. However, FINRA also offers additional information regarding the portion of the fees that is refundable. *Id.* As noted above, the Commission does not believe that the exact amount of the shortfall is necessary to determine whether the Proposal is consistent with the Exchange Act; rather, the relevant consideration is whether the fees are currently assessed inconsistently across member firms and associated persons.

[135] *See* AdvisorLaw Letter.

[136] *See* FINRA Letter.

[137] *See* AdvisorLaw Letter.

[138] *See* FINRA Letter.

[139] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[140]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11650 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88944; File No. SR–ICC–2020–005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures

May 26, 2020.

I. Introduction

On April 3, 2020, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the ICC Clearing Participant (''CP'') Default Management Procedures (''Default Management Procedures''). The proposed rule change was published for comment in the **Federal Register** on April 15, 2020.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change would make amendments to the Default Management Procedures related to (i) the personnel involved in the default management process, including personnel at ICC and representatives of CPs; (ii) actions taken as part of the default management process; (iii) the development and execution of default management tests; and (iv) the correction of typographical and drafting errors.[4]

A. Personnel Involved in the Default Management Process

As mentioned above, the proposed rule change would make changes related to the personnel involved in the default management process, including personnel at ICC and representatives of CPs.

First, the proposed rule change would amend the list of defined terms in Section 2 to update the definition of the term ''ICC Management''. Under the proposed rule change, ICC Management would consist of the General Counsel, Chief Risk Officer, Chief Operating Officer, Chief Compliance Officer, Head of Corporate Development, and Head of Technology. The Default Management Procedures assign certain responsibilities to, and require certain notifications to, the individuals comprising ICC Management.

Second, the proposed rule change would revise the personnel at each CP for which ICC maintains contact information related to the default management process. Currently, ICC is required to maintain contact information for the Chief Executive Officer (''CEO''), Chief Financial Officer (''CFO''), and General Counsel of each CP, as well as other role-based contacts that are specific to the default management process. The proposed rule change would remove this and instead require ICC to maintain contact information for the most senior person in charge of the CDS business and the most senior person responsible for providing compliance oversight for the CDS business. The Default Management Procedures would refer to these personnel as the CP's ''CP Default Contacts.'' Accordingly, the proposed rule change would replace, throughout the Default Management Procedures, references to a CP's CEO, CFO, and General Counsel, with the term CP Default Contacts.

B. Actions Taken as Part of the Default Management Process

In addition to changes related to the personnel involved in the default management process, the proposed rule change would make changes related to certain actions taken as part of the default management process. First, the proposed rule change would amend Subsection 6.1.1, which describes certain actions that ICC's President must take before a CP is declared in default. Currently, ICC's President must notify ICE's Head of Enterprise Risk Management and ICE's CFO of a CP's possible default. The proposed rule change would instead require that ICC's president notify ICE's Global Head of Clearing, rather than the ICE CFO.

Next, the proposed rule change would amend Subsection 6.1.5, which describes certain actions that ICC's CCO must take before a CP is declared in default. Currently, Subsection 6.1.5 requires that ICC's CCO draft certain notifications and email those notifications to ICC Management for review and approval prior to sending the notifications. The proposed rule change would instead require that ICC's CCO email the notifications to the Close-Out Team, rather than ICC Management, for review and approval. The Close-Out Team is responsible for overseeing the default management process and includes ICC Management, the most senior member of the ICC Treasury Department, and the ICC Risk Oversight Officer. Thus, under this proposed change, ICC's CCO would still send the notifications to ICC Management for review and approval, because ICC Management is part of the Close-Out Team, but would also send the notifications to the most senior member of the ICC Treasury Department and the ICC Risk Oversight Officer, who are the other members of the Close-Out Team.

Next, the proposed rule change would amend Subsection 6.4, which describes certain actions that ICC's President must take after a CP is declared in default. Currently, Subsection 6.4 requires that ICC's President call or email the Chairman of the Risk Committee to inform the Chairman of the declaration of default and that ICC's President confirm with ICC's CCO that the Chairman has been notified. The proposed rule change would expand this to require that the President inform the Risk Committee (not just the Chairman) and ICC's Board, and furthermore, that the President confirm with ICC's CCO that the Risk Committee and Board have been notified.

The proposed rule change would also amend Subsection 8.6 to clarify that ICC could only take certain actions relating to direct liquidation if ICC obtains Board approval. Currently, Subsection 8.6 describes the actions that ICC would take to liquidate a defaulting CP's portfolio by direct transactions, rather than a default auction. Subsection 8.6 currently provides that if the Close-Out Team does not receive Board approval, ICC may not execute direct liquidation trades that would consume the Guaranty Fund resources of non-Defaulting CPs and provides a list of certain actions that ICC would take otherwise. The proposed rule change would clarify this point by specifying that the list of actions ICC would take are actions that

[140] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures; Exchange Act Release No. 88614 (April 9, 2020); 85 FR 21052 (April 15, 2020) (SR–ICC–2020–005) (''Notice'').

[4] Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICC Rules and Default Management Procedures, as applicable.

ICC would only take if Board approval is obtained. In other words, the proposed rule change would make explicit a point assumed in the current drafting of Subsection 8.6, that ICC would only undertake the listed actions upon approval of ICC's Board to execute direct liquidation trades that would consume the Guaranty Fund resources of non-Defaulting CPs.

Finally, the proposed rule change would amend Subsection 9.1, regarding calling for assessments. ICC's Rules and the Default Management Procedures allow ICC to call for assessment contributions to the Guaranty Fund in the event that the Guaranty Fund has been depleted or ICC anticipates the need for additional funds related to a default, and CPs are obligated to meet these assessments by providing additional amounts to the Guaranty Fund.[5] Currently, ICC distributes notices calling for assessment contributions to each CP's Execution Coordinator. Under ICC's Default Management Procedures, such role is responsible for coordinating internally and with ICC for hedging and liquidation related activities. The proposed rule change would replace the term Execution Coordinator with the existing defined term Central Point of Contact. Under the Default Management Procedures, the Central Point of Contract is the position at each CP that has overall responsibility for coordinating internally and with ICC during the default management process.

C. Development and Execution of Default Management Test

The proposed rule change would also revise the Default Management Procedures regarding the development and execution of default management tests, which ICC uses to simulate a Clearing Participant default and its actions to manage such a default. Currently, Subsection 4.5 requires that ICC, in coordination with its CPs and Direct Participant Customers, conduct a default management test at least once per calendar year. The proposed rule change would amend the Default Management Procedures to require that ICC coordinate with its Risk Committee and Board, in addition to CPs and Direct Participant Customers, regarding its default management test and that ICC conduct its default management test every twelve months instead of once per calendar year.

Moreover, Subsection 4.5 currently requires that ICC's Risk Oversight Officer work with ICC Management (which is a defined term as discussed above) in planning and coordinating the execution of default management tests. The proposed rule change would require that ICC's Risk Oversight Officer work with the Close-Out Team instead of ICC Management. As discussed above, as defined, the Close-Out Team includes the personnel comprising ICC Management as well as certain additional personnel, and thus ICC Management would still be involved in planning and coordinating the execution of default management tests. Moreover, the proposed rule change would require that the proposed scope of a default management test be presented to ICC's Board for review prior to execution of the test.

Finally, the proposed rule change would add Appendix 1 to the Default Management Procedures. Appendix 1 would include language on the development of the scope of a default management test. Specifically, proposed Appendix 1 would set forth key scenario components that ICC may consider when developing a default management test, including (1) scenarios resulting in CP defaults, such as a CP's failure to meet payment obligations to ICC, insolvency or bankruptcy; (2) default management tools available to ICC in case of default, including consulting with the CDS Default Committee or performing Secondary Default Management Actions (*e.g.,* calling for assessment contributions); (3) timing considerations, such as the time and length of a default event; (4) planning strategy (*e.g.,* whether there is advance notice of a test); and (5) event specific elements that may occur in a default scenario, such as the occurrence of multiple CP defaults or stressed market conditions.

D. Typographical and Drafting Errors

Finally, as mentioned above, the proposed rule change would make other non-material changes to fix typographical and drafting errors.[6]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[7] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[8] and Rule 17Ad–22(d)(8) and (d)(11).[9]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.[10]

As discussed above, the proposed rule change would update, throughout the Default Management Procedures, the defined list of individuals that comprise ICC Management. The proposed rule change would also update the personnel at CPs for which ICC maintains contact information, and that ICC contacts, regarding a default. The Commission believes that this aspect of the proposed rule change should help ICC better manage a default by helping to ensure that ICC has accurate contact information for CPs and contacts the personnel at CPs who should be best positioned to respond to a default, and that the appropriate personnel at ICC (as part of the defined term ICC Management) are involved in responding to a default.

The proposed rule change would also, as discussed above, make changes related to the actions available to ICC in response to a default, by clarifying in Section 8.6 that ICC may take certain actions to directly liquidate a defaulting CP's portfolio via bilateral trades (rather than an auction) if ICC's Board approves. Similarly, the proposed rule change would require that ICC's president notify ICE's Global Head of Clearing of the possible default or risk of default before a default is declared and notify the Risk Committee and Board once a CP has been declared in default. The proposed rule change would also require that ICC's CCO email notifications to the Close-Out Team, rather than ICC Management, for review and approval, and that ICC distribute notices calling for assessment contributions to each CP's Central Point of Contact rather than Execution Coordinator. The Commission believes that these aspects of the proposed rule change should help to ensure that appropriate personnel are informed of, and able to participate in, ICC's

[5] *See* ICC Rule 803.

[6] For further information about these specific changes, please see Notice, 85 FR at 21054.

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q-1(b)(3)(F).

[9] 17 CFR 240.17Ad-22(d)(8), (d)(11).

[10] 15 U.S.C. 78q–1(b)(3)(F).

response to a default. The Commission therefore believes that these aspects of the proposed rule change should improve ICC's ability to manage a default.

As discussed above, the proposed rule change would also enhance ICC's development and conduct of default tests by specifying, in new Appendix 1, the processes, tools, and conditions that ICC would test and requiring that ICC's Risk Oversight Officer work with other members of the Close-Out Team (which term would include ICC Management) to determine the scope of each default management test. Similarly, the proposed rule change would require that ICC coordinate default management tests with its Risk Committee and Board and that the Board review the scope of the Default Test prior to executing the test. Finally, the proposed rule change would also specify that ICC conducts a default management test at least every twelve months, rather than once per calendar year. The Commission believes these changes should improve the planning and conduct of default tests by setting out specific factors to test in Appendix 1 and requiring additional input, including Board review, on the scope and conduct of default tests. Because the Commission believes that default tests should help ICC to plan and prepare for responding to an actual default, the Commission believes that these aspects of the proposed rule change should improve ICC's ability to manage a default.

Finally, the proposed rule change would correct typographical and drafting errors. Again, the Commission believes these proposed changes should help ICC better manage a default by reducing the possibility for confusion when applying the Default Management Procedures by removing unintentional drafting errors.

By improving ICC's ability to manage a CP default, the Commission believes that the proposed rule change should also improve ICC's ability to avoid losses that could result from a CP default. The Commission further believes that such losses, if not properly managed, could hinder ICC's ability to continue operations and therefore clear and settle securities transactions and safeguard securities and funds in its custody or control. Therefore, for these reasons, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody and control, consistent with the Section 17A(b)(3)(F) of the Act.[11]

B. Consistency With Rule 17Ad–22(d)(8)

Rule 17Ad-22(d)(8) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act[12] applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures.[13] As discussed above, the proposed rule change would make explicit in Section 8.6 that ICC may take certain actions to directly liquidate a defaulting CP's portfolio via bilateral trades (rather than an auction) if ICC's Board approves, require that ICC coordinate default management tests with its Risk Committee and Board, and require that the Board review the scope of the Default Test prior to executing the test. The Commission believes that this aspect of the proposed rule change should establish clear governance arrangements regarding the Board's involvement in responding to a default and planning and conducting a Default Test. Similarly, the proposed rule change would require that ICC's President notify certain other ICE and ICC personnel prior to and after declaration of a default. Again, the Commission believes that this should establish clear governance arrangements regarding the President's actions in response to a default. For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(d)(8).[14]

C. Consistency With Rule 17Ad–22(d)(11)

Rule 17Ad–22(d)(11) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of ICC's default procedures publicly available and establish default procedures that ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.[15] As discussed above, the proposed rule change would enhance ICC's development and conduct of default management tests, require that ICC coordinate default management tests with its Risk Committee and Board, and require that the Board review the scope of the default management test prior to executing the test. The proposed rule change would also specify that ICC conducts a default management test at least every twelve months, rather than once per calendar year, and correct typographical and drafting errors. The Commission believes that these changes, in improving ICC's conduct of its default tests and specifying how often ICC would conduct such tests, should help to improve ICC's default testing. The Commission further believes that such testing should help to ensure the effectiveness of ICC's Default Management Procedures by revealing potential deficiencies in, and facilitating the improvement of, ICC's Default Management Procedures. The Commission therefore believes that the proposed rule change should help ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(d)(11).[16]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[17] and Rules 17Ad–22(d)(8) and (d)(11).[18]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[19] that the proposed rule change (SR–ICC–2020–005), be, and hereby is, approved.[20]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11649 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 17Ad–22(d)(8).

[14] 15 U.S.C. 17Ad–22(d)(8).

[15] 15 U.S.C. 17Ad–22(d)(11).

[16] 15 U.S.C. 17Ad–22(d)(11).

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(d)(8), (d)(11).

[19] 15 U.S.C. 78s(b)(2).

[20] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88940; File No. SR–GEMX–2020–12]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX's Pricing Schedule

May 26, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2020, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX's Pricing Schedule. Specifically, the Exchange proposes to amend GEMX's Pricing Schedule. Specifically, the Exchange proposes to amend Options 7, Section 3, titled ''Regular Order Fees and Rebates.''

The Exchange originally filed the proposed pricing changes on April 30, 2020 (SR–GEMX–2020–11). On May 11, 2020, the Exchange withdrew that filing and submitted this filing.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3, titled ''Regular Order Fees and Rebates.'' GEMX proposes to amend its Regular Order Fees and Rebates in Penny Symbols. Specifically, the Exchange proposes various amendments to its Maker Rebates and Taker Fees, as well as qualification tiers. Each amendment is described below.

Technical Correction

The Exchange proposes to remove ''and SPY'' from the title ''Penny Symbols and SPY'' as SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Pilot Program and would otherwise be subject to the pricing applicable to Penny Symbols.

Maker Rebates

With respect to the Tier 1 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker[3] a $0.28 per contract rebate, a Non-Nasdaq GEMX Market Maker (FarMM)[4] a $0.25 per contract rebate, a Firm Proprietary/Broker Dealer[5] a $0.25 per contract rebate, a Professional Customer[6] a $0.25 per contract rebate and a Priority Customer[7] a $0.25 per contract rebate. The Exchange proposes to lower Tier 1 Maker Rebates for all non-Priority Customers. Specifically, the Exchange proposes to lower a Market Maker from $0.28 to $0.20 per contract, a Non-Nasdaq GEMX Market Maker (FarMM) from $0.25 to $0.20 per contract, a Firm Proprietary/Broker Dealer from $0.25 to $0.20 per contract, and a Professional Customer from $0.25 to $0.20 per contract. A Priority Customer will continue to receive a Tier 1 Maker Rebate of $0.25 per contract. Priority Customers would receive the highest Tier 1 Maker Rebate with this proposal. While the Exchange is lowering the Tier 1 Maker Rebate for all non-Priority Customers to $0.20 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5 Maker Rebate will pay higher rebates to Market Makers.

With respect to the Tier 2 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker a $0.30 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers are not eligible for a Tier 2 Maker Rebate. Priority Customers receive a $0.40 per contract Tier 2 Maker Rebate. The Exchange is proposing to amend the Tier 2 Maker Rebate for Market Makers from $0.30 to $0.25 per contract. The Exchange is not otherwise amending the Tier 2 Maker Rebates. Priority Customers would continue to receive the highest Tier 2 Maker Rebates with this proposal. While the Exchange is lowering the Tier 2 Maker Rebate for Market Makers to $0.25 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5 Maker Rebate will pay higher rebates to Market Makers.

With respect to the Tier 3 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker a $0.35 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers are not eligible for a Tier 3 Maker Rebate. Priority Customers receive a $0.48 per contract Tier 3 Maker Rebate. The Exchange is proposing to amend the Tier 3 Maker Rebate for Market Makers from $0.35 to $0.30 per contract. The Exchange is not otherwise amending the Tier 3 Maker Rebates. Priority Customers would continue to receive the highest Tier 3 Maker Rebates with this proposal. While the Exchange is lowering the Tier 3 Maker Rebate for Market Makers to $0.30 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5

[3] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[4] A ''Non-Nasdaq GEMX Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. *See* GEMX Options 7, Section 1.

[5] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account. A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. *See* GEMX Options 7, Section 1.

[6] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* GEMX Options 7, Section 1.

[7] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in this Pricing Schedule the term ''Priority Customer'' includes ''Retail''. A ''Retail'' order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* GEMX Options 7, Section 1.

Maker Rebate will pay higher rebates to Market Makers.

With respect to the Tier 4 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker a $0.45 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers are not eligible for a Tier 4 Maker Rebate. Priority Customers receive a $0.53 per contract Tier 4 Maker Rebate. The Exchange is proposing to amend the Tier 4 Maker Rebate for Market Makers from $0.45 to $0.41 per contract. The Exchange is not otherwise amending the Tier 4 Maker Rebates. Priority Customers would continue to receive the highest Tier 4 Maker Rebates with this proposal. While the Exchange is lowering the Tier 4 Maker Rebate for Market Makers to $0.41 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5 Maker Rebate will pay higher rebates to Market Makers.

The Exchange proposes to adopt new Tier 5 Maker Rebates in Penny Symbols. The Exchange proposes to pay a Market Maker a $0.45 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers would not be eligible for a Tier 5 Maker Rebate. Priority Customers would receive a $0.53 per contract Tier 5 Maker Rebate. With this proposal, Priority Customers would receive the highest Tier 5 Maker Rebate. The Exchange believes that these new Tier 5 Maker Rebates for Market Makers and Priority Customers will attract a greater amount of order flow on GEMX in Penny Symbols because of the opportunity to receive these rebates.

Taker Fees

With respect to the Tier 1 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers a $0.50 per contract fee. Priority Customers are assessed a $0.48 per contract fee. The Exchange is proposing to increase the Tier 1 Taker Fee for Priority Customers from $0.48 to $0.49 per contract. The Exchange is not otherwise amending the Tier 1 Taker Fees. Priority Customers would continue to pay the lowest Tier 1 Taker Fee with this proposal. While the Exchange is increasing the Tier 1 Taker Fees for Priority Customers to $0.49 per contract in Penny Symbols, the Exchange is proposing to add new Tier 5 Taker Fees, as described in more detail below. The new Tier 5 Taker Fee will offer lower fees for Priority Customers.

With respect to the Tier 2 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers a $0.50 per contract fee. Priority Customers are assessed a $0.47 per contract fee. The Exchange is proposing to increase the Tier 2 Taker Fee for Priority Customers from $0.47 to $0.48 per contract. The Exchange is not otherwise amending the Tier 2 Taker Fees. Priority Customers would continue to pay the lowest Tier 2 Taker Fee with this proposal. While the Exchange is increasing the Tier 2 Taker Fees for Priority Customers to $0.48 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Taker Fee, as described in more detail below. The new Tier 5 Taker Fee will offer lower fees for Priority Customers.

With respect to the Tier 3 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers a $0.50 per contract fee. Priority Customers are assessed a $0.47 per contract fee. The Exchange is proposing to increase the Tier 3 Taker Fee for Priority Customers from $0.47 to $0.48 per contract. The Exchange is not otherwise amending the Tier 3 Taker Fees. Priority Customers would continue to pay the lowest Tier 3 Taker Fee with this proposal. While the Exchange is increasing the Tier 3 Taker Fees for Priority Customers to $0.48 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Taker Fee, as described in more detail below. The new Tier 5 Taker Fee will offer lower fees for Priority Customers.

With respect to the Tier 4 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) a $0.48 per contract fee. The Exchange currently assesses Firm Proprietary/Broker Dealers and Professional Customers a $0.49 per contract fee. Priority Customers are assessed a $0.45 per contract fee. The Exchange is proposing to decrease the Tier 4 Taker Fee for Priority Customers from $0.45 to $0.43 per contract. The Exchange is not otherwise amending the Tier 4 Taker Fees. Priority Customers would pay an even lower Tier 4 Taker Fee with this proposal, which should attract a greater amount of Priority Customer order flow on GEMX in Penny Symbols because of the opportunity to obtain lower fees.

The Exchange proposes to adopt new Tier 5 Taker Fees in Penny Symbols. The Exchange proposes to assess a Market Maker and a Non-Nasdaq GEMX Market Maker (FarMM) a $0.48 per contract fee. The Exchange proposes to assess a Firm Proprietary/Broker Dealer and a Professional Customer a $0.49 per contract fee. Priority Customers would be assessed a $0.42 per contract fee. With this proposal, Priority Customers would pay the lowest Tier 5 Taker Fee. Proposed Tier 5 Taker Fees will attract a greater amount of order flow on GEMX in Penny Symbols because of the opportunity to obtain lower Priority Customer fees.

Further, note 4 in Options 7, Section 3 would be applicable to this new Tier 5 Taker Fee. Therefore, non-Priority Customer orders would be charged the Taker Fee for trades executed during the Opening Process. Priority Customer orders executed during the Opening Process will receive the applicable Maker Rebate based on the tier achieved.[8] Additionally, note 13 would be applicable to this new Tier 5 Taker Fee. Therefore, non-Priority Customer orders will be charged a Taker Fee of $0.50 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a Taker Fee of $0.49 per contract for trades executed against a Priority Customer. Currently, Taker Fee Tiers 1–4 are subject to notes 4 and 13.

Qualifying Tier Thresholds

The Exchange proposes to amend the Qualifying Tiers within Options 7, Section 3. Currently, there are 4 qualifying tiers:

[8] The Exchange proposes to replace the phrase ''opening rotation'' with ''Opening Process'' to conform the title within note 4 to the title of Options 3, Section 8. The Exchange also proposes to capitalize the terms ''Maker Rebate'' and ''Taker Fee'' in notes 3, 4, 5, 13 and 16.

TABLE 1

Tier	Total affiliated member % of customer total consolidated volume	Priority customer maker % of customer total consolidated volume
Tier 1	Executes less than 0.65% of Customer Total Consolidated Volume.	Executes Priority Customer Maker volume of less than 0.10% of Customer Total Consolidated Volume.
Tier 2	Executes 0.65% to less than 1.5% of Customer Total Consolidated Volume.	Executes Priority Customer Maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume.
Tier 3	Executes 1.5% to less than 2.50% of Customer Total Consolidated Volume.	Executes Priority Customer Maker volume of 0.65% to less than 1.20% of Customer Total Consolidated Volume.
Tier 4	Executes 2.5% or greater of Customer Total Consolidated Volume.	Executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume.

All market participants can qualify for Tiers 1 through 4, provided they meet the requisite volume thresholds specified in Table 1 above. The maker and taker fees for all market participants represented in Table 1, displayed above, are dependent on qualifying for a particular tier. With respect to these tiers, the highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants. All eligible volume from affiliated Members will be aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

The Exchange proposes to amend the current Qualifying Tier Thresholds. Specifically, the Exchange proposes to amend the Tier 4 Qualifying Tier Threshold. The Exchange proposes to amend the description of Tier 4 in the Total Affiliated Member % of Customer Total Consolidated Volume,[9] which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume. The Exchange proposes to instead require that a member execute 2.5% to less than 3.5% of Customer Total Consolidated Volume. The Exchange also proposes to amend the description of the Tier 4 Priority Customer Maker % of Customer Total Consolidated Volume,[10] which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume. The Exchange proposes to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume.

The Exchange proposes to adopt a new Tier 5 Qualifying Tier Threshold which for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume. Also, the Exchange proposes to adopt a new Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, which requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

The Exchange is amending the Tier 4 Qualifying Tier Threshold so that it may add a new Tier 5 Qualifying Tier Threshold. The Exchange believes that Members may execute a greater amount of volume on GEMX to qualify for higher rebates and lower fees. The proposed pricing is intended to continue to reward Members that submit Priority Customer order flow to the Exchange and thereby increase liquidity and trading opportunities for all Members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [14] (''NetCoalition'') the DC Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[15] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [16]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [17] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Maker Rebates

The Exchange's proposal to amend the Tier 1 Maker Rebates in Penny

[9] For purposes of measuring Total Affiliated Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

[10] The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[14] *NetCoalition* v. *SEC,* 615 F.3d 525 (DC Cir. 2010).

[15] *See NetCoalition,* at 534—535.

[16] *Id.* at 537.

[17] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

Symbols to pay all non-Priority Customers a $0.20 per contract rebate and lower the Tier 2 Maker Rebate (from $0.30 to $0.25 per contract), the Tier 3 Maker Rebate (from $0.35 to $0.30 per contract) and the Tier 4 Maker Rebate (from $0.45 to $0.41 per contract) for Market Makers is reasonable. With this proposal, Priority Customers would receive the highest Maker Rebates in Tiers 1–4, respectively. While the Exchange is lowering the Tier 1 Maker Rebate for all non-Priority Customers as well as the Tier 2, 3 and 4 Maker Rebates for Market Makers, the Exchange is proposing new Tier 5 Maker Rebates, which would provide Market Makers and Priority Customers an opportunity to obtain higher rebates, provided they meet the qualifications. While the proposal generally decreases Maker Rebates for Market Makers and non-Priority Customers, the Exchange believes that the proposed rebate structure will remain attractive to all Members.

The Exchange's proposal to amend the Tier 1 Maker Rebates in Penny Symbols to pay all non-Priority Customers a $0.20 per contract rebate and lower the Tier 2 Maker Rebate (from $0.30 to $0.25 per contract), the Tier 3 Maker Rebate (from $0.35 to $0.30 per contract) and the Tier 4 Maker Rebate (from $0.45 to $0.41 per contract) for Market Makers is equitable and not unfairly discriminatory. The Tier 1 Maker Rebates will uniformly pay all non-Priority Customers a $0.20 per contract rebate. Also, Priority Customers would receive the highest Tier 1 Maker Rebate with the proposal. While the Exchange is lowering the Tier 2, 3 and 4 Maker Rebates for Market Makers, the proposal will continue to pay Priority Customers the highest Tier 2, 3 and 4 Maker Rebates, respectively. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).[18] Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Penny Symbols is reasonable. The Exchange proposes to pay a Market Maker a $0.45 per contract Tier 5 rebate and Priority Customers a $0.53 per contract Tier 5 rebate. Priority Customers would receive the highest Tier 5 Maker Rebate. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. More specifically, the Exchange's proposal amends the Tier 4 Taker Fee for Priority Customers from $0.45 to $0.43 per contract. The Exchange believes that this amendment, along with the potential to qualify for an even lower Tier 5 Taker Fee of $0.42 per contract, will encourage Members to send order flow to GEMX.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Penny Symbols is equitable and not unfairly discriminatory. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).[19] Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Taker Fees

The Exchange's proposal to amend the Tier 1–4 Taker Fees for Priority Customers[20] is reasonable. The Exchange's proposal, while increasing the Tier 1–3 Taker Fees for Priority Customers, will remain attractive to all Members. Priority Customers would continue to pay the lowest Tier 1–3 Taker Fees with this proposal. Further, decreasing the Tier 4 Taker Fee for Priority Customers will attract a greater amount of Priority Customer order flow on GEMX in Penny Symbols because of the opportunity to receive this lower fee. Also, the Tier 4 Taker Fee for Priority Customer will remain the lowest Tier 4 Taker Fee. With this proposal, Market Makers and Priority Customers will continue to be incentivized to submit order flow on GEMX.

The Exchange's proposal to amend the Tier 1—4 Taker Fees for Priority Customers is equitable and not unfairly discriminatory. The proposed amendments continue to provide Priority Customers with the lowest Tier 1—4 Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend the Tier 1–4 Taker Fees for Priority Customers is equitable and not unfairly discriminatory. The proposed amendments continue to provide Priority Customers with the lowest Tier 1–4 Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunites, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Taker Fees[21] is reasonable. The proposed Tier 5 Taker Fees will attract a greater amount of Priority Customer orders on GEMX in Penny Symbols because of the opportunity to obtain these lower fees by submitting qualifying order flow. All Members may obtain the Tier 5 Taker Fees provided they submit qualifying order flow.

The Exchange's proposal to adopt new Tier 5 Taker Fees is equitable and not unfairly discriminatory. Market Makers and Non-Nasdaq GEMX Market Maker (FarMM) would be assessed lower fees as compared to other non-Priority Customer market participants. The Exchange does not believe that it is unfairly discriminatory to assess lower Tier 5 Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) as these market participants have obligations in the marketplace, which other market participants do not have, such as quoting. Also these market participants provide liquidity. With this proposal, Priority Customers would pay the lowest Tier 5 Taker Fees. The Tier 5 Taker Fees would be assessed to those

[18] *See* GEMX Options 2, Section 5.

[19] *Id.*

[20] The Exchange's proposal increases the Tier 1 Priority Customer Taker fee from $0.48 to $0.49 per contract. The Tier 2 Priority Customer Taker fee is being increased from $0.47 to $0.48 per contract. The Tier 3 Priority Customer Taker Fee is being increased from $0.47 to $0.48 per contract. Finally, the Tier 4 Priority Customer Taker Fee is being decreased from $0.45 to $0.43 per contract.

[21] The Exchange proposes the following Tier 5 Taker Fees: Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) would be assessed a $0.48 per contract fee; Firm Proprietary/Broker Dealers and Professional Customers would be assessed a $0.49 per contract fee; and Priority Customers would be assessed a $0.42 per contract fee.

participants that submit qualifying volume on GEMX. All market participants that submit qualifying volume are able to obtain lower fees with more qualifying volume.

The Exchange's proposal to apply current note 4 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee is reasonable, equitable and not unfairly discriminatory. Similar to Tiers 1–4 of the Taker Fees, the Exchange states that during the Opening Process, non-Priority Customers would be charged the Taker Fee for trades executed. Also, Priority Customers executed during the Opening Process will receive the applicable Maker Rebate based on the tier achieved. The Exchange believes that it is fair and equitable to charge its ''taker'' fee for non-Priority Customers executed during the Opening Process in order to avoid the negative economics associated with paying a rebate on both sides of each trade. In addition, the fee is reasonable, because the Exchange desires to attract Priority Customers into its Opening Process and therefore proposes to pay those orders certain rebates. The Exchange does not believe that it is unfairly discriminatory not to similarly charge its ''taker'' fee to Priority Customers. In general, Priority Customers are provided higher rebates and lower fees than other market participants on the Exchange. The Exchange believes continuing to provide rebates to Priority Customers whose orders are executed during the Opening Process, similar to the Tier 1–4 Taker Fees, will attract order flow to GEMX and thereby create liquidity to the benefit of all market participants who trade on the Exchange.

The Exchange's proposal to apply current note 13 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee is reasonable, equitable and not unfairly discriminatory. Non-Priority Customers will be charged a Taker Fee of $0.50 per contract for trades executed against a Priority Customer. Also, Priority Customers will be charged a Taker Fee of $0.49 per contract for trades executed against a Priority Customer. This proposed fee structure in note 13 is similar to the Tier 1–4 Taker Fees. The Exchange's pricing structure for Penny Symbols offers Priority Customers the highest rebates and lowest fees. The Exchange believes that it is reasonable and equitable to increase the fee charged to non-Priority Customers that trade against a Priority Customer or a Priority Customer that trades against another Priority Customer as this proposal is designed to offset the higher rebates and lower fees offered to Priority Customers. The Exchange believes that Members will benefit from the additional liquidity which the Exchange attracts through its favorable pricing (higher rebates and lower fees) that is offered to Priority Customers in Penny Symbols. Therefore, the Exchange believes that it is appropriate to assess a higher Taker Fee for trades executed against a Priority Customer. Finally, the Exchange will uniformly assess the higher Taker Fee to Non-Priority Customers and Priority Customers for trades executed against a Priority Customer.

Qualifying Tier Thresholds

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds with respect to the Total Affiliated Member % of Customer Total Consolidated Volume,[22] which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume, to instead require that a member execute 2.5%, to less than 3.5% of Customer Total Consolidated Volume is reasonable. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume,[23] which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume, to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume is reasonable. With this proposal, the Exchange adopts a new Tier 5 Maker Rebate and a new Tier 5 Taker Fee with certain qualifications that currently would fall within the Tier 4 Maker Rebate and the Tier 4 Taker Fee, respectively. The new Tier 5 Maker Rebate offers higher rebates and the new Tier 5 Taker Fee offers lower fees than the equivalent Tier 4 Maker Rebate and Tier 4 Taker Fee. The Exchange believes that amending the Tier 4 Qualifying Tier Threshold will allow Members to continue to receive the same rebates and fees as today, provided they continue to submit the same qualifying volume, with the possibility of achieving higher rebates and lower fees with the new Tier 5 Maker Rebate and Tier 5 Taker Fee.

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds with respect to the Total Affiliated Member % of Customer Total Consolidated Volume, which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume, to instead require that a member execute 2.5%, to less than 3.5% of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume, which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume, to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. All Members that meet the qualifications of the Tier 4 Qualifying Tier Threshold would be eligible, uniformly, to receive the corresponding rebates and fees.

The Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold that for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume is reasonable. Further, the Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold with respect to Priority Customer Maker % of Customer Total Consolidated Volume that requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume is reasonable. The Exchange's proposal seeks to incentivize Members to submit a greater amount of order flow on GEMX in order to earn higher rebates and lower fees. The Exchange believes that adopting a new Tier 5 Qualifying Tier Threshold in conjunction with a new Tier 5 Maker Rebate and a new Tier 5 Taker Fee will encourage Members to submit a greater amount of order flow on GEMX in Penny Symbols.

The Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold that for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. Further, the Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold with respect to Priority Customer Maker % of Customer Total Consolidated Volume that requires a member to execute Priority Customer Maker volume of

[22] For purposes of measuring Total Affiliated Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

[23] The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

2.75% or greater of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. Members that meet the qualifications for these Tier 5 Qualifying Tier Thresholds would be eligible, uniformly, to receive the corresponding Tier 5 Maker Rebates and Tier 5 Taker Fees in Penny Symbols. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. More specifically, the Exchange's proposal amends the Tier 4 Taker Fee for Priority Customers from $0.45 to $0.43 per contract. The Exchange believes that this amendment, along with the potential to qualify for an even lower Tier 5 Taker Fee of $0.42 per contract, will encourage Members to send order flow to GEMX.

Technical Correction

The Exchange's proposal to remove ''and SPY'' from the title ''Penny Symbols and SPY'' is reasonable as SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Pilot Program and would otherwise be subject to the pricing applicable to Penny Symbols. The Exchange's proposal to remove ''and SPY'' from the title ''Penny Symbols and SPY'' is equitable and not unfairly discriminatory as this amendment will not cause a change in pricing to any market participant. All other technical amendments to capitalize terms and rename the ''opening rotation'' to refer to ''Opening Process'' are non-substantive amendments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

The proposed amendments do not impose an undue burden on intramarket competition.

Maker Rebates

The Exchange's proposal to amend the Tier 1 Maker Rebates in Penny Symbols to pay all non-Priority Customers a $0.20 per contract rebate and lower the Tier 2 Maker Rebate (from $0.30 to $0.25 per contract), the Tier 3 Maker Rebate (from $0.35 to $0.30 per contract) and the Tier 4 Maker Rebate (from $0.45 to $0.41 per contract) for Market Makers does not impose an undue burden on competition. The Tier 1 Maker Rebates will uniformly pay all non-Priority Customers a $0.20 per contract rebate. Also, Priority Customers would receive the highest Tier 1 Maker Rebate with the proposal. While the Exchange is lowering the Tier 2, 3 and 4 Maker Rebates for Market Makers, the proposal will continue to pay Priority Customers the highest Tier 2, 3 and 4 Maker Rebates, respectively. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).[24] Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Penny Symbols does not impose an undue burden on competition. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).[25] Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Taker Fees

The Exchange's proposal to amend the Tier 1–4 Taker Fees for Priority Customers does not impose an undue burden on competition. The proposed amendments continue to provide Priority Customers with the lowest Tier 1–4 Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Taker Fees does not impose an undue burden on competition. Market Makers and Non-Nasdaq GEMX Market Maker (FarMM) would be assessed lower fees as compared to other non-Priority Customer market participants. The Exchange does not believe that it is unfairly discriminatory to assess lower Tier 5 Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) as these market participants have obligations in the marketplace, which other market participants do not have, such as quoting. Also these market participants provide liquidity. With this proposal, Priority Customers would pay the lowest Tier 5 Taker Fees. The Tier 5 Taker Fees would be uniformly assessed to those participants that submit qualifying volume on GEMX. All market participants that submit qualifying volume are able to obtain lower fees with more qualifying volume.

The Exchange's proposal to apply current note 4 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee does not impose an undue burden on competition. Assessing a ''taker'' fee for non-Priority Customers executed during the Opening Process avoids the negative economics associated with paying a rebate on both sides of each trade. In general, Priority Customers are provided higher rebates and lower fees than other market participants on the Exchange. Providing rebates to Priority Customers executed during the Opening Process, similar to the Tier 1–4 Taker Fees, will attract that order flow to GEMX and thereby create liquidity to the benefit of

[24] *See* GEMX Options 2, Section 5.

[25] *Id.*

all market participants who trade on the Exchange.

The Exchange's proposal to apply current note 13 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee does not impose an undue burden on competition. This proposed fee structure in note 13 is similar to the Tier 1–4 Taker Fees. The Exchange's pricing structure for Penny Symbols offers Priority Customers the highest rebates and lowest fees. The Exchange believes that it does not impose an undue burden on competition to increase the fee charged to non-Priority Customers that trade against a Priority Customer or a Priority Customer that trades against another Priority Customer as this proposal is designed to offset the higher rebates and lower fees offered to Priority Customers. The Exchange believes that Members will benefit from the additional liquidity which the Exchange attracts through its favorable pricing (higher rebates and lower fees) that is offered to Priority Customers in Penny Symbols. Therefore, the Exchange believes that it is appropriate to assess a higher Taker Fee for trades executed against a Priority Customer. Finally, the Exchange will uniformly assess the higher Taker Fee to Non-Priority Customers and Priority Customers for trades executed against a Priority Customer.

Qualifying Tier Thresholds

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds with respect to the Total Affiliated Member % of Customer Total Consolidated Volume, which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume, to instead require that a member execute 2.5%, to less than 3.5% of Customer Total Consolidated Volume does not impose an undue burden on competition. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume, which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume, to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume does not impose an undue burden on competition. All Members that meet the qualifications of the Tier 4 Qualifying Tier Threshold would be eligible, uniformly, to receive the corresponding rebates and fees.

The Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold that for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume does not impose an undue burden on competition. Further, the Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold with respect to Priority Customer Maker % of Customer Total Consolidated Volume that requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume does not impose an undue burden on competition. Members that meet the qualifications for these Tier 5 Qualifying Tier Thresholds would be eligible, uniformly, to receive the corresponding Tier 5 Maker Rebates and Tier 5 Taker Fees in Penny Symbols. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. More specifically, the Exchange's proposal amends the Tier 4 Taker Fee for Priority Customers from $0.45 to $0.43 per contract. The Exchange believes that this amendment, along with the potential to qualify for an even lower Tier 5 Taker Fee of $0.42 per contract, will encourage Members to send order flow to GEMX.

Technical Correction

The Exchange's proposal to remove ''and SPY'' from the title ''Penny Symbols and SPY'' does not impose an undue burden on competition because the amendment will not cause a change in pricing to any market participant. All other technical amendments to capitalize terms and rename the ''opening rotation'' to refer to ''Opening Process'' are non-substantive amendments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Other

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[26] and Rule 19b–4(f)(2)[27] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2020–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2020–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

[27] 17 CFR 240.19b–4(f)(2).

submissions should refer to File Number SR–GEMX–2020–12 and should be submitted on or before June 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11647 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88939; File No. SR–ISE–2020–20]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7

May 26, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, as described further below.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Pricing Schedule at Options 7 to: (i) Adjust the Market Maker Plus regular maker rebate for SPY, QQQ, and IWM, and (ii) modify its QCC and Solicitation Rebate program. The Exchange has designated the proposed pricing changes to be operative on May 1, 2020. Each change is described below.

ISE initially filed the proposed rule change on April 30, 2020 (SR–ISE–2020–19). On May 11, 2020, ISE withdrew that filing and submitted this this filing.

Market Maker Plus

The Exchange currently operates a Market Maker Plus program for regular orders in Select[3] and Non-Select Symbols,[4] which provides tiered incentives to Market Makers[5] based on the percentage of time spent quoting at the national best bid or offer (''NBBO'').[6] Market Makers that qualify for this program will not pay the maker fee of $0.11 per contract (in Select Symbols) or $0.70 (in Non-Select Symbols), and will instead receive incentives based on the applicable Market Maker Plus Tier for which they qualify. Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day.[7] A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above. If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive periods described above, then the lower of the two Market Maker Plus tier fees or rebates would apply to all contracts.[8] A Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this incentive.[9] These general qualification requirements will remain unchanged with the modifications to the applicable Market Maker Plus incentives described herein.

For SPY, QQQ, and IWM, the Exchange currently provides the below maker rebates based on the applicable Market Maker Plus tier for which the Market Maker qualifies.

SPY, QQQ, AND IWM

Market maker plus tier (specified percentage)	Regular maker rebate	Linked maker rebate
Tier 1 (70% to less than 80%)	($0.00)	N/A
Tier 2 (80% to less than 85%)	($0.18)	($0.15)

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Select Symbols'' are options overlying all symbols listed on the Exchange that are in the Penny Pilot Program.

[4] ''Non-Select Symbols'' are options overlying all symbols except Select Symbols.

[5] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[6] *See* Options 7, Section 3, note 5.

[7] Qualifying series are series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium.

[8] Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers—*i.e.,* badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker's badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. Only badge/suffix combinations quoting a minimum of ten trading days within the month is used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker's performance for that month.

[9] A Market Maker who qualifies for Market Maker Plus Tiers 2 or higher in at least four of the previous six months will be eligible to receive a reduced Tier 2 incentive in a given month where the Market Maker does not qualify for any Market Maker Plus tiers. For Select Symbols, this rebate is the applicable Tier 2 rebate reduced by $0.08 per contract. For Non-Select Symbols, this fee is the Tier 2 fee increased by $0.08 per contract.

SPY, QQQ, AND IWM—Continued

Market maker plus tier (specified percentage)	Regular maker rebate	Linked maker rebate
Tier 3 (85% to less than 90%)	($0.22)	($0.19)
Tier 4 (90% or greater)	($0.26)	($0.23)

The Exchange now proposes to replace Market Maker Plus Tier 1 with new Tier 1a and Tier 1b. As proposed, the Market Maker Plus Tier qualification requirements and associated incentive will be as follows: (1) 50% to less than 65% to qualify for the $0.00 per contract Tier 1a regular maker rebate (*i.e.,* free executions instead of paying the $0.11 per contract maker fee), and (2) 65% to less than 80% to qualify for the $0.05 per contract Tier 1b regular maker rebate. Current Market Maker Plus Tiers 2–4 as set forth above and the associated maker rebates will remain unchanged under this proposal. In addition, the Exchange will not offer any linked maker rebates for proposed Tiers 1a and 1b.

The proposed changes are intended to fortify Market Maker participation in the Exchange's Market Maker Plus program for SPY, QQQ, and IWM. By lowering the percentage of time required to be spent quoting at the NBBO that is necessary to qualify for the $0.00 and $0.05 per contract regular maker rebates in Tier 1a and Tier 1b, respectively, the Exchange seeks to make it easier for Market Makers to qualify as Market Maker Plus in SPY, QQQ, and IWM, and to better enable existing Market Maker Plus participants to maintain their qualifications as such. By fortifying participation in this program, the Exchange believes that the proposed changes will continue to encourage Market Makers to post quality markets in SPY, QQQ, and IWM, thereby improving trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market.

QCC and Solicitation Rebate

Currently, Members using the Qualified Contingent Cross (''QCC'') [10] and/or other solicited crossing orders, including solicited orders executed in the Solicitation,[11] Facilitation [12] or Price Improvement Mechanisms (''PIM''),[13] receive rebates for each originating contract side in all symbols traded on the Exchange.[14] Once a Member reaches a certain volume threshold in QCC orders and/or other solicited crossing orders during a month, the Exchange provides rebates to that Member for all of its QCC and solicited crossing order traded contracts for that month. The applicable rebates are applied on QCC and solicited crossing order traded contracts once the volume threshold is met. Members receive the rebate for all QCC and/or other solicited crossing orders except for QCC and solicited orders between two Priority Customers,[15] which do not receive any rebate.

At this time, the Exchange proposes to no longer provide the QCC and Solicitation Rebate to solicited orders executed in PIM. The Exchange has observed that few members have received this rebate, with little associated volume.[16] To effect this change, the Exchange proposes to remove the reference to PIM in Section 6.A. In addition, the Exchange proposes to add a new defined term ''Solicited Orders,'' which will encompass QCC orders and/or other solicited orders executed in the Solicitation and Facilitation Mechanisms, and use this defined term throughout Section 6.A to make clear what types of solicited crossing orders will qualify the Member for the QCC and Solicitation Rebate. The volume thresholds and applicable rebates will remain unchanged under this proposal.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, ,'[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [19]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities

[10] A QCC Order is comprised of an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Supplementary Material .01 to Options 3, Section 7, coupled with a contra-side order or orders totaling an equal number of contracts. *See* Options 3, Section 7(j).

[11] The Solicited Order Mechanism is a process by which an Electronic Access Member (''EAM'') can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none. *See* Options 3, Section 11(d).

[12] The Facilitation Mechanism is a process by which an EAM can execute a transaction wherein the EAM seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against a block-size order it represents as agent. *See* Options 3, Section 11(b).

[13] The PIM is a process by which an EAM can provide price improvement opportunities for a transaction wherein the EAM seeks to facilitate an order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against an order it represents as agent. *See* Options 3, Section 13.

[14] *See* Options 7, Section 6.A.

[15] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Options 1, Section 1(a)(37).

[16] For example, of the contract sides that qualified for the QCC and Solicitation Rebate in March 2020, less than 1% of that volume represented solicited PIM orders.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [20]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Market Maker Plus

The Exchange believes that the proposed changes to its Market Maker Plus program for SPY, QQQ, and IWM are reasonable and equitable for several reasons. As noted above, the Exchange's proposal is intended to fortify participation in this program and improve market quality on ISE. The Exchange's proposal to lower the required percentage of time spent at the NBBO to qualify for Market Maker Plus Tiers 1a and 1b will improve the overall incentive to Market Makers to participate in this program by making it easier for Market Makers to qualify for Market Maker Plus in SPY, QQQ, and IWM. By broadening the Market Maker Plus in this manner, the Exchange will encourage new participants in the program and help ensure that existing Market Maker Plus participants continue to qualify as such.

The Exchange will apply the proposed changes to SPY, QQQ, and IWM as they are three of the most actively traded symbols on ISE, and the Exchange therefore believes that incentivizing liquidity in these three names will have a significant and beneficial impact on market quality on the Exchange. Further, the Exchange believes that the proposed Tier 1a and Tier 1b qualifications for SPY, QQQ, and IWM will continue to require Market Makers to quote at the NBBO for a significant percentage of time in order to glean the benefits of the associated incentives.[21] For the foregoing reasons, the Exchange believes that its proposal will further encourage Market Makers to maintain tight markets in SPY, QQQ, and IWM, thereby increasing liquidity and attracting additional order flow to the Exchange, which will benefit all market participants in the quality of order interaction.

The Exchange also believes that the proposed changes to the Market Maker Plus program for SPY, QQQ, and IWM are not unfairly discriminatory as all Market Makers can qualify for this program by meeting the requirements that are designed to incentivize Market Makers to maintain quality markets. In addition, the Exchange continues to believe that it is not unfairly discriminatory to offer rebates under this program to only Market Makers. Market Makers, and in particular, those Market Makers that participate in the Market Maker Plus program and achieve Market Maker Plus status, add value through continuous quoting and are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not.

QCC and Solicitation Rebate

The Exchange believes that it is reasonable to no longer provide the QCC and Solicitation Rebate to solicited orders executed in PIM. As noted above, few Members have received this rebate for solicited PIM orders, and related volume is low.[22] As such, the Exchange believes that the proposed elimination will have minimal impact on Members. Furthermore, the Exchange notes that it already offers competitive pricing for PIM orders. For instance, the Exchange currently assesses a fee of $0.10 per contract for regular and complex PIM orders to all market participants (other than Priority Customers for which the Exchange currently charges no fee), which is significantly lower than the Exchange's other transaction fees, including the fees assessed to other Crossing Orders.[23] Furthermore, this $0.10 per contract fee may be further reduced if the non-Priority Customer executes a certain ADV threshold in PIM in a given month.[24] Accordingly, the Exchange believes that its pricing structure for PIM, with the proposed changes, will continue to encourage market participant PIM activity, including solicited PIM activity, and will streamline its PIM incentive structure.

The Exchange also believes that its proposal is equitable and not unfairly discriminatory because with the proposed changes, no market participant will receive the rebate for solicited PIM orders. Accordingly, the Exchange's proposal will apply uniformly to all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of Exchange market participant at a competitive disadvantage. The proposed changes to the Market Maker Plus program for SPY, QQQ, and IWM are intended to improve market quality by fortifying and encouraging participation in this program. As discussed above, the Exchange believes that its proposal will encourage all Market Makers to improve market quality by providing significant quoting at the NBBO in SPY, QQQ, and IWM, which in turn improves trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market, thereby attracting additional order flow to the Exchange. As it relates to the proposed elimination of the rebate for solicited PIM orders, the Exchange believes that its proposal will continue to encourage market participant activity in PIM given the Exchange's competitive PIM pricing structure, as discussed above. Accordingly, the Exchange believes that the proposed changes will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee

[20] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[21] As proposed, a Market Maker would need to be on the NBBO 50% to less than 65% of the time to qualify for the Tier 1a rebate of $0.00, and 65% to less than 80% of the time for the Tier 1b rebate of $0.05.

[22] *See supra* note 16.

[23] A ''Crossing Order'' is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, PIM or submitted as a QCC order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. Today, the Exchange charges all non-Priority Customers a $0.20 per contract fee for regular and complex Crossing Orders except PIM orders. Priority Customers are not charged Crossing Order fees. *See* Options 7, Section 3 and Section 4.

[24] See Options 7, Section 3, note 13 (setting forth discounted PIM fees for regular orders) and Section 4, note 9 (setting forth discounted PIM fees for complex orders).

levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [25] and Rule 19b–4(f)(2) [26] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 240.19b–4(f)(2).

Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–ISE–2020–20 on the subject line.*

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number *SR–ISE–2020–20.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2020–20 and should be submitted on or before June 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11646 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88960/May 27, 2020]

Order Under Section 17A and Section 36 of the Securities Exchange Act of 1934 Extending Temporary Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder

On March 20, 2020, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Sections 36 and 17A(c)(1) of the Exchange Act that granted transfer agents (and other persons with regard to Exchange Act section 17(f)(2) and Rule 17f–2 thereunder) the following temporary exemptions: (1) Transfer agents from the requirements of Sections 17A and 17(f)(1) of the Exchange Act, as well as Rules 17Ad–1 through 17Ad–11, 17Ad–13 through 17Ad–20, and 17f–1 thereunder; and (2) transfer agents and other persons subject to such requirements, from the requirements of Section 17(f)(2) of the Exchange Act and Rule 17f–2 thereunder (collectively, the ''Exemptions'').[1] The Exemptions were granted in light of the challenges that may be presented by COVID–19 and are scheduled to expire on May 30, 2020.

The Commission understands from transfer agents and their representatives, as well as other persons, that COVID–19 may continue to present challenges in timely meeting certain of their obligations under the federal securities laws. For this reason and the reasons stated in the Order originally granting the Exemptions, the Commission finds that extending the Exemptions until June 30, 2020, pursuant to its authority under Sections 36 and 17A(c)(1) of the Exchange Act, is appropriate in the public interest and consistent with the protection of investors.

Accordingly, *It Is Ordered*, pursuant to Sections 17A and 36 of the Exchange Act, that the time period for the Exemptions specified in the Order are hereby extended to June 30, 2020 where the conditions below are satisfied.

Conditions

(a) A registrant or other person relying on the Order must provide written notification to the Commission by June 30, 2020 of the following: [2]

[1] *See* Securities Exchange Act Release No. 34–88488 (March 20, 2020), 85 FR 17122 (March 26, 2020) (''Order'').

[2] A registrant or other person who is relying on the Order and has already provided a written notification to the Commission may rely on this extension without submitting another written notification solely with respect to the Exempted

(1) The registrant or other person is relying on the Order;

(2) A description of the specific Exempted Provisions, as defined in the Order, the registrant or other person is unable to comply with and a statement of the reasons why, in good faith, the registrant or other person is unable to comply with such Exempted Provisions; and

(3) If a transfer agent knows or believes that it has been unable to maintain the books and records it is required to maintain pursuant to Section 17A and the rules thereunder, a complete and accurate description of the type of books and records that were not maintained, the names of the issuers for whom such books and records were not maintained, the extent of the failure to maintain such books and records, and the steps taken to ameliorate any such failure to maintain such books and records.

(b) As noted in the Order, the Exempted Provisions do not include, and neither the Order nor this extension of the Order provides relief from, Rule 17Ad–12 under the Exchange Act. Transfer agents affected by COVID–19 that have custody or possession of any security holder or issuer funds or securities shall continue to comply with the requirements of Rule 17Ad–12 under the Exchange Act. If a transfer agent's operations, facilities, or systems are significantly affected as a result of COVID–19 such that the transfer agent believes its compliance with Rule 17Ad-12 could be negatively affected, to the extent possible, all security holder or issuer funds that remain in the custody of the transfer agent should be maintained in a separate bank account held for the exclusive benefit of security holders until such funds are properly processed, transferred, or remitted.

The notification required under (a) above shall be emailed to: *tradingandmarkets@sec.gov*

The Commission encourages registered transfer agents and the issuers for whom they act to inform affected security holders whom they should contact concerning their accounts, their access to funds or securities, and other shareholder concerns. If feasible, issuers and their transfer agents should place a notice on their websites or provide toll free numbers to respond to inquiries.

The Commission is closely monitoring the impact of COVID–19 on investors, the securities markets, and market participants and may extend the time period during which this relief applies, with any additional conditions the Commission deems appropriate, if the need for such relief persists. Transfer agents and other persons who are unable to meet a deadline as extended by this relief, or in need of additional assistance, should contact the Division of Trading and Markets at (202) 551–5777 or *tradingandmarkets@sec.gov.*

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–11718 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

Provisions described in such prior written notification.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88938; File No. SR–BX–2020–009]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the BX Disciplinary Rules and Incorporate by Reference the Disciplinary Rules of The Nasdaq Stock Market LLC

May 26, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2020, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (A) relocate the BX Series 8000 and 9000 Rules (the ''Current BX 8000 Series,'' ''Current BX 9000 Series,'' and, collectively, the ''Disciplinary Rules'') to the Exchange's rulebook's (''Rulebook'') shell structure;[3] (B) the Exchange is also proposing to simultaneously replace the text of the Disciplinary Rules with introductory paragraphs in each that incorporate by reference The Nasdaq Stock Market LLC's (''Nasdaq'') Series 8000 and 9000 Rules, currently located under the General 5 title of the Nasdaq rulebook.[4]

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A. Rule Relocation

The Exchange proposes to relocate the Disciplinary Rules under the General 5 title (''Discipline'') in the Rulebook shell. The relocation and harmonization of these rules is part of the Exchange's continued effort to promote efficiency and conformity of its processes with those of its Affiliated Exchanges. The Exchange believes that the placement of the Disciplinary Rules into their new location in the shell will facilitate the use of the Rulebook by members, associated persons, or other persons subject to BX's jurisdiction.

Specifically, the Exchange proposes to relocate the Disciplinary Rules as follows:

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In 2017, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, The Nasdaq Stock Market LLC; Nasdaq PHLX LLC; Nasdaq ISE, LLC (''ISE''); Nasdaq GEMX, LLC (''GEMX''); and Nasdaq MRX, LLC (''MRX'') (together, the ''Affiliated Exchanges''). *See* Securities Exchange Act Release No. 82174 (November 29, 2017), 82 FR 57492 (December 5, 2017) (SR–BX–2017–054).

[4] *See* Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098).

General 5—Discipline: Proposed new rule No.	Current BX rule No.
Section 1	8000. Investigations and Sanctions.
Section 2	9000. Code of Procedure.

B. Incorporation by Reference

The Exchange also proposes to simultaneously replace the current BX Series 8000 and 9000 Rules with introductory paragraphs to each that incorporate by reference the Nasdaq Series 8000 and 9000 Rules (located in General 5 Discipline), respectively, and state that such Nasdaq Rules shall be applicable to Exchange Members, associated persons, and other persons subject to the Exchange's jurisdiction.[5]

Except as noted below, the Nasdaq Series 8000 and 9000 Rules are substantially similar to BX's Disciplinary Rules. The proposed introductory paragraphs list instances in which cross-references in the Nasdaq Series 8000 and 9000 Rules to other Nasdaq rules shall be read to refer instead to the Exchange Rules, and references to Nasdaq terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. For instance, references in both the Nasdaq Series 8000 and 9000 Rules to the following terms shall be read to refer to the Exchange-specific meanings of those terms: The terms ''Exchange'' or ''Nasdaq'' shall be read to refer to BX; the terms ''Rule,'' ''Rules of Nasdaq,'' or ''Nasdaq Rules'' shall be read to refer to the BX Rules (also referenced in the Disciplinary Rules as ''Equity Rules''); in Rules 9521(b)(2) and 9521(b)(3) the term ''Nasdaq By-Laws'' shall be read as a reference to BX's Rules; the terms ''Board'' or ''Nasdaq Board'' shall be read to refer to the BX Board of Directors; the terms ''Member,'' ''member firm,'' or ''associated person'' shall be read to refer to a BX Member, BX member firm, or BX associated person; the terms ''Nasdaq Regulation'' or ''Nasdaq Regulation Department'' shall be read to refer to the BX Regulation Department; the term ''Nasdaq Options Market'' shall be read to refer to the BX Options Market; and the term ''Chief Regulatory Officer'' shall be read to refer to BX's Chief Regulatory Officer.

Additionally, the Exchange proposes that the references in the Nasdaq Rule 9000 Series to Equity 5, Sections 4 and 5 shall be read, respectively, to refer to BX's Rules 7440A and 7450A.

Moreover, in addition to the proposed introduction to the BX Series 9000 Rules (New General 5, Section 2) indicating how certain Nasdaq Series 9000 Rules should be read to apply to Exchange members, associated persons, and other persons subject to the Exchange's jurisdiction, the proposed introduction will indicate that specific language in certain Disciplinary Rules will be preserved. Specifically:

- Rule 9231(b)(1)(C) in the Nasdaq rules shall be read to allow the Chief Hearing Officer to select as a Panelist a person who previously served as a Governor of the Exchange prior to its acquisition by Nasdaq, Inc., but does not serve currently in that position; and 9231(b)(1)(D) shall be read to allow a person who is a member of FINRA's Market Regulation Committee to be among the FINRA Panelists approved by the Exchange Board at least annually whom the Chief Hearing Officer may also select as a Panelist. This language is necessary to preserve the pool of individuals from whom the Chief Hearing Officer may select to serve as a Panelist for BX disciplinary matters.
- The term ''Nasdaq By-Laws'' in Nasdaq Rules 9521(b)(2) and (b)(3) shall be read as a reference to BX's Rules (or ''Rules of the Exchange,'' as described in Current BX Rules 9521(b)(2) and (b)(3)) for purposes of determining the disqualification of members and associated persons to the Exchange.[6]
- Rules 9552(f), 9553(g), 9554(g), 9555(g), 9556(g), and 9558(g) in the Nasdaq 9000 Series shall be read to continue to allow the filing of a request for termination of a suspension (or a request for termination of the limitation, prohibition or suspension with respect to Rules 9555(g) and 9558(g)), to be made with either the head of the Exchange or the FINRA department or office that issued the notice or that is handling the matter on behalf of the issuing department or office. The inclusion of this language is necessary so that it is clear that such filings may continue to be made with the Exchange.

The Exchange also believes that it is necessary, as a consequence of the relocation of its Disciplinary Rules and the incorporation by reference of the Nasdaq rules as previously described, to eliminate certain differences between the BX and Nasdaq rules by adopting the Nasdaq rule text by reference. The following discussions identify the differences between the current BX Disciplinary Rules and the corresponding Nasdaq Disciplinary Rules to be incorporated by reference:

Current BX IM–8310–3(b)

Current BX Rule 9120(f) provides that ''[t]he term ''Department of Enforcement'' means the Department of Enforcement of FINRA Regulation, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.''[7] Current BX IM–8310–3(b), however, uses the term ''Department of Enforcement of FINRA.'' Since Nasdaq IM–8310–3(b) uses the term ''Department of Enforcement'' and to the extent that such term is already defined in the BX rulebook, the Exchange believes that it is appropriate to apply the term provided in Nasdaq IM–8310–3(b) and incorporate it by reference into the BX rule.

Current BX Rule 8320

In 2010, Nasdaq created Rule 7007 (''Collection of Fees'') to facilitate an efficient method of collecting undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to Nasdaq from The Nasdaq Option Market (''NOM'') Participants.[8]

Similarly, in 2012, BX adopted its options market rules (''BX Options Market'') to operate as a fully automated, price/time priority execution system built on the core functionality of the NOM.[9] In its filing,

[5] The Exchange notes that the proposed changes will not become operative unless and until the Commission approves the Exchange's request, to be filed pursuant to Section 36 of the Exchange Act and SEC Rule 0–12 thereunder, for an exemption from the rule filing requirements of Section 19(b) of the Exchange Act as to changes to the BX 8000 Series (New General 5, Section 1) and BX 9000 Series (New General 5, Section 2) that are effected solely by virtue of a change to the Nasdaq Series 8000 or 9000 Rules Series.

[6] In a future filing, Nasdaq will amend its Rules 9521(b)(2) and (b)(3) concerning the qualification/disqualification of Exchange members, to align its rules closer to BX and Phlx's rulebook.

[7] This definition mirrors the one in the Nasdaq rulebook under Rule 9120(f).

[8] *See* Securities Exchange Act Release No. 63536 (December 14, 2010), 75 FR 80102 (December 21, 2010) (SR–NASDAQ–2010–163). Nasdaq Rule 7007 was later relocated to Options Chapter XV, Section 1 and then moved to its current location under Options 7, Section 1, in the Nasdaq rulebook shell. *See* Securities Exchange Act Release No. 66158 (January 13, 2012), 75 FR 80102 (January 13, 2012) (SR–NASDAQ–2012–006) and Securities Exchange Act Release No. 84684 (November 29, 2018), 83 FR 62936 (December 6, 2018) (SR–NASDAQ–2018–098).

[9] Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030). This rule was later relocated to the BX

BX proposed to adopt, under respective Chapter XV, Section 2 a rule identical to the Nasdaq Collection of Fees rule.[10] Although, at the time of its creation, the Nasdaq Collection of Fees rule was cross-referenced to current Nasdaq Rule 8320(a)(1),[11] such cross-reference was not included in the filing that created the BX Options Market.

Based on the above, the Exchange believes that it is appropriate that BX adopts the aforementioned cross-reference to make the collection of fees owed to the Exchange more efficient. Therefore, the Exchange believes that it is appropriate to incorporate by reference Nasdaq Rule 8320.

Current BX Rule 9120

In 2018, the Exchange amended its Disciplinary Rules to align them with the investigatory and disciplinary processes of Nasdaq PHLX LLC (''Phlx'').[12] As stated in its proposal, the changes to the ''Interested Staff'' concept (which, at the time, was relocated under 9120(r)) were done to conform the BX rule to Phlx's definition. At the time, however, the proposed harmonizing changes to BX Rule 9120(r)(1)(B) inadvertently excluded the words ''Head of'' and omitted to add the word ''the''; indeed, the text should have read ''Head of the Exchange's Regulation Department'' instead of, simply, ''Exchange's Regulation Department.''

The correct definition, as explained above, would also align with the term currently defined in Nasdaq Rule 9120(r)(1)(B), which provides that ''Interested Staff'' shall mean ''an Exchange employee of the Nasdaq Regulation Department who reports, directly or indirectly, to the Head of the Nasdaq Regulation Department.''

The Exchange believes that it is appropriate to apply Nasdaq Rule 9120 and to incorporate it by reference into the BX rule. Additionally, the Exchange notes applying the Nasdaq Rule 9120 and incorporating it by reference into the Exchange rule should correct a typo in Current BX Rule 9120(v) that erroneously uses the term ''RINRA'' instead of the acronym ''FINRA.''

Current BX IM–9216

In 2007, Nasdaq filed a proposal to adopt rules that would govern participation in the NOM.[13] This proposal, among other changes, adopted NOM Rule Chapter X, Section 7 (''Penalty for Minor Rule Violations'') and was cross-referenced in Nasdaq IM–9216.

The provisions in the Nasdaq Penalty for Minor Rule Violations rule were identical to those adopted in 2012 by the BX Options Market.[14] Similarly, the Exchange adopted under BX IM–9216 a cross-reference to BX Chapter X, Section 7 [15] (Chapter X, Section 7, was later relocated under the Options 11 title in the Rulebook shell [16]); however, such cross-reference was inadvertently left out of the Rulebook. Thus, the Exchange believes that incorporating by reference Nasdaq IM–9216 into the BX rule will restore the cross-reference to the current BX's Penalty for Minor Rule Violations rule.

The Exchange also believes that incorporating by reference Nasdaq IM–9216 will correct a typo in the BX cross-reference that currently points to SEC Exchange Act (''SEA'') Rule 602(b)(5). The cross-reference refers to the failure to properly update published quotations in certain Electronic Communication Networks; however, the rules for the dissemination of such information are actually described in SEA Rule 605(b)(5).

Current BX Rule 9231

The Exchange proposes to adopt the cross-reference in Nasdaq Rule 9231(c) concerning the appointment of arbitrators pursuant to the FINRA Rules 12000 and 13000 Series (the ''FINRA Arbitration Rules''). Current BX Rule 9231(c) provides that arbitrators shall be appointed pursuant to BX General 6 (''BX Arbitration Rules'').[17] The BX Arbitration Rules incorporate by reference the similar Nasdaq arbitration rules (also under Nasdaq's General 6 title); in turn, the Nasdaq rules incorporate the FINRA Arbitration Rules by reference into its text. Following the incorporation by reference of Nasdaq Rule 9231, BX Rule 9231(c) will directly cross-reference the FINRA Arbitration Rules, which will not create any differences from the current BX rules.

Current BX Rule 9232

Currently, Nasdaq Rule 9232(a) provides a cross-reference to subsections (A) through (D) in Nasdaq Rule 9231(b)(1), whereas Current BX Rule 9232(a) simply provides a reference to BX Rule 9231(b)(1). The Exchange believes that it is appropriate to apply Nasdaq Rule 9232(a) and incorporate it by reference into the BX rule since the Nasdaq rule contains a more precise cross-reference to Nasdaq Rule 9231(b)(1).

Current BX Rule 9522

The Exchange proposes to apply and incorporate by reference Nasdaq Rule 9522 into current BX Rule 9522. This will amend the first sentence in Current BX Rule 9522(a)(1) by replacing the term ''Exchange's Regulation Department'' with the term ''Department of Member Regulation'' as currently provided in Nasdaq Rule 9522(a)(1). As previously indicated by the Exchange,[18] the FINRA Department of Member Regulation [19] currently performs the functions described in Current BX Rule 9522. Therefore applying the Nasdaq rule and incorporating it by reference into BX Rule 9522 provides clarity to the rule text and aligns it with Nasdaq and Phlx's rules.

2. Statutory Basis

Rule Relocation

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by bringing greater transparency to its rules by relocating its Rules into the new Rulebook shell together with other rules which have already been relocated. The Exchange's proposal is consistent with the Act and will protect investors and the public interest by harmonizing its rules, where applicable, across Nasdaq markets so that members can readily locate rules which cover similar topics. The relocation and harmonization of the Disciplinary Rules is part of the Exchange's continued effort to promote efficiency and conformity of its processes with those of its Affiliated Exchanges. The Exchange believes that the placement of these Disciplinary Rules into their new location in the

Rulebook shell. *See* Securities Exchange Act Release No. 84326 (October 1, 2018), 83 FR 50414 (October 1, 2018) (SR–BX–2018–046).

[10] *Id.*

[11] *See supra* note 8.

[12] *See* Securities Exchange Act Release No. 84354 (October 3, 2018), 83 FR 50723 (October 9, 2018) (SR–BX–2018–042).

[13] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 12, 2008) (SR–NASDAQ–2007–004).

[14] *See supra* note 9.

[15] *Id.*

[16] *See* Securities Exchange Act Release No. 87468 (November 5, 2019), 84 FR 61091 (November 12, 2019) (SR–BX–2019–039).

[17] *See* Securities Exchange Act Release No. 84476 (October 24, 2018), 83 FR 54630 (October 30, 2018) (SR–BX–2018–048).

[18] *See* Securities Exchange Act Release No. 84354 (October 3, 2018), 83 FR 50724 (October 9, 2018) (SR–BX–2018–042).

[19] As defined in BX 9120(g).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

shell will facilitate the use of the Rulebook by members, associated persons, and other persons subject to the Exchange's jurisdiction. Specifically, the Exchange believes that market participants that are members of more than one Nasdaq market will benefit from the ability to compare Rulebooks.

The Exchange is not substantively amending rule text unless noted otherwise within this proposal. The Exchange's Affiliated Exchanges have already completed or are in the process of completing the relocation of corresponding disciplinary rules into the same location of their rulebooks for ease of reference.[22] The Exchange believes its proposal will benefit investors and the general public by increasing the transparency of its Rulebook and promoting easy comparisons among the various Nasdaq Rulebooks.

Incorporation by Reference

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Section 6(b)(5) of the Act,[24] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by consolidating its rules into a single rule set. The Exchange's Affiliated Exchanges have filed similar proposed rule changes to amend and relocate their disciplinary rules[25] so that the Nasdaq 8000 Series and 9000 Series Rules, which govern the investigative and disciplinary processes, are similarly consolidated and incorporated by reference.

Replacing the Current BX Series 8000 (to be relocated under General 5, Section 1) and 9000 (to be relocated under General 5, Section 2) Rules with introductory paragraphs to each that incorporate by reference Nasdaq Series 8000 and 9000 Rules, respectively, will provide an easy reference for members, associated persons, and other persons subject to the Exchange's jurisdiction seeking to understand and follow the investigative and disciplinary processes across all of Nasdaq's Exchanges. As noted, the Exchange's Affiliated Exchanges have filed similar proposed rule changes to amend and relocate their disciplinary rules to incorporate by reference the Nasdaq rules so that the Nasdaq Series 8000 and 9000 Rules are the source document for all of the Nasdaq Exchanges' investigative and disciplinary processes. The Exchange notes that the substance of the current rules is not changing. The Exchange desires to conform its rules to give its members and the members of its Affiliated Exchanges the ability to quickly locate rules in one central location.

The Exchange also believes that the proposal is consistent with Section 6(b)(6) of the Act,[26] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted above, the Exchange proposes to include introductory paragraphs to each of BX's Disciplinary Rules (to be relocated, respectively, under General 5, Sections 1 and 2) that list instances in which cross references in the Nasdaq Series 8000 and 9000 Rules to other Nasdaq rules should be read to refer instead to the Exchange Rules and references to Nasdaq terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. This is consistent with the Act because it minimizes confusion and ensures the proper application of the Nasdaq Rules to BX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that this rule change does not impose an undue burden on competition because the Exchange is merely incorporating the Nasdaq Series 8000 and 9000 Rules, which are substantially similar to BX's Disciplinary Rules (to be relocated, respectively, under General 5, Sections 1 and 2). Those rules will now apply to BX members, associated persons, and other persons subject to the Exchange's jurisdiction. To the extent that there are differences between the two rule sets, the Exchange notes those differences in introductory paragraphs to each of BX's Disciplinary Rules (to be relocated, respectively, under General 5, Sections 1 and 2). As noted above, the proposed introductory paragraphs list instances in which cross references in Nasdaq Series 8000 and 9000 Rules to other Nasdaq rules shall be read to refer instead to the Exchange Rules, and references to Nasdaq terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. Because Nasdaq Current Series 8000 and 9000 Rules are substantially similar to BX's Disciplinary Rules (General 5, Sections 1 and 2, respectively), and because the introductory paragraphs ensure that any differences are preserved, the proposed changes do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Finally, the Exchange believes that the proposed amendments do not impose an undue burden on competition because the amendments to relocate the Rules are non-substantive. This rule change is intended to bring greater clarity to the Exchange's Rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[27] and Rule 19b–4(f)(6) thereunder.[28]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[22] *See* Securities Exchange Act Release No. 86138 (July 18, 2019), 84 FR 29567 (July 24, 2019) (SR–ISE–2019–17); Securities Exchange Act Release No. 86346 (July 10, 2019), 84 FR 33999 (July 16, 2019) (SR–GEMX–2019–08); and Securities Exchange Act Release No. 86424 (July 12, 2019), 84 FR 36134 (July 26, 2019) (SR–MRX–2019–15); and Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098). Similarly, Phlx recently submitted a proposal to relocate its disciplinary rules. *See* Securities Exchange Act Release No. 88519 (March 31, 2020), 85 FR 19203 (April 6, 2020) (SR–Phlx–2020–09).

[23] *See supra* note 20.

[24] *See supra* note 21.

[25] *See supra* note 22.

[26] 15 U.S.C. 78f(b)(6).

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2020–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2020–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2020–009 and should be submitted on or before June 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11645 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88948; File No. 4–566]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., Investors' Exchange LLC, and Long-Term Stock Exchange, Inc. Relating to the Surveillance, Investigation, and Enforcement of Insider Trading Rules

May 26, 2020.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility (''Plan'') filed on May 19, 2020, pursuant to Rule 17d–2 of the Act,[2] by Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BYX''), NYSE Chicago, Inc. (''CHX''), Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), MEMX LLC (''MEMX''), Nasdaq BX, Inc. (''BX''), Nasdaq PHLX LLC (''PHLX''), The Nasdaq Stock Market LLC (''Nasdaq''), NYSE National, Inc. (''NYSE National''), New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), Investors' Exchange LLC (''IEX'') and Long-Term Stock Exchange, Inc. (''LTSE'') (collectively, ''Participating Organizations'' or ''Parties'').

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 12, 2008, the Commission declared effective the Participating Organizations' Plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[11] The Plan is designed to eliminate regulatory duplication by allocating regulatory responsibility over Common FINRA Members [12] (collectively ''Common Members'') for the surveillance, investigation, and enforcement of common insider trading rules (''Common Rules'').[13] The Plan assigns regulatory responsibility over Common FINRA Members to FINRA for surveillance, investigation, and enforcement of insider trading by broker-dealers, and their associated persons, with respect to Listed Stocks (as defined in the Plan), irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur.

III. Proposed Amendment to the Plan

On May 19, 2020, the Parties submitted a proposed amendment to the Plan. The proposed amendment was submitted to add MEMX as a Participant to the Plan. The text of the proposed amended 17d–2 plan is as follows (additions are *italicized;* deletions are [bracketed]):

* * * * *

Agreement for the Allocation of Regulatory Responsibility of Surveillance, Investigation and Enforcement for Insider Trading Pursuant to § 17(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78q (d), and Rule 17d–2 Thereunder

This agreement (the ''Agreement'') by and among Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BYX''), NYSE Chicago, Inc. (''CHX''), Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), *MEMX LLC (''MEMX''),* Nasdaq BX, Inc. (''BX''), Nasdaq PHLX LLC (''PHLX''), The Nasdaq Stock Market LLC (''Nasdaq''), NYSE National, Inc. (''NYSE National''), New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), Investors' Exchange LLC (''IEX'') and Long-Term Stock Exchange, Inc. *(''LTSE'')* (each a ''Participating Organization'' and together, the ''Participating Organizations''), is made pursuant to § 17(d) of the Securities Exchange Act of 1934 (the ''Act''), 15 U.S.C. 78q(d), and Securities and Exchange Commission (''SEC'') Rule 17d–2, which allow for plans to allocate regulatory responsibility among self-regulatory organizations (''SROs''). Upon approval by the SEC, this Agreement shall amend and restate the agreement among the Participating Organizations approved by the SEC on [October 10, 2018]*August 1, 2019.*

Whereas, the Participating Organizations desire to: (a) Foster cooperation and coordination among the SROs; (b) remove impediments to, and foster the development of, a national market system; (c) strive to protect the interest of investors; and (d) eliminate duplication in their regulatory surveillance, investigation and enforcement of insider trading;

Whereas, the Participating Organizations are interested in allocating to FINRA regulatory responsibility for Common FINRA Members (as defined below) for surveillance, investigation and enforcement of Insider Trading (as defined below) in NMS Stocks (as defined below) irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur in violation of Common Insider Trading Rules (as defined below);

Whereas, the Participating Organizations will request regulatory allocation of these regulatory responsibilities by executing and filing with the SEC a plan for the above stated purposes (this Agreement, also known herein as the ''Plan'') pursuant to the provisions of § 17(d) of the Act, and SEC Rule 17d–2 thereunder, as described below; and

Whereas, the Participating Organizations will also enter into a Regulatory Services Agreement (the ''Insider Trading RSA''), of even date herewith, to provide for the investigation and enforcement of suspected Insider Trading against broker-dealers, and their associated persons, that are not Common FINRA Members in the case of Insider Trading in NMS Stocks..

Now, Therefore, in consideration of the mutual covenants contained hereafter, and other valuable consideration to be mutually exchanged, the Participating Organizations hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement, or the context otherwise requires, the terms used in this Agreement will have the same meaning they have under the Act, and the rules and regulations thereunder. As used in this Agreement, the following terms will have the following meanings:

a. ''Rule'' of an ''exchange'' or an ''association'' shall have the meaning defined in Section 3(a)(27) of the Act.

b. ''Common FINRA Members'' shall mean members of FINRA and at least one of the Participating Organizations.

c. ''Common Insider Trading Rules'' shall mean (i) the federal securities laws and rules thereunder promulgated by the SEC pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading, as provided on Exhibit A to this Agreement.

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008). *See also* Securities Exchange Act Release Nos. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008); 61919 (April 15, 2010), 75 FR 21051 (April 22, 2010); 63103 (October 14, 2010), 75 FR 64755 (October 20, 2010); 63750 (January 21, 2011), 76 FR 4948 (January 27, 2011); 65991 (December 16, 2011), 76 FR 79714 (December 22, 2011); 78473 (August 3, 2016), 81 FR 52722 (August 9, 2016); 84392 (October 10, 2018), 83 FR 52243 (October 16, 2018); and 86542 (August 1, 2019), 84 FR 38679 (August 7, 2019).

[12] Common FINRA Members include members of FINRA and at least one of the Participating Organizations.

[13] Common rules are defined as: (i) Federal securities laws and rules promulgated by the Commission pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading. *See* Exhibit A to the Plan.

d. ''Effective Date'' shall have the meaning set forth in paragraph 27.

e. ''Insider Trading'' shall mean any conduct or action taken by a natural person or entity related in any way to the trading of securities by an insider or a related party based on or on the basis of material non-public information obtained during the performance of the insider's duties at the corporation, or otherwise misappropriated, that could be deemed a violation of the Common Insider Trading Rules.

f. ''Intellectual Property'' will mean any: (1) Processes, methodologies, procedures, or technology, whether or not patentable; (2) trademarks, copyrights, literary works or other works of authorship, service marks and trade secrets; or (3) software, systems, machine-readable texts and files and related documentation.

g. ''Plan'' shall mean this Agreement, which is submitted as a Plan for the allocation of regulatory responsibilities of surveillance for insider trading pursuant to § 17(d) of the Act, 15 U.S.C. 78q(d), and SEC Rule 17d–2.

h. ''NMS Stock(s)'' shall have the meaning set forth in Rule 600(b)(47) of SEC Regulation NMS.

i. ''Listing Market'' shall mean an exchange that lists NMS [s]*S*tocks.

2. *Assumption of Regulatory Responsibilities.* On the Effective Date of the Plan, FINRA will assume regulatory responsibilities for surveillance, investigation and enforcement of Insider Trading by broker-dealers, and their associated persons, for Common FINRA Members with respect to NMS Stocks, irrespective of the marketplace(s) maintained by the Participant Organizations on which the relevant trading may occur in violation of the Common Insider Trading Rules (''Regulatory Responsibilities'').

3. *Certification of Insider Trading Rules.*

a. *Initial Certification.* By signing this Agreement, the Participating Organizations, other than FINRA, hereby certify to FINRA that their respective lists of Common Insider Trading Rules contained in Exhibit A hereto are correct, and FINRA hereby confirms that such rules are Common Insider Trading Rules as defined in this Agreement.

b. *Yearly Certification.* Each year following the commencement of operation of this Agreement, or more frequently if required by changes in the rules of the Participating Organizations, each Participating Organization shall submit a certified and updated list of Common Insider Trading Rules to FINRA for review, which shall (i) add Participating Organization rules not included in the then-current list of Common Insider Trading Rules that qualify as Common Insider Trading Rules as defined in this Agreement; (ii) delete Participating Organization rules included in the current list of Common Insider Trading Rules that no longer qualify as Common Insider Trading Rules as defined in this Agreement; and (iii) confirm that the remaining rules on the current list of Common Insider Trading Rules continue to be Participating Organization rules that qualify as Common Insider Trading Rules as defined in this Agreement. FINRA shall review each Participating Organization's annual certification and confirm whether FINRA agrees with the submitted certified and updated list of Common Insider Trading Rules by each of the Participating Organizations.

4. *No Retention of Regulatory Responsibility.* The Participating Organizations do not contemplate the retention of any responsibilities with respect to the regulatory activities being assumed by FINRA under the terms of this Agreement.

5. *Fees.* FINRA shall charge Participating Organizations for performing the Regulatory Responsibilities, as set forth in the Schedule of Fees, attached as Exhibit B.

6. *Applicability of Certain Laws, Rules, Regulations or Orders.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule, or order is inconsistent with one or more provisions of this Agreement, the statute, rule, or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

7. *Exchange Committee; Reports.*

a. *Exchange Committee.* The Participating Organizations shall form a committee (the ''Exchange Committee''), which shall act on behalf of all of Participating Organizations in receiving copies of the reports described below and in reviewing issues that arise under this Agreement. Each Participating Organization shall appoint a representative to the Exchange Committee. The Exchange Committee representatives shall report to their respective executive management bodies regarding status or issues under this Agreement. The Participating Organizations agree that the Exchange Committee will meet regularly up to four (4) times a year, with no more than one meeting per calendar quarter. At these meetings, the Exchange Committee will discuss the conduct of the Regulatory Responsibilities and identify issues or concerns with respect to this Agreement, including matters related to the calculation of the cost formula and accuracy of fees charged and provision of information related to the same. The SEC shall be permitted to attend the meetings as an observer.

b. *Reports.* FINRA shall provide the reports set forth in Exhibit C hereto and any additional reports related to this Agreement reasonably requested by a majority vote of all representatives to the Exchange Committee at each Exchange Committee meeting, or more often as the Participating Organizations deem appropriate, but no more often than once every quarterly billing period.

8. *Customer Complaints.* If a Participating Organization receives a copy of a customer complaint relating to Insider Trading or other activity or conduct that is within FINRA's Regulatory Responsibilities as set forth in this Agreement, the Participating Organization shall promptly forward to FINRA, as applicable, a copy of such customer complaint.

9. *Parties to Make Personnel Available as Witnesses.* Each Participating Organization shall make its personnel available to FINRA to serve as testimonial or non-testimonial witnesses as necessary to assist FINRA in fulfilling the Regulatory Responsibilities allocated under this Agreement. FINRA shall provide reasonable advance notice when practicable and shall work with a Participating Organization to accommodate reasonable scheduling conflicts within the context and demands as the entity with ultimate regulatory responsibility. The Participating Organization shall pay all reasonable travel and other expenses incurred by its employees to the extent that FINRA requires such employees to serve as witnesses, and provide information or other assistance pursuant to this Agreement.

10. *Market Data; Sharing of Work-Papers, Data and Related Information.*

a. *Market Data.* FINRA shall obtain raw market data necessary to the performance of regulation under this Agreement from (a) the Consolidated Tape Association (''CTA'') and (b) the NASDAQ Unlisted Trading Privileges Plan.

b. *Sharing.* A Participating Organization shall make available to FINRA information necessary to assist FINRA in fulfilling the Regulatory Responsibilities assumed under the terms of this Agreement. Such information shall include *any* information collected by a Participating Organization in the course of performing its regulatory obligations under the Act, including information

relating to an on-going disciplinary investigation or action against a member, the amount of a fine imposed on a member, financial information, or information regarding proprietary trading systems gained in the course of examining a member (''Regulatory Information''). This Regulatory Information shall be used by FINRA solely for the purposes of fulfilling its Regulatory Responsibilities.

c. *No Waiver of Privilege.* The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

d. *Intellectual Property.*

(i) *Existing Intellectual Property.* FINRA is and will remain the owner of all right, title and interest in and to the proprietary Intellectual Property it employs in the provision of regulation hereunder (including the SONAR system), and any derivative works thereof. To the extent certain elements of FINRA's systems, or portions thereof, may be licensed or leased from third parties, all such third party elements shall remain the property of such third parties, as applicable. Likewise, any other Participating Organization is and will remain the owner of all right, title and interest in and to its own existing proprietary Intellectual Property.

(ii) *Enhancements to Existing Intellectual Property or New Developments.* In the event FINRA (a) makes any changes, modifications or enhancements to its Intellectual Property for any reason, or (b) creates any newly developed Intellectual Property for any reason, including as a result of requested enhancements or new development by the Exchange Committee (collectively, the ''New IP''), the Participating Organizations acknowledge and agree that FINRA shall be deemed the owner of the New IP created by it (and any derivative works thereof), and shall retain all right, title and interest therein and thereto, and each other Participating Organization hereby irrevocably assigns, transfers and conveys to FINRA without further consideration all of its right, title and interest in or to all such New IP (and any derivative works thereof).

(iii) *Fees for New IP.* FINRA will not charge the Participating Organizations any fees for any New IP created and used by FINRA; provided, however, that FINRA will be permitted to charge fees for software maintenance work performed on systems used in the discharge of its duties hereunder.

11. *Special or Cause Examinations.* Nothing in this Agreement shall restrict or in any way encumber the right of a party to conduct special or cause examinations of Common FINRA Members as any party, in its sole discretion, shall deem appropriate or necessary.

12. *Dispute Resolution Under this Agreement.*

a. *Negotiation.* The parties to this Agreement will attempt to resolve any disputes through good faith negotiation and discussion, escalating such discussion up through the appropriate management levels until reaching the executive management level. In the event a dispute cannot be settled through these means, the parties shall refer the dispute to binding arbitration.

b. *Binding Arbitration.* All claims, disputes, controversies, and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof that cannot be resolved by the parties will be resolved through binding arbitration. Unless otherwise agreed by the parties, a dispute submitted to binding arbitration pursuant to this paragraph shall be resolved using the following procedures:

(i) The arbitration shall be conducted in the city of New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; and

(ii) There shall be three arbitrators, and the chairperson of the arbitration panel shall be an attorney.

13. *Limitation of Liability.* As between the Participating Organizations, no Participating Organization, including its respective directors, governors, officers, employees and agents, will be liable to any other Participating Organization, or its directors, governors, officers, employees and agents, for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except (a) as otherwise provided for under the Act, (b) in instances of a Participating Organization's gross negligence, willful misconduct or reckless disregard with respect to another Participating Organization, (c) in instances of a breach of confidentiality obligations owed to another Participating Organization, or (d) in the case of any Participating Organization paying fees hereunder, for any payments due. The Participating Organizations understand and agree that the Regulatory Responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by any Participating Organization to any other Participating Organization with respect to any of the responsibilities to be performed hereunder. This paragraph is not intended to create liability of any Participating Organization to any third party.

14. *SEC Approval.*

a. The parties agree to file promptly this Agreement with the SEC for its review and approval. FINRA shall file this Agreement on behalf, and with the explicit consent, of all Participating Organizations.

b. If approved by the SEC, the Participating Organizations will notify their members of the general terms of this Agreement and of its impact on their members.

15. *Subsequent Parties; Limited Relationship.* This Agreement shall inure to the benefit of and shall be binding upon the Participating Organizations hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended or shall: (a) Confer on any person other than the Participating Organizations hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (b) constitute the Participating Organizations hereto partners or participants in a joint venture, or (c) appoint one Participating Organization the agent of the other.

16. *Assignment.* No Participating Organization may assign this Agreement without the prior written consent of all the other Participating Organizations, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that any Participating Organization may assign this Agreement to a corporation controlling, controlled by or under common control with the Participating Organization without the prior written consent of any other party.

17. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

18. *Termination.*

a. Any Participating Organization may cancel its participation in this Agreement at any time, provided that it has given 180 days written notice to the other Participating Organizations (or in

the case of a change of control in ownership of a Participating Organization, such other notice time period as that Participating Organization may choose), and provided that such termination has been approved by the SEC. The cancellation of its participation in this Agreement by any Participating Organization shall not terminate this Agreement as to the remaining Participating Organizations.

b. The Regulatory Responsibilities assumed under this Agreement by FINRA may be terminated by FINRA against any Participating Organization as follows. The Participating Organization will have thirty (30) days from receipt to satisfy the invoice. If the Participating Organization fails to satisfy the invoice within thirty (30) days of receipt (''Default''), FINRA will notify the Participating Organization of the Default. The Participating Organization will have thirty (30) days from receipt of the Default notice to satisfy the invoice.

c. FINRA will have the right to terminate the Regulatory Responsibilities assumed under this Agreement if a Participating Organization has Defaulted in its obligation to pay the invoice on more than three (3) occasions in any rolling twenty-four (24) month period.

19. *Intermarket Surveillance Group (''ISG'').* In order to participate in this Agreement, all Participating Organizations to this Agreement must be members of the ISG.

20. *General.* The Participating Organizations agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

21. *Liaison and Notices.* All questions regarding the implementation of this Agreement shall be directed to the persons identified below, as applicable. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

For Cboe BZX Exchange, Inc.: Greg Hoogasian, Chief Regulatory Officer, Cboe BZX Exchange, Inc., 400 S LaSalle Street, Chicago, IL 60605, Telephone: (312) 786–7844, Facsimilie: (312) 786–7982, Email: *ghoogasian@cboe.com*

For Cboe BYX Exchange, Inc.: Greg Hoogasian, Chief Regulatory Officer, Cboe BZX Exchange, Inc., 400 S LaSalle Street, Chicago, IL 60605, Telephone: (312) 786–7844, Facsimilie: (312) 786–7982, Email: *ghoogasian@cboe.com*

For NYSE Chicago, Inc.: Anthony Albanese, Chief Regulatory Officer, NYSE Group, Inc., 11 Wall Street, New York, NY 10005, Telephone: (212) 656–8297, Facsimile: (212) 656–2027, Email: *Anthony.Albanese@theice.com*

For Cboe EDGA Exchange, Inc.: Greg Hoogasian, Chief Regulatory Officer, Cboe BZX Exchange, Inc., 400 S LaSalle Street, Chicago, IL 60605, Telephone: (312) 786–7844, Facsimilie: (312) 786–7982, Email: *ghoogasian@cboe.com*

For Cboe EDGX Exchange, Inc.: Greg Hoogasian, Chief Regulatory Officer, Cboe BZX Exchange, Inc., 400 S LaSalle Street, Chicago, IL 60605, Telephone: (312) 786–7844, Facsimilie: (312) 786–7982, Email: *ghoogasian@cboe.com*

For Financial Industry Regulatory Authority, Inc.: [Cameron Funkhouser], [Executive Vice President,], Sam Draddy, Senior Vice President, Office of Fraud Detection and Market Intelligence, FINRA, 1735 K Street NW, Washington, DC 20006, Telephone: (240) 386-[5021]*5042*, Facsimile: (301) 407–4635, Email: *[Cameron.Funkhouser]Sam.Draddy@finra.org*

For MEMX LLC: Scott Palmer, Chief Regulatory Officer, MEMX LLC, 111 Town Square Place, Suite 520, Jersey City, NJ 07310, Telephone: (201) 596–6995, Facsimilie: (201) 331–7904, Email: *spalmer@memx.com*

For Nasdaq BX, Inc.: John A. Zecca, [Senior] Executive Vice President and Chief Legal and Regulatory Officer, The Nasdaq Stock Market LLC, [9600 Blackwell Road], 805 King Farm Boulevard, Rockville, MD 20850, Telephone: (301) 978–8498, Facsimile: (301) 978–8472, Email: *John.Zecca@nasdaq[omx].com*

For Nasdaq PHLX LLC: Joseph P. Cusick, Chief Regulatory Officer, Nasdaq PHLX LLC, [1900 Market Street], FMC Tower, Level 8, 2929 Walnut Street, Philadelphia, PA 1910[3]4, Telephone: (215) 496–1576, Facsimile: (215) 496–5104, Email: *jo[e]seph.cusick@nasdaq[omx].com*

For The Nasdaq Stock Market LLC: John A. Zecca, [Senior]Executive Vice President and Chief Legal and Regulatory Officer, The Nasdaq Stock Market LLC, [9600 Blackwell Road], 805 King Farm Boulevard, Rockville, MD 20850, Telephone: (301) 978–8498, Facsimile: (301) 978–8472, Email: *John.Zecca@nasdaq[omx].com*

For NYSE National, Inc.: Anthony Albanese, Chief Regulatory Officer, NYSE National, Inc., 11 Wall Street, New York, NY 10005, Telephone: (212) 656–8927, Facsimile: (212) 656–2027, Email: *Anthony.albanese@theice.com*

For New York Stock Exchange LLC: Anthony Albanese, Chief Regulatory Officer, NYSE, 11 Wall Street, New York, NY 10005, Telephone: (212) 656–8927, Facsimile: (212) 656–2027, Email: *Anthony.albanese@theice.com*

For NYSE American LLC: Anthony Albanese, Chief Regulatory Officer, NYSE American, 11 Wall Street, New York, NY 10005, Telephone: (212) 656–8927, Facsimile: (212) 656–2027, Email: *Anthony.albanese@theice.com*

For NYSE Arca, Inc.: Anthony Albanese, Chief Regulatory Officer, NYSE Arca, 11 Wall Street, New York, NY 10005, Telephone: (212) 656–8927, Facsimile: (212) 656–2027, Email: *Anthony.albanese@theice.com*

For Investors' Exchange LLC.: Claudia Crowley, Chief Regulatory Officer, IEX, [4]3 World Trade Center, 1[50]75 Greenwich Street, [44]58th Floor, New York, NY 10007, Telephone: (646) 343–2041, Facsimile: (646) 365–6862, Email: *Claudia.crowley@iextrading.com*

For Long-Term Stock Exchange, Inc.: [Howard Steinberg]Gary Goldsholle, [General Counsel and] Chief Regulatory Officer, LTSE, [300 Montgomery St., STE 790,], [San Francisco, CA 94104], 100 Greenwich St., Suite 11A, New York, NY 10006, Telephone: (202) [880–4022]580–5752, Email: [*howard]Gary@longtermstockexchange.com*

22. *Confidentiality.* The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations under this Agreement. No party shall assert regulatory or other privileges as against the other with respect to Regulatory Information that is required to be shared pursuant to this Agreement, as defined by paragraph 10, above.

23. *Regulatory Responsibility.* Pursuant to Section 17(d)(1)(A) of the Act, and Rule 17d–2 thereunder, the Participating Organizations jointly and severally request the SEC, upon its approval of this Agreement, to relieve the Participating Organizations, jointly and severally, of any and all responsibilities with respect to the matters allocated to FINRA pursuant to this Agreement for purposes of §§ 17(d) and 19(g) of the Act.

24. *Governing Law.* This Agreement shall be deemed to have been made in

the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the parties hereby consents to submit to the jurisdiction of the courts of the State of New York in connection with any action or proceeding relating to this Agreement.

25. *Survival of Provisions.* Provisions intended by their terms or context to survive and continue notwithstanding delivery of the regulatory services by FINRA, the payment of the Fees by the Participating Organizations, and any expiration of this Agreement shall survive and continue.

26. *Amendment.*

a. This Agreement may be amended to add a new Participating Organization, provided that such Participating Organization does not assume regulatory responsibility, solely by an amendment executed by FINRA and such new Participating Organization. All other Participating Organizations expressly consent to allow FINRA to add new Participating Organizations to this Agreement as provided above. FINRA will promptly notify all Participating Organizations of any such amendments to add a new Participating Organization.

b. All other amendments must be approved by each Participating Organization. All amendments, including adding a new Participating Organization, must be filed with and approved by the SEC before they become effective.

27. *Effective Date.* The Effective Date of this Agreement will be the date the SEC declares this Agreement to be effective pursuant to authority conferred by § 17(d) of the Act, and SEC Rule 17d–2 thereunder.

28. *Counterparts.* This Agreement may be executed in any number of counterparts, including facsimile, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the parties.

{*Remainder of Page Intentionally Left Blank.*}

In witness whereof, the parties hereto have each caused this Agreement for the Allocation of Regulatory Responsibility of Surveillance, Investigation and Enforcement for Insider Trading to be signed and delivered by its duly authorized representative.

Exhibit A: Common Insider Trading Rules

1. Securities Exchange Act of 1934 Section 10(b), and rules and regulations promulgated there under in connection with insider trading, including SEC Rule 10b–5 (as it pertains to insider trading), which states that:

Rule 10b–5—Employment of Manipulative and Deceptive Devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

a. To employ any device, scheme, or artifice to defraud,

b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

2. Securities Exchange Act of 1934 Section 17(a), and rules and regulations promulgated there under in connection with insider trading, including SEC Rule 17a–3 (as it pertains to insider trading).

3. The following SRO Rules as they pertain to violations of insider trading:

FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade)
FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)
FINRA Rule 3110 (Supervision)
FINRA Rule 4511 (General Requirements)
FINRA Rule 4512 (Customer Account Information)
MEMX Rule 3.1 (Business Conduct of Members)
MEMX Rule 3.2 (Violations Prohibited)
MEMX Rule 3.3 (Use of Fraudulent Devices)
MEMX Rule 4.1 (Requirements)
MEMX Rule 5.1 (Written Procedures)
MEMX Rule 5.3 (Records)
MEMX Rule 5.5 (Prevention of Misuse of Material, Nonpublic Information)
MEMX Rule 12.4 (Manipulative Transactions)
NYSE Rule 440 (Books and Records)
NYSE Rule 476(a) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Principal Executives, Approved Persons, Employees, or Others)
NYSE Rule 2010 (Standards of Commercial Honor and Principles of Trade)
NYSE Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)
NYSE Rule 3110 (Supervision)
NYSE American General and Floor Rule 3(j) (General Prohibitions and Duty to Report)
NYSE American Rule 2.24–E (ETP Books and Records)
NYSE American Rule 476(a) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Principal Executives, Approved Persons, Employees, or Others)
NYSE American Rule 2010 (Equities. Standards of Commercial Honor and Principles of Trade)
NYSE American Rule 2020 (Equities. Use of Manipulative, Deceptive or Other Fraudulent Devices)
NYSE American Rule 3110 (Equities. Supervision)
Nasdaq Rule [2010A]*General 9, Section 1(a)* (Standards of Commercial Honor and Principles of Trade)
Nasdaq Rule [2120]*General 9, Section 1(g)* (Use of Manipulative, Deceptive or Other Fraudulent Devices)
Nasdaq Rule [3010]*General 9, Section 20* (Supervision)
Nasdaq Rule [4511A]*General 9, Section 43* (General Requirements
Nasdaq Rule [4512A]*General 9, Section 45* (Customer Account Information)
CHX Article 8, Rule 3 (Fraudulent Acts)
CHX Article 9, Rule 2 (Just & Equitable Trade Principles)
CHX Article 11, Rule 2 (Maintenance of Books and Records)
CHX Article 6, Rule 5 (Supervision of Registered Persons and Branch and Resident Offices)
PHLX Rule [707]*Options 9, Section 1* (Conduct Inconsistent with Just and Equitable Principles of Trade)
PHLX Rule [748]*General 9, Section 20* (Supervision)
PHLX Rule [760]*Options 6E, Section 1* (Maintenance, Retention and Furnishing of Books, Records and Other Information)
PHLX Rule [761]*General 9, Section 21* (Supervisory Procedures Relating to ITSFEA and to Prevention of Misuse or Material Nonpublic Information)
PHLX Rule [782]*General 9, Section 1(b)* (Manipulative Operations)
NYSE Arca Rule 2.28 (Books and Records)
NYSE Arca Rule 5.1–E(a)(2)(v)(D) (General Provisions and Unlisted Trading Privileges)
NYSE Arca Rule 11.1 (Adherence to Law)
NYSE Arca Rule 11.2(b) (Prohibited Acts (J&E))
NYSE Arca Rule 11.3 (Prevention of the Misuse of Material, Nonpublic Information)
NYSE Arca Rule 11.18 (Supervision)
NYSE Arca Rule 9.1–E(c) (Office Supervision)

NYSE Arca Rule 9.2–E(b) (Account Supervision)
NYSE Arca Rule 9.2–E(c) (Customer Records)
NYSE Arca Rule 9.2010–E (Standards of Commercial Honor and Principles of Trade)
NYSE Arca Rule 9.2020–E (Use of Manipulative, Deceptive or Other Fraudulent Devices)
NYSE National Rule 5.1(a)(2)(D)(iv) (Unlisted Trading Privileges)
NYSE National Rule 11.3.1 (Business Conduct of ETP Holders)
NYSE National Rule 11.3.2 (Violations Prohibited)
NYSE National Rule 11.3.3 (Use of Fraudulent Devices)
NYSE National Rule 11.4.1 (Requirements)
NYSE National Rule 11.5.1 (Written Procedures)
NYSE National Rule 11.5.3 (Records)
NYSE National Rule 11.5.5 (Prevention of the Misuse of Material, Nonpublic Information)
NYSE National Rule 11.12.4 (Manipulative Transactions)
BX Rule [2110]*General 9, Section 1(a)* (Standards of Commercial Honor and Principles of Trade)
BX Rule [2120]*General 9, Section 1(i)* (Use of Manipulative, Deceptive or Other Fraudulent Devices)
BX Rule [3010]*General 9, Section 20* (Supervision)
BX Rule [3110 (a) and (c)]*General 9, Section 30(a) and (b)* (Books and Records; Financial Condition)
BZX Rule 3.1 (Business Conduct of Members)
BZX Rule 3.2 (Violations Prohibited)
BZX Rule 3.3 (Use of Fraudulent Devices)
BZX Rule 4.1 (Requirements)
BZX Rule 5.1 (Written Procedures)
BZX Rule 5.3 (Records)
BZX Rule 5.5 (Prevention of the Misuse of Material, Non-Public Information)
BZX Rule 12.4 (Manipulative Transactions)
BYX Rule 3.1 (Business Conduct of ETP Holders)
BYX Rule 3.2 (Violations Prohibited)
BYX Rule 3.3 (Use of Fraudulent Devices)
BYX Rule 4.1 (Requirements)
BYX Rule 5.1 (Written Procedures)
BYX Rule 5.3 (Records)
BYX Rule 5.5 (Prevention of the Misuse of Material, Non-Public Information)
BYX Rule 12.4 (Manipulative Transactions)
EDGA Rule 3.1 (Business Conduct of Members)
EDGA Rule 3.2 (Violations Prohibited)
EDGA Rule 3.3 (Use of Fraudulent Devices)
EDGA Rule 4.1 (Requirements)
EDGA Rule 5.1 (Written Procedures)
EDGA Rule 5.3 (Records)
EDGA Rule 5.5 (Prevention of Misuse of Material, Nonpublic Information)
EDGA Rule 12.4 (Manipulative Transactions)
EDGX Rule 3.1 (Business Conduct of Members)
EDGX Rule 3.2 (Violations Prohibited)
EDGX Rule 3.3 (Use of Fraudulent Devices)
EDGX Rule 4.1 (Requirements)
EDGX Rule 5.1 (Written Procedures)
EDGX Rule 5.3 (Records)
EDGX Rule 5.5 (Prevention of Misuse of Material, Nonpublic Information)
EDGX Rule 12.4 (Manipulative Transactions)
IEX Rule 3.110 (Business Conduct of Members)
IEX Rule 3.120 (Violations Prohibited)
IEX Rule 3.130 (Use of Fraudulent Devices)
IEX Rule 4.511 (General Requirements)
IEX Rule 4.512 (Customer Account Information)
IEX Rule 5.110 (Supervision)
IEX Rule 5.150 (Prevention of Misuse of Material, Non-Public Information)
IEX Rule 10.140 (Manipulative Transactions)
LTSE Rule 3.110 (Business Conduct of Members)
LTSE Rule 3.120 (Violations Prohibited)
LTSE Rule 3.130 (Use of Fraudulent Devices)
LTSE Rule 4.511 (General Requirements)
LTSE Rule 4.512 (Customer Account Information)
LTSE Rule 5.110 (Supervision)
LTSE Rule 5.150 (Prevention of Misuse of Material, Non-Public Information)
LTSE Rule 10.140 (Manipulative Transactions)

Exhibit B: Fee Schedule

1. *Fees.* FINRA shall charge each Participating Organization a Quarterly Fee in arrears for the performance of FINRA's Regulatory Responsibilities under the Plan (each, a ''Quarterly Fee,'' and together, the ''Fees'').

a. *Quarterly Fees.*

(1) Quarterly Fees for each Participating Organization will be charged by FINRA according to the Participating Organization's ''Percentage of Publicly Reported Trades'' occurring over three-month billing periods. The ''Percentage of Publicly Reported Trades'' shall equal a Participating Organization's total number of reported NMS Stock trades during the relevant period as specified in paragraph 1b. (the ''Numerator''), divided by the total number of all NMS Stock trades for the same period as specified in paragraph 1b.(the ''Denominator''). For purposes of clarification, ADF and Trade Reporting Facility (''TRF'') activity will be included in the Denominator. Additionally, with regard to TRFs, TRF trade volume will be charged to FINRA. Consequently, for purposes of calculating the Quarterly Fees, the volume for each Participant Organization's TRF will be calculated separately (that is, TRF volume will be broken out from the Participating Organization's overall Percentage of Publicly Reported Trades) and the fees for such will be billed to FINRA in accordance with paragraph 1a.(2), rather than to the applicable Participating Organization.

(2) The Quarterly Fees shall be determined by FINRA in the following manner for each Participating Organization:

(a) Less than 1.0%: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is less than 1.0%, the Quarterly Fee shall be $6,250, per quarter (''Static Fee'');

(b) Less than 2.0% but No Less than 1.0%: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is less than 2.0% but no less than 1.0%, the Quarterly Fee shall be $18,750, per quarter (''Static Fee'');

(c) 2.0% or Greater: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is 2.0% or greater, the Quarterly Fee shall be the amount equal to the Participating Organization's Percentage of Publicly Reported Trades multiplied by FINRA's total charge (''Total Charge'') for its performance of Regulatory Responsibilities for the relevant three-month billing period.

(3) Increases in Static Fees. FINRA will re-evaluate the Quarterly Fees on an annual basis during the annual budget process outlined in paragraph 1.c. below. During each annual re-evaluation, FINRA will have the discretion to increase the Static Fees by a percentage no greater than the percentage increase in the Final Budget over the preceding year's Final Budget. Any changes to the Static Fees shall not require an amendment to this Agreement, but rather shall be memorialized through the budget process.

(4) Increases in Total Charges. Any change in the Total Charges (whether a Final Budget increase or any mid year change) shall not require an amendment to this Agreement, but rather shall be memorialized through the budget process.

b. *Source of Data.* For purposes of calculation of the Percentage of Publicly Reported Trades for each Participating Organization, FINRA will use trades reported to the two SIPs (a) the Consolidated Tape Association (''CTA''), and (b) the Unlisted Trading Privileges Plan. In each case, FINRA will use the total trades as may be adjusted by the Participating Organization. Adjustments will include any separation or breakup of the number of trades as a result of reporting of bunched or bundled trades by a Participating Organization but will not include any adjustments resulting from single-priced opening, reopening or closing auction trades. Each Participating Organization that reports bunched or bundled trades will report to FINRA any adjustments to its total number of NMS Stock trades on the 15th of the month following the end of the quarter.

c. *Annual Budget Forecast.* FINRA will notify the Participating Organizations of the forecasted costs of its insider trading program for the following calendar year by close of business on October 15 of the then-current year (the ''Forecasted Budget''). FINRA shall use best efforts to provide as accurate a forecast as possible. FINRA shall then provide a final submission of the costs following approval of such costs by its Board of Governors (the ''Final Budget''). Subject to paragraph 1d. below, in the event of a difference between the Forecasted Budget and the Final Budget, the Final Budget will govern.

d. *Increases in Fees over Five Percent.*

(1) In the event that any proposed increase to Fees by FINRA for a given calendar year (which increase may arise either during the annual budgetary forecasting process or through any mid-year increase) will result in a cumulative increase in such calendar year's Fees of more than five percent (5%) above the preceding calendar year's Final Budget (a ''Major Increase''), then senior management of any Participating Organization (a) that is a Listing Market or (b) for which the Percentage of Publicly Reported Trades is then currently twenty percent (20%) or greater, shall have the right to call a meeting with the senior management of FINRA in order to discuss any disagreement over such proposed Major Increase. By way of example, if FINRA provides a Final Budget for 2011 that represents an 4% increase above the Final Budget for 2010, the terms of this paragraph 1.d.(1) shall not apply; if, however, in April of 2011, FINRA notifies the Exchange Committee of an increase in Fees that represents an additional 3% increase above the Final Budget for 2010, then the increase shall be deemed a Major Increase, and the terms of this paragraph 1.d.(1) shall become applicable (*i.e.,* 4% and 3% represents a cumulative increase of 7% above the 2010 Final Budget).

(2) In the event that senior management members of the involved parties are unable to reach an agreement regarding the proposed Major Increase, then the matter shall be referred back to the Exchange Committee for final resolution. Prior to the matter being referred back to the Exchange Committee, nothing shall prohibit the parties from conferring with the SEC. Resolution shall be reached through a vote of no fewer than all Participating Organizations seated on the Exchange Committee, and a simple majority shall be required in order to reject the proposed Major Increase.

e. *Time Tracking.* FINRA shall track the time spent by staff on insider trading responsibilities under this Agreement; however, time tracking will not be used to allocate costs.

2. *Invoicing and Payment.* FINRA shall invoice each Participating Organization for the Quarterly Fee associated with the regulatory activities performed pursuant to this Agreement during the previous three-month billing period within forty five (45) days of the end of such previous 3-month billing period. A Participating Organization shall have thirty (30) days from date of invoice to make payment to FINRA on such invoice. The invoice will reflect the Participating Organization's Percentage of Publicly Reported Trades for that billing period.

3. *Disputed Invoices; Interest.* In the event that a Participating Organization disputes an invoice or a portion of an invoice, the Participating Organization shall notify FINRA in writing of the disputed item(s) within fifteen (15) days of receipt of the invoice. In its notification to FINRA of the disputed invoice, the Participating Organization shall identify the disputed item(s) and provide a brief explanation of why the Participating Organization disputes the charges. FINRA may charge a Participating Organization interest on any undisputed invoice or the undisputed portions of a disputed invoice that a Participating Organization fails to pay within thirty (30) days of its receipt of such invoice. Such interest shall be assessed monthly. Interest will mean one and one half percent per month, or the maximum allowable under applicable law, whichever is less.

4. *Taxes.* In the event any governmental authority deems the regulatory activities allocated to FINRA to be taxable activities similar to the provision of services in a commercial context, the other Participating Organizations agree that they shall bear full responsibility, on a joint and several basis, for the payment of any such taxes levied on FINRA, or, if such taxes are paid by FINRA directly to the governmental authority, the other Participating Organizations agree that they shall reimburse FINRA for the amount of any such taxes paid.

5. *Audit Right; Record Keeping.*

a. *Audit Right.*

(i) Once every rolling twelve (12) month period, FINRA shall permit no more than one audit (to be performed by one or more Participating Organizations) of the Fees charged by FINRA to the Participating Organizations hereunder and a detailed cost analysis supporting such Fees (the ''Audit''). The Participating Organization or Organizations that conduct this Audit will select a nationally-recognized independent auditing firm (or may use its regular independent auditor, providing it is a nationally-recognized auditing firm) (''Auditing Firm'') to act on its, or their behalf, and will provide reasonable notice to other Participating Organizations of the Audit. FINRA will permit the Auditing Firm reasonable access during FINRA's normal business hours, with reasonable advance notice, to such financial records and supporting documentation as are necessary to permit review of the accuracy of the calculation of the Fees charged to the Participating Organizations. The Participating Organization, or Organizations, as applicable, other than FINRA, shall be responsible for the costs of performing any such audit.

(ii) If, through an Audit, the Exchange Committee determines that FINRA has inaccurately calculated the Fees for any Participating Organization, the Exchange Committee will promptly notify FINRA in writing of the amount of such difference in the Fees, and, if applicable, FINRA shall issue a reimbursement of the overage amount to the relevant Participating Organization(s), less any amount owed by the Participating Organization under any outstanding, undisputed invoice(s). If such an Audit reveals that any Participating Organization paid less than what was required pursuant to the Agreement, then that Participating Organization shall promptly pay FINRA the difference between what the Participating Organization owed pursuant to the Agreement and what that Participating Organization originally paid FINRA. If FINRA disputes the results of an Audit regarding the accuracy of the Fees, it

will submit the dispute for resolution pursuant to the dispute resolution procedures in paragraph 12 of the Agreement.

(iii) In the event that through the review of any supporting documentation provided during the Audit, any one or more Participating Organizations desire to discuss with FINRA the supporting documentation and any questions arising therefrom with regard to the manner in which regulation was conducted, the Participating Organization(s) shall call a meeting with FINRA. FINRA shall in turn notify the Exchange Committee of this meeting in advance, and all Participating Organizations shall be welcome to attend (the ''Fee Analysis Meeting''). The parties to this Agreement acknowledge and agree that while FINRA commits to discuss the supporting documentation at the Fee Analysis Meeting, FINRA shall not be subject, by virtue of the above Audit rights or any discussions during the Fee Analysis Meeting or otherwise, to any limitation whatsoever, other than the Increase in Fee provisions set forth in paragraph 1.d. of this Exhibit, on its discretion as to the manner and means by which it conducts its regulatory efforts in its role as the SRO primarily liable for regulatory decisions under this Agreement. To that end, no disagreement among the Participating Organizations as to the manner or means by which FINRA conducts its regulatory efforts hereunder shall be subject to the dispute resolution procedures hereunder, and no Participating Organization shall have the right to compel FINRA to alter the manner or means by which it conducts its regulatory efforts. Further, a Participating Organization shall not have the right to compel a rebate or reassessment of fees for services rendered, on the basis that the Participating Organization would have conducted regulatory efforts in a different manner than FINRA in its professional judgment chose to conduct its regulatory efforts.

b. *Record Keeping.* In anticipation of any audit that may be performed by the Exchange Committee under paragraph 5.a. above, FINRA shall keep accurate financial records and documentation relating to the Fees charged by it under this Agreement.

Exhibit C: Reports

FINRA shall provide the following information in reports to the Exchange Committee, which information covers activity occurring under this Agreement:

1. *Alert Summary Statistics:* Total number of surveillance system alerts generated by quarter along with associated number of reviews and investigations. In addition, this paragraph shall also reflect the number of reviews and investigations originated from a source other than an alert. A separate table would be presented for the trading activity of the NMS Stocks listed on each Participating Organization's exchange.

2008	Surveillance alerts	Investigations
1st Quarter		
2nd Quarter		
3rd Quarter		
4th Quarter		
2008 Total		

2. *Aging of Open Matters:* Would reflect the aging for all currently open matters for the quarterly period being reported. A separate table would be presented for the trading activity of the NMS Stocks listed on each Participating Organization's exchange.

Example:

	Surveillance alerts	Investigations
0–6 months		
6–9 months		
9–12 months		
12+ months		
Total		

3. *Timeliness of Completed Matters:* Would reflect the total age of those matters that were completed or closed during the quarterly period being reported. FINRA will provide total referrals to the SEC.

Example:

	Surveillance alerts	Investigations
0–6 months		
6–9 months		
9–12 months		

	Surveillance alerts	Investigations
12+ months		
Total		

4. *Disposition of Closed Matters:* Would reflect the disposition of those matters that were completed or closed during the quarterly period being reported. A separate table would be presented for the trading activity of the NMS Stocks listed on each Participating Organization's exchange.

Example:

	Surveillance YTD	Investigations YTD
No Further Review		
Letter of Caution/Admonition Fine		
Referred to Legal/Enforcement		
Referred to SEC/SRO		
Merged		
Other		
Total		

5. *Pending Reviews.* In addition to the above reports, the Chief Regulatory Officer (CRO) (or his or her designee) of any Participating Organization that is also a Listing Market may inquire about pending reviews involving stocks listed on that Participating Organization's market. FINRA will respond to such inquiries from a CRO; provided, however, that (a) the CRO must hold any information provided by FINRA in confidence and (b) FINRA will not be compelled to provide information in contradiction of any mandate, directive or order from the SEC, U.S. Attorney's Office, the Office of any State Attorney General or court of competent jurisdiction.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–566 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–566. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of the Participating Organizations. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–566 and should be submitted on or before June 22, 2020.

V. Discussion

The Commission finds that the Plan, as proposed to be amended, is consistent with the factors set forth in Section 17(d) of the Act [14] and Rule 17d–2 thereunder [15] in that it is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. The Commission continues to believe that the Plan, as amended, should reduce unnecessary regulatory duplication by allocating regulatory responsibility for the surveillance, investigation, and enforcement of Common Rules to FINRA. Accordingly, the proposed amendment to the Plan promotes efficiency by consolidating these regulatory functions in a single SRO.

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The amendment adds MEMX as a Participant to the Plan.[16] The Commission believes that the current amendment to the Plan does not raise any new regulatory issues that the Commission has not previously considered, and therefore believes that

[14] 15 U.S.C. 78q(d).

[15] 17 CFR 240.17d–2.

[16] The Commission notes that the most recent prior amendment to the Plan, which, among other things, added LTSE as a Party to the Plan, was published for comment and the Commission did not receive any comments thereon. *See supra* note 11.

the amended Plan should become effective without any undue delay.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4–566.

It is therefore ordered, pursuant to Section 17(d) of the Act,[17] that the Plan, as amended, filed with the Commission pursuant to Rule 17d–2 on May 19, 2020, is hereby approved and declared effective.

It is further ordered that the Participating Organizations are relieved of those regulatory responsibilities allocated to FINRA under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11656 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78q(d).

[18] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88947; File No. SR–NYSEAMER–2020–41]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 960NY to Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options

May 26, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 22, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 960NY to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the ''OLPP'') and add new Rule 960.1NY. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend Rule 960NY (Trading Differentials) to align the rule with the recently approved amendment to the OLPP.

Background

On January 23, 2007, the Commission approved on a limited basis a Penny Pilot in option classes in certain issues (''Penny Pilot''). The Penny Pilot was designed to determine whether investors would benefit from options being quoted in penny increments, and in which classes the benefits were most significant. The Penny Pilot was expanded and extended numerous times over the last 13 years.[4] In each instance, these approvals relied upon the consideration of data periodically provided by the Exchanges that analyzed how quoting options in penny increments affects spreads, liquidity, quote traffic, and volume. Today, the Penny Pilot includes 363 option classes, which are among the most actively traded, multiply listed option classes. The Penny Pilot is scheduled to expire by its own terms on June 30, 2020.[5]

In light of the imminent expiration of the Penny Pilot on June 30, 2020, the Exchange, together with other participating exchanges, filed, on July 18, 2019 a proposal to amend the OLPP.[6] On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the ''OLPP Program'').[7]

The OLPP Program replaces the Penny Pilot by instituting a permanent program that would permit quoting in penny increments for certain option classes. Under the terms of the OLPP Program, designated option classes would continue to be quoted in $0.01 and $0.05 increments according to the same parameters for the Penny Pilot. In addition, the OLPP Program would: (i) Establish an annual review process to add option classes to, or to remove option classes from, the OLPP Program; (ii) to allow an option class to be added to the OLPP Program if it is a newly listed option class and it meets certain criteria; (iii) to allow an option class to be added to the OLPP Program if it is an option class that has seen a significant growth in activity; (iv) to provide that if a corporate action involves one or more option classes in

[4] *See* Securities Exchange Act Release Nos. 55161 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR-Amex-2006–106); 6567 (September 27, 2007), 72 FR 56396 (October 7, 2007); 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009); 61106 (December 3, 2009), 74 FR 65193 (December 9, 2009); 63393 (November 30, 2010), 75 FR 75715 (December 6, 2010) (SR–NYSEAmex-2010–107); 65978 (December 15, 2011), 76 FR 79246 (December 21, 2011) (SR–NYSEAmex-2011–107); 68427 (December 13, 2012), 77 FR 75227 (December 19, 2012) (SR–NYSEMKT–2012–75); 67321 (June 29, 2012), 77 FR 39761 (July 5, 2012) (SR–NYSEMKT–2012–12); 61106 (December 3, 2009), 74 FR 65193 (December 9, 2009) (SR–NYSEAmex-2009–74); 69105 (March 11, 2013), 78 FR 16554 (March 15, 2013) (SR–NYSEMKT–2013–17); 69791 (June 18, 2013), 78 FR 37860 (June 24, 2013) (SR–NYSEMKT–2013–48); 71163 (December 20, 2013), 78 FR 79049 (December 27, 2013) (SR–NYSEMKT–2013–104); 72190 (May 20, 2014), 79 FR 30215 (May 27, 2014) (SR–NYSEMKT–2014–47); 73778 (December 8, 2014), 79 FR 73922 (December 12, 2014) (SR–NYSEMKT–2014–99); 75281 (June 24, 2015), 80 FR 37338 (June 30, 2015) (SR–NYSEMKT–2015–43); 78176 (June 28, 2016) 81 FR 43340 (July 1, 2016). (SR–NYSEMKT–2016–61); 80989 (June 21, 2017), 82 FR 29130 (June 27, 2017) (SR–NYSEMKT–2017–36); 79525 (December 12, 2016), 81 FR 91230 (December 16, 2016) (SR–NYSEMKT–2016 111); 83507 (June 25, 2018), 83 FR 30808 (June 29, 2018) (SR–NYSEAMER–2018–33); 84871 (December 19, 2018) 83 FR 66789 (December 27, 2018) (SR- NYSE AMER–2018–57); and 86061 (June 7, 2019) 84 FR 27665 (June 13, 2019) (SR–NYSEAMER–2019–22).

[5] *See* Securities and Exchange Act Release No. 87633 (November 26, 2019), 84 FR 66251 (December 3, 2019) (NYSEAmex-2019–51).

[6] *See* Securities Exchange Act Release No. 87681 (December 9, 2019), 84 FR 68960 (December 17, 2019) (''Notice'').

[7] *See* Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4–443) (''Approval Order'').

the OLPP Program, all adjusted and unadjusted series and classes emerging as a result of the corporate action will be included in the OLPP Program; and (v) to provide that any series in an option class participating in the OLPP Program that have been delisted, or are identified by OCC as ineligible for opening Customer transactions, will continue to trade pursuant to the OLPP Program until they expire.

To conform its Rules to the OLPP Program, the Exchange proposes to delete Commentary .02 to Rule 960NY (the ''Penny Pilot Rule''), which will be ''Reserved,'' and replace it with new Rule 960.1NY (Requirements for Penny Interval Program), which is described below, and to replace references to ''Penny Pilot'' in the Exchange rules with ''Penny Interval Program.'' [8] The Exchange also proposes to delete the superfluous operational language in Commentary .01 regarding the process for modifying trading differential by rule filing because such requirement remains the case today, as the Exchange must submit proposed rule changes—including for Rule 960NY—to the Commission; the Exchange will hold this Commentary as Reserved.[9]

Penny Interval Program

The Exchange proposes to codify the OLPP Program in new Rule 960.1NY (Requirements for Penny Interval Program) (the ''Penny Program''), which will replace the Penny Pilot Rule and permanently permit the Exchange to quote certain option classes in minimum increments of one cents ($0.01) and five cents ($0.05) (''penny increments''). The penny increments that currently apply under the Penny Pilot will continue to apply for option classes included in the Penny Program. Specifically, (i) the minimum quoting increment for all series in the QQQ, SPY, and IWM would continue to be $0.01, regardless of price; [10] (ii) all series of an option class included in the Penny Program with a price of less than $3.00 would be quoted in $0.01 increments; and (iii) all series of an option class included in the Penny Program with a price of $3.00 or higher would be quoted in $0.05 increments.

The Penny Program would initially apply to the 363 most actively traded multiply listed option classes, based on National Cleared Volume at The Options Clearing Corporation (''OCC'') in the six full calendar months ending in the month of approval (*i.e.,* November 2019—April 2020) that currently quote in penny increments, or overlie securities priced below $200, or any index at an index level below $200. Eligibility for inclusion in the Penny Program will be determined at the close of trading on the monthly Expiration Friday of the second full month following April 1, 2020 (*i.e.,* June 19, 2020).

Once in the Penny Program, an option class will remain included until it is no longer among the 425 most actively traded option classes at the time the annual review is conducted (described below), at which point it will be removed from the Penny Program. As described in more detail below, the removed class will be replaced by the next most actively traded multiply listed option class overlying securities priced below $200 per share, or any index at an index level below $200, and not yet in the Penny Program. Advanced notice regarding the option classes included, added, or removed from the Penny Program will be provided to the Exchange's membership via Trader Update and published by the Exchange on its website.

Annual Review

The Penny Program would include an annual review process that applies objective criteria to determine option classes to be added to, or removed from, the Penny Program. Specifically, on an annual basis beginning in December 2020 and occurring ever December thereafter, the Exchange will review and rank all multiply listed option classes based on National Cleared Volume at OCC for the six full calendar months from June 1st through November 30th for determination of the most actively traded option classes. Any option classes not yet in the Penny Program may be added to the Penny Program if the class is among the 300 most actively traded multiply listed option classes and priced below $200 per share or any index at an index level below $200.

Following the annual review, option classes to be added to the Penny Program would begin quoting in penny increments (*i.e.,* $0.01 if trading at less than $3; and $0.05 if trading at $3 and above) on the first trading day of January.[11] In addition, following the annual review, any option class in the Penny Program that falls outside of the 425 most actively traded option classes would be removed from the Penny Program. After the annual review, option classes that are removed from the Penny Program will be subject to the minimum trading increments set forth in Rule 960NY, effective on the first trading day of April.

Changes to the Composition of the Penny Program Outside of the Annual Review

Newly Listed Option Classes and Option Classes With Significant Growth in Activity

The Penny Program would specify a process and parameters for including option classes in the Program outside the annual review process in two circumstances. These provisions are designed to provide objective criteria to add to the Penny Program new option classes in issues with the most demonstrated trading interest from market participants and investors on an expedited basis prior to the annual review, with the benefit that market participants and investors will then be able to trade these new option classes based upon quotes expressed in finer trading increments.

First, the Penny Program provides for certain newly listed option classes to be added to the Penny Program outside of the annual review process, provided that (i) the class is among the 300 most actively traded, multiply listed option classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading; and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Such newly listed option classes added to the Penny Program pursuant to this process would remain in the Penny Program for one full calendar year and then would be subject to the annual review process.

Second, the Penny Program would allow an option class to be added to the Penny Program outside of the annual review process if it is an option class that meets certain specific criteria. Specifically, new option classes may be added to the Penny Program if: (i) the option class is among the 75 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in the prior six full calendar months of trading and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Any option class added under this provision will be added on the first trading day of the second full month after it qualifies and will remain in the Penny Program for

[8] This proposed rule change will become operative on July 1, 2020, upon expiration of the current Penny Pilot on June 30, 2020.

[9] *See* Commentary .01 to Rule 960NY (providing that ''[t]he Exchange may only change the trading differentials for option contracts traded on the Exchange by filing a rule change proposal with the SEC, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (effective upon filing)'').

[10] *See* Rule 960NY(a)(3)(A)–(C).

[11] *See id.* (providing that the minimum quoting increment for all series in the QQQ, SPY, and IWM would continue to be $0.01, regardless of price).

the rest of the calendar year, after which it will be subject to the annual review process.

Corporate Actions

The Penny Program would also specify a process to address option classes in the Penny Program that undergo a corporate action and is designed to ensure continuous liquidity in the affected option classes. Specifically, if a corporate action involves one or more option classes in the Penny Program, all adjusted and unadjusted series of an option class would continue to be included in the Penny Program.[12] Furthermore, neither the trading volume threshold, nor the initial price test would apply to option classes added to the Penny Program as a result of the corporate action. Finally, the newly added adjusted and unadjusted series of the option class would remain in the Penny Program for one full calendar year and then would become subject to the annual review process.

Delisted or Ineligible Option Classes

Finally, the Penny Program would provide a mechanism to address option classes that have been delisted or those that are no longer eligible for listing. Specifically, any series in an option class participating in the Penny Program in which the underlying has been delisted, or is identified by OCC as ineligible for opening customer transactions, would continue to quote pursuant to the terms of the Penny Program until all options series have expired.

Technical Changes

The Exchange proposes to replace reference to the Penny Pilot with reference to the Penny Interval Program in Rules 903, Commentary .14, 960NY(a), and 986NY(a) and Commentary .01 thereto. The Exchange believes these technical changes would add clarity, transparency and internal consistency to Exchange rules making them easier to navigate.

Implementation

This proposed rule change will become operative on July 1, 2020, upon expiration of the current Penny Pilot on June 30, 2020. The Exchange proposes to implement the Penny Program on July 1, 2020, which is the first trading day of the third month following the Approval Order issued on April 1, 2020—*i.e.,* July 1, 2020.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which conforms the Exchange rules to the recently adopted OLPP Program, allows the Exchange to provide market participants with a permanent Penny Program for quoting options in penny increments, which maximizes the benefit of quoting in a finer quoting increment to investors while minimizing the burden that a finer quoting increment places on quote traffic.

Accordingly, the Exchange believes that the proposal is consistent with the Act because, in conforming the Exchange rules to the OLPP Program, the Penny Program would employ processes, based upon objective criteria, that would rebalance the composition of the Penny Program, thereby helping to ensure that the most actively traded option classes are included in the Penny Program, which helps facilitate the maintenance of a fair and orderly market.

Technical Changes

The Exchange notes that the proposed change to Rules 903, 960NY and 968NY to replace references to the Penny Pilot with references to the Penny Interval Program would provide clarity and transparency to the Exchange rules and would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule changes would also provide internal consistency within Exchange rules and operate to protect investors and the investing public by making the Exchange rules easier to navigate and comprehend.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed Penny Program, which modifies the exchange's rules to align them with the Commission approved OLPP Program, is not designed to be a competitive filing nor does it impose an undue burden on intermarket competition as the Exchange anticipates that the options exchanges will adopt substantially identical rules. Moreover, the Exchange believes that by conforming Exchange rules to the OLPP Program, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. To the extent that there is a competitive burden on those option classes that do not qualify for the Penny Program, the Exchange believes that it is appropriate because the proposal should benefit all market participants and investors by maximizing the benefit of a finer quoting increment in those option classes with the most trading interest while minimizing the burden of greater quote traffic in option classes with less trading interest. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by all option exchanges that are participants in the OLPP, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative

[12] For example, if Company A acquires Company B and Company A is not in the Penny Program but Company B is in the Penny Program, once the merger is consummated and an options contract adjustment is effective, then Company A would be added to the Penny Program and remain in the Penny Program for one calendar year.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–41 and should be submitted on or before June 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11652 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(iii). Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange satisfied this requirement.

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88950; File No. SR–NYSE–2020–48]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To add Commentary .05 to Rule 7.35A

May 26, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 26, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .05 to Rule 7.35A to provide that, for a temporary period that begins May 26, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Exchange would (1) permit a DMM limited entry to the Trading Floor or (2) provide a DMM remote access to Floor-based systems, for the purpose of effecting a manual Trading Halt Auction for reopening a security following a regulatory halt issued under Section 2 of the Listed Company Manual. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Commentary .05 to Rule 7.35A to provide that, for a temporary period that begins May 26, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to Designated Market Makers (''DMM'') or after the Exchange closes on June 30, 2020, the Exchange would (1) permit a DMM limited entry to the Trading Floor or (2) provide a DMM remote access to Floor-based systems, for the purpose of effecting a manual Trading Halt Auction for reopening a security following a regulatory halt issued under Section 2 of the Listed Company Manual.

Background

On March 18, 2020, the CEO of the Exchange made a determination under

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.[4] On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.31(c) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers.[5]

The Trading Floor facilities have been reopened to DMMs for only limited circumstances, as described in Commentaries .02–.04 to Rule 7.35A. Commentary .02 to Rule 7.35A provides that:

For a temporary period that begins on March 26, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Exchange will permit a DMM limited entry to the Trading Floor to effect an IPO Auction manually.

Commentary .03 to Rule 7.35A provides that:

For a temporary period that begins on April 2, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Exchange will permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering.

Commentary .04 to Rule 7.35A provides that:

For a temporary period that begins on April 17, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Exchange will provide a DMM remote access to Floor-based systems for the sole purpose of effecting a manual (1) IPO Auction, or (2) Core Open Auction in connection with a listed company's post-IPO public offering.

The Exchange added these Commentaries because, while the Trading Floor is temporarily closed to DMMs, DMMs cannot engage in a manual IPO Auction or Core Open Auction for a post-IPO public offering and these Commentaries allow for such Auctions to be conducted manually by a DMM either on the Trading Floor or remotely.[6]

Proposed Rule Change

Rule 7.35A(c)(1)(E) provides that a DMM may not effect a Trading Halt Auction electronically if it is a reopening following a regulatory halt issued under Section 2 of the Listed Company Manual. Accordingly, during the temporary period while the Trading Floor is temporarily closed to DMMs, the Exchange has facilitated Trading Halt Auctions pursuant to Rule 7.35C to reopen trading in a security following a regulatory halt issued under Section 2 of the Listed Company Manual.

When the Exchange facilitates such a Trading Halt Auction, the Exchange determines an Auction Price based on the Indicative Match Price for a security, which is bound by Auction Collars.[7] The Auction Reference Price for determining the Auction Collars is the most recent consolidated last-sale eligible trade in a security on any market during Core Trading Hours, and if none, the Official Closing Price from the prior trading day for that security.[8] Accordingly, an Exchange-facilitated Auction will be conducted at a price that is no higher or lower than the greater of $0.15 or 5% away from that Auction Reference Price.[9]

As noted above, during the temporary period while the Trading Floor is closed, the Exchange has permitted limited reentry to the Trading Floor for the purposes of effecting an IPO Auction and a post-IPO public offering. The Exchange has also provided DMMs with remote access to NYSE trading systems that are located on the Trading Floor so that a DMM can manually effect such Auctions remotely. The Exchange proposes to provide DMMs with limited entry to the Trading Floor or remote access to NYSE trading systems so that a DMM may manually effect a Trading Halt Auction to reopen a security following a regulatory halt issued under Section 2 of the Listed Company Manual.

To effect this change, the Exchange proposes to add Commentary .05 to Rule 7.35A to provide that:

For a temporary period that begins May 26, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Exchange would (1) permit a DMM limited entry to the Trading Floor or (2) provide a DMM remote access to Floor-based systems, for the purpose of effecting a manual Trading Halt Auction for reopening a security following a regulatory halt issued under Section 2 of the Listed Company Manual.

The Exchange believes that providing DMMs with the ability to conduct such Trading Halt Auctions manually would promote fair and orderly reopening auctions following a regulatory halt because it would allow such reopenings to be facilitated at a price that is consistent with the buy and sell interest for such securities. As noted above, an Exchange-facilitated Trading Halt Auction is bound by Auction Collars that use an Auction Reference Price from before the regulatory halt. Accordingly, an Exchange-facilitated Auction would allow for 5% of price movement away from such reference price. To date, that has not been an issue as the Exchange has been able to facilitate Trading Halt Auctions to reopen a security following a regulatory halt issued under Section 2 of the Listed Company Manual at Auction Prices that have been consistent with the buy and sell interest of the security.

However, if there has been significant change in price in a security during the course of a regulatory halt, an Exchange-facilitated Auction, which would be bound by the Auction Collars, would be conducted at a price that is not consistent with the buy and sell interest in the security. This result could be obviated by enabling the DMMs to effect such Auctions manually, either on the Trading Floor or remotely, pursuant to Rule 7.35A.

If a DMM were to effect such Auctions manually pursuant to Rule 7.35A, the Auction Price would not be bound by Auction Collars and all better-priced orders on the side of the imbalance would be satisfied in the Auction.[10] In addition, if a DMM were to manually effect such Trading Halt Auctions, the

[4] The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110.*

[5] *See* Securities Exchange Act Release No. 88933 (May 22, 2020) (SR–NYSE–2020–47) (Notice of filing and immediate effectiveness of proposed rule change).

[6] *See* Securities Exchange Act Release Nos. 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR–NYSE–2020–23) (Notice of filing and immediate effectiveness of proposed rule change to add Commentary .02 to Rule 7.35A); 88546 (April 2, 2020) (SR–NYSE–2020–28), 85 FR 19782 (April 8, 2020) (Notice of filing and immediate effectiveness of proposed rule change to add Commentary .03 to Rule 7.35A); and 88705 (April 21, 2020), 85 FR 23413 (April 27, 2020) (SR–NYSE–2020–35) (Notice of filing and immediate effectiveness of proposed rule change to add Commentary .04).

[7] *See* Rule 7.35C(b)(2).

[8] Rule 7.35C(b)(1) provides that the Auction Reference Price for a Trading Halt Auction is the same as the Imbalance Reference Price determined under Rule 7.35A(e)(3). Pursuant to Rule 7.35A(e)(3), the Imbalance Reference Price for a Trading Halt Auction is the Consolidated Last Sale Price, unless a pre-opening indication has been published. Pursuant to Rule 7.35(a)(11)(A), the term ''Consolidated Last Sale Price'' means the most recent consolidated last-sale eligible trade in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

[9] *See* Rule 7.35C(b)(3)(A)(ii).

[10] *See* Rule 7.35A(g) (requiring the DMM to select an Auction Price at which all better-priced orders on the Side of the Imbalance can be satisfied).

DMM would publish pre-opening indications pursuant to Rule 7.35A(d), which would be in addition to the Auction Imbalance Information available for such Trading Halt Auctions.

During this temporary period while the Trading Floor has been closed due to precautionary measures to prevent the spread of COVID–19, DMMs are available to conduct such Trading Halt Auctions manually, either on the Trading Floor or remotely. Accordingly, this proposed rule change could be implemented immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Directly related to social-distancing measures to reduce the spread of COVID–19, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading. On May 26, 2020, the Trading Floor reopened on a limited basis to a subset of Floor brokers, but remains closed to DMMs except under limited circumstances specified in Commentary .02 and .03 to Rule 7.35A.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote fair and orderly Trading Halt Auctions in connection with the reopening of trading following a regulatory halt issued under Section 2 of the Listed Company Manual. The Exchange believes that it would promote fair and orderly markets to provide the DMM with mechanisms to facilitate such Trading Halt Auctions manually because it would allow such Auctions to be conducted consistent with the buy and sell interest in the security, and not be bound by Auction Collars based on an Auction Reference Price that may no longer reflect the price of the security to investors.

The Exchange believes that providing DMMs with the option to either come to the Trading Floor or use remote access to Floor-based trading systems to manually effect a Trading Halt Auction to reopen a security following a regulatory halt issued under Section 2 of the Listed Company Manual would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide flexibility to DMMs who may determine that travel to and entry to the Trading Floor would not be advisable or possible during this temporary period.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of a full reopening of the Trading Floor facilities to DMMs or the close of the Exchange on June 30, 2020, market participants will have advance notice that a Trading Halt Auction for a reopening following a regulatory halt issued under Section 2 of the Listed Company Manual may be effected manually by the DMM during this period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to ensure fair and orderly Trading Halt Auctions for reopening a security following a regulatory halt issued under Section 2 of the Listed Company Manual during a temporary period when the Exchange Trading Floor has been closed to DMMs in response to social-distancing measures designed to reduce the spread of the COVID–19 virus.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. In support of this request, the Exchange has represented that the proposal would provide the DMM with mechanisms to facilitate manually and to conduct Trading Halt Auctions consistent with the buy and sell interest in the security, and not be bound by Auction Collars based on an Auction Reference Price that may no longer reflect the price of the security to investors. Further, the Commission notes that the proposed rule change would only be in effect only during a temporary period. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[19] If the Commission takes such action, the

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(3)(C).

Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–48 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–48 and should be submitted on or before June 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11657 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88943; File No. SR–NYSEArca–2020–50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 6.72–O To Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options

May 26, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 22, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.72–O to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the ''OLPP'') and add new Rule 6.72A–O. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend Rule 6.72–O (Trading Differentials) to align the rule with the recently approved amendment to the OLPP.

Background

On January 23, 2007, the Commission approved on a limited basis a Penny Pilot in option classes in certain issues (''Penny Pilot''). The Penny Pilot was designed to determine whether investors would benefit from options being quoted in penny increments, and in which classes the benefits were most significant. The Penny Pilot was expanded and extended numerous times over the last 13 years.[4] In each instance, these approvals relied upon the consideration of data periodically provided by the Exchanges that analyzed how quoting options in penny

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 55156 (January 23, 2007) 72 FR 4759 (February 1, 2007) (NYSEArca–2006–73); 56150 (July 26, 2007) 72 FR 42460 (August 2, 2007) (NYSEArca–2007–56); 56568 (September 27, 2007) 72 FR 56422 (October 3, 2007) (NYSEArca–2007–88); 59628 (March 26, 2009) 74 FR 15025 (NYSEArca–2009–26); 60224 (July 1, 2009) 74 FR 32991 (July 9, 2009) (NYSEArca–2009–61); 60711 (September 23, 2009) 74 FR 49419 (September 28, 2009) (NYSEArca–2009–44); 61061 (November 24, 2009) 74 FR 62857 (December 1, 2009) (NYSEArca–2009–44); 63376 (November 24, 2010) 75 FR 75527 (December 3, 2010) (NYSEArca–2010–104); 65977 (December 15, 2011) 76 FR 79234 (NYSEArca–2011–93); 67307 (June 28, 2012), 77 FR 40110 (July 6, 2012) (NYSEArca–2012–65); 68426 (December 13, 2012) 77 FR 75224 (December 19, 2012) (NYSEArca–2012–135); 69106 (March 11, 2013) 78 FR 16552 (March 15, 2013) (NYSEArca–2013–22); 69790 (June 18, 2013) 78 FR 37853 (June 24, 2013) (NYSE Arca–2013–59); 71159 (December 20, 2013), 78 FR 71163 (December 27, 2013) (NYSEArca–2013–145); 72192 (May 20, 2014) 79 FR 30209 (May 27, 2014) (NYSE Arca–2014–60); 73777 (December 8, 2014) 79 FR 73913 (December 12, 2014) (NYSEArca–2014–136); 75280 (June 24, 2015) 80 FR 37331 (June 30, 2015) (NYSEArca–2015–51); 78174 (June 28, 2016) 81 FR 43332 (July 1, 2016) (NYSEArca–2016–88); 79524 (December 12, 2016) 81 FR 91220 (December 16, 2016) (NYSEArca–2016–156); 80988 (June 21, 2017) 82 FR 29128 (June 27, 2017) (NYSEArca–2017–68); 82366 (December 19, 2017) 82 FR 61052 (December 26, 2017) (NYSEArca–2017–141); 83512 (June 25, 2018) 83 FR 30793 (June 29, 2018) (NYSEArca–2018–49); 84873 (December 19, 2018) 83 FR 66798 (December 27, 2018) (NYSEArca–2018–96); 86062 (June 7, 2019) 84 FR 27669 (June 13, 2019) (NYSEArca–2019–41).

increments affects spreads, liquidity, quote traffic, and volume. Today, the Penny Pilot includes 363 option classes, which are among the most actively traded, multiply listed option classes. The Penny Pilot is scheduled to expire by its own terms on June 30, 2020.[5]

In light of the imminent expiration of the Penny Pilot on June 30, 2020, the Exchange, together with other participating exchanges, filed, on July 18, 2019 a proposal to amend the OLPP.[6] On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the ''OLPP Program'').[7]

The OLPP Program replaces the Penny Pilot by instituting a permanent program that would permit quoting in penny increments for certain option classes. Under the terms of the OLPP Program, designated option classes would continue to be quoted in $0.01 and $0.05 increments according to the same parameters for the Penny Pilot. In addition, the OLPP Program would: (i) Establish an annual review process to add option classes to, or to remove option classes from, the OLPP Program; (ii) to allow an option class to be added to the OLPP Program if it is a newly listed option class and it meets certain criteria; (iii) to allow an option class to be added to the OLPP Program if it is an option class that has seen a significant growth in activity; (iv) to provide that if a corporate action involves one or more option classes in the OLPP Program, all adjusted and unadjusted series and classes emerging as a result of the corporate action will be included in the OLPP Program; and (v) to provide that any series in an option class participating in the OLPP Program that have been delisted, or are identified by OCC as ineligible for opening Customer transactions, will continue to trade pursuant to the OLPP Program until they expire.

To conform its Rules to the OLPP Program, the Exchange proposes to delete Commentary .02 to Rule 6.72–O (the ''Penny Pilot Rule''), which will be ''Reserved,'' and replace it with new Rule 6.72A–O (Requirements for Penny Interval Program), which is described below, and to replace references to ''Penny Pilot'' in the Exchange rules with ''Penny Interval Program.''[8] The Exchange also proposes to delete the superfluous operational language in Commentary .01 regarding the process for modifying trading differentials by rule filing because such requirement remains the case today, as the Exchange must submit proposed rule changes—including for Rule 6.72–O—to the Commission; the Exchange will hold this Commentary as Reserved.[9]

Penny Interval Program

The Exchange proposes to codify the OLPP Program in new Rule 6.72A–O (Requirements for Penny Interval Program) (the ''Penny Program''), which will replace the Penny Pilot Rule and permanently permit the Exchange to quote certain option classes in minimum increments of one cents ($0.01) and five cents ($0.05) (''penny increments''). The penny increments that currently apply under the Penny Pilot will continue to apply for option classes included in the Penny Program. Specifically, (i) the minimum quoting increment for all series in the QQQ, SPY, and IWM would continue to be $0.01, regardless of price;[10] (ii) all series of an option class included in the Penny Program with a price of less than $3.00 would be quoted in $0.01 increments; and (iii) all series of an option class included in the Penny Program with a price of $3.00 or higher would be quoted in $0.05 increments.

The Penny Program would initially apply to the 363 most actively traded multiply listed option classes, based on National Cleared Volume at The Options Clearing Corporation (''OCC'') in the six full calendar months ending in the month of approval (*i.e.,* November 2019—April 2020) that currently quote in penny increments, or overlie securities priced below $200, or any index at an index level below $200. Eligibility for inclusion in the Penny Program will be determined at the close of trading on the monthly Expiration Friday of the second full month following April 1, 2020 (*i.e.,* June 19, 2020).

Once in the Penny Program, an option class will remain included until it is no longer among the 425 most actively traded option classes at the time the annual review is conducted (described below), at which point it will be removed from the Penny Program. As described in more detail below, the removed class will be replaced by the next most actively traded multiply listed option class overlying securities priced below $200 per share, or any index at an index level below $200, and not yet in the Penny Program. Advanced notice regarding the option classes included, added, or removed from the Penny Program will be provided to the Exchange's membership via Trader Update and published by the Exchange on its website.

Annual Review

The Penny Program would include an annual review process that applies objective criteria to determine option classes to be added to, or removed from, the Penny Program. Specifically, on an annual basis beginning in December 2020 and occurring ever December thereafter, the Exchange will review and rank all multiply listed option classes based on National Cleared Volume at OCC for the six full calendar months from June 1st through November 30th for determination of the most actively traded option classes. Any option classes not yet in the Penny Program may be added to the Penny Program if the class is among the 300 most actively traded multiply listed option classes and priced below $200 per share or any index at an index level below $200.

Following the annual review, option classes to be added to the Penny Program would begin quoting in penny increments (*i.e.,* $0.01 if trading at less than $3; and $0.05 if trading at $3 and above) on the first trading day of January.[11] In addition, following the annual review, any option class in the Penny Program that falls outside of the 425 most actively traded option classes would be removed from the Penny Program. After the annual review, option classes that are removed from the Penny Program will be subject to the minimum trading increments set forth in Rule 6.72–O, effective on the first trading day of April.

Changes to the Composition of the Penny Program Outside of the Annual Review Newly Listed Option Classes and Option Classes With Significant Growth in Activity

The Penny Program would specify a process and parameters for including option classes in the Program outside the annual review process in two circumstances. These provisions are

[5] *See* Securities Exchange Act Release No. 87610 (November 25, 2019) 84 FR 66047 (December 2, 2019) (NYSEArca–2019–83).

[6] *See* Securities Exchange Act Release No. 87681 (December 9, 2019), 84 FR 68960 (December 17, 2019) (''Notice'').

[7] *See* Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4–443) (''Approval Order'').

[8] This proposed rule change will become operative on July 1, 2020, upon expiration of the current Penny Pilot on June 30, 2020.

[9] *See* Commentary .01 to Rule 6.72–O (providing that ''[t]he Exchange may only change the trading differentials for option contracts traded on the Exchange by filing a rule change proposal with the SEC, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (effective upon filing)'').

[10] *See* Rule 6.72–O(a)(3)(A)–(C).

[11] *See id.* (providing that the minimum quoting increment for all series in the QQQ, SPY, and IWM would continue to be $0.01, regardless of price).

designed to provide objective criteria to add to the Penny Program new option classes in issues with the most demonstrated trading interest from market participants and investors on an expedited basis prior to the annual review, with the benefit that market participants and investors will then be able to trade these new option classes based upon quotes expressed in finer trading increments.

First, the Penny Program provides for certain newly listed option classes to be added to the Penny Program outside of the annual review process, provided that (i) the class is among the 300 most actively traded, multiply listed option classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading; and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Such newly listed option classes added to the Penny Program pursuant to this process would remain in the Penny Program for one full calendar year and then would be subject to the annual review process.

Second, the Penny Program would allow an option class to be added to the Penny Program outside of the annual review process if it is an option class that meets certain specific criteria. Specifically, new option classes may be added to the Penny Program if: (i) the option class is among the 75 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in the prior six full calendar months of trading and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Any option class added under this provision will be added on the first trading day of the second full month after it qualifies and will remain in the Penny Program for the rest of the calendar year, after which it will be subject to the annual review process.

Corporate Actions

The Penny Program would also specify a process to address option classes in the Penny Program that undergo a corporate action and is designed to ensure continuous liquidity in the affected option classes. Specifically, if a corporate action involves one or more option classes in the Penny Program, all adjusted and unadjusted series of an option class would continue to be included in the Penny Program.[12] Furthermore, neither the trading volume threshold, nor the initial price test would apply to option classes added to the Penny Program as a result of the corporate action. Finally, the newly added adjusted and unadjusted series of the option class would remain in the Penny Program for one full calendar year and then would become subject to the annual review process.

Delisted or Ineligible Option Classes

Finally, the Penny Program would provide a mechanism to address option classes that have been delisted or those that are no longer eligible for listing. Specifically, any series in an option class participating in the Penny Program in which the underlying has been delisted, or is identified by OCC as ineligible for opening customer transactions, would continue to quote pursuant to the terms of the Penny Program until all options series have expired.

Technical Changes

The Exchange proposes to replace reference to the Penny Pilot with reference to the Penny Interval Program in Rules 6.72–O(a), 6.80–O(a) and Commentary .01 thereto, 6.4–O, Commentary .14. The Exchange believes these technical changes would add clarity, transparency and internal consistency to Exchange rules making them easier to navigate.

Implementation

This proposed rule change will become operative on July 1, 2020, upon expiration of the current Penny Pilot on June 30, 2020. The Exchange proposes to implement the Penny Program on July 1, 2020, which is the first trading day of the third month following the Approval Order issued on April 1, 2020—*i.e.,* July 1, 2020.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which conforms the Exchange rules to the recently adopted OLPP Program, allows the Exchange to provide market participants with a permanent Penny Program for quoting options in penny increments, which maximizes the benefit of quoting in a finer quoting increment to investors while minimizing the burden that a finer quoting increment places on quote traffic.

Accordingly, the Exchange believes that the proposal is consistent with the Act because, in conforming the Exchange rules to the OLPP Program, the Penny Program would employ processes, based upon objective criteria, that would rebalance the composition of the Penny Program, thereby helping to ensure that the most actively traded option classes are included in the Penny Program, which helps facilitate the maintenance of a fair and orderly market.

Technical Changes

The Exchange notes that the proposed change to Rules 6.72–O, 6.80–O and 6.4–O to replace references to the Penny Pilot with references to the Penny Interval Program would provide clarity and transparency to the Exchange rules and would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule changes would also provide internal consistency within Exchange rules and operate to protect investors and the investing public by making the Exchange rules easier to navigate and comprehend.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed Penny Program, which modifies the exchange's rules to align them with the Commission approved OLPP Program, is not designed to be a competitive filing nor does it impose an undue burden on intermarket competition as the Exchange anticipates that the options exchanges will adopt substantially identical rules. Moreover, the Exchange believes that by conforming Exchange rules to the OLPP Program, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor

[12] For example, if Company A acquires Company B and Company A is not in the Penny Program but Company B is in the Penny Program, once the merger is consummated and an options contract adjustment is effective, then Company A would be added to the Penny Program and remain in the Penny Program for one calendar year.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

protection. To the extent that there is a competitive burden on those option classes that do not qualify for the Penny Program, the Exchange believes that it is appropriate because the proposal should benefit all market participants and investors by maximizing the benefit of a finer quoting increment in those option classes with the most trading interest while minimizing the burden of greater quote traffic in option classes with less trading interest. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by all option exchanges that are participants in the OLPP, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2020–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–50 and should be submitted on or before June 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11648 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A)(iii). Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange satisfied this requirement.

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88949; File No. SR–BOX–2020–16]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change in Connection With the Proposed Commencement of Operations of Boston Security Token Exchange LLC ("BSTX") as a Facility of the Exchange

May 26, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 2020, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the proposed commencement of operations of BSTX. In this Proposed Rule Change, the proposed Amended and Restated Limited Liability Company Agreement of the Company dated December 24, 2019 (the ''LLC Agreement''), is attached as Exhibit 5A hereto [sic]. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the proposed commencement of operations of BSTX. The Exchange proposes to establish BSTX as a facility, as that term is defined in Section 3(a)(2) of the Act,[3] of the Exchange.[4] BSTX would be a facility of the Exchange that will operate a market for the trading of digital security tokens. BSTX would operate a fully automated, price/time priority execution system for the trading of ''security tokens,'' which would be equity securities that meet BSTX listing standards and for which ancillary records of ownership would be able to be created and maintained using distributed ledger (or ''blockchain'') technology. The security tokens would qualify as NMS stocks pursuant to Regulation NMS.[5] All transactions in security tokens would clear and settle in accordance with the rules, policies and procedures of registered clearing agencies.

BSTX is controlled jointly by BOX Digital, a Delaware limited liability company and a subsidiary of BOX Holdings Group LLC, and tZERO Group, Inc., a Delaware corporation and an affiliate of Overstock.com, Inc. BSTX is an affiliate of the Exchange and, when it commences trading operations, will be subject to regulatory oversight by the Exchange. In addition, the Exchange will enter into a facility agreement with BSTX (the ''Facility Agreement'') pursuant to which the Exchange will regulate the Company as a facility of the Exchange. The Exchange's powers and authority under the Facility Agreement ensure that the Exchange has full regulatory control over BSTX, which is designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of the Company. The Exchange will also provide certain business services to the Company such as providing human resources and office technology support pursuant to an administrative services agreement between the Exchange and BSTX.

The LLC Agreement is the source of governance and operating authority for the Company and, therefore, functions in a similar manner as articles of incorporation and bylaws would function for a corporation. The Exchange is submitting a separate filing to establish rules relating to trading on BSTX.[6] The Exchange also submitted a separate filing to introduce structural changes to the Exchange to accommodate regulation of BSTX in addition to the Exchange's existing facility. With the addition of BSTX as an Exchange facility, BSTX Participants[7] will have the same representation, rights and responsibilities as Participants on the Exchange's other facility.

The Exchange currently operates BOX Options Market LLC (''BOX Options''), which is a facility of the Exchange, as that term is defined in Section 3(a)(2) of the Act. The proposed LLC Agreement provisions are generally the same as the provisions of the BOX Options LLC Agreement or, where indicated herein, are the same as provisions of the BOX Holdings LLC Agreement.[8] Currently, BOX Holdings has nine separate, unaffiliated owners. BOX Holdings owns 100% of BOX Options so BOX Holdings is essentially the alter ego of BOX Options. By contrast, the Company has two separate, unaffiliated voting owners, BOX Digital and tZERO, each of which owns 50% of the voting class of equity of the Company. Ownership diverges for BOX Options directly above BOX Holdings in its ownership structure and ownership diverges for the Company directly above the Company in its ownership structure. Therefore, as discussed below, when comparing various provisions in the LLC Agreement, some provisions are more appropriately compared with the BOX Holdings LLC Agreement, particularly with respect to ownership issues. The Exchange believes that governance consistent with established provisions that have already received Commission approval harmonizes rules and practices across the Exchange's facilities, which may foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Act.[9]

Structure of the Company

In the discussion below, the Exchange describes provisions in the LLC Agreement related to the structure of the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Ownership interests of the Company are represented by Units.[10] The Company has two classes of Units: Class A Units[11] and Class B Units.[12] Except as otherwise provided in the LLC Agreement, all Units are identical to each other and accord the holders thereof the same obligations, rights, and privileges as accorded to each other holder thereof.[13] The duly admitted

[3] 15 U.S.C. 78c(a)(2).

[4] Approval for the BSTX facility will be sought by the Exchange through a separate proposed rule change with the Commission. (''BSTX Rulebook Proposal''). The Exchange has also separately proposed certain other rule changes with the Commission designed to provide sufficient flexibility for there to be multiple facilities under the Exchange's regulatory authority. Currently, there is only one facility of the Exchange, BOX Options Market LLC. *See* Securities Exchange Act Release No. 88236 February 19, 2020, 85 FR 10765 February 25, 2020.

[5] 17 CFR 242.600 through 613.

[6] *See* BSTX Rulebook Proposal.

[7] A BSTX Participant is a firm or organization that is registered with the Exchange pursuant to Exchange Rules for the purposes of participating on the BSTX Market as an order flow provider or market maker. *See* Section 1.1, LLC Agreement.

[8] The Exchange notes, as further described in the Proposed Rule Change, that certain provisions of the BOX Holdings LLC and BOX Options LLC Agreements are not included in the LLC Agreement because they are not applicable. For example, certain provisions in the BOX Holdings LLC Agreement that are related to different voting classes of ownership are not present in the LLC Agreement because BSTX has only one voting class of ownership. *See, e.g.,* Sections 4.1, 4.4, 4.13 and 7 of the BOX Holdings LLC Agreement.

[9] 15 U.S.C. 78f(b)(5).

[10] ''Units'' mean Class A Units and Class B Units. For the avoidance of doubt, the ownership or possession of Units shall not in and of itself entitle the owner or holder thereof to vote or consent to any action with respect to the Company (which rights shall be vested only in duly admitted Members of the Company), or to exercise any right of a Member of the Company under the LLC Agreement, the LLC Act, or other applicable law. *See* Section 1.1, LLC Agreement.

[11] ''*Class A Units*'' shall mean equal units of limited liability company interest in the Company, including an interest in the ownership and profits and losses of the Company and the right to receive distributions from the Company as set forth in the LLC Agreement. *See* Section 1.1, LLC Agreement.

[12] ''*Class B Units*'' shall be identical to Class A Units except that Class B Members shall not have the right to vote on any matter related to the Company as a result of holding Class B Units. *See* Section 1.1, LLC Agreement.

[13] Pursuant to Section 2.5(b) of the LLC Agreement, upon the consummation of any sale or transfer of a majority of the Class A Units or a

Continued

holders of Units are referred to as the members of the Company (''Members''). The Units represent equity interests in the Company and entitle the duly admitted holders thereof to participate in the Company's allocations and distributions. Voting Class A Units are held 50/50 by BOX Digital and tZERO with each having an economic interest of over 45% in the Company. Non-voting Class B Units are held by various employees and directors of the Company, each of whom holds less than 5% economic interest in the Company. Pursuant to Section 1.1 of the LLC Agreement, a record of the Members is maintained by the Secretary of the Company and updated from time to time as necessary and as provided in the LLC Agreement (''Membership Record'').[14] These provisions are substantially the same as those in the BOX Holdings LLC Agreement.[15]

BOX Digital is a subsidiary of BOX Holdings and an affiliate of the Exchange and, therefore, the Company will be an affiliate of the Exchange. BOX Holdings owns 98% of BOX Digital and 2% of BOX Digital is held by Lisa Fall. BOX Holdings already owns one subsidiary that is an existing facility of the Exchange. The existing facility—BOX Options—operates a market for trading option contracts on U.S. equities. BOX Holdings is the parent company for both BOX Digital and BOX Options. BOX Holdings has nine separate, unaffiliated owners, including MX US 2, Inc., a wholly owned, indirect subsidiary of TMX Group Limited (''TMX''), which holds 42.62% of the outstanding units of BOX Holdings, and IB Exchange Corp., which holds 22.69% of the outstanding units of BOX Holdings. The other seven owners of BOX Holdings, Citadel Securities Principal Investments LLC, Citigroup Financial Products Inc., UBS Americas Inc., CSFB Next Fund Inc., LabMorgan Corp., Wolverine Trading, LLC and Aragon Solutions Ltd, each hold less than 15% of the outstanding units of BOX Holdings.

Medici Ventures, Inc. (''Medici''), a Delaware corporation, owns 80.07% of the outstanding shares of tZERO, Joseph Cammarata holds 7.53%, and each of the following owns less than 3% of the outstanding shares of tZERO: Todd Tobacco, Newer Ventures LLC, Schalk Steyn, Raj Karkara, Alec Wilkins, Dohi Ang, Brian Capuano, Trent Larson, Eric Fish, Kristen Anne Bagley, Kirstie Dougherty, SpeedRoute Technologies Inc., Tommy McSherry, Rob Collucci, John Gilchrist, John Paul DeVito, Jimmy Ambrose, Jason Heckler, Max Melmed, Alex Vlastakis, Olalekan Abebefe, Samson Arubuola, Ryan Mitchell, Zachary Wilezol, Anthony Bove, Ralph Daiuto, Rob Christiansen, Amanda Gervase, Derek Tobacco, Steve Bailey, and Dinosaur Financial. Overstock.com, Inc. (''Overstock''), a publicly held corporation organized under the laws of the state of Delaware, owns 100% of the outstanding shares of Medici. Therefore, both tZERO and the Company are affiliates of Overstock.

Pursuant to Section 7.4(g)(ii) of the LLC Agreement, any Controlling Person[16] is required to become a party to the LLC Agreement and abide by its provisions, to the same extent and as if they were Members. Related Persons that are otherwise Controlling Persons are not required to become parties to the LLC Agreement if they are only under common control of an upstream owner but are not in the upstream ownership chain above a Company owner because they will not have the ability to exert any control over the Company. BOX Holdings, Medici, and Overstock are indirect owners of the Company. Overstock owns 100% of Medici Ventures, Inc., which owns more than 80% of tZERO Group, Inc., which owns 50% of the voting class of equity of BSTX. Medici and Overstock will be required to become parties to the Company's LLC Agreement by executing an instrument of accession substantially in the form attached hereto as Exhibit 5B [sic] and abide by its provisions, to the same extent and as if they were Members, because they are Controlling Persons of the Company. Similarly, BOX Digital, BOX Holdings, MX US 2, Inc., MX US 1, Inc., Bourse de Montreal Inc., and TMX Group Limited will also each be required to become parties to the LLC Agreement by executing an instrument of accession and abide by its provisions to the same extent and as if they were Members because they are Controlling Persons of the Company. TMX Group Limited owns 100% of Bourse de Montreal Inc., which owns 100% of MX US 1, Inc., which owns 100% of MX US 2, Inc., which owns more than 40% of BOX Holdings. BOX Holdings owns 98% of BOX Digital, which owns 50% of the voting class of equity of BSTX.

Any BSTX Participant that holds, directly or indirectly, more than 20% of the Company will have its voting power capped at 20% pursuant to Section 7.4(h) of the LLC Agreement, a limitation designed to prevent a market participant from exerting undue influence on an Exchange facility.[17] Related Persons will be grouped together when applying these limits. The Exchange believes the proposed voting cap provision is consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[18] In particular, the voting cap is designed to minimize the ability of a BSTX Participant to improperly interfere with or restrict the ability of the Exchange to effectively carry out its regulatory oversight responsibilities under the Act.

The SEC will be required to be notified if an owner exceeds 5%, 10% or 15% ownership in the Company pursuant to Section 7.4(e) of the LLC

majority of the assets of the Company, directly or indirectly, to any party or group of related parties, including through a series of transactions, all then outstanding Class B Units shall automatically convert into an equal number of Class A units without the need of any action by any person. For the avoidance of doubt, a Class B Member's Capital Account does not change as a result of the conversion of the Class B Units.

[14] The Membership Record shall include the name and address of each Member and the number of Units of each class held by each Member.

[15] *See* BOX Holdings LLC Agreement Sections 1.1 and 2.5.

[16] A ''Controlling Person'' is defined as ''a Person who, alone or together with any Related Persons of such Person, holds a Controlling Interest in a Member.'' *See* Section 7.4(g)(v)(B), LLC Agreement. A ''Controlling Interest'' is defined as ''the direct or indirect ownership of 25% or more of the total voting power of all equity securities of a Member (other than voting rights solely with respect to matters affecting the rights, preferences, or privileges of a particular class of equity securities), by any Person, alone or together with any Related Persons of such Person.'' *See* Section 7.4(g)(v)(A), LLC Agreement. A ''Related Person'' is defined as ''with respect to any Person: (A) Any Affiliate of such Person; (B) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units; (C) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the [Act]) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of any BSTX Participant who is at the same time a broker-dealer, any Person that is associated with the BSTX Participant (as determined using the definition of ''person associated with a member'' as defined under Section 3(a)(21) of the [Act]); (E) in the case of a Person that is a natural person and a BSTX Participant, any broker or dealer that is also a BSTX Participant with which such Person is associated; (F) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of the Exchange or any of its parents or subsidiaries; (G) in the case of a Person that is an executive officer (as defined under Rule 3b-7 under the [Act]) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (H) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable.''

[17] LLC Agreement Section 7.4(h) is based on Section 7.4(h) of the BOX Holdings LLC Agreement.

[18] 15 U.S.C. 78f(b)(1).

Agreement.[19] Further, rule filings are required when an owner crosses above 20% or any subsequent 5% increment, pursuant to Section 7.4(f) of the LLC Agreement.[20] Related Persons are grouped together when applying these limits. These are the same provisions as are contained in the BOX Holdings LLC Agreement. The Exchange believes the proposed notification provisions are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[21] In particular, SEC notification of ownership interests exceeding certain percentage thresholds can help improve the Commission's ability to effectively monitor and surveil for potential undue influence and control over the operation of the Exchange.

The Exchange notes that existing ownership limits applicable to owners of the Exchange, the entity that will have regulatory oversight of BSTX, are not changing.[22] The Exchange believes the existing ownership limits will help to ensure the independence of the Exchange's regulatory oversight of BSTX and facilitate the ability of the Exchange to carry out its regulatory responsibilities and operate in a manner consistent with the Act, and are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act.[23]

The Company does not have the same ownership as BOX Options or BOX Holdings; therefore, the Members of the Company differ from those of BOX Options and BOX Holdings. The Exchange believes that the structure of the Company will promote just and equitable principles of trade, and, in general, protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[24]

Term and Termination

In the discussion below, the Exchange describes provisions in the LLC Agreement related to the term and termination of the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Pursuant to Section 2.3 of the LLC Agreement, the Company will have a perpetual legal existence unless it is sooner dissolved as a result of an event specified in the Delaware Limited Liability Company Act, as amended and in effect from time to time, and any successor statute (the ''LLC Act'') or by agreement of the Members. The term is the same as the provision in the BOX Options LLC Agreement,[25] but also provides that the Company can be dissolved by agreement of the Members. In addition, Section 10.1 of the LLC Agreement provides that the Company shall be dissolved upon (i) the election to dissolve the Company made by the Board pursuant to Section 4.4(b)(v) of the LLC Agreement; (ii) the entry of a decree of judicial dissolution under § 18–802 of the LLC Act; (iii) the resignation, expulsion, bankruptcy or dissolution of the last remaining Member, or the occurrence of any other event which terminates the continued membership of the last remaining Member in the Company, unless the business of the Company is continued without dissolution in accordance with the LLC Act; or (iv) the occurrence of any other event that causes the dissolution of a limited liability company under the LLC Act unless the Company is continued without dissolution in accordance with the LLC Act. The dissolution events are generally the same as those in the BOX Options LLC Agreement;[26] however, the Company may also be dissolved by the affirmative vote of Members holding a majority of all of the then outstanding Percentage Interests[27] (excluding any Percentage Interests held directly or indirectly by tZERO and its Affiliates from the numerator and the denominator for such calculation) taken within 180 calendar days after the occurrence of any ''Trigger Event'' as such term is defined in the IP License and Services Agreement entered into by and between tZERO and the Company (the ''LSA'') and described in more detail below.[28] The Exchange believes that the addition of such dissolution events will promote just and equitable principles of trade, and, in general, protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[29]

Upon the occurrence of any of the events set forth in Section 10.1(a) of the LLC Agreement, the Company will be dissolved and terminated in accordance with the provisions of Article 10 of the LLC Agreement.

Governance of the Company

In the discussion below, the Exchange describes provisions in the LLC Agreement related to the governance of the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Section 4.1 of the LLC Agreement establishes a board of directors of the Company (the ''Board of Directors'' or the ''Board'') to manage the development, operations, business and affairs of the Company without the need for any approval of the Members or any other person. Section 4.10 of the LLC Agreement provides that, except and only to the extent expressly provided for in the LLC Agreement and the Related Agreements and as delegated by the Board of Directors to committees of the Board of Directors or to duly appointed Officers or agents of the Company, neither a Member nor any other Person other than the Board of Directors shall be an agent of the Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company. Section 4.12(a) of the LLC Agreement provides that each of the Members and the Directors, Officers, employees and agents of the Company (a) shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and to its obligations to investors and

[19] LLC Agreement Section 7.4(e) is based on Section 7.4(e) of the BOX Holdings LLC Agreement.

[20] LLC Agreement Section 7.4(f) is based on Section 7.4(f) of the BOX Holdings LLC Agreement.

[21] 15 U.S.C. 78f(b)(1).

[22] *See* Securities Exchange Act Release No. 34–66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (Order granting approval of BOX Exchange).

[23] 15 U.S.C. 78f(b)(1).

[24] 15 U.S.C. 78f(b)(5).

[25] *See* BOX Options LLC Agreement Section 2.3.

[26] *See* BOX Options LLC Agreement Section 8.1.

[27] ''Percentage Interests'' are defined as ''with respect to a Member, means the ratio of the number of Unit held by the Member to the total of all of the issued Units, expressed as a percentage and determined with respect to each class of Units whenever applicable.'' *See* Section 1.1, LLC Agreement.

[28] The LSA defines a ''Trigger Event'' as meaning ''any of the following events: (a) A material breach by tZERO of any of its obligations under this LSA (being either a single event which is a material breach or a series of breaches which taken together are a material breach) which material breach or failure is not cured by tZERO within 90 days after Company gives written notice of such breach or failure to tZERO hereunder, except for Critical Functions in which case the cure period shall be 10 days; (b) any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency Law or any non-frivolous dissolution or liquidation proceedings commenced by or against tZERO; and if such case or proceeding is not commenced by tZERO, it is acquiesced by tZERO in or remains undismissed for 30 days; (c) tZERO ceasing active operation of its business without a successor or discontinuing any of the Base Services; (d) tZERO becomes judicially declared insolvent or admits in writing its inability to pay its debts as they become due; or (e) tZERO applies for or consents to the appointment of a trustee, receiver or other custodian for tZERO, or makes a general assignment for the benefit of its creditors.''

[29] 15 U.S.C. 78f(b)(5).

the general public and shall not take any actions which would interfere with the effectuation of decisions by the board of directors of the Exchange relating to its regulatory functions (including disciplinary matters) or which would interfere with the Exchange's ability to carry out its responsibilities under the Act; (b) comply with the federal securities laws and the rules and regulations promulgated thereunder; and (c) cooperate with the Exchange pursuant to its regulatory authority and with the SEC. Section 3.2 of the LLC Agreement provides that the Exchange will (a) act as the SEC-approved SRO for the BSTX Market, (b) have regulatory responsibility for the activities of the BSTX Market and provide regulatory services to the Company pursuant to the Facility Agreement. These are the same provisions that are contained in the BOX Options LLC Agreement.[30] These provisions ensure that the Exchange has full regulatory control over BSTX, which is designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of the Company.

Section 4.1 of the LLC Agreement provides that the Board will consist of six (6) directors (each a ''Director''), comprised of two (2) Directors appointed by BOX Digital, two (2) Directors appointed by tZERO (together with the BOX Digital Directors, each a ''Member Director''), one (1) Director (the ''Independent Director'') appointed by the unanimous vote of all of the then serving Member Directors, and one (1) non-voting Director (the ''Regulatory Director'') appointed by the Exchange. As long as the Company is a facility of the Exchange pursuant to Section 3(a)(2) of the Act, the Exchange will have the right to appoint a Regulatory Director to serve as a Director. The Regulatory Director must be a member of the senior management of the regulation staff of the Exchange. By comparison, the board of directors of BOX Options is the same as BOX Holdings because it is a wholly-owned subsidiary of BOX Holdings. The remaining structure of the Board of Directors for the Company differs from that of BOX Holdings because the ownership of the Company differs from that of BOX Holdings, which has no owners with 50% or greater ownership of its voting class of equity. The Company has an Independent Director to avoid either Member from controlling or creating deadlock on the Board. However, the presence of a Regulatory Director selected by the Exchange on the Board is identical to the longstanding practice at the Exchange's other facility, BOX Options. The Exchange believes that the proposed board structure, and in particular, the inclusion of the proposed Independent Director and Regulatory Director, will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[31] Further, the Exchange believes that inclusion of the Regulatory Director on the BSTX Board would also be consistent with Section 6(b)(1) of the Act. This is because the Regulatory Director is required to be someone who is a member of the senior management of the regulation staff of the Exchange and is therefore a person who is knowledgeable of the rules of the Exchange and the regulations applicable to it and, in turn, is someone who would be well positioned to help ensure the Exchange, including in the operation of any facilities, continues to be so organized and has the capacity to carry out the purposes of the Act, including to prevent inequitable and unfair practices.

Section 4.3 of the LLC Agreement provides that the Board will meet as often as it deems necessary, but at least four (4) times per year.[32] Meetings of the Board or any committee thereof may be conducted in person or by telephone or in any other manner agreed to by the Board or, respectively, by the members of a committee. Any of the Directors or the Exchange may call a meeting of the Board upon fourteen (14) calendar days prior written notice. In any case where the convening of a meeting of Directors is a matter of urgency, notice of the meeting may be given not less than forty-eight (48) hours before the meeting is to be held. No notice of a meeting shall be necessary when all Directors are present. The attendance of at least a majority of all the Directors shall constitute a quorum for purposes of any meeting of the Board. Except as may otherwise be provided by the LLC Agreement, each of the Directors will be entitled to one vote on any action to be taken by the Board, except that the Regulatory Director shall not vote on any action to be taken by the Board or any committee, the CEO (if a Director) shall not be entitled to vote on matters relating to the CEO's powers, compensation or performance, and a Director shall not be entitled to vote on any matter pertaining to that Director's removal from office. A Director may vote the votes allocated to another Director (or group of Directors) pursuant to a written proxy. Except as otherwise provided by the LLC Agreement, any action to be taken by the Board shall be considered effective only if approved by at least a majority of the votes entitled to be voted on that action. Meetings of the Board may be attended by other representatives of the Members, the Exchange and other persons related to the Company as the Board may approve. Any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting if written consents, setting forth the action so taken, are executed by the members of the Board or committee, as the case may be, representing the minimum number of votes that would be necessary to authorize or to take that action at a meeting at which all members of the Board or committee, as the case may be, permitted to vote were present and voted. The Board will determine procedures relating to the recording of minutes of its meetings. The Exchange believes that the proposed board structure will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[33]

Pursuant to Section 4.4 of the LLC Agreement, no action with respect to any major action (each a ''Major Action''), will be effective unless approved by the Board, including the affirmative vote of all then serving Member Directors, in each case acting at a meeting. A vacancy on the Board will not prevent approval of a Major Action. No other Member votes are required for a Major Action. For purposes of the LLC Agreement, ''Major Action'' means any of the following: (i) A merger or consolidation of the Company with any other entity or the sale by the Company of any material portion of its assets; (ii) entry by the Company into any line of business other than the business outlined in Article 3 of the LLC

[30] *See* BOX Options LLC Agreement Sections 4.1, 4.10, 4.12, and 3.2.

[31] 15 U.S.C. 78f(b)(5).

[32] LLC Agreement Section 4.3 is based on Section 4.3 of the BOX Options LLC Agreement.

[33] 15 U.S.C. 78f(b)(5).

Agreement; (iii) conversion of the Company from a Delaware limited liability company into any other type of entity; (iv) except as expressly contemplated by the LLC Agreement and then existing Related Agreements, entering into any agreement, commitment, or transaction with any Member or any of its Affiliates other than transactions or agreements upon commercially reasonable terms that are no less favorable to the Company than the Company would obtain in a comparable arms-length transaction or agreement with a third party; (v) to the fullest extent permitted by law, taking any action (except pursuant to a vote of the Members pursuant to Section 10.1(a)(ii) of the LLC Agreement to effect the voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company; (vi) operating the BSTX Market utilizing any other software system, other than the BSTX trading system, except as otherwise provided in the LSA or to the extent otherwise required by the Exchange to fulfill its regulatory functions or responsibilities or to oversee the BSTX Market as determined by the board of the Exchange; (vii) operating the BSTX Market utilizing any other regulatory services provider other than the Exchange, except as otherwise provided in the Facility Agreement or to the extent otherwise required by the Exchange to fulfill its regulatory functions or responsibilities or to oversee the BSTX Market as determined by the board of the Exchange; (viii) entering into any partnership, joint venture or other similar joint business undertaking; (ix) making any fundamental change in the market structure of the Company from that contemplated by the Members as of the date of the LLC Agreement, except to the extent otherwise required by the Exchange to fulfill its regulatory functions or responsibilities or to oversee the BSTX Market as determined by the board of the Exchange; (x) issuing any new Units pursuant to Section 7.6 of the LLC Agreement or admitting additional or substitute Members pursuant to Section 7.1(b); (xi) altering the provisions for Board membership applicable to any Member, except to the extent otherwise required by the Exchange to fulfill its regulatory functions or responsibilities or to oversee the BSTX Market as determined by the board of the Exchange; and (xii) altering the definition of or requirements for approving a Major Action, except to the extent otherwise required by the Exchange to fulfill its regulatory functions or responsibilities or to oversee the BSTX Market as determined by the board of the Exchange. The Major Action events are generally the same as those in the BOX Options LLC Agreement and BOX Holdings LLC Agreement [34] with the exception of deletions to references to BOX Options affiliates and owners and to include cross references to other provisions of the LLC Agreement; however, the Company's LLC Agreement also provides that a Major Action also includes provisions (viii), (x), and (xi) as described above. The Exchange believes that such events should be deemed Major Actions for commercial fairness. The Exchange believes that deeming the above referenced events as Major Actions will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[35]

Pursuant to Section 4.1(b) of the LLC Agreement, a Member Director may be removed by the Member entitled to appoint that Member Director, with or without cause. The Independent Director may be removed by a majority vote of the then serving Member Directors, with or without cause. Any Member Director or Independent Director may be removed by the Board if the Board determines, in good faith, that the Director has violated any provision of the LLC Agreement or any federal or state securities law or that such action is necessary or appropriate in the public interest or for the protection of investors. A Director shall not participate in any vote regarding that Director's removal. The Company shall promptly notify the Exchange in writing of the commencement or cessation of service of a Member Director or Independent Director. Like BOX Options, Directors may be removed by the Board for reasons related to protection of investors and the owners with rights to appoint a Member Director have power to remove and replace their respective designees. The removal provisions for the Company's Independent Director differ from those of BOX Options and BOX Holdings because those entities do not have an Independent Director. The Exchange believes that the proposed removal provisions will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, consistent with Section 6(b)(5) of the Act. Further, the Exchange believes that the ability for Member Directors and Independent Directors to be removed from the Board in the circumstances described above would be consistent with Section 6(b)(1) of the Act.[36] This is because removal of such Directors who have violated the LLC Agreement or federal or state laws would help ensure that the Exchange, including in its operation of facilities, is so organized and has the capacity to be able to carry out the purposes of the Act, including the prevention of inequitable and unfair practices.

Section 4.1(c) of the LLC Agreement provides that, if a vacancy is created on the Board as a result of the death, disability, retirement, resignation or removal (with or without cause) of a Member Director or otherwise there shall exist or occur any vacancy on the Board, the Member whose designee created the vacancy will fill that vacancy by written notice to the Company. Each Member shall promptly fill vacancies on the Board, and the Board shall consider the advisability of taking further action until the vacancies are filled. The vacancy provisions are not in the BOX Options LLC Agreement; however, the Exchange believes that providing for contingencies in the event of a vacancy are important to avoid business disruption and, therefore, this proposal will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Act.[37] Further, the Exchange believes that filling Director vacancies, as described above, would provide a predetermined and transparent manner for filling Director vacancies and therefore help avoid business disruptions at BSTX. The Exchange believes that this, in turn, would be consistent with Section 6(b)(1) of the

[34] *See* Section 4.4 of the BOX Options LLC Agreement and Section 4.4 of the BOX Holdings LLC Agreement.

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78f(b)(1).

[37] 15 U.S.C. 78f(b)(5).

Act[38] because it would help ensure that the Exchange, including in the operation of facilities, is so organized and has the capacity to be able carry out the purposes of the Act, including to remove impediments to and perfect the mechanisms of a national market system for securities.

Section 4.1(d) of the LLC Agreement provides that the Regulatory Director may be removed (a) by the Exchange, with or without cause, (b) by the Board if the Board determines, in good faith, that the Regulatory Director has violated any provision of the LLC Agreement or any federal or state securities law, or (c) by the Board if the Board determines, in good faith, that the Regulatory Director does not meet the requirements of a Regulatory Director as set forth in the LLC Agreement. If the Regulatory Director ceases to serve for any reason, the Exchange shall appoint a new Regulatory Director in accordance with the requirements in the LLC Agreement. The removal provisions in the Company's LLC Agreement are substantially the same as those in the BOX Options LLC Agreement.[39]

Section 4.12(b) of the LLC Agreement provides that the Company and its Members shall comply with the federal securities laws and the rules and regulations promulgated thereunder and shall cooperate with the SEC and the Exchange pursuant to and to the extent of their respective regulatory authority. The Directors, Officers, employees and agents of the Company, by virtue of their acceptance of such position, shall comply with the federal securities laws and the rules and regulations promulgated thereunder and shall be deemed to agree to cooperate with the SEC and the Exchange in respect of the SEC's oversight responsibilities regarding the Exchange, and the Company shall take reasonable steps necessary to cause its Directors, Officers, employees and agents to so cooperate. These provisions in the LLC Agreement are the same as those in the BOX Options LLC Agreement and BOX Holdings LLC Agreement.[40]

Section 3.2(a)(ii) of the LLC Agreement provides that the Exchange shall receive notice of planned or proposed changes to the Company (but not including changes relating solely to one or more of the following: Marketing, administrative matters, personnel matters, social or team building events, meetings of the Members, communication with the Members, finance, location and timing of Board meetings, market research, real property, equipment, furnishings, personal property, intellectual property, insurance, contracts unrelated to the operation of the BSTX Market and de minimis items (''Non-Market Matters'') or the BSTX Market (including, but not limited to the BSTX trading system) which will require an affirmative approval by the Exchange prior to implementation, not inconsistent with the LLC Agreement. Planned changes include, without limitation: (a) Planned or proposed changes to the BSTX trading system; (b) the sale by the Company of any material portion of its assets; (c) taking any action to effect a voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company; or (d) obtaining regulatory services from a regulatory services provider other than the Exchange. Procedures for requesting and approving changes shall be established by the mutual agreement of the Company and the Exchange. These provisions in the LLC Agreement are the same as those in the BOX Options LLC Agreement.[41]

Section 3.2(a)(iii) of the LLC Agreement provides that in the event that the Exchange, in its sole discretion, determines that the proposed or planned changes to the Company or the BSTX Market (including, but not limited to, the BSTX trading system) set forth in Section 3.2(a)(ii) of the LLC Agreement could cause a Regulatory Deficiency if implemented, the Exchange may direct the Company, subject to approval of the Exchange board of directors, to modify the proposal as necessary to ensure that it does not cause a Regulatory Deficiency. The Company will not implement the proposed change until it, and any required modifications, are approved by the Exchange board of directors. The costs of modifications undertaken shall be paid by the Company. These provisions in the LLC Agreement are the same as those in the BOX Options LLC Agreement.[42] These provisions ensure the Exchange maintains full regulatory control and authority over BSTX while it operates as a facility of the Exchange. The Exchange believes this provision helps guarantee the Exchange's ability to fulfill its regulatory responsibilities and operate in a manner consistent with the Act, in particular with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[43]

Section 3.2(a)(iv) of the LLC Agreement provides that in the event that the Exchange, in its sole discretion, determines that a Regulatory Deficiency exists or is planned, the Exchange may direct the Company, subject to approval of the Exchange board of directors, to undertake such modifications to the Company (but not to include Non-Market Matters) or the BSTX Market (including, but not limited to, the BSTX trading system), as are necessary or appropriate to eliminate or prevent the Regulatory Deficiency and allow the Exchange to perform and fulfill its regulatory responsibilities under the Act.[44] The costs and modifications undertaken shall be paid by the Company. These provisions in the LLC Agreement are substantially the same as those in the BOX Options LLC Agreement, with the exception of a reference to an agreement that is not applicable to the Company.[45]

Regulatory Funds

Pursuant to Section 9 of the Facility Agreement, the Company will agree that the Exchange has the right to receive all fees, fines and disgorgements imposed upon BSTX Participants with respect to the Company's trading system (''Regulatory Funds'') and all market data fees, tape and other revenues (''Non-regulatory Funds''). All Regulatory Funds and Non-regulatory Funds collected by the Exchange with respect to the Company may be used by the Exchange for regulatory purposes, which will be determined in the sole discretion of the Exchange. To the extent the Company incurs costs and expenses for regulatory purposes, the Exchange may reimburse the Company using Regulatory Funds. In the event the Exchange, at any time, determines that it does not hold sufficient funds to meet all regulatory purposes, the Company will reimburse the Exchange for any such additional costs and expenses. All Regulatory Funds collected by the

[38] 15 U.S.C. 78f(b)(1).

[39] *See* Section 4.1(d) of the BOX Options LLC Agreement.

[40] *See* Section 4.12(b) of the BOX Options LLC Agreement and Section 4.12(b) of the BOX Holdings LLC Agreement.

[41] *See* Section 3.2(a)(ii) of the BOX Options LLC Agreement.

[42] *See* Section 3.2(a)(iii) of the BOX Options LLC Agreement.

[43] 15 U.S.C. 78f(b)(1).

[44] As discussed above, the Exchange will appoint a Regulatory Director who may, among other things, serve as a Director of any regulatory committee(s). Such individual will also have insight and access to important information related to the Company; for example, while the Regulatory Director may not serve as a Director on Board committees other than authorized regulatory committees, the Regulatory Director nevertheless shall (A) have the right to attend all meetings of the Board and committees thereof; (B) receive equivalent notice of meetings as other Directors; and (C) receive a copy of the meeting materials provided to other Directors, including agendas, action items and minutes for all meetings. (*See* LLC Agreement § 4.2(c).)

[45] *See* Section 3.2(a)(iv) of the BOX Options LLC Agreement.

Exchange will be retained by the Exchange and not transferred to the Company. Non-regulatory funds collected by the Exchange may be transferred to the Company after the Exchange makes adequate provision for all regulatory purposes. These provisions ensure that the Exchange has full control over BSTX with respect to its regulated functions and is designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of the Company.

Capital Contributions and Distributions

In the discussion below, the Exchange describes provisions in the LLC Agreement related to capital contributions and distributions by the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Pursuant to Section 6.1 of the LLC Agreement, all capital contributions contributed to the Company by holders of Units shall be reflected on the books and records of the Company. No interest will be paid on any capital contribution to the Company. No Member will have any personal liability for the repayment of the capital contribution of any Member, and no Member will have any obligation to fund any deficit in its Capital Account. Each Member waived any right to partition the property of the Company or to commence an action seeking dissolution of the Company under the LLC Act. These provisions are substantially the same as those in the BOX Holdings LLC Agreement.[46]

Under Section 6.2 of the LLC Agreement, the Board, in its sole discretion, will determine the capital needs of the Company. If at any time the Board determines that additional capital is required in the interests of the Company, additional working capital shall be raised in such manner as determined by a vote of the Board, including the affirmative vote of at least one Member Director appointed by each Member, but the Board will not have the power to require the Members to make any additional capital contributions. These provisions in the LLC Agreement are substantially the same as those in the BOX Options LLC Agreement, with the exception of the requirement for at least one Member Director appointed by each Member to affirmatively vote on the manner to raise additional working capital.[47] The Exchange believes that this added provision exists for purposes of commercial fairness and is necessary due to the ownership structure of the Company and that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Act.[48]

Pursuant to Section 8.1 of the LLC Agreement, if at any time and from time to time the Board determines that the Company has cash that is not required for the operations of the Company, the payment of liabilities or expenses of the Company, or the setting aside of reserves to meet the anticipated cash needs of the Company (''Distributable Cash''), then the Company shall make cash distributions to its Members in the following manner and priority: First, the Company shall make tax distributions (''Tax Distributions'') to the Members to cover each Member's estimated income tax for that period (or in the event that Distributable Cash is less than the total of all such Tax Amounts, the Company shall distribute the Distributable Cash in proportion to such Tax Amounts). All tax distributions to a Member will be treated as advances against any subsequent distributions to be made to that Member. Subsequent distributions made to the Member shall be adjusted so that when aggregated with all prior distributions to the Member pursuant to those provisions, and with all prior Tax Distributions to the Member, the amount distributed will be equal, as nearly as possible, to the aggregate amount that would have been distributable to that Member pursuant to the LLC Agreement if the LLC Agreement contained no provision for Tax Distributions; second, when, as and if declared by the Board, the Company shall make cash distributions to each of the Members pro rata in accordance with that Member's respective Percentage Interest. Since the Company does not have the same ownership as BOX Options, the distribution provisions in the LLC Agreement differ from the BOX Options LLC Agreement and BOX Holdings LLC Agreement. These provisions relate to tax and accounting rules to which the Company is subject, due to its ownership structure. As such, these provisions are standard or not novel for a similarly situated commercial business registered as a limited liability company under the laws of the state of Delaware.

Section 8.2 of the LLC Agreement provides that the Company, and the Board on behalf of the Company, shall not make a distribution to any Member on account of its ownership interest in the Company if, and to the extent, such distribution would violate the LLC Act or other applicable law. This provision in the LLC Agreement is the same as the provision in the BOX Options LLC Agreement and BOX Holdings LLC Agreement.[49]

Section 9.1 of the LLC Agreement provides that all profits, losses and credits of the Company (for both accounting and tax purposes) for each fiscal year shall be allocated to the Members from time to time (but no less often than once annually and before making any distribution to the Members) pro rata among the Members based on that Member's respective Percentage Interest, subject to limitations, offsets, chargebacks, deductions and revaluations. Since the Company does not have the same ownership as BOX Options, the allocation of profits and losses provisions in the LLC Agreement differ from the BOX Options LLC Agreement. These provisions relate to tax and accounting rules to which the Company is subject, due to its ownership structure. As such, these provisions are standard or not novel for a similarly situated commercial business registered as a limited liability company under the laws of the state of Delaware.

Under Section 9.9 of the LLC Agreement, any profits or losses resulting from a liquidation, merger or consolidation of the Company, the sale of substantially all the assets of the Company in one or a series of related transactions, or any similar event (and, if necessary, specific items of gross income, gain, loss or deduction incurred by the Company in the fiscal year of the transaction(s)) shall be allocated among the Members so that after those allocations and the allocations required pursuant to capital account adjustments, and immediately before the making of any liquidating distributions to the Members, the Members' Capital Accounts equal, as nearly as possible, the amounts of the respective distributions to which they are entitled in a winding up. Since the Company does not have the same ownership as BOX Options, the termination and special allocation provisions in the LLC Agreement differ from the BOX Options LLC Agreement. These provisions relate to tax and accounting rules to which the Company is subject, due to its ownership structure. As such, these provisions are standard or not novel for

[46] *See* Section 6.1 of the BOX Holdings LLC Agreement.

[47] *See* Section 6.2 of the BOX Options LLC Agreement.

[48] 15 U.S.C. 78f(b)(5).

[49] *See* Section 7.1 of the BOX Options LLC Agreement and Section 8.2 of the BOX Holdings LLC Agreement.

a similarly situated commercial business registered as a limited liability company under the laws of the state of Delaware.

Pursuant to Section 10.2 of the LLC Agreement, the assets of the Company in winding up shall be applied or distributed as follows: First, to creditors of the Company, including Members who are creditors, to the extent otherwise permitted by law, whether by payment or the making of reasonable provisions for the payment thereof, and including any contingent, conditional and unmatured liabilities of the Company, taking into account the relative priorities thereof; second, to the Members and former Members in satisfaction of liabilities under the LLC Act for distributions to those Members and former Members; and third, to the Members in proportion to their respective Percentage Interests. A reasonable reserve for contingent, conditional and unmatured liabilities in connection with the winding up of the business of the Company shall be retained by the Company until the winding up is completed or the reserve is otherwise deemed no longer necessary by the liquidator. These provisions are substantially the same as those in the BOX Holdings LLC Agreement, with the exception of certain provisions that were not included in the LLC Agreement because they are inapplicable to the Company's structure.[50]

Intellectual Property

In the discussion below, the Exchange describes provisions in the LLC Agreement related to intellectual property of the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Pursuant to Section 3.2(b) of the LLC Agreement, tZERO will provide to the Company the intellectual property license and services necessary to operate the BSTX trading system as set forth in the LSA and will make the necessary arrangements with any applicable third parties which will permit the Company to be an authorized sublicensee of any required third-party software necessary for Trading on the BSTX trading system. The intellectual property provisions in the LLC Agreement are similar to those in the BOX Options LLC Agreement, but contain certain differences reflecting the license and services of tZERO pursuant to the LSA rather than the software and technology provided by MX pursuant to the TOSA in connection with the BOX Options LLC Agreement.[51]

Under the LSA, tZERO will provide the Company and the Exchange with a perpetual, fully paid up, royalty-free license to use its intellectual property comprising the BSTX trading system. In addition, the LSA provides that tZERO will provide services to the Company, including services related to implementing, administering, maintaining, supporting, hosting, developing, testing and securing the trading system. These services to be provided by tZERO relate to the specialized trading system operated by BSTX and are separate from any administrative or office technology services provided to BSTX by the Exchange discussed above.

Pursuant to the LSA, tZERO retains its ownership of the BSTX trading system and tZERO's trademarks and service marks; provided, however, that the Company will own deliverables, enhancements and other technology that are developed or created by tZERO for the Company, including any related documentation and intellectual property.

Non-Competition

In the discussion below, the Exchange describes provisions in the LLC Agreement related to non-competition, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Section 16.1 of the LLC Agreement provides that, for so long as it holds, directly or indirectly, a combined Percentage Interest in the Company of five percent (5%) or more, a Member will not hold or invest in more than five percent (5%) of, or participate in the creation and/or operation of, any U.S.-based market for the secondary trading of security tokens or in any person engaged in the creation and/or operation of any U.S.-based market for the secondary trading of security tokens. The non-competition provision is substantially the same as the non-competition provision in the BOX Holdings LLC Agreement.[52]

Changes in Ownership of the Company

In the discussion below, the Exchange describes provisions in the LLC Agreement related to changes in ownership of the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Section 7.1(a) of the LLC Agreement provides that no person will directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, dispose of, sell, alienate, assign, exchange, participate, subparticipate, encumber, or otherwise transfer in any manner (each, a ''Transfer'') its Units unless prior to that Transfer the transferee is approved by a vote of the Board. To be eligible for Board approval, a proposed transferee must be of high professional and financial standing, be able to carry out its duties as a Member hereunder, if admitted as a Member, and be under no regulatory or governmental bar or disqualification. Notwithstanding the foregoing, registration as a broker-dealer or self-regulatory organization is not required to be eligible for Board approval. However, the following will not be included in the definition of ''Transfer'': Transfers among Members, transfers to any person directly or indirectly owning, controlling or holding with power to vote all of the outstanding voting securities of and equity or beneficial interests in that Member, or transfers to any person that is a wholly owned Affiliate of a transferring Member. A holder of Units will provide prior written notice to the Exchange of any proposed Transfer. Any Transfer which violates the Transfer restrictions in the LLC Agreement will be void and ineffectual and will not bind or be recognized by the Company.

Section 7.1(b) of the LLC Agreement establishes that a person will be admitted to the Company as an additional or substitute Member of the Company only upon that person's execution of a counterpart of the LLC Agreement to evidence its written acceptance of the terms and provisions of the LLC Agreement, and acceptance thereof by resolution of the Board, which acceptance may be given or withheld in the sole discretion of the Board; if that person is a transferee, its agreement in writing to its assumption of the obligations under the LLC Agreement of its assignor, and acceptance thereof by resolution of the Board; if that person is a transferee, a determination by the Board that the Transfer was permitted by the LLC Agreement; and approval of the Board. Whether or not a transferee who acquired any Units has accepted in writing the terms and provisions of the LLC Agreement and assumed in writing

[50] *See* Section 10.2 of the BOX Holdings LLC Agreement.

[51] *See* Article 13 of the BOX Options LLC Agreement.

[52] *See* Section 16.1 of the BOX Holdings LLC Agreement.

the obligations hereunder of its predecessor in interest, that transferee will be deemed, by the acquisition of those Units, to have agreed to be subject to and bound by all the obligations of the LLC Agreement with the same effect and to the same extent as any predecessor in interest of that transferee. Notwithstanding the foregoing, any Person to which the Company issues new Class B Units shall be automatically admitted as a Member upon such Person's execution of a counterpart of this Agreement. Pursuant to Section 7.1(c) of the LLC Agreement, all costs incurred by the Company in connection with the admission of a substituted Member will be paid by the transferor Member. The transfer provisions in Section 7.1 of the LLC Agreement are not contained in the BOX Options LLC Agreement; however, the Exchange notes that the provisions of Section 7.1 are substantially based on provisions in the BOX Holdings Group LLC Agreement.[53]

Pursuant to Section 7.2 of the LLC Agreement, the Company will have a right of first refusal if a Member desires to Transfer its Units, and obtains a bona fide offer therefor from a third-party transferee. Further, Section 7.3 of the LLC Agreement provides that, if the Company does not elect to exercise its right of first refusal, the non-transferring Member(s) next have a right of first refusal. The provisions in Sections 7.2 and 7.3 of the LLC Agreement are substantially based on provisions found in the BOX Holdings LLC Agreement, with certain variations to account for differences in corporate and ownership structure.[54] The Exchange believes that such variations are necessary to ensure proper application of the LLC Agreement's provisions to the Company, which serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Act.[55] Further, the Exchange believes that the variations in Sections 7.2 and 7.3 of the LLC Agreement that tailor those provisions to the corporate and ownership structure of BSTX would help ensure that persons subject to the Exchange's jurisdiction are able to navigate and more readily understand the LLC Agreement. The Exchange believes that this, in turn, would be consistent with Section 6(b)(1) of the Act[56] because it would help ensure that the Exchange, including in its operation of facilities, is so organized and has the capacity to be able to carry out the purposes of the Act.

Pursuant to Section 7.4 of the LLC Agreement, no Transfer may occur if the Transfer could cause a termination of the Company, could cause a termination of the Company's status as a partnership or cause the Company to be treated as a publicly traded partnership for federal income tax purposes, is prohibited by any securities laws, is prohibited by the LLC Agreement, or is to a minor or incompetent person.

Section 7.4(e) of the LLC Agreement requires that a Member will provide the Company with written notice fourteen (14) days prior, and the Company will provide the Commission and the Exchange with written notice ten (10) days prior, to the closing date of any acquisition that results in that Member's Percentage Interest, alone or together with any related person of that Member, meeting or crossing the threshold level of 5% or the successive 5% Percentage Interest levels of 10% and 15%. Any person that, either alone or together with its related persons, owns, directly or indirectly, of record or beneficially, five percent (5%) or more of the then outstanding Units will, immediately upon acquiring knowledge of its ownership of five percent (5%) or more of the then outstanding Units, give the Company written notice of that ownership. In addition, Section 7.4(f) of the LLC Agreement provides that any Transfer that results in the acquisition and holding by any person, alone or together with its related persons, of an aggregate Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% Percentage Interest level (*i.e.,* 25%, 30%, etc.) is also subject to the rule filing process pursuant to Section 19 of the Act.

Under Section 7.4(g) of the LLC Agreement, unless it does not directly or indirectly hold any interest in a Member, a Controlling Person (as defined below) of a Member will be required to execute an amendment to the LLC Agreement upon establishing a Controlling Interest (as defined below) in any Member that, alone or together with any related persons of that Member, holds a Percentage Interest in the Company equal to or greater than 20%. This amendment will be substantially in the form of the instrument of accession attached as Exhibit 5B hereto [sic] and provide that the Controlling Person will agree to become a party to the LLC Agreement and to abide by all of its provisions, to the same extent and as if they were Members. These amendments to the LLC Agreement will be subject to the rule filing process pursuant to Section 19 of the Act. The rights and privileges, including all voting rights, of the Member in whom a Controlling Interest is held, directly or indirectly, under the LLC Agreement and the LLC Act will be suspended until the amendment has become effective pursuant to Section 19 of the Act or the Controlling Person no longer holds, directly or indirectly, a Controlling Interest in the Member.[57] As a result, any new Member or other direct or indirect owner of an equity interest in BSTX, whether by transfer of such equity interest from an existing owner or otherwise, will be subject to the same requirements as all other Members, namely that it will be required to execute an instrument of accession to the LLC Agreement and be subject to the rule filing process if the new Member holds, directly or indirectly, a Controlling Interest in BSTX.

In accordance with Section 7.4(h) of the LLC Agreement, if a Member, or any related person of that Member, is approved by the Exchange as a BSTX Participant pursuant to the Exchange Rules, and that Member's Percentage Interest is greater than 20%, alone or together with any Related Person of that Member, the voting rights of the Member and its appointed Member Directors will be limited to 20%; provided, however, that the Member's full Percentage Interest will be counted for quorum purposes and the portion greater than 20% will be voted by the person presiding over quorum and vote matters in the same proportion as the Units held by the other Members are voted. The Exchange notes that Section 7.4 of the Company's LLC Agreement is identical in substance to provisions of the BOX Holdings LLC Agreement.[58]

In addition to the provisions discussed above, Section 5 of the LLC Agreement includes provisions that relate to changes in ownership of the Company. Because BOX Options is wholly-owned by BOX Holdings, the LLC Agreement differs from the BOX Options LLC Agreement. Under Section 5.5 of the LLC Agreement, a Member will cease to be a Member of the Company upon the Bankruptcy or the involuntary dissolution of that Member. Further, Section 5.8 of the LLC Agreement allows the Board, by unanimous vote and after appropriate notice and opportunity for hearing, to suspend or terminate a Member's voting

[53] *See* Section 7.1 of the BOX Holdings LLC Agreement.

[54] *See* Sections 7.2 and 7.3 of the BOX Holdings LLC Agreement.

[55] 15 U.S.C. 78f(b)(5).

[56] 15 U.S.C. 78f(b)(1).

[57] *See supra* note 16.

[58] *See* Section 7.4 of the BOX Holdings LLC Agreement.

privileges or membership in the Company for three potential reasons: (i) In the event the Board determines in good faith that such Member is subject to a ''statutory disqualification,'' as defined in Section 3(a)(39) of the Act; (ii) in the event the Board determines in good faith that such Member has violated a material provision of this Agreement, or any federal or state securities law; or (iii) in the event the Board determines in good faith that such action is necessary or appropriate in the public interest or for the protection of investors. The Exchange believes that limiting the ability to participate in the Company for Members who may act in contravention of legal or ethical standards may promote just and equitable principles of trade, and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Act.[59] Further, the Exchange believes that the ability to suspend or terminate a Member's voting privileges or membership in the Company as described above would be consistent with Section 6(b)(1) of the Act.[60] This is because such measures in respect of Members who act in contravention of legal or ethical standards would help ensure that the Exchange, including in its operation of facilities, is so organized and has the capacity to be able to carry out the purposes of the Act, including the prevention of inequitable and unfair practices.

Finally, the Exchange notes that Section 18.1 of the Company's LLC Agreement provides that amendments to the LLC Agreement must be approved by the Board, including one Member Director appointed by each of BOX Digital and tZERO, and any amendment of a provision specific to any Class, Member, or the Exchange requires the consent of holders of a majority of the outstanding Units of such Class, or such Member or the Exchange (as applicable). In addition, the Company shall provide prompt notice to the Exchange of any amendment, modification, waiver or supplement to the Agreement formally presented to the Board for approval and the Exchange shall review each such amendment, modification, waiver or supplement and, if such amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the SEC before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.[61] These provisions are similar to provisions in the BOX Holdings LLC Agreement but differ in details related to the different ownership structure of the Company.[62]

Regulation of the Company

In the discussion below, the Exchange describes provisions in the LLC Agreement related to regulation of the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Generally, Section 3.2 of the LLC Agreement, which is identical in substance to a provision in the BOX Options LLC Agreement, provides that the Exchange has authority to act as the SRO for the Company, will provide the regulatory framework for the BSTX Market and will have regulatory responsibility for the activities of the BSTX Market.[63] In addition, the Exchange will provide regulatory services to the Company pursuant to the Facility Agreement. Nothing in the LLC Agreement shall be construed to prevent the Exchange from allowing the Company to perform activities that support the regulatory framework for the BSTX Market, subject to oversight by the Exchange. This provision ensures that the Exchange has full regulatory control over BSTX, which is designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of the Company.

Section 15 of the LLC Agreement deals with how the Company will govern the handling of confidential information, as it relates to the securities regulations and otherwise. All of the provisions in Section 15 of the LLC Agreement are substantively similar to provisions in the BOX Options LLC Agreement, except where noted below.[64] Under Sections 15.1 and 15.2(a) of the LLC Agreement, subject to certain exceptions set forth below, no Member will make any public disclosures concerning the LLC Agreement without the prior approval of the Company. Each Member and the Exchange may only use confidential information of the Company in connection with the activities contemplated by the LLC Agreement and other written agreements and pursuant to the Act and the rules and regulations thereunder. Furthermore, Section 15.4 of the LLC Agreement provides that representatives of the parties will meet to institute confidentiality procedures and discuss confidentiality and disclosure issues.

Pursuant to Section 15.2(b) of the LLC Agreement, each of the Members and the Exchange may disclose confidential information of the Company only to its respective directors, officers, employees and agents who have a reasonable need to know the information. Also, such individuals may disclose confidential information of the Company to the extent required by applicable securities or other laws, a court or securities regulators, including the Commission and the Exchange.

Section 15.3 of the LLC Agreement requires that each Member and the Exchange will hold all non-public information concerning the other Members or the Exchange in strict confidence, unless disclosure to an applicable regulatory authority is necessary or appropriate or unless compelled to disclose by judicial or administrative process or required by law. If a Member or the Exchange is compelled to disclose any Member Information in connection with any necessary regulatory approval or by judicial or administrative process, it will promptly notify the disclosing party to allow the disclosing party to seek a protective order.

Pursuant to Section 15.5 of the LLC Agreement, nothing in the LLC Agreement will be interpreted as to limit or impede the rights of the Commission, pursuant to the federal securities laws and rules and regulations thereunder, and the Exchange to access and examine applicable confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any directors, officers, employees or agents of the Company and any directors, officers, employees or agents of the Members to disclose that confidential information to the Commission or the Exchange. This is substantially the same provision that is contained in the BOX Options LLC Agreement, except that it also provides that the SEC can access and examine Confidential Information, pursuant to the federal securities laws and rules and regulations thereunder.[65]

Under Section 15.6 of the LLC Agreement, confidential information of the Company or the Exchange

[59] 15 U.S.C. 78f(b)(5).

[60] 15 U.S.C. 78f(b)(1).

[61] A proposed rule change can also become effective by operation of law. *See* 15 U.S.C. 78s(b)(2).

[62] *See* Section 18.1 of the BOX Holdings LLC Agreement.

[63] *See* Section 3.2 of the BOX Options LLC Agreement.

[64] *See* Article 12 of the BOX Options LLC Agreement.

[65] *See* Section 12.5 of the BOX Options LLC Agreement.

pertaining to regulatory matters (including but not limited to disciplinary matters, trading data, trading practices and audit information) will not be made available to any persons other than to the Company's Directors, officers, employees and agents that have a reasonable need to know the contents thereof; will be retained in confidence by the Company and the Directors, officers, employees and agents of the Company; and will not be used for any non-regulatory purpose. Nothing in the LLC Agreement will be interpreted as to limit or impede the rights of the Commission and the Exchange to access and examine that confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any Directors, officers, employees and agents of the Company to disclose that confidential information to the Commission or the Exchange.

Finally, Section 18.8 of the LLC Agreement establishes that the Company will not operate as a facility of the Exchange until this rule filing is effective. Upon effectiveness, the Commission and the Exchange will then have regulatory oversight responsibilities with respect to the Company and references in the LLC Agreement to the Exchange, the Commission, any regulation or oversight of the Company by the Commission or the Exchange, and any participation in the affairs of the Company by the Commission or the Exchange, will take effect. The execution of the LLC Agreement by the Exchange will not be required until the approval is obtained, at which time the Exchange will become a party to the LLC Agreement. This provision is not included in the BOX Options LLC Agreement because it would not be applicable. By not operating the Company until this rule filing is effective, the Exchange believes it is fostering cooperation and coordination with persons engaged in regulating (*e.g.,* the Commission), clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Act.[66]

Regulatory Jurisdiction Over Members

In the discussion below, the Exchange describes provisions in the LLC Agreement related to regulatory jurisdiction over Members by the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Pursuant to Section 11.1 of the LLC Agreement, which is similar in substance to a provision in the BOX Holdings LLC Agreement, the Board will cause to be entered in appropriate books, kept at the Company's principal place of business, all transactions of or relating to the Company.[67] Each Member will have the right to inspect and copy those books and records, excluding regulatory and disciplinary information. The Board will not have the right to keep confidential from the Members any information that the Board would otherwise be permitted to keep confidential pursuant to § 18–305(c) of the LLC Act, except for information required by law or by agreement with any third party to be kept confidential. The Company's independent auditor will be an independent public accounting firm selected by the Board. To the extent related to the operation or administration of the Exchange or the BSTX Market, all books and records of the Company and its Members will be maintained at a location within the United States, the books, records, premises, directors, officers, employees and agents of the Company and its Members will be deemed to be the books, records, premises, directors, officers, employees and agents of the Exchange for the purposes of, and subject to oversight pursuant to, the Act, and the books and records of the Company and its Members will be subject at all times to inspection and copying by the Commission and the Exchange.

Under Section 18.6(a) of the LLC Agreement, to the extent they are related to Company activities, the books, records, premises, officers, directors, agents, and employees of the Member will be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for the purpose of and subject to oversight pursuant to the Act. Further, pursuant to Section 18.6(b) of the LLC Agreement, the Company, the Members and the officers, directors, employees and agents of each, by virtue of their acceptance of those positions, will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission and the Exchange for purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, activities of the Exchange and the Company, and Delaware state courts for any matter relating to the organization or internal affairs of the Company, and will be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. federal courts, the Commission, the Exchange or Delaware state courts, as applicable, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by those courts or agencies. The Company, the Members and the officers, directors, employees and agents of each, by virtue of their acceptance of those positions, also agree that they will maintain an agent in the United States for the service of process of a claim arising out of, or relating to, the activities of the Exchange and the Company. These provisions are substantially similar to provisions of the BOX Options LLC Agreement.[68]

Pursuant to Section 18.6(c) of the LLC Agreement, with respect to obligations under the LLC Agreement related to confidentiality regulation, jurisdiction and books and records, the Company, the Exchange, and each Member will ensure that directors, officers and employees of the Company, the Exchange, and each Member consent in writing to the applicability of the applicable provisions to the extent related to the operation or administration of the Exchange or the BSTX Market. This provision is substantially the same as the provision contained in the BOX Options LLC Agreement, with the exception of the deletion of a reference to privacy rules in Canada, which are not applicable to the current Members of the Company.[69] The Exchange believes that allowing only applicable laws to be referenced in the LLC Agreement helps to ensure that proper legal standards apply to the Company, which may foster cooperation and coordination with persons engaged in regulating transactions in securities, consistent with Section 6(b)(5) of the Act.[70] Further, the Exchange believes that basing the provisions described above on the BOX Options LLC Agreement but omitting terms that are not applicable would help ensure that persons subject to the Exchange's jurisdiction are able to navigate and more readily understand the LLC Agreement. The Exchange believes that this, in turn, would be consistent with

[66] 15 U.S.C. 78f(b)(5).

[67] *See* Section 11.1 of the BOX Holdings LLC Agreement.

[68] *See* Section 14.6 of the BOX Options LLC Agreement.

[69] *See* Section 14.6(c) of the BOX Options LLC Agreement.

[70] 15 U.S.C. 78f(b)(5).

Section 6(b)(1) of the Act[71] because it would help ensure that the Exchange, including in its operation of facilities, is so organized and has the capacity to be able to carry out the purposes of the Act.

Amendments to LLC Agreement

In the discussion below, the Exchange describes provisions in the LLC Agreement related to amendments to the LLC Agreement, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Section 18.1 of the LLC Agreement, which is substantially similar to a provision in the BOX Holdings LLC Agreement,[72] provides that the LLC Agreement may only be amended by an agreement in writing approved by the Board, including at least one Member Director appointed by each Member, without the consent of any Member or other person. In addition, any terms specific to any Class, or Member or to the Exchange may not be altered or adversely affect that Member or the Exchange without the prior written consent of holders of a majority of the outstanding Units of such Class, or such Member or the Exchange as applicable. The Company will provide prompt notice to the Exchange of any amendment, modification, waiver or supplement to the LLC Agreement formally presented to the Board for approval and the Exchange will review each amendment, modification, waiver or supplement and, if that amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before that amendment may be effective, then that amendment will not be effective until filed with, or filed with and approved by, the Commission, as the case may be. If the Exchange ceases to be the SRO authority of the Company, the Exchange will no longer be a party to the LLC Agreement and thereafter the provisions of the LLC Agreement will not apply to the Exchange except for the provisions referenced in Section 18.12, which will survive.

Additional Provisions

As previously mentioned, BSTX is a Delaware limited liability company. As such, the LLC Agreement contains numerous provisions that are standard or not novel for a similarly situated commercial business registered as a limited liability company under the laws of the state of Delaware.[73] The Exchange believes that these provisions are consistent with Section 6(b)(1) of the Act[74] because they are consistent with corporate governance practices, generally, and they would help ensure that the Exchange, including in its operation of facilities, is so organized and has the capacity to be able to carry out the purposes of the Act.

2. Statutory Basis

In addition to the sections above that discuss variations from the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and their associated statutory bases, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[75] in general, and furthers the objectives of Section 6(b)(1),[76] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act[77] in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C . Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2020–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2020–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[71] 15 U.S.C. 78f(b)(1).

[72] *See* Section 18.1 of the BOX Holdings LLC Agreement.

[73] *See* LLC Agreement Sections 2.1, 2.2, 2.4, 2.5, 2.6, 2.7, 3.1, 4.2, 4.5, 4.6, 4.7, 4.8, 4.9, 4.11, 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 6.3, 6.4, 6.5, 7.5, 7.6, 7.7, 8.3, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 10.3, 10.4, 11.2, 11.3, 11.4, 11.5, 11.6, 12, 13.1, 14, 16.2, 17, 18.2, 18.3, 18.4, 18.5, 18.7, 18.9, 18.10, 18.11, and 18.12.

[74] 15 U.S.C. 78f(b)(1).

[75] 15 U.S.C. 78f(b).

[76] 15 U.S.C. 78f(b)(5).

[77] 15 U.S.C. 78f(b)(5).

public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2020–16 and should be submitted on or beforeJune 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[78]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11653 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

[78] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11129]

Notice of Public Meeting; Request for Comments

SUMMARY: As required by the Federal Advisory Committee Act, the Department of State gives notice of a virtual meeting of the Advisory Committee on International Postal and Delivery Services.

DATES: Comments due by June 9, 2020.

Virtual meeting on June 16, 2020 from 1:00 p.m. to 5:00 p.m., Eastern Time via Webex at the following link: *https://statedept.webex.com/statedept/j.php?MTID=meeb8ecb9729bbd2ab b0c92b280e1dd6fMeeting* number: 906 036 756

Password: PUBLIC159357 (78254215 from phones and video systems).

ADDRESSES: Send comments to Shereece Robinson by any of the following methods:

- *Mail:* IO/STA, Suite L–409 SA–1, U.S. Department of State, Washington, DC 20522
- *Email: RobinsonSA2@state.gov.*
- *Telephone:* (202) 663–2649.

SUPPLEMENTARY INFORMATION:

The agenda of the meeting will include a discussion of the state of planning for the Universal Postal Congress, issues surrounding opening the Universal Postal Union to a broader membership, and remuneration issues. Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speakers list, or requesting reasonable accommodation should be made through the above listed methods for comments. Any requests received after June 9, 2020, may be considered and will be granted as reasonably possible.

FOR FURTHER INFORMATION CONTACT: Please contact Ms. Shereece Robinson of the Office of Specialized and Technical Agencies (IO/STA), at (202) 663–2649.

Zachary A, Parker,

Director, Office of Directives Management, Department of State.

[FR Doc. 2020–11678 Filed 5–29–20; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 11130]

Renewal of Defense Trade Advisory Group Charter

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State announces the renewal of the Charter for the Defense Trade Advisory Group (DTAG) for another two years. The DTAG advises the Department on its support for and regulation of defense trade to help ensure the foreign policy and national security of the United States continue to be protected and advanced, while helping to reduce unnecessary impediments to legitimate exports in order to support the defense requirements of U.S. friends and allies. It is the only Department of State advisory committee that addresses defense trade related topics. The DTAG will remain in existence for two years after the filing date of the Charter unless terminated sooner. The DTAG is authorized by the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Please contact Neal Kringel, Alternate Designated Federal Officer, Defense Trade Advisory Group, and Management Director, Directorate of Defense Trade Controls, Department of State, Washington, DC 20520, telephone: (202) 663–2836.

Neal F. Kringel,

Alternate Designated Federal Officer, Defense Trade Advisory Group, Department of State.

[FR Doc. 2020–11675 Filed 5–29–20; 8:45 am]

BILLING CODE 4710–25–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the Association of American Railroads (WB20–22—4/3/20) for permission to use data from the Board's 2018 Masked Carload Waybill Sample along with continued access to previously received datasets. A copy of this request may be obtained from the Board's website under docket no. WB20–22.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020–11711 Filed 5–29–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind Notice of Intent To Prepare Environmental Impact Statement in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice to Rescind Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that it is rescinding its Notice of Intent (NOI), originally published in the **Federal Register** on November 7, 2019, to prepare a Draft Environmental Impact Statement for the South County Traffic Relief Effort project, located in Orange and San Diego Counties, California.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Smita Deshpande, Senior Environmental Planner, Caltrans District 12, 1750 East Fourth Street, Suite 100, Santa Ana, California 92705, weekdays 8:00 a.m. to 5:00 p.m., telephone (657) 328–6151, email *smita.desphande@dot.ca.gov.* For FHWA: David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and

the Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the assigned National Environmental Policy Act (NEPA) agency, in cooperation with the Foothill/Eastern Transportation Corridor Agency (F/ETCA), published an NOI on November 7, 2019, to prepare an EIS on a proposal for a highway improvement project in Orange County and San Diego County, California. The proposed improvements intended to address north-south regional mobility and accommodation of travel demand included the extension of the tolled State Route (SR) 241 lanes to Interstate (I) 5, the extension of Crown Valley Parkway to SR 241, new connections between Ortega Highway, Antonio Parkway, Avery Parkway, and SR–73, new general purpose lanes on I–5, new managed lanes on I–5, or combinations of these preliminary alternatives. The formal scoping period occurred beginning November 8, 2019 and ended February 10, 2020. Public scoping meetings were held on November 20, 2019 and December 4, 2019 in Mission Viejo, California, and Dana Point, California, respectively. Following the formal scoping period, review of the public and agency input received, and preliminary alternatives evaluation work, Caltrans and F/ETCA mutually agreed to discontinue project development. Therefore, the FHWA is rescinding the NOI as there is no effort underway to advance the EIS. Comments and questions concerning this action should be directed to Caltrans at the email address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 26, 2020.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2020–11775 Filed 5–29–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0062]

Marking of Commercial Motor Vehicles; Application for an Exemption—Adirondack Trailways, Pine Hill Trailways, and New York Trailways

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant Adirondack Transit Lines, Inc. (dba Adirondack Trailways), Pine Hill-Kingston Bus Corp. (dba Pine Hill Trailways), and Passenger Bus Corp. (dba New York Trailways) an exemption from FMCSA's commercial motor vehicle (CMV) marking rules under certain circumstances involving the exchange of equipment and/or drivers. FMCSA has determined that the terms and conditions of the exemption likely ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective June 1, 2020 and expires May 28, 2025.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

The on-line Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including 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.*

FOR FURTHER INFORMATION CONTACT: Ms. La Tonya Mimms, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2020–0062'' 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 by visiting the Docket Management Facility 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., E.T., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would be likely to achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the granting or denial, and, if granted, the specific person or class of persons receiving the exemption and the regulatory provision or provisions from which exemption is granted. The notice must specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Under 49 CFR 390.21, commercial motor vehicles must display the legal name or single trade name of the motor carrier operating the vehicle and the

USDOT identification number assigned to that motor carrier. For motor carriers operating interchanged passenger carrying vehicles, the requirements of section 390.21(b)(3) are satisfied if the vehicle is marked with a single placard, sign, or other device affixed to the right (curb) side of the vehicle on or near the front passenger door. The placard, sign, or device must display the legal name or a single trade name of the motor carrier operating the CMV and the motor carrier's USDOT number, preceded by the words ''Operated by.''

Adirondack Trailways, Pine Hill Trailways, and New York Trailways combined operate approximately 130 motorcoaches using about 124 drivers in intercity bus service. The three commonly owned passenger services interchange buses and drivers frequently each year. Additionally, Adirondack Trailways is party to longstanding agreements for through service with various carriers and for revenue pooling with Greyhound Lines, Inc. The applicants explained that the frequency with which motorcoaches are involved in interchange arrangements with the three Trailways carriers, Greyhound Lines, and other passenger carriers makes it difficult to comply with section 390.21(b)(3). This is especially the case when the interchanges happen on short notice and in remote locations. Therefore, the companies are seeking an exemption from the CMV marking requirements in 49 CFR 390.21(b)(3).

IV. Public Comments

On January 14, 2020 (85 FR 2229), the Agency published a notice requesting public comment on the exemption request from Adirondack Trailways, Pine Hill Trailways, and New York Trailways. The Agency received three responses to the notice, with comments from two individuals who opposed the exemption application and comments from the American Bus Association (ABA) writing in support of the request.

Mr. Michael Millard said ''[b]ased on the legal issues of three carriers sharing one insurance policy and issues regarding drivers employed by multiple carriers I suggest the application [should be] denied and the three carriers do what they already seem to have done. Become one carrier.''

An anonymous commenter stated: ''In a world where there is great concern about chameleon carriers, these carriers are asking for an exemption from the one tool that FMCSA has to track who is responsible for the safety of the vehicle on the road.''

The ABA believes ''This action, coupled with the [carriers'] long-standing safety record and level of service to the passengers in the region, persuades ABA to support the petition for exemption.''

V. FMCSA Decision and Safety Analysis

FMCSA believes it is appropriate to grant the applicants an exemption from 49 CFR 390.21 concerning the CMV marking requirements for interchanged passenger-carrying equipment. The frequency with which vehicles are interchanged between the commonly owned and controlled motor carries of passengers, Greyhound Lines and other authorized motor carriers of passengers creates significant challenges for achieving compliance with 49 CFR 390.21(b)(3). The Agency has determined, as required by 49 U.S.C. 31315(b) and the implementing regulations under 49 CFR part 381, that the exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption.

The Agency acknowledges the commenters' concerns. However, the exemption does not provide relief from a rule that could impact the safety performance of the commonly owned companies. The only question is whether the agency should provide an exemption to address the marking requirements when the interchanges between carriers happen frequently, especially on short notice and in remote locations. These carriers still bear full responsibility for compliance with the applicable safety regulations. Furthermore, the granting of the exemption does not leave Federal and State safety enforcement personnel without a means of identifying the carrier responsible for the operation of a vehicle on a given trip, or a means of conducting compliance assurance activities.

From a safety equivalency perspective, each of the passenger carriers providing transportation services would continue to be subject to all regulations concerning on-road safety performance (*e.g.,* driver licensing and qualifications, controlled substances and alcohol testing, inspection, repair, and maintenance, hours of service, etc.). Each passenger carrier would also continue to meet the financial responsibility requirements and maintain operating authority. The Agency's information technology system provides a means for immediate notification by the insurance carrier if the insurance policy is cancelled, or there is a change in operating authority status.

In addition, each vehicle would display the name and USDOT number assigned to the owner/lessee of the passenger-carrying vehicle, with information about the responsible motor carrier readily available from the driver.

FMCSA does not believe the exemption will compromise safety because the public can easily identify one of the FMCSA-authorized carriers involved in the transportation, while Federal or State enforcement personnel would have immediate access to the identity of the responsible carrier, if the name and USDOT number displayed on the side of the passenger-carrying vehicle is not the operating carrier for the specific trip.

VI. Terms and Conditions of the Exemption

This exemption from 49 CFR 390.21(b)(3) is issued to Adirondack Transit Lines, Inc. (dba Adirondack Trailways), Pine Hill-Kingston Bus Corp. (dba Pine Hill Trailways), and Passenger Bus Corp. (dba New York Trailways). The conditions of this exemption are as follows:

1. Passenger-carrying commercial vehicles display the name and USDOT number of the owner/lessee;
2. A document is signed by at least one of the authorized carriers involved in the movement of the vehicle that provides (in electronic or paper format):
   a. The registered name of each party to the agreement;
   b. The USDOT number for each party to the agreement;
3. The passenger carrier named on the driver's record of duty status is the responsible motor carrier;
4. The owner/lessee and the responsible motor carrier cooperate with all Federal, State and local enforcement officials to provide the identity of the operators of the passenger carrying vehicle.

The carrier and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) and Hazardous Materials Regulations (49 CFR parts 105–180).

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may adopt the same exemption with respect to operations in intrastate commerce.

FMCSA Notification

Adirondack Trailways, Pine Hill Trailways, and New York Trailways must notify FMCSA within 5 business days of any accident (as defined by 49 CFR 390.5) involving the operation of any of their CMVs while under this exemption. The notification must be emailed to *MCPSD@DOT.GOV* and include the following information:

a. Name of the Exemption: ''Adirondack Trailways, Pine Hill Trailways, and New York Trailways'';

b. The USDOT number of the operating carrier;

c. Date of the accident;

d. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident;

e. Driver's name and driver's license State, number, and class;

f. Co-Driver's name and driver's license State, number, and class;

g. Vehicle company number and power unit license plate State and number;

h. Number of individuals suffering physical injury;

i. Number of fatalities;

j. The police-reported cause of the accident;

k. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and

l. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to *MCPSD@DOT.GOV* as soon as available.

Termination

The FMCSA does not believe the carriers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revoking the exemption. The FMCSA will revoke the exemption immediately for failure to comply with its terms and conditions.

James A. Mullen,

Deputy Administrator.

[FR Doc. 2020–11740 Filed 5–29–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0101]

Controlled Substances and Alcohol Use and Testing: Motion Picture Compliance Solutions Application for Exemption From the Drug and Alcohol Clearinghouse Pre-Employment Full-Query

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant Motion Picture Compliance Solutions (MPCS) an exemption from the requirement that an employer must not employ a driver who is subject to drug and alcohol testing to perform safety-sensitive functions prior to conducting a full query of the Drug and Alcohol Clearinghouse (Clearinghouse) on behalf of its members that employ commercial driver's license (CDL) holders. Under the exemption, MPCS may conduct a limited query of the Clearinghouse before one of its member employers hires a driver for a project, rather than conducting a full pre-employment query as required. If the limited query indicates that information about the driver exists in the Clearinghouse, the driver would not be permitted to perform safety-sensitive functions unless and until a full query subsequently shows that the driver is not prohibited from operating a commercial motor vehicle (CMV). Absent the exemption, a limited query would be available only to satisfy the employer's duty to make an annual query, not a pre-employment query. The Agency has determined that the terms and conditions of the exemption, coupled with MPCS's unique safety protocols, will achieve a level of safety that is equivalent to the level of safety that would be achieved through compliance with the applicable regulation.

DATES: This exemption is effective June 1, 2020 and expires May 28, 2025.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2019–0101 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 Management Facility 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., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4325; Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

II. Background

Current Regulations

Currently, 49 CFR 382.701(a)(2) requires that employers must not employ a driver subject to the testing requirements of 49 CFR part 382 without first conducting a pre-employment full query of the Clearinghouse. A full query allows the employer to see any information that exists about a driver in the

Clearinghouse. An employer must obtain the driver's specific consent, provided electronically through the Clearinghouse, prior to the release of detailed information in response to the full query.

By contrast, a limited query allows an employer to determine whether the Clearinghouse contains any information about the driver, but does not release any specific information about the driver. Limited queries require only a driver's general consent, which is obtained and retained outside the Clearinghouse and may be in written or electronic form. Under 49 CFR 382.701(b)(2), an employer may conduct a limited query in lieu of a full query when satisfying the annual query requirement for current driver-employees. However, if the response to a limited query indicates there is information about the driver in the Clearinghouse, the employer must conduct a full query, after obtaining the driver's specific consent, within 24 hours, as required by 49 CFR 382.701(b)(3). If the full query is not conducted within the 24-hour period, or shows that the driver is prohibited from operating a CMV, the employer must not permit the driver to continue to perform safety-sensitive functions.

MPCS Exemption Application

MPCS requested the exemption from 49 CFR 701(a)(2) on behalf of its members that employ CDL holders subject to drug and alcohol testing under 49 CFR part 382. MPCS's members employ drivers providing transportation services to or from theatrical, commercial, television, or motion picture production sites. MPCS would conduct a limited query of the Clearinghouse before one of its member employers hires a driver for a project. If the limited query indicates that information about the driver exists in the Clearinghouse, the driver would not be permitted to perform safety-sensitive functions unless and until a full query subsequently shows that the driver is not prohibited from operating a CMV. MPCS, serving as a Consortium/Third-party Administrator (C/TPA) for its member employers, requests, obtains, and retains limited query general consent forms from drivers. A copy of the exemption application is included in the docket referenced at the beginning of this notice.

III. Public Comments

On March 6, 2020 (85 FR 13229), FMCSA published a **Federal Register** notice requesting public comment on MPCS's exemption application. The Agency received 12 comments: Dot Production Compliance; Brian Gray; Brian Hildebrandt; Michael Millard, AWM; the Owner-Operator Independent Drivers Association (OOIDA); Scopelitis Transportation Consulting (STC); James Whalen; Mark Whelan, Teamsters Local 817; Pamela White; and three separate anonymous comments. Four of the commenters supported the request while eight commenters expressed opposition to the request.

dot Compliance believes that granting the MPCS request to start with a limited query is needed for employing drivers in the studio production industry. The company stated, ''[The exemption] allows for a more expedient onboarding process and we agree that this exemption would not have any adverse impacts on operational safety, because if the Limited Query produces negative information MPCS will then conduct a Full Query.''

dot Compliance believes compliance with 49 CFR 382.701(a)(2) would significantly slow down the industry's ability to hire drivers within the short onboarding periods of less than 24 hours and prevent the studios from implementing ''more efficient or effective operations that would maintain a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.''

STC expressed support for the MPCS exemption application. STC stated:

> [MPCS's] robust safety protocols, including a private database that tracks drivers' drug testing history, provides MPCS with an uninterrupted look into drivers' qualifications. This coupled with their adoption of the Drug & Alcohol Clearinghouse limited query protocol (which will be converted to a full query in the unlikely event information is returned) is an approach that exceeds minimum requirements and creates a level of safety greater than that required under current regulation. Under the exemption, MPCS will not be relieved of the requirement to use the Clearinghouse, they will simply be allowed to use a reasonable alternative method to access the information. They will continue to take the same action in response to information it contains and will be obligated to report testing information like all other motor carriers and third-party administrators.

OOIDA opposes the MPCS request because they believe granting the exemption would

''. . . diminish the intended safety benefits of the program.'' OOIDA acknowledges the employment arrangement described by MPCS and states:

> This type of scenario was one of the reasons the Clearinghouse was enacted, so drivers with drug/alcohol violations cannot simply move around to different carriers. Waiving the pre-employment full query requirements may prevent carriers from accessing necessary hiring information and allow drivers with drug/alcohol violations to return [to] the road before proper evaluation and treatment is completed. OOIDA urges FMCSA to deny the MPCS exemption request. The exemption would not maintain or improve the level of safety that is currently required by the Drug and Alcohol Clearinghouse.

Brian Gray also wrote in opposition to the MPCS requests for an exemption from 49 CFR 382.701(a)(2). Mr. Gray states:

> All motor carriers are in need of drivers to start ASAP. Allowing this exemption will push CDL holding drug users into the motion picture industry, and because MPCS uses the pre-employment testing exemption in its hiring process, most of these drivers won't get pre-employment tested. MPCS's reasoning for the exemption is due to the length of time it says it takes to run a full query. Being a TPA owner myself, my staff has completed over 1,000 pre-employment queries. The most time consuming part of running the query is getting the driver registered with the Clearinghouse. Once the driver is registered, performing the query takes less than 5 minutes. That being said, registration has been open since October 2019. MPCS has had plenty of time to get its 12,000 drivers registered.

IV. FMCSA's Safety Analysis and Decision

The FMCSA acknowledges the concerns of commenters who expressed opposition to the MPCS exemption application. However, as explained below, FMCSA disagrees with commenters who stated that, were we to grant the requested exemption, an equivalent level of safety would not be maintained. In the Agency's judgment, MPCS's process for identifying qualified drivers for its member employers is uniquely designed to accommodate safety concerns related to drug and alcohol testing violations. FMCSA concludes that, based on MPCS's existing processes, coupled with the terms and conditions set forth below, it is appropriate to provide limited relief from the pre-employment full query requirement through the requested exemption.

As MPCS explained, the motion picture industry is freelance in nature and employs a pool of approximately 12,000 production drivers who are considered multiple-employer drivers. These drivers frequently work for more than one production-related motor carrier in a week and in some instances, two or more in the same day. To address the challenges in the motion picture industry, MPCS and its member motor carriers implemented a DOT Violation Database (Database) comparable to the FMCSA's Clearinghouse. The Database

consists of all information and documentation pertaining to a driver's violations, including the initial positive/violation report(s) and/or supporting documentation, substance abuse professional (SAP) documentation, and information about return-to-duty tests and any follow-up tests. This process has been in place for 10 years and drivers and employers have provided and disclosed information relating to their violations such that the Database houses the information needed to support a high level of safety oversight for the motion picture industry's CMV drivers. The Database complies with the applicable privacy rules including driver notification and consent.

With regard to queries of the Database, each time a production company hires a CDL holder, the company accesses the driver's record in the Database to determine if he or she is eligible to operate a CMV based on their drug and alcohol violation history. The Database instantly identifies drivers who are prohibited from performing safety-sensitive functions and ensures that such drivers receive the required SAP evaluation, treatment, return-to-duty testing and follow-up testing before returning to safety-sensitive duties. FMCSA notes that, under this process, drivers are part of a pool of drivers serving the motion picture industry over a period of time, whose pre-Clearinghouse DOT drug and alcohol testing history is known to the employer via the Database. Therefore, these drivers are not fundamentally ''new hires,'' as that term is commonly understood.

With the implementation of FMCSA's Clearinghouse, MPCS members, and MPCS as the C/TPA, will use the exemption to allow them to conduct a limited query of FMCSA's Clearinghouse as part of the ''hiring'' process. This alternative would not jeopardize safety because the employer and/or their C/TPA must conduct a full query if the limited query shows that information about the driver exists in the Clearinghouse. A driver's specific consent for the full query would be provided electronically in the Clearinghouse as required under the existing regulations. At the same time, the Database that was established prior to the Clearinghouse will continue in operation, thereby providing further means of identifying qualified drivers prior to the FMCSA-mandated queries of the Clearinghouse.

To address the requirements for documentation of drivers' consent for limited queries, MPCS would serve as a C/TPA and request, obtain, and retain limited query consent forms from drivers on behalf of its motor carrier members. At any point that a full query becomes necessary, a driver's specific consent would be provided electronically, as noted above.

From a safety equivalency perspective, all CDL holders employed by MPCS' member companies would remain subject to FMCSA controlled substances and alcohol testing requirements, and their employers would ultimately be responsible for complying with the applicable requirements of part 382, other than the pre-employment full query. Drivers for whom a limited query indicates information is contained in the Clearinghouse would not be used in any safety-sensitive capacity until a full query is conducted and the results indicate the driver is not prohibited from operating a CMV. In addition, MPCS would continue to report violation information on behalf of its member employers to FMCSA's Clearinghouse, as required by 49 CFR 382.705 (b).

Finally, the Agency notes that 49 CFR 382.701(c), which provides that an employer conducting a pre-employment full query will be notified if any new information about that driver is reported to the Clearinghouse within 30 days of the full query, would not be applicable to pre-employment limited queries. However, due to the unique hiring practices of MPCS's member employers, under the exemption, MPCS would be conducting limited queries multiple times during any given 30-day period for the same driver, each time the driver is ''hired'' to perform services for a different MPCS employer member. This practice, coupled with drug and alcohol violation information available to MPCS and its member employers through the existing Database, described above, ensures an equivalent or greater level of safety provided by the 30-day notification set forth in 49 CFR 382.701(c).

Based on the information presented in the exemption application, and in consideration of the public comments, FMCSA grants MPCS an exemption from 49 CFR 382.701(a)(2) on behalf of its members, subject to the terms and conditions set forth below. The Agency has determined, as required by 49 U.S.C. 31315(a) and the implementing regulations under 49 CFR 381, that the exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption.

V. Terms and Conditions for the Exemption

This exemption is limited strictly to 49 CFR 382.701(a)(2) of the Federal Motor Carrier Safety Regulations and during the period of the exemption:

1. MPCS, on behalf of its member employers, must obtain the results of a limited query of FMCSA's Clearinghouse for each driver hired to operate a CMV for a member employer, if a full query is not practicable;
2. MPCS, on behalf of its member employers, must conduct a full query of FMCSA's Clearinghouse for each driver whose limited query results indicate information about the driver exists in the Clearinghouse, and, in accordance with current regulations, must not permit the driver to perform safety sensitive functions if the results of the full query indicate the driver is prohibited from doing so;
3. MPCS, acting as a C/TPA, must request, obtain, and retain limited query consent forms from drivers on behalf of its member employers, in accordance with the regulations;
4. MPCS, acting as a C/TPA, must report drivers' controlled substances and alcohol violations to FMCSA's Clearinghouse, in accordance with the regulations; and
5. MPCS and its member employers must maintain operation of the DOT Violation Database, described above.

VI. Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

VII. Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. Interested parties or organizations possessing information that would otherwise show that MPCS is not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of this exemption is inconsistent with 49 U.S.C. 31315, FMCSA will immediately take steps to revoke the exemption of the company and drivers in question.

James A. Mullen,

Deputy Administrator.

[FR Doc. 2020–11742 Filed 5–29–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0078]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DISCO (Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 1, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0078 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0078 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0078, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DISCO is:

—Intended Commercial Use of Vessel: ''Multi-day, offshore sailing charters for sailors and adventurers who want to know what it feels like when you can't see land from the boat.''

—Geographic Region Including Base of Operations: ''Washington State'' (Base of Operations: Mats Mats Bay, WA)

—Vessel Length and Type: 42′ sailboat

The complete application is available for review identified in the DOT docket as MARAD–2020–0078 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0078 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121 * * *

Dated: May 27, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–11699 Filed 5–29–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2019–0018]

FEDERAL RESERVE SYSTEM

[Docket ID OP–1679]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA09

NATIONAL CREDIT UNION ADMINISTRATION

RIN 3133–AF05

Interagency Guidance on Credit Risk Review Systems

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and National Credit Union Administration (NCUA).

ACTION: Final guidance.

SUMMARY: The OCC, the Board, the FDIC, and the NCUA (collectively, the agencies) are issuing final guidance for credit risk review (final guidance). This guidance is relevant to all institutions supervised by the agencies and replaces Attachment 1 of the 2006 Interagency Policy Statement on the Allowance for Loan and Lease Losses. The final guidance discusses sound management of credit risk, a system of independent, ongoing credit review, and appropriate communication regarding the performance of the institution's loan portfolio to its management and board of directors.

DATES: The final guidance is available on June 1, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: Beth Nalyvayko, Bank Examiner, or Lou Ann Francis, Director, Commercial Credit Risk, (202) 649–6670; or Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490. For persons who are hearing impaired, TTY, (202) 649–5597.

Board: Constance Horsley, Deputy Associate Director, (202) 452–5239; Kathryn Ballintine, Manager, (202) 452–2555; or Carmen Holly, Lead Financial Institution Policy Analyst (202) 973–6122; or Alyssa O'Connor, Attorney, Legal Division, (202) 452–3886, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Thomas F. Lyons, Chief, Policy & Program Development, *tlyons@fdic.gov* (202) 898–6850); George J. Small, Senior Examination Specialist, Risk Management Policy, *gsmall@fdic.gov* (917) 320–2750, Risk Management Supervision; Ann M. Adams, Senior Examination Specialist, Risk Management Policy, *annadams@fdic.gov* (347) 751–2469, Risk Management Supervision; or Andrew B. Williams II, Counsel, *andwilliams@fdic.gov;* (202) 898–3591), Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation; 550 17th Street NW, Washington, DC 20429.

NCUA: Vincent H. Vieten, Senior Credit Specialist (703) 518–6618; Uduak Essien, Director (703) 518–6399, Division of Credit Markets; or Ian Marenna, Associate General Counsel (703) 518–6554, Office of General Counsel.

SUPPLEMENTARY INFORMATION:

I. Background

In 2006, the OCC, the Board, the FDIC, and the NCUA (collectively referred to as the agencies) issued the *Interagency Policy Statement on the Allowance for Loan and Lease Losses.*[1] Attachment 1 of that statement, entitled ''Loan Review Systems,'' served as the agencies' guidance on credit risk review (Attachment 1). Attachment 1 supplemented and aligned with other relevant agency issuances on credit review, including the *Interagency Guidelines Establishing Standards for Safety and Soundness.*[2]

In October 2019, the agencies invited public comment on proposed guidance on credit risk review (proposed guidance or proposal).[3] The proposed guidance would update and clarify Attachment 1. It also would adjust terminology to be consistent with the current expected credit losses (CECL) methodology, a recent accounting standards change.[4] The agencies are adopting the proposed guidance in final form (final guidance), with certain revisions as discussed below. The final guidance replaces Attachment 1 as the agencies' guidance on credit risk review systems for all supervised institutions and is being issued as a standalone document. Attachment 1 is rescinded as of June 1, 2020.

II. Overview of Comments

The agencies collectively received 19 comments on the proposed guidance. Commenters included trade associations, banks, credit unions, and members of the public.

Most commenters expressed general support for the guidance. Commenters noted that the proposed guidance reflected sound practices and principles, incorporated the core elements of credit risk review, and did not represent a fundamental shift from Attachment 1. Some commenters raised concerns including that the guidance was too prescriptive.

The comments addressed a wide range of topics, and in some instances, commenters requested clarifications to certain aspects of the proposed guidance. For example, commenters discussed the role of credit risk review including its relation to other functions, such as internal audit; the appropriate scope, depth and frequency of credit risk review activities; internal responsibility for an institution's risk rating framework; the process for adjudicating risk rating disputes; the communication of credit risk review results and qualifications of credit risk review personnel; credit risk review in the context of retail portfolios; and the use of technology and data in credit risk review.

A number of commenters expressed concern with what they viewed as the one-size-fits-all approach of the proposed guidance and the potential burden to smaller institutions. Commenters requested that the agencies specifically tailor the guidance to emphasize flexibility based on an institution's risk profile or even exempt small institutions from the guidance.

Some commenters discussed independence of the credit risk review function and acknowledged that credit risk review provides a critical and independent assurance role but noted that role has expanded in scope and may overlap with duties performed by other functions resulting in a duplication of efforts.

Commenters also expressed concern generally with the implementation of the CECL methodology; the relationship of the proposed guidance to Allowances for Credit Losses (ACL); and whether CECL would make credit risk review more burdensome, particularly for smaller institutions.

[1] *See* OCC Bulletin 2006–47; FDIC Financial Institution Letter FIL–105–2006; Federal Reserve Supervision and Regulation (SR) letter 06–17; NCUA Accounting Bulletin No. 06–01.

[2] 12 CFR part 30, appendix A (OCC); 12 CFR part 208, appendix D–1 (Board); 12 CFR part 364 appendix A (FDIC). *Also see* 12 CFR part 723 (NCUA).

[3] Interagency Guidance on Credit Risk Review Systems, 84 FR 55679 (Oct. 17, 2019).

[4] *See* Financial Accounting Standards Board's, Accounting Standards Codification Topic 326, which revises the accounting for the allowances for credit losses (ACLs) and introduces the CECL methodology. [The agencies' final guidance on CECL is contained in a separate document published elsewhere in this issue of the **Federal Register**.]

III. Discussion of Comments on the Proposed Guidance

The agencies are finalizing the guidance with targeted changes and clarifications to address the concerns raised by commenters. The comments, and any revisions to the final guidance, are discussed below and grouped based on the three questions posed in the proposal and other related topics raised by commenters. The agencies' three questions asked whether the proposed guidance reflected sound practices, whether the proposed guidance was appropriate for institutions of differing sizes, and whether the agencies should include additional factors in the proposed guidance to help credit risk review achieve a sufficient degree of independence.[5]

The agencies emphasize that credit risk review is a significant risk management function separate from the determination of the appropriate reserve for credit losses. While the results of the credit risk review can help ensure that the ACLs or Allowance for Loan and Lease Losses (ALLL) adequately reflects risk in the institution's loan portfolio, the agencies are addressing the implementation of CECL separately from the final guidance.

A. General Application of Guidance

Some commenters indicated the guidance was too prescriptive; in one case, a commenter considered the guidance excessively detailed and not aligned with current practices for credit unions in particular. Others indicated that the proposed guidance reflected foundational principles and outlined elements of a sound credit risk program without mandating how credit risk review should operate. Commenters also raised concerns that the proposed guidance would be enforced as a regulation.

An effective credit risk review function is integral to the safe and sound operation of every insured depository institution. To assist institutions in the creation and operation of such functions, the agencies have developed the final guidance to describe a broad set of practices and principles for developing and maintaining a credit risk review function consistent with safe and sound credit risk management practices and the *Interagency Guidelines Establishing Standards for Safety and Soundness*.[6] However, the final guidance does not establish any requirements or rules, nor does it mandate implementation of a specific system or prescribe specific actions with which institutions must comply.

One commenter expressed general concern about guidance being applicable to all institutions, including credit unions, because the commenter considered credit union operational practices as distinct from those of other institutions. Another commenter called for the guidance to address how it intersects with the NCUA Examiner's Guide. The NCUA notes that credit risk is related to the characteristics of the loan, and not the type of institution providing the financing. This guidance is an appropriate reference to assist in establishing a credit risk review function for both credit union and other institutions' loan portfolios. Furthermore, the final guidance aligns with the NCUA Examiner's Guide for commercial loans [7] and 12 CFR part 723 of the NCUA's regulations, and the NCUA supports the recommendations in this final guidance as it pertains to retail and consumer loan portfolios. The NCUA Examiner's Guide will be updated to reflect this new guidance.

B. Elements of the Guidance

Commenters addressed the role of credit risk review; scope, depth, and frequency of reviews; responsibility for and determination of risk ratings; timely communication of results; qualifications of credit risk review personnel; tailoring of the guidance to retail portfolios; and use of technology in the credit risk review process.

1. Role of Credit Risk Review

Some commenters called for the guidance to better delineate between the responsibilities of credit risk review and other functions. As provided in footnote 5 [8] of the final guidance, the role of credit risk review is distinct from the roles of other groups within an institution that are also responsible for monitoring, managing, and reporting credit risk. The agencies reiterate that institutions have flexibility to determine the specific roles, responsibilities, and duties of these different groups. The core responsibilities of a credit risk review system are discussed in the final guidance under the objectives of an effective credit risk review system, and include the prompt identification of loans with credit weaknesses and the validation and adjustment of risk ratings.

One commenter disagreed that a primary objective of credit risk review was to promptly identify all loans with actual and potential credit weaknesses. The commenter believed that this responsibility primarily lies with the credit administration function while credit risk review would identify such loans using a sample-based approach. The guidance does not singularly assign the process of risk identification to credit risk review; effective ongoing credit administration practices allow other credit risk functions to have a role in the prompt detection of changes in loan quality and appropriate adjustments to the risk rating. As part of its independent risk rating validation process, credit risk review may identify loans with significant weaknesses and identifiable losses and adjust the risk rating accordingly. The emphasis for credit risk review or any party identifying credit risk is on timely and accurate identification of credit weaknesses so that action can be taken to strengthen credit quality and minimize loss.

Several commenters asked for clarification of credit risk review's role in relation to internal audit. As discussed in footnote 4 [9] of the final

[5] Question 1: To what extent does the proposed credit review guidance reflect current sound practices for an institution's credit risk review activities? What elements should be added or removed, and why? Question 2: To what extent is the proposed credit review guidance appropriate for institutions of all asset sizes? What elements should be added or removed for institutions of differing in sizes, and why? Question 3: What, if any, additional factors should the agencies consider incorporating into the guidance to help achieve a sufficient degree of independence and why? To what extent does the approach described for small or rural institutions with fewer resources or employees provide for an appropriate degree of independence in the credit review function? What if any modifications should the agencies consider and why?

[6] *Supra* note 2.

[7] *See* the Commercial and Member Business Loans section of the NCUA *Examiner's Guide* (Commercial and Member Business Loans > Commercial Loan Administration≤Independent Loan Review).

[8] Footnote 5 states that credit risk review may be referred to as loan review, credit review, asset quality review, or another name as chosen by an institution. The role of, expectations for, and scope of credit risk review as discussed in this document are distinct from the roles, expectations, and scope of work performed by other groups within an institution that are also responsible for monitoring, managing and reporting credit risk. Examples may be those involved with lending functions, independent risk management, loan work outs, and accounting. Each institution indicates in its own policies and procedures the specific roles and responsibilities of these different groups, including separation of duties. A credit risk review unit, or individuals serving in that role, can rely on information provided by other units in developing its own independent assessment of credit risk in loan portfolios, but the credit risk review unit critically evaluates such information to maintain its own view, as opposed to relying exclusively on such information.

[9] Footnote 4 states that the credit risk review function is not intended to be performed by an institution's internal audit function. However, as discussed in the agencies' March 2003 *Interagency Policy Statement on the Internal Audit Function and its Outsourcing* (2003 policy statement), some institutions coordinate the internal audit function

Continued

guidance, the credit risk review function is not intended to be performed by an institution's internal audit function. The March 2003 *Interagency Statement on the Internal Audit Function and Its Outsourcing* (2003 policy statement)[10] discusses the coordination of the internal audit function with risk monitoring functions, such as the credit risk review function. The 2003 policy statement provides that coordination of credit risk review with the internal audit function can facilitate the reporting of material risk and control issues to the audit committee, increase the overall effectiveness of these monitoring functions, better utilize available resources, and enhance the institution's ability to comprehensively manage risk.

Commenters noted that credit risk review and other banking units should coordinate their activities and requested clarification of whether it would be appropriate for credit risk review or for other internal functions within a credit risk review system to perform activities that are compliance or operational in nature, such as confirming proper lien perfection and collateral documentation. Commenters also stated that credit risk review provides support to financial and regulatory reporting functions but does not directly deliver outputs to these functions, and requested that the proposed guidance be clarified in this regard.

While duties such as assuring lien perfection and collateral confirmation might not be directly undertaken by the credit risk review function, evaluation and confirmation of such actions is within the scope of the credit risk review function and a key aspect of an assessment of the overall quality of the credit. The credit risk review function may use information generated by other functions when developing an independent assessment of credit risk, but footnote 5 of the final guidance provides that such information is typically subject to critical challenge and evaluation and a credit risk review function typically does not rely exclusively on such information.

Some commenters indicated that credit risk review should not have a role in evaluating workout plans, and requested that related language be eliminated from the guidance. An effective workout plan is typically designed to rehabilitate a troubled credit or to maximize the amount of repayment ultimately collected and is therefore a loss mitigation strategy. For this reason, Attachment 1 included similar language to the proposed guidance on workout plans, as effective workout plans are critical to managing risk in a loan portfolio. Since assessment of such strategies is within the scope of the credit risk review's role, the final guidance retains the reference to evaluating workout plans.

One commenter stated that one part of the proposed guidance allows institutions to have a system concept for structuring credit risk review whereas the latter part of the proposed guidance defined specific roles for a credit review function. The commenter requested clarification on the words ''system'' and ''function'' as used in the guidance. The agencies have seen institutions use both terms when referring to credit risk review, with the term used generally depending on the size of the institution and composition of its risk review framework. While the agencies incorporated both terms to provide flexibility to institutions, the terms can be used interchangeably depending on the institution's existing framework.

2. Scope

Commenters suggested that the agencies consider the nature of a loan portfolio and the history and experience of an institution's management team when determining the scope of credit risk review. Commenters requested that the proposed guidance indicate that credit review practices can be tailored when loans are seasoned and have a history of performance and enhanced collateral positions. Some commenters recommended that credit risk review focus on higher risk or newer loans. The agencies reaffirm that, as stated in the proposal, institutions may tailor their credit risk review practices based on a number of factors, including the nature of the institution's loan portfolio and overall risk profile.

Commenters requested clarification about whether the proposed guidance covered non-lending activities. One commenter indicated that these activities should not be within the scope of credit risk review, while other commenters disagreed. Some commenters suggested that all references to ''loans'' in the proposed guidance be changed to a broader term that incorporates assets other than loans, such as securities.

In response, the agencies recognize that credit risk may arise from activities that are not specific to lending and encourage institutions to consider whether such activities should be included in the scope of the credit risk review function. For example, institutions that hold investment securities or engage in capital markets, treasury, or automated clearinghouse activities may elect to include the credit risk related to these activities in the scope of a review. While the examples of non-lending credit activities cited here are not exhaustive, and may not apply to all institutions, they illustrate other areas that management and the board of directors may consider in the development of a review plan that reflects the risk profile of the institution.

Further, some commenters expressed the view that smaller banks and credit unions may have difficulty in identifying concentrations of credit risk and other loans affected by common repayment factors. Commenters stated that the phrase ''common repayment factors'' could lead to a much larger scope of review. The OCC, Board, and FDIC note that, under the *Interagency Guidelines Establishing Standards for Safety and Soundness,*[11] insured depository institutions should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to identify problem assets and prevent deterioration in those assets, which includes considering the size and potential risks of material asset concentrations. The reference to ''common repayment factors'' is meant to provide flexibility to institutions to consider a variety of factors that are applicable to the institution's circumstances and which may lead to a concentration of credit risk.

Commenters suggested that credit risk review focus on loans that contain major, significant, or critical exceptions to policy, rather than ''approved'' exceptions or loans with minor or administrative policy exceptions. Commenters also suggested that there may be ''major'' exceptions to policy with strong mitigating factors that suggest these exceptions may not warrant a focus in the review process. The final guidance is not prescriptive and allows for institutions to set their own parameters for determining the materiality of policy exceptions that

with several risk monitoring functions, such as the credit risk review function. The 2003 policy statement states that coordination of credit risk review with the internal audit function can facilitate the reporting of material risk and control issues to the audit committee, increase the overall effectiveness of these monitoring functions, better utilize available resources, and enhance the institution's ability to comprehensively manage risk. However, an effective internal audit function maintains the ability to independently audit the credit risk review function. (The NCUA was not an issuing agency of the 2003 policy statement.)

[10] The 2003 policy statement was issued by the Board, OCC, and FDIC on March 17, 2003. *See* SR Letter 03–5, OCC Bulletin 2003–12, FDIC Financial Institution Letter FIL–21–2003. NCUA was not a party to the issuance.

[11] *Supra* note 2.

should fall into the scope of a credit review.

Further, commenters suggested that credit risk review focus on loans with high-risk indicators and asked the agencies to clarify that institutions can define ''segments of the loan portfolio experiencing rapid growth.'' Commenters suggested that it is appropriate for banks and credit unions to define their own ''rapid growth'' targets for credit review and to have independent loan review verify those targets. This final guidance emphasizes that an effective scope is risk-based and includes loans or portfolios that have high-risk indicators, exceptions to policy, are experiencing rapid growth, or have other risk attributes. The final guidance provides examples of high-risk indicators and other characteristics of loans that may warrant additional review, but does not prescribe specific targets or thresholds. Institutions can select their own high-risk indicators, keeping in mind how the indicators fit the characteristics of the overall portfolio and how the indicators help to reinforce safe and sound practices.

3. Depth

Commenters noted that the language in the proposed guidance stating that loans selected for credit risk review are evaluated for ''sufficiency of credit and collateral documentation'' was too broad. The final guidance does not recommend that credit risk review perform or oversee the loan documentation process. However, because inadequate loan documentation and lien perfection may adversely impact the risk rating and could result in losses for a financial institution, effective credit risk review often includes the evaluation of loan documentation as part of the overall assessment of the credit risk of a particular transaction. In doing so, effective credit risk review assesses and evaluates information from departments responsible for loan documentation and highlights identified concerns in the reports to management, including recommendations for their resolution.

One commenter recommended removing language in the proposed guidance stating that loans selected for credit risk review are evaluated for ''quality of the information used in the credit loss estimation process, including the reasonableness of assumptions used and the timeliness of charge-offs.'' The commenter suggested that credit review should not validate the translation of loss numbers; rather, internal audit and external auditors should review accuracy, timeliness, and consistency of charge-offs.

The bullet in the proposed guidance mentioning quality of the information used in the credit loss estimation process was not intended to expand the review of such information beyond that of the original Attachment 1. The focus of Attachment 1 was on assessing the adequacy of the identification and related impairment calculation of individually impaired loans under the ALLL methodology, a process which will no longer be applicable to loans evaluated under CECL. In order to direct the focus and applicability of the review under both allowance methodologies, the agencies have revised the language in the final guidance to read as follows: ''The appropriateness of credit loss estimation for those credits with significant weaknesses including the reasonableness of assumptions used, and the timeliness of charge-offs.'' Additionally, the agencies acknowledge that the calculation of estimated ACL or ALLL is not the role of credit risk review. However, effective credit risk review results help ensure that the ACL or ALLL adequately reflects risk in the credit portfolio. In performing its assessment of reasonableness, credit risk review can leverage work performed in this area by other functions, such as internal audit.

Several commenters suggested that evaluating the validity of underwriting assumptions was too broad of an activity for credit risk review, and could imply that credit risk review is responsible for back testing assumptions. Commenters suggested that the agencies should instead refer to evaluating the ''reasonableness'' of assumptions, such as borrower cash flow forecasts. In response, the final guidance has been revised to provide that such loans, and segments of portfolios, selected for review are generally reviewed for the reasonableness of assumptions. Back testing the validity of assumptions is often a part of the underwriting and monitoring processes. Credit risk review can use this information, if available, when making their assessments.

Commenters indicated that institutions should receive credit during a review if back testing of initial loan risk ratings shows a high level of accuracy. Similarly, commenters suggested that the agencies' guidance should focus less on risk evaluation, but instead focus on the front-end loan evaluation by bank staff. The focus of the credit risk review system is on the assessment of credit quality in the credit portfolios, which is an important input into the determination of the ACL and ALLL. An effective credit risk review system considers any information available that can impact or provide insight into the quality of the portfolio. To the extent that back testing results are available, they can be considered by credit risk review staff in their assessment of credit quality.

4. Frequency

Several commenters raised questions about the frequency of credit risk reviews and requested clarification as to when it is appropriate for reviews to be conducted less frequently than annually. Commenters suggested there are instances in which less frequent reviews are appropriate, such as for well-managed institutions with lower risk portfolios. Commenters also requested that the proposed guidance respect the authority of a board of directors to approve when audits and loan reviews are completed, and how frequently reports are reviewed. With respect to the credit risk review policy, one commenter suggested that frequency of review should be determined by a firm's board of directors.

Consistent with the principles in the final guidance, each institution has the flexibility to set the scope of coverage and frequency of reviews based on the institution's specific circumstances while continuing to operate in a safe and sound manner. Accordingly, the agencies have clarified in the final guidance that effective credit risk reviews are typically performed annually. However, in certain circumstances more frequent reviews may be necessary. Reviews that are less frequent are typically well supported and reflective of low risk portfolios, are conducted consistent with safe and sound practices, and are approved by the institution's board of directors or board committee thereof. The agencies have clarified in the final guidance that an effective credit risk review system starts with a written credit risk review policy that is typically reviewed and approved at least annually.

5. Risk rating responsibility and adjudication

Several commenters observed that the proposed guidance provided an opportunity to establish which area or department at the institution will have responsibility over risk rating dispositions within the credit review function. Commenters asked if credit risk review should always be the final arbiter of a risk rating, even if credit risk review's rating is less conservative than that determined by the business line. Commenters requested that the proposed guidance clarify that an institution's board of directors retains

the responsibility for maintaining a bank's credit risk rating and establishing relevant policies. Some commenters questioned whether the proposed guidance would require institutions to employ an arbitration process.

The agencies believe that the language as proposed describes a clear disposition process for adjudicating risk ratings that is flexible for institutions of all sizes. In particular, the final guidance addresses risk rating differences between the credit risk review and areas responsible for loan approval. Typically, the lower credit quality classification or risk rating assigned by credit risk review prevails unless there is additional information that would support a higher credit quality classification or risk rating. The final guidance also discusses a risk rating framework that is consistent with safe and sound practices and the agencies' guidelines for supervisory classifications.[12]

6. Communication of Results

In general, commenters expressed support for credit risk review reporting directly to the board of directors. Other commenters indicated that the language in the proposed guidance was too prescriptive, particularly regarding communication to the board at least quarterly. Commenters recommended that the proposed guidance permit boards of directors to tailor their policies based on the size, scope, and complexity of the loan portfolio, as well as to the complexity of a loan itself.

The agencies believe that it is consistent with safe and sound lending practices to have the credit risk review function report findings regularly and directly to the institution's board of directors or a committee thereof. Institutions have discretion to determine the frequency and extent of such reporting, taking into account the nature of their loan portfolios and the importance of informing the board of directors on credit risk. To clarify this flexibility, the proposed guidance was revised to state that effective communication typically involves providing results of the credit risk reviews to the board of directors or appropriate board committee quarterly. This change emphasizes that quarterly reporting of results is a typical practice, but institutions have room to adjust the frequency given their risk profile and consistent with safety and soundness.

One commenter noted that the guidance should specifically recommend tracking forward-looking indicators to help identify risk trends to support informed decisions and proactive risk mitigation. The agencies acknowledge that forward-looking indicators such as portfolio concentration trends, shifting underwriting standards, and risk rating migrations are consistent with proactive risk management activities. The agencies recognize that institutions may develop internal parameters for establishing, tracking, and reporting forward-looking indicators of credit exposure that are specific to the institution's business model and lending activities. The agencies believe that language in the proposed guidance is sufficient to address this issue.

Commenters also requested that the agencies clarify that only ''material'' deficiencies and weaknesses that remain unresolved beyond the scheduled time frames for correction should be promptly reported to senior management and the board of directors or appropriate board committee. The agencies believe that an effective credit review system should report all noted deficiencies and weaknesses to the board of directors. Credit review may prioritize findings of weaknesses or deficiencies; however, allowing management to determine the materiality of findings can compromise the independence of the credit review process.

7. Qualifications of Personnel

One commenter suggested that footnote 4 of the proposed guidance be revised to emphasize the importance of the qualifications, independence, and expertise of personnel conducting the internal audit of a credit risk review system or function. The OCC, Board, and FDIC believe that the qualifications of audit personnel are sufficiently addressed in the 2003 policy statement, which is referenced in the final guidance.

One commenter noted that with respect to credit risk review staff, knowledge of an institution's membership and experience with underwriting are key factors in determining the qualifications of credit risk review personnel. This final guidance broadly addresses the experience of personnel, which would include knowledge of the institution's portfolio and experience with underwriting. Specific personnel qualifications are the purview of management and the board and are typically reflective of the institution's business model.

8. Retail and Consumer Portfolios

The agencies received a number of comments regarding the differences in characteristics between retail (consumer) and commercial loan portfolios, as well as the processes, techniques, tools, data and technology used to conduct credit risk review of retail loan portfolios. One commenter stated that the proposed guidance inadequately differentiated between product types and exposures of commercial and retail loans. The commenter stated that the use of manual review of individual loans to assign and validate risk ratings would be impractical for a large portfolio of smaller retail loans.

The agencies recognize that differences between retail and most commercial loans and portfolios may justify differences in approaches, techniques, and tools for conducting credit risk review. The proposed guidance was designed so that institutions may apply its principles to the review of all loans and portfolios, including retail loan portfolios. In response to comments received, the agencies have made revisions to the final guidance in order to provide flexibility to institutions in determining the scope and depth of the loan review for all loan portfolios. The revisions for the final guidance discussed below reflect existing industry practices. They are applicable to all types of loan portfolios, but especially for retail portfolios.

Specifically, the final guidance includes language in a new bullet under the ''Scope of Reviews'' section, which acknowledges that institutions may determine the scope of the credit risk review by segmenting or grouping loans based on similar risk characteristics, such as those related to borrower risk, transaction risk, and other risk factors. The new bullet is intended to provide clarity and reflect existing industry practices for retail portfolios. Similar references to portfolio segments have been made in the ''Depth of Transaction or Portfolio Reviews'' and ''Communication and Distribution of Results'' sections.

Additionally, the final guidance includes language in a new sub-bullet under ''Depth of Transaction Reviews.'' The sub-bullet indicates that, with regard to evaluating credit quality,

[12] Two commenters requested clarification from the NCUA regarding whether credit unions are required to adopt the loan classification system described in footnote 7 of the guidance. The NCUA does not require credit unions to adopt the regulatory classifications of substandard, doubtful or loss. However, NCUA does support the use of these classifications, as defined by the other banking agencies, as an effective method for rating adversely classified loan risk. *See* the Commercial and Member Business Loans section of the NCUA *Examiner's Guide* (Commercial and Member Business Loans > Credit Risk Rating Systems≤ Credit Risk Rating Categories).

soundness of underwriting and risk identification, borrower performance, and adequacy of the sources of repayment, ''[w]hen applicable, this evaluation includes the appropriateness of automated underwriting and credit scoring, including prudent use of overrides, as well as the effectiveness of account management strategies, collections, and portfolio management activities in managing credit risk.''

The agencies have added the new sub-bullet in response to commenter requests for more guidance on the applicability of the guidance to retail loan portfolios. The new sub-bullet takes into account the fact that some institutions, especially those with large retail portfolios, may use models or other automated decision tools in their credit decision or risk rating processes, and thus clarifies that effective credit risk review can consider the appropriateness of the business line's application of these tools in these processes. Further, an effective credit risk review can consider the effectiveness of account management strategies, such as credit line management, re-aging, and extension/renewal in managing credit risk. An effective credit risk review can also consider whether portfolio management activities, such as risk identification and performance monitoring, and collection policies and practices are commensurate with the institution's risk profile and complexity of the products and loan structures offered.

9. Technology

Commenters posed a number of questions and comments related to the use and governance of technology in credit risk review. Commenters discussed the use of analytical and management information system tools, particularly for consumer loans, and suggested that the guidance recommend automation of risk data aggregation. The agencies believe institutions have significant flexibility to use various types of technology to assist in the credit risk review process; as such, the agencies decline to recommend the use of any specific types of technology.

One commenter expressed concern about the potential risks associated with the use of models in various credit processes and suggested that the proposed guidance emphasize the appropriateness and effectiveness of reviewing credit model design, performance, and governance. A commenter indicated that the guidance should include robust governance of artificial intelligence algorithms. The agencies recognize the importance of model risk management, which is discussed in other existing guidance.[13]

C. Scalability of the Guidance

The agencies received numerous comments about whether the proposed guidance is appropriate for institutions of all sizes. Several commenters expressed concern with what they viewed as a one-size-fits-all nature, and called for the proposed guidance to be tailored based on the size and activities of the institution, as well as the complexity of the loan portfolio. Commenters also requested accommodations for smaller institutions, including credit unions. One commenter stated the proposed guidance could impose higher costs on smaller institutions because such costs cannot be spread across a large asset base and requested the guidance provide more flexibility for review activities. One commenter suggested that the proposed guidance would benefit from additional discussion and analysis of how modest-sized institutions with limited personnel would implement the guidance. This commenter expressed concern that the proposed guidance would be burdensome for such institutions and potentially require outsourcing of credit risk review. Another commenter requested that the proposed guidance specifically exempt small, non-complex rural institutions, thereby allowing them to utilize their existing review functions. Another commenter requested that the agencies clarify the proposed guidance's applicability to large banks, including defining a large institution based on asset size and examples of complex institutions and explaining how supervisors make these determinations.

The agencies believe that the final guidance provides both small and large institutions flexibility to tailor the credit review function to the activities of the institution. For example, the final guidance states that the nature of credit risk review varies based on an institution's size, complexity, loan types, risk profile, and risk management framework. In addition, as described under ''Independence of Credit Risk Review Personnel,'' smaller or less complex institutions have flexibility to use an independent committee of outside directors or qualified members of the staff to perform the credit risk review function. Footnote 6 [14] of the final guidance emphasizes that small or rural institutions that have few resources or employees may adopt modified credit risk review procedures and methods to achieve a proper degree of independence. As the final guidance notes, doing so is appropriate when more robust procedures and methods are impractical. The final guidance also notes that credit risk review systems in larger institutions may include a dedicated credit risk review function. Institutions of all sizes have the flexibility to tailor the various principles and practices in the final guidance to systems appropriate for their circumstances.

D. Independence Considerations

Some commenters suggested that creating the independence structure described in the proposed guidance would be a problem for small banks and credit unions. Commenters stated that doing so could lead to duplicative functions and compliance burden for small banks and credit unions, which have limited staffing. Commenters also stressed that small credit unions may find it costly to hire third parties to ensure the independence of the credit review function. One commenter called for an exemption for small institutions and requested that the agencies adopt alternative independence standards, such as those articulated in the agencies' appraisal guidance, which would allow third-party staff members or an independent lender to confirm the risk rating of another lender. This commenter also suggested a rotation of duties as a way to achieve independence in the credit risk review function. Another commenter noted that the boards of directors of small, closely held institutions may be involved in the credit process from the beginning, and the board's input and participation in loan origination can be more important

[13] See the interagency statement titled, Supervisory Guidance on Model Risk Management, published by the Board in SR Letter 11–7 and OCC Bulletin 2011–12 on April 4, 2011. The FDIC adopted the interagency statement on June 7, 2017. Institutions supervised by the FDIC should refer to FIL 22–2017, Adoption of Supervisory Guidance on Model Risk Management, including the statement of applicability in the FIL.

[14] Footnote 6 states that small or rural institutions that have few resources or employees may adopt modified credit risk review procedures and methods to achieve a proper degree of independence. For example, in the review process, such an institution may use qualified members of the staff, including loan officers, other officers, or directors, who are not involved with originating or approving the specific credits being assessed and whose compensation is not influenced by the assigned risk ratings. It is appropriate to employ such modified procedures when more robust procedures and methods are impractical. Institution management and the board, or a board committee, should have reasonable confidence that the personnel chosen will be able to conduct reviews with the needed independence despite their position within the loan function.

than the subsequent credit review that happens post origination.

As stated above, the agencies recognize that small institutions with few resources may need to adopt modified credit risk review procedures in order to achieve a proper degree of independence, as previously referenced in footnote 6 of the proposed guidance. That footnote states that small or rural institutions with few resources may use qualified members of the staff, including loan officers, other officers, or directors, who are not involved with originating or approving the specific credits being assessed and whose compensation is not influenced by the assigned risk ratings in the credit risk review process. The footnote also states that institution management and the board, or board committee, should have reasonable confidence that the personnel chosen will be able to conduct reviews with the needed independence despite their position within the loan function.

Commenters asked for clarification on the reporting structure of credit risk review. The OCC, Board, and FDIC note that the *Interagency Guidelines Establishing Standards for Safety and Soundness* [15] state that an institution should have internal controls and information systems that are appropriate to the size of the institution, as well as nature, scope and risk of its activities, including clear lines of authority and responsibility for monitoring adherence to established policies. This statement applies to policies for a system of independent, ongoing credit review and appropriate communication to management and to the board of directors. Whether or not the institution has a dedicated credit risk review department, it is prudent for the credit risk review function to report directly to the institution's board of directors or a committee thereof. This reporting structure allows the credit risk review function to provide the board of directors with an independent assessment of the overall quality of loan portfolios and other areas of credit exposure as mandated. Senior management may be responsible for appropriate administrative functions, provided such an arrangement does not compromise the independence of the credit risk review function.

E. Current Expected Credit Losses

The agencies received a number of comments related to the CECL methodology as described in FASB ASC Topic 326.[16] Some commenters cautioned the agencies against incorporating FASB ASC Topic 326 into the credit review final guidance because this would create a complex methodology that many institutions would be unable to implement. For example, one commenter expressed concern with maintaining historical loss experience on a segment level because loan segmentation under FASB ASC 326 may be more granular than what is currently maintained and may change over time. Commenters on the proposed credit review guidance noted that while institutions with large and complex loan portfolios typically maintain records of their historical loss experience for credits in each of the categories in their risk rating framework, this may not be the case in smaller institutions.

The final guidance is intended to be flexible and consistent with CECL, but it does not incorporate FASB Topic 326. The agencies have observed that maintenance of historical loss information has traditionally been part of an effective credit risk grading framework for institutions of all sizes as it provides a basis for credit loss estimation for various credit types. Institutions have flexibility in how historical loss data information is maintained to the extent that it provides sufficient information to inform and help confirm the accuracy of risk rating similar credits. To provide further clarity and to emphasize the flexibility available to institutions, the agencies have modified the final guidance to read ''evaluation of the institution's historical loss experience for each of the groups of loans with similar risk characteristics into which it has segmented its loan portfolio.''

Some commenters recommended that the agencies clarify credit risk review's role in determining ACLs. One commenter asked for clarification on whether credit risk review functions must conduct risk-specific assessments on the valuations of financial assets measured at an amortized cost basis, such as held-to-maturity securities. With regard to institutions that produce economic forecast estimations as a component of their ACL estimate, the commenter also asked whether credit risk review functions should integrate and align the economic forecast estimations into qualitative assessments of individual loans and portfolios.

As discussed previously, the agencies are issuing this final guidance as a standalone document separate from any guidance on estimation of expected credit losses, as credit risk review is an important component of safety and soundness on its own. Commenters should refer to the Interagency Policy Statement on Allowances for Credit Losses [17] regarding how credit risk review can facilitate the loss estimation process.

IV. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[18] the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The final guidance will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

V. Final Guidance

The text of the final guidance is as follows:

INTERAGENCY GUIDANCE ON CREDIT RISK REVIEW SYSTEMS

Introduction

The *Interagency Guidelines Establishing Standards for Safety and Soundness* (Guidelines) [1] underscore the critical importance of credit risk review and set safety and soundness standards for insured depository institutions to establish a system for independent, ongoing credit risk review, and for appropriate communication to their management and boards of directors.[2] This guidance, which aligns with the Guidelines, is appropriate for all institutions [3] and describes a broad set of practices that can be used either within a dedicated unit or across multiple units throughout an institution to form a credit risk review system that is consistent with safe and sound lending practices. This guidance outlines principles that an institution

[15] *Supra* note 2.

[16] Refer to the final Interagency Policy Statement on Allowances for Credit Losses published elsewhere in this issue of the **Federal Register** for more details on CECL methodology.

[17] This guidance is contained in a separate document published elsewhere in this issue of the **Federal Register**.

[18] 44 U.S.C. 3501–3521.

[1] 12 CFR part 30, appendix A (OCC); 12 CFR part 208, appendix D–1 (Board); and 12 CFR part 364, appendix A (FDIC). Part 723 of NCUA Rules and Regulations (12 CFR part 723).

[2] For foreign banking organization branches, agencies, or subsidiaries not operating under single governance in the United States, the U.S. risk committee would serve in the role of the board of directors for purposes of this guidance.

[3] For purposes of this guidance, regulated institutions are those supervised by the following agencies: The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC), hereafter referred to as the ''agencies.''

should consider in developing and maintaining an effective credit risk review system.

Overview of Credit Risk Review Systems

The nature of credit risk review systems [4] varies based on an institution's size, complexity, loan types, risk profile, and risk management practices. For example, in smaller or less complex institutions, a credit risk review system may include qualified members of the staff, including loan officers, other officers, or directors, who are independent of the credits being assessed. In larger or more complex institutions, a credit risk review system may include components of a dedicated credit risk review function that are independent of the institution's lending function.[5] A credit risk review system may also include various responsibilities assigned to credit underwriting, loan administration, a problem loan workout group, or other organizational units of an institution. Among other responsibilities, these groups may administer the internal problem loan reporting process, maintain the integrity of the credit risk rating process, confirm that timely and appropriate changes are made to risk ratings, and support the quality of information used to estimate the Allowance for Credit Losses (ACL) or the Allowance for Loan and Lease Losses (ALLL), as applicable. Additionally, some or all of the credit risk review function may be performed by a qualified third party.

Regardless of the structure, an effective credit risk review system accomplishes the following objectives:

- Promptly identifies loans with actual and potential credit weaknesses so that timely action can be taken to strengthen credit quality and minimize losses.
- Appropriately validates and, if necessary, adjusts risk ratings, especially for those loans with potential or well-defined credit weaknesses that may jeopardize repayment.
- Identifies relevant trends that affect the quality of the loan portfolio and highlights segments of those portfolios that are potential problem areas.
- Assesses the adequacy of and adherence to internal credit policies and loan administration procedures and monitors compliance with applicable laws and regulations.
- Evaluates the activities of lending personnel and management, including compliance with lending policies and the quality of their loan approval, monitoring, and risk assessment.
- Provides management and the board of directors with an objective, independent, and timely assessment of the overall quality of the loan portfolio.
- Provides management with accurate and timely credit quality information for financial and regulatory reporting purposes, including the determination of an appropriate ACL or ALLL, as applicable.

Credit Risk Rating (or Grading) Framework

The foundation for any effective credit risk review system is accurate and timely risk ratings to assess credit quality and identify or confirm problem loans. An effective credit risk rating framework includes the monitoring of individual loans and retail credit portfolios, or segments thereof, with similar risk characteristics. An effective framework also provides important information on the collectibility of each portfolio for use in the determination of an appropriate ACL or ALLL, as applicable. Further, an effective framework generally places primary reliance on the lending staff to assign accurate and timely risk ratings and identify emerging loan problems. However, given the importance of the credit risk rating framework, the lending personnel's assignment of risk ratings is typically subject to review by qualified and independent: (i) Peers, managers, or loan committee(s); (ii) part-time or full-time employee(s); (iii) internal departments staffed with credit review specialists; or (iv) external credit review consultants. A risk rating review that is independent of the lending function and approval process can provide a more objective assessment of credit quality.[6]

An effective credit risk rating framework includes the following attributes:

- A formal credit risk rating system in which the ratings reflect the risk of default and credit losses, and for which a written description of the credit risk framework is maintained, including a discussion of the factors used to assign appropriate risk ratings to individual loans and retail credit portfolios, or segments thereof, with similar risk characteristics.[7]
- Identification or grouping of loans that warrant the special attention of management or other designated ''watch lists'' of loans that management is more closely monitoring.[8]
- Clear explanation of why particular loans warrant the special attention of

[4] The credit risk review function is not intended to be performed by an institution's internal audit function. However, as discussed in the agencies' March 2003 *Interagency Policy Statement on the Internal Audit Function and its Outsourcing* (2003 policy statement), some institutions coordinate the internal audit function with several risk monitoring functions, such as the credit risk review function. The 2003 policy statement states that coordination of credit risk review with the internal audit function can facilitate the reporting of material risk and control issues to the audit committee, increase the overall effectiveness of these monitoring functions, better utilize available resources, and enhance the institution's ability to comprehensively manage risk. However, an effective internal audit function maintains the ability to independently audit the credit risk review function. (The NCUA was not an issuing agency of the 2003 policy statement.)

[5] Credit risk review may be referred to as loan review, credit review, asset quality review, or another name as chosen by an institution. The role of, expectations for, and scope of credit risk review as discussed in this document are distinct from the roles, expectations, and scope of work performed by other groups within an institution that are also responsible for monitoring, managing and reporting credit risk. Examples may be those involved with lending functions, independent risk management, loan work outs, and accounting. Each institution indicates in its own policies and procedures the specific roles and responsibilities of these different groups, including separation of duties. A credit risk review unit, or individuals serving in that role, can rely on information provided by other units in developing its own independent assessment of credit risk in loan portfolios, but the credit risk review unit critically evaluates such information to maintain its own view, as opposed to relying exclusively on such information.

[6] Small or rural institutions that have few resources or employees may adopt modified credit risk review procedures and methods to achieve a proper degree of independence. For example, in the review process, such an institution may use qualified members of the staff, including loan officers, other officers, or directors, who are not involved with originating or approving the specific credits being assessed and whose compensation is not influenced by the assigned risk ratings. It is appropriate to employ such modified procedures when more robust procedures and methods are impractical. Institution management and the board, or a board committee, should have reasonable confidence that the personnel chosen will be able to conduct reviews with the needed independence despite their position within the loan function.

[7] A bank or savings association may have a credit risk rating framework that differs from the framework for loan classifications used by the Federal banking agencies. Such banks and savings associations should maintain documentation that translates their risk ratings into the regulatory classification framework used by the Federal banking agencies. This documentation will enable examiners to reconcile the totals for the various loan classifications or risk ratings under the institution's system to the Federal banking agencies' categories contained in the Uniform Agreement on the Classification and Appraisal of Securities Held by Depository Institutions Attachment 1—Classification Definitions (OCC: OCC Bulletin 2013–28; Board: SR Letter 13–18; and FDIC: FIL–51–2013). The NCUA does not require credit unions to adopt a uniform regulatory classification system. Risk rating guidance for credit unions is set forth in NCUA letters to credit unions 10–CU–02, ''Current Risks in Business Lending and Sound Risk Management Practices,'' issued January 2010 and 10–CU–03, ''Concentration Risk,'' issued March 2010. *See also* the Commercial and Member Business Loans section of the NCUA *Examiner's Guide* (Commercial and Member Business Loans > Credit Risk Rating Systems) and the preamble to 1 CFR parts 701, 723, and 741 Member Business Loans; Commercial Lending: Proposed Rule July 2015.

[8] In addition to loans designated as ''watch list,'' this identification typically includes loans rated special mention, substandard, doubtful, or loss.

management or have received an adverse risk rating.

- Evaluation of the effectiveness of approved workout plans.
- A method for communicating direct, periodic, and timely information to the institution's senior management and the board of directors or appropriate board committee on the status of loans identified as warranting special attention or adverse classification, and the actions taken by management to strengthen the credit quality of those loans.
- Evaluation of the institution's historical loss experience for each of the groups of loans with similar risk characteristics into which it has segmented its loan portfolio.[9]

Elements of an Effective Credit Risk Review System

An effective credit risk review system starts with a written credit risk review policy [10] that is reviewed and typically approved at least annually by the institution's board of directors or appropriate board committee to evidence its support of, and commitment to, maintaining an effective system. Effective policies include a description of the overall risk rating framework and establish responsibilities for loan review based on the portfolio being assessed. An effective credit risk review policy addresses the following elements, described in more detail below: the qualifications and independence of credit risk review personnel; the frequency, scope, and depth of reviews; the review of findings and follow-up; and communication and distribution of results.

Qualifications of Credit Risk Review Personnel

An effective credit risk review function is staffed with personnel who are qualified based on their level of education, experience, and extent of formal credit training. Qualified personnel are knowledgeable in both sound lending practices and the institution's lending guidelines for the types of loans offered by the institution. The level of experience and expertise for all personnel involved in the credit risk review process is expected to be commensurate with the nature of the risk and complexity of the portfolios. In addition, qualified credit risk review personnel possess knowledge of relevant laws, regulations, and supervisory guidance.

Independence of Credit Risk Review Personnel

An effective credit risk review system incorporates both the initial identification of emerging problem loans by loan officers and other line staff, and an assessment of loans by personnel independent of the credit approval process. Placing primary responsibility on loan officers, risk officers, and line staff is important for continuous portfolio analysis and prompt identification and reporting of problem loans. Because of frequent contact with borrowers, loan officers and line staff can usually identify potential problems before they become apparent to others. However, institutions should be careful to avoid over-reliance on loan officers and line staff for identification of problem loans. An independent assessment of risk is achieved when personnel who perform the loan review do not have control over the loan and are not part of or influenced by individuals associated with the loan approval process.

While a larger institution may establish a separate department staffed with credit review specialists, cost and volume considerations may not justify such a system in a smaller institution. For example, in the review process, smaller institutions may use an independent committee of outside directors or qualified members of the staff, including loan officers, other officers, or directors, who are not involved with originating or approving the specific credits being assessed and whose compensation is not influenced by the assigned risk ratings. Whether or not the institution has a dedicated credit risk review department, it is prudent for the credit risk review function to report directly to the institution's board of directors or a committee thereof, consistent with safety and soundness standards. Senior management may be responsible for appropriate administrative functions provided such an arrangement does not compromise the independence of the credit risk review function.

The institution's board of directors, or a committee thereof, may outsource the credit risk review function to an independent third party.[11] However, the responsibility for maintaining a sound credit risk review system remains with the institution's board of directors. In any case, institution personnel who are independent from the lending function typically assess risks, develop the credit risk review plan, and verify appropriate follow-up of findings. Outsourcing of the credit risk review function to the institution's external auditor may raise additional independence considerations.[12]

Frequency of Reviews

An effective credit risk review system provides for review and evaluation of an institution's significant loans, loan products, or groups of loans typically annually, on renewal, or more frequently when internal or external factors indicate a potential for deteriorating credit quality or the existence of one or more other risk factors. The credit risk review function can also provide useful continual feedback on the effectiveness of the lending process in order to identify any emerging problems. Ongoing or periodic review of an institution's loan portfolio is particularly important to the estimation of ACLs or the ALLL because loss expectations may change as the credit quality of a loan changes. Use of key risk indicators or performance metrics by credit risk review management can support adjustments to the frequency and scope of reviews.

Scope of Reviews

Comprehensive and effective reviews cover all segments of the loan portfolio that pose significant credit risk or concentrations, and other loans that meet certain institution-specific criteria. A properly designed scope considers the current market conditions or other external factors that may affect a borrower's current or future ability to repay the loan. Establishment of an appropriate review scope also helps ensure that the sample of loans selected for review, or portfolio segments selected for review, is representative of the portfolio as a whole and provides reasonable assurance that any credit quality deterioration or unfavorable trends are identified. An effective credit risk review function also considers industry standards for credit risk review coverage consistent with the

[9] In particular, institutions with large and complex loan portfolios typically maintain records of their historical loss experience for credits in each of the categories in their risk rating framework. For banks and savings associations, these categories are either those used by, or those that can be translated into those used by, the Federal banking agencies.

[10] *See* 12 CFR part 30, appendix A (OCC); 12 CFR part 208, appendix D–1 (Board); and 12 CFR part 364, appendix A (FDIC). *See also* 12 CFR part 723 (NCUA).

[11] For supervisory guidance related to outside service providers, refer to SR letter 13–19/CA letter 13–21, ''Guidance on Managing Outsourcing Risk,'' issued by the Board on December 5, 2013; FIL–44–2008, ''Guidance for Managing Third-Party Risk,'' issued by the FDIC on June 6, 2008; and OCC Bulletin 2013–29, ''Third-Party Relationships: Risk Management Guidance,'' issued by the OCC on October 30, 2013. For credit unions, refer to NCUA letters to credit unions 01–CU–20 ''Due Diligence over Third Party Service Providers,'' issued November 2001 and 07–CU–13 ''Evaluating Third Party Relationships,'' issued December 2007.

[12] *See* footnote 4.

institution's size, complexity, loan types, risk profile, and risk management practices and helps to verify whether the review scope is appropriate. The institution's board of directors or appropriate board committee typically approves the scope of the credit risk review on an annual basis or whenever significant interim changes are made in order to adequately assess the quality of the current portfolio. An effective scope of credit risk review is risk-based and typically includes:

- Loans over a predetermined size;
- A sufficient sample of smaller loans, new loans, and new loan products;
- Loans with higher risk indicators, such as low credit scores, high credit lines, or those credits approved as exceptions to policy;
- Segments of loan portfolios, including retail, with similar risk characteristics such as those related to borrower risk (*e.g.* credit history), transaction risk (*e.g.* product and/or collateral type), or other risk factors as appropriate;
- Segments of the loan portfolio experiencing rapid growth;
- Exposures from non-lending activities that also pose credit risk;
- Past due, nonaccrual, renewed, and restructured loans;
- Loans previously adversely classified and loans designated as warranting the special attention of the institution's management; [13]
- Loans to insiders or related parties;
- Loans to affiliates;
- Loans constituting concentrations of credit risk and other loans affected by common repayment factors.

Depth of Transaction or Portfolio Reviews

Loans and portfolio segments selected for review are typically evaluated for:

- Credit quality, soundness of underwriting and risk identification, borrower performance, and adequacy of the sources of repayment;
  - When applicable, this evaluation includes the appropriateness of automated underwriting and credit scoring, including prudent use of overrides, as well as the effectiveness of account management strategies, collections, and portfolio management activities in managing credit risk;
- Reasonableness of assumptions;
- Creditworthiness of guarantors or sponsors;
- Sufficiency of credit and collateral documentation;
- Proper lien perfection;
- Proper approvals consistent with internal policies;
- Adherence to loan agreement covenants;
- Adequacy of, and compliance with, internal policies and procedures (such as those related to nonaccrual and classification or risk rating policies), laws, and regulations;
- The appropriateness of credit loss estimation for those credits with significant weaknesses including the reasonableness of assumptions used, and the timeliness of charge-offs;
- The accuracy of risk ratings and the appropriateness and timeliness of the identification of problem loans by loan officers.

Review of Findings and Follow-Up

An important activity of an effective credit risk review system is the discussion of the review findings, including all noted deficiencies, identified weaknesses, and any existing or planned corrective actions (including time frames for correction) with appropriate loan officers, department managers, and senior management. An effective system includes processes for all noted deficiencies and weaknesses that remain unresolved beyond the scheduled time frames for correction to be promptly reported to senior management and the board of directors or appropriate board committee.

It is important to resolve risk rating differences between loan officers and loan review personnel according to a pre-arranged process. That process may include formal appeals procedures and arbitration by an independent party or may require default to the assigned classification or risk rating that indicates lower credit quality. If credit risk review personnel conclude that a loan or loan portfolio is of a lower credit quality than is perceived by the portfolio management staff, the lower classification or risk rating typically prevails unless internal parties identify additional information sufficient to obtain the concurrence of the independent reviewer or arbiter on the higher credit quality classification or risk rating.

Communication and Distribution of Results

Personnel involved in the credit risk review process typically prepare a list of all loans (and portfolio segments) reviewed, the date of review, and a summary analysis that substantiates the risk ratings assigned to the loans reviewed. Effective communication also typically involves providing results of the credit risk reviews to the board of directors or appropriate board committee quarterly.[14] Comprehensive reporting includes comparative trends that identify significant changes in the overall quality of the loan portfolio, the adequacy of, and adherence to, internal policies and procedures, the quality of underwriting and risk identification, compliance with laws and regulations, and management's response to substantive criticisms or recommendations. Such comprehensive reporting provides the board of directors or appropriate board committee with insight into the portfolio and the responsiveness of management and facilitates timely corrective action of deficiencies.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on or about May 7, 2020.

Robert E. Feldman,

Executive Secretary.

By the National Credit Union Administration Board.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2020–10292 Filed 5–29–20; 8:45 am]

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

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee: VA National Academic Affiliations Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the VA National Academic Affiliations Council (NAAC) will meet via conference call on July 15, 2020, from 1:00 p.m. to 3:00 p.m. EST. The meeting is open to the public.

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On July 15, 2020, the Council will receive updates about VA's COVID–19 response; receive briefings from its Subcommittees; receive an update about

[13] *See* footnote 8.

[14] An effective credit risk review system provides for informing the board of directors or appropriate board committee more frequently than quarterly when material adverse trends are noted. When an institution conducts loan file reviews less frequently than quarterly, the board or appropriate board committee will typically receive results on other credit risk review activities quarterly.

VA's Electronic Health Record Modernization; receive briefings on the implementation status of VA MISSION Act educational sections; and discuss other follow-up items. The Council will receive public comments from 2:40 p.m. to 2:50 p.m. EST.

Interested persons may attend and/or present oral statements to the Council. The dial in number to attend the conference call is: 1–800–767–1750. At the prompt, enter access code 12095 then press #. Individuals seeking to present oral statements are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Council prior to the meeting or at any time, by email to *Larissa.Emory@va.gov,* or by mail to Larissa A. Emory PMP, CBP, MS, Designated Federal Officer, Office of Academic Affiliations (10X1), 810 Vermont Avenue NW, Washington, DC 20420. Any member of the public wishing to participate or seeking additional information should contact Ms. Emory via email or by phone at (915) 269–0465.

Dated: May 27, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–11697 Filed 5–29–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 85 Monday,

No. 105 June 1, 2020

Part II

Securities and Exchange Commission

17 CFR Parts 229, 230, 232, et al.

Securities Offering Reform for Closed-End Investment Companies; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 232, 239, 240, 243, 249, 270, and 274

[Release Nos. 33–10771; 34–88606; IC–33836; File No. S7–03–19]

RIN 3235–AM31

Securities Offering Reform for Closed-End Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting rules that will modify the registration, communications, and offering processes for business development companies (''BDCs'') and other closed-end investment companies under the Securities Act of 1933. As directed by Congress, we are adopting rules that will allow these investment companies to use the securities offering rules that are already available to operating companies. These rules will extend to closed-end investment companies offering reforms currently available to operating company issuers by expanding the definition of ''well-known seasoned issuer'' to allow these investment companies to qualify; streamlining the registration process for these investment companies, including the process for shelf registration; permitting these investment companies to satisfy their final prospectus delivery requirements by filing the prospectus with the Commission; and permitting additional communications by and about these investment companies during a registered public offering. In addition, we are amending certain rules and forms to tailor the disclosure and regulatory framework to these investment companies. These amendments also will modernize our approach to securities registration fee payment by requiring closed-end investment companies that operate as ''interval funds'' to pay securities registration fees using the same method as mutual funds and exchange-traded funds and extend the ability to use this payment method to issuers of certain continuously offered, exchange-traded products (''ETPs''). Additionally, we are expanding the ability of certain registered closed-end funds or BDCs that conduct continuous offerings to make changes to their registration statements on an immediately effective basis or on an automatically effective basis a set period of time after filing. Lastly, we are adopting certain structured data reporting requirements, including for filings on the form providing annual notice of securities sold pursuant to the rule under the Investment Company Act of 1940 that prescribes the method by which certain investment companies (including mutual funds) calculate and pay registration fees.

DATES:

Effective Dates: This rule is effective August 1, 2020, except for amendatory instructions 21, 22, 30, 31, 33, 34, 41, 42, and 45 which are effective August 1, 2021.

Compliance Dates: The applicable compliance dates are discussed below in section II.J.

FOR FURTHER INFORMATION CONTACT: Asaf Barouk, Attorney-Adviser; Joel Cavanaugh, Senior Counsel; Terri G. Jordan, Senior Counsel; Amy Miller, Senior Counsel; Angela Mokodean, Senior Counsel; Amanda Hollander Wagner, Branch Chief; David J. Marcinkus, Branch Chief; Jacob D. Krawitz, Branch Chief; or Brian McLaughlin Johnson, Assistant Director, at (202) 551–6792, Investment Company Regulation Office, Division of Investment Management; Charles Kwon, Senior Counsel, Office of Rulemaking, at (202) 551–3430, Division of Corporation Finance; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to:

Commission reference	CFR citation (17 CFR)
SECURITIES ACT OF 1933 (''SECURITIES ACT'') [1]	
Rule 134	§ 230.134
Rule 138	§ 230.138
Rule 156	§ 230.156
Rule 163	§ 230.163
Rule 163A	§ 230.163A
Rule 164	§ 230.164
Rule 168	§ 230.168
Rule 169	§ 230.169
Rule 172	§ 230.172
Rule 173	§ 230.173
Rule 405	§ 230.405
Rule 415	§ 230.415
Rule 418	§ 230.418
Rule 424	§ 230.424
Rule 430A	§ 230.430A
Rule 430B	§ 230.430B
Rule 433	§ 230.433
Rule 456	§ 230.456
Rule 457	§ 230.457
Rule 462	§ 230.462
Rule 486	§ 230.486
Rule 497	§ 230.497
Form S–1	§ 239.11
Form S–3	§ 239.13
Form N–14	§ 239.23
Form F–1	§ 239.31
Form F–3	§ 239.33
REGULATION S–T [17 CFR 232.10 THROUGH 232.903]	
Rule 11	§ 232.11
Rule 405	§ 232.405
SECURITIES EXCHANGE ACT OF 1934 (''EXCHANGE ACT'') [2]	
Schedule 14A	§ 240.14a–101
Rule 103 of Regulation FD.	§ 243.103
INVESTMENT COMPANY ACT OF 1940 (''INVESTMENT COMPANY ACT'') [3]	
Rule 8b–16	§ 270.8b–16
Rule 23c–3	§ 270.23c–3
Rule 24f–2	§ 270.24f–2
Form 24F–2	§ 274.24
SECURITIES ACT AND INVESTMENT COMPANY ACT	
Form N–2	§§ 239.14 and 274.11a–1
EXCHANGE ACT AND INVESTMENT COMPANY ACT	
Form N–CSR	§§ 249.331 and 274.128

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 80a–1 *et seq.*

Table of Contents

I. Introduction
II. Discussion
A. Scope of Closed-End Investment Companies Affected by the Final Rule
B. Registration Process
1. Current Shelf Offering Process for Affected Funds
2. Amendments to the Registration Process for Affected Funds
3. Short-Form Registration on Form N–2
C. Well-Known Seasoned Issuer Status
1. WKSI Definition
2. WKSI Eligibility
3. Ineligible Issuer Definition
D. Automatic or Immediate Effectiveness for Filings by Affected Funds Conducting Certain Continuous Offerings
E. Final Prospectus Delivery Reforms
F. Communications Reforms
1. Offering Communications
2. Broker-Dealer Research Reports
G. Other Rule Amendments
1. Rule 418 Supplemental Information
2. Amendments to Incorporation by Reference Into Proxy Statements
3. Rule 103 of Regulation FD
H. New Registration Fee Payment Method for Interval Funds and Issuers of Certain Exchange-Traded Products
I. Disclosure and Reporting Parity Proposals

1. Structured Data Requirements
2. Periodic Reporting Requirements
3. Current Reporting Requirements for Affected Funds
4. Online Availability of Information Incorporated by Reference
5. Amendments to Certain Registered CEFs' Annual Report Disclosure
J. Effective and Compliance Dates
III. Economic Analysis
A. Introduction and Baseline
1. Number of Affected Funds
2. Current Securities Offering Requirements for Affected Funds
3. Current Disclosure Obligations of Affected Funds
B. Potential Benefits Resulting From the Proposed Implementation of the Statutory Mandates
1. Improved Access to Capital and Lower Cost of Capital
2. Facilitated Communication With Investors
C. Potential Costs Resulting From the Proposed Implementation of the Statutory Mandates
1. Compliance Costs
2. Other Costs
D. Alternatives to Adopted Approach To Implementing Statutory Mandates
E. Discussion of Discretionary Choices
1. New Registration Fee Payment Method for Interval Funds and Issuers of Certain Exchange-Traded Products
2. Structured Data Requirements
3. Periodic Reporting Requirements
4. Discretionary Amendments to Incorporation by Reference Requirements
5. Automatic or Immediate Effectiveness of Filings by Affected Funds Conducting Certain Continuous Offerings
IV. Paperwork Reduction Act Analysis
A. Background
B. Summary of the Amendments and Impact on Information Collections
1. Amendments to Form N–2 Registration Statement
2. Structured Data Reporting Requirements
3. New Annual Reporting Requirements Under 17 CFR 270.30e–1 (Rule 30e–1) and Exchange Act Periodic Reporting Requirements for BDCs
4. Securities Offering Communications
5. Prospectus Delivery Requirements
6. Form 24F–2
7. Amendments Permitting the Registration of Offerings of an Indeterminate Number of Exchange-Traded Vehicle Securities and the Payment of Registration Fees for Such Offerings on an Annual Net Basis
8. Amendments to Form N–14
V. Final Regulatory Flexibility Analysis
A. Need and Objectives of the Final Rule
B. Significant Issues Raised by Public Comments
C. Small Entities Subject to the Rule
D. Projected Reporting, Recordkeeping, and Other Compliance Requirements
1. Registration Process and Final Prospectus Delivery
2. Communications Rules
3. New Registration Fee Payment Method for Interval Funds
4. Disclosure and Reporting Requirements
5. Automatic or Immediate Effectiveness for Filings by Affected Funds Conducting Certain Continuous Offerings
E. Agency Action To Minimize Effect on Small Entities
1. Alternatives to the Adopted Approach To Implementing Statutory Mandates
2. Alternative Approaches to Discretionary Choices
VI. Other Matters
VII. Statutory Authority

I. Introduction

We are adopting rules that will modify the registration, communications, and offering processes for business development companies (''BDCs'') and registered closed-end investment companies (''registered CEFs''), including interval funds (collectively, ''affected funds'') under the Securities Act.[4] In 2005, the Commission adopted securities offering reforms for operating companies to modernize the securities offering and communication processes while maintaining the protection of investors under the Securities Act.[5] At that time, the Commission specifically excluded all investment companies—including affected funds—from the scope of the reforms.[6] Now, as directed by Congress, we are adopting rules that will allow affected funds to use the securities offering rules that are already available to operating companies.

The Small Business Credit Availability Act (the ''BDC Act'') directs us to allow a BDC to use the securities offering rules that are available to other issuers required to file reports under section 13(a) or section 15(d) of the Exchange Act.[7] As discussed in detail below, the BDC Act identifies with specificity the required revisions.[8] The Economic Growth, Regulatory Relief, and Consumer Protection Act (the ''Registered CEF Act'') (and, together with the BDC Act, the ''Acts'') directs us to adopt rules to allow any registered CEF that is listed on a national securities exchange (a ''listed registered CEF'') or that makes periodic repurchase offers under rule 23c–3 to use the securities offering rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Exchange Act, subject to appropriate conditions.[9] Unlike the BDC Act, the Registered CEF Act does not identify with specificity the revisions that are required.

In 2019, we proposed rules that would modify the registration, communications, and offering processes for affected funds under the Securities Act.[10] As discussed in greater detail below, most commenters supported the proposal.[11] Many of the commenters who supported the proposal generally also recommended modifications to some of the proposed rules.[12] For example, some commenters recommended further expanding the scope of issuers that would qualify as ''well-known seasoned issuers'' to include smaller issuers or those without

[4] BDCs are a category of closed-end investment companies that do not register under the Investment Company Act, but rather elect to be subject to the provisions of sections 55 through 65 of the Investment Company Act. *See* section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)]. Congress established BDCs for the purpose of making capital more readily available to small, developing and financially troubled companies that do not have ready access to the public capital markets or other forms of conventional financing. *See* H.R. Rep. No. 1341, 96th Cong., 2d Sess. 21 (1980). *See infra* section II.A for additional discussion of the definition of ''affected funds.''

''Interval funds'' are a type of registered CEF or BDC that make periodic repurchase offers pursuant to rule 23c–3 under the Investment Company Act. *See* 17 CFR 270.23c–3 (''rule 23c–3'').

[5] Securities Offering Reform, Securities Act Release No. 8591 (July 19, 2005) [70 FR 44721 (Aug. 3, 2005)] (''Securities Offering Reform Adopting Release''). In this release we generally use the term ''operating company'' to refer to issuers that are not investment companies and that are currently eligible to rely on the rules we are amending.

[6] *See, e.g., id.* at 44727 (discussing the exclusion of investment companies registered under the Investment Company Act and BDCs from the definition of ''well-known seasoned issuer''); *id.* at 44735 (discussing the exclusion of such companies from the safe harbors for factual business information and forward-looking information); *id.* at 44784 (discussing the exclusion of such companies from final prospectus delivery reforms).

[7] Section 803(b) of Small Business Credit Availability Act, Public Law 115–141, 132 Stat. 348 (2018) (''BDC Act''). This section also directs us to make specified revisions to allow a BDC to use the proxy rules that are available to such other issuers. *Id.* Affected funds generally use the proxy rules that are available to operating companies already. One current difference applicable to these entities, however, is a more limited ability to incorporate information into their proxy statements by reference. The BDC Act directs that we eliminate this difference by providing these entities parity with operating companies. Section 803(b)(2)(N) of the BDC Act; *see also infra* section II.G.2.

[8] *See* section 803(b)(2) of the BDC Act.

[9] Section 509(a) of Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296 (2018) (''Registered CEF Act''). The Registered CEF Act also refers to proxy rules, as does the BDC Act. *See supra* footnote 7.

[10] Securities Offering Reform for Closed-End Investment Companies, Investment Company Act Release No. 33427 (Mar. 20, 2019) [84 FR 14448 (Apr. 10, 2019)] (''Proposing Release'').

[11] *See, e.g.,* Comment Letter of the Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association (July 3, 2019) (''ABA Comment Letter''); Comment Letter of Alternative Credit Council (June 10, 2019) (''ACC Comment Letter''); Comment Letter of Coalition for Business Development (June 10, 2019) (''CBD Comment Letter''). The comment letters on the Proposing Release (File No. S7–03–19) are available at *https://www.sec.gov/comments/s7-03-19.htm.*

[12] *See, e.g.,* Comment Letter of Calcbench, Inc. (May 13, 2019) (''Calcbench Comment Letter''); Comment Letter of GraniteShares LLC (June 26, 2019) (''GraniteShares Comment Letter''); Comment Letter of Institute for Portfolio Alternatives (June 10, 2019) (''IPA Comment Letter'').

public float.[13] Commenters also recommended eliminating or modifying the proposed requirement that certain additional affected funds file current reports on Form 8–K.[14] Other commenters recommended that the Commission expand the scope of issuers permitted to file certain immediately effective registration statements.[15] Several commenters that are sponsors to exchange-traded products recommended that the Commission expand the scope of issuers permitted to pay registration fees on an annual net basis.[16] Finally, one commenter expressed concern with the proposal, recommending that large BDCs and registered CEFs be subject to additional scrutiny.[17] As discussed in detail below, we are adopting the proposed rules with certain modifications, after consideration of comments received.

Our action will institute a number of reforms:

- First, it will streamline the registration process to allow eligible affected funds to use a short-form shelf registration statement to sell securities ''off the shelf'' more quickly and efficiently in response to market opportunities.
- Second, the final rule will allow affected funds to qualify as ''well-known seasoned issuers'' (''WKSIs'') under rule 405 under the Securities Act.
- Third, it will allow affected funds to satisfy final prospectus delivery requirements using the same method as operating companies.
- Fourth, it will allow affected funds to use certain rules currently available to operating companies, such as communications safe harbors for certain factual business information and forward-looking information, ''free writing prospectuses,'' and broker-dealer research reports (referred throughout this release as the ''communications rules'').
- Fifth, the final rule will allow certain continuously-offered affected funds to make certain changes to their registration statements on an immediately-effective basis or on an automatically effective basis a set period of time after filing.
- Finally, it will tailor the disclosure and regulatory framework for affected funds in light of the amendments to the offering rules applicable to them. These amendments include structured data requirements to make it easier for investors and others to analyze fund data; new annual report disclosure requirements to provide key information in annual reports; a requirement that interval funds pay securities registration fees using the same method that mutual funds and exchange-traded funds (''ETFs'') use today; and a provision that will allow certain ETPs that are not registered under the Investment Company Act to elect to pay securities registration fees in the same manner.

As discussed in detail below, the final rule will affect different categories of affected funds differently, just as different categories of operating companies are treated differently under these rules currently. For example, some of the provisions will apply to all affected funds, that is, all BDCs and registered CEFs. Many of the provisions, however, will apply only to ''seasoned funds.'' These are listed affected funds that are current and timely in their reporting and therefore generally eligible to file a short-form registration statement under the proposal if they have at least $75 million in ''public float.'' [18] Some of the provisions will apply only to seasoned funds that also qualify as WKSIs, that is, listed affected funds that qualify as seasoned funds and generally have at least $700 million in public float.[19] Additionally, the final rule provides unlisted affected funds with the flexibility to make certain filings that become effective either immediately upon filing or automatically after 60 days.[20] The final rule therefore will provide additional flexibilities to both listed and unlisted affected funds. Tables 1 and 2 below summarize these different impacts.

TABLE 1

Entity	Summary definition
Affected funds	Affected funds include all BDCs and registered CEFs, including interval funds.
Seasoned funds [1]	Seasoned funds are affected funds that are current and timely in their reporting and therefore generally eligible to file a short-form registration statement if they have at least $75 million in ''public float.'' *See supra* footnote 18.
WKSIs	WKSIs are seasoned funds that generally have at least $700 million in ''public float.''
ETPs	ETPs are issuers that are not registered investment companies and whose assets consist primarily of commodities, currencies or derivative instruments that reference commodities or currencies; whose securities are listed for trading on a national securities exchange; and that purchase or redeem securities for a ratable share of their assets at NAV.

Notes:

1. Some of the rule changes that are shown below as affecting ''seasoned funds'' will only affect those seasoned funds that elect to file a registration statement on Form N–2 using an instruction permitting funds to use the form to file a short-form registration statement.

[13] *See infra* section II.C.

[14] *See infra* section II.I.3.

[15] *See* ABA Comment Letter; Comment Letter of Investment Company Institute (June 10, 2019) (''ICI Comment Letter'').

[16] *See, e.g.,* Comment Letter of United States Commodity Funds LLC (June 10, 2019) (''USCF Comment Letter''); Comment Letter of World Gold Council (June 10, 2019) (''WGC Comment Letter'').

[17] Comment Letter of Dale White (Apr. 3, 2019) (''White Comment Letter'').

[18] *See* General Instruction I.B.1 of Form S–3 (defining ''aggregate market value''). In this release, we use ''public float'' to mean the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant. *See* General Instruction I.B.1 of Form S–3. Certain issuers with less than $75 million in public float also are eligible to use Form S–3 to register a primary offering but are limited as to the amount of securities they can register. *See* General Instruction I.B.6 of Form S–3. The Commission has stated that the calculations of an issuer's public float for the purpose of determining an issuer's eligibility to use Form S–3 and for determining WKSI status under rule 405 are the same. *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at n.50.

[19] *See* rule 405 (defining WKSI).

[20] *See* amended rules 486(a) and 486(b) under the Securities Act. *See also supra* section II.D.

TABLE 2

Rule	Summary description of rule	Entities affected by changes	Discussed below in
Affected Funds (Including BDCs, Registered CEFs, and Interval Funds)			
Registration Provisions:			
General Instruction F.4.a of Form N–2.	Requires online posting of information incorporated by reference.	Affected Funds	Section II.I.4.
Securities Act Rules 424 and 497.	Provide the processes for filing prospectus supplements.	Affected Funds	Section II.B.3.d.
Investment Company Act Rule 23c–3.	Subjects interval funds to the registration fee payment system based on annual net sales.	Interval Funds	Section II.H.
Securities Act Rule 486	Allows continuously-offered unlisted affected funds to make certain filings that are immediately effective upon filing or automatically effective 60 days after filing.	Continuously-offered unlisted affected funds not relying on rule 23c–3.	Section II.D.
General Instruction G of Form N–14.	Permits certain registrants to incorporate by reference.	BDCs	Section II.B.3.b.
Communication Provisions:			
Securities Act Rule 134	Permits issuers to publish factual information about the issuer or the offering, including "tombstone ads.".	Affected Funds	Section II.F.1.
Securities Act Rule 163A	Permits issuers to communicate without risk of violating the gun-jumping provisions until 30 days prior to filing a registration statement.	Affected Funds	Section II.F.1.
Securities Act Rules 168 and 169.	Permit the publication and dissemination of regularly released factual and forward-looking information.	Affected Funds	Section II.F.1.
Securities Act Rules 164 and 433.	Permit use of a "free writing prospectus."	Affected Funds	Section II.F.1.
Prospectus Delivery Provisions:			
Securities Act Rules 172 and 173.	Permit issuers, brokers, and dealers to satisfy final prospectus delivery obligations if certain conditions are satisfied.	Affected Funds	Section II.E.
Periodic Reporting Provisions:			
Investment Company Act Rule 8b–16.	A requirement that funds that rely on paragraph (b) of the rule describe in the annual report the fund's current investment objectives, policies and risks, and certain key changes in enough detail to allow investors to understand each change and how it may affect the fund.	Registered CEFs	Section II.I.5.
Instruction 4.g to Item 24 of Form N–2.	A requirement for narrative disclosure about the fund's performance in the fund's annual report.	Registered CEFs	Section II.I.2.b.
Item 4 of Form N–2; Instruction 10 to Item 24 of Form N–2.	Requires disclosure of certain financial information.	BDCs	Section II.I.2.c.
Structured Data Reporting Requirements:			
Structured Financial Statement Data.	A requirement that BDCs tag their financial statements using Inline eXtensible Business Reporting Language ("Inline XBRL") format.	BDCs	Section II.I.1.a.
Prospectus Structured Data Requirements.	A requirement that registrants tag certain information required by Form N–2 using Inline XBRL.	Affected Funds	Sections II.I.1.b and II.I.1.c.
Form 24F–2 Structured Format.	A requirement that filings on Form 24F–2 be submitted in a structured format.	Form 24F–2 Filers, including open-end funds and unit investment trusts.	Section II.I.1.d.
Seasoned Funds			
Registration Provisions:			
Securities Act Rule 415	Permits registration of securities to be offered on a delayed or a continuous basis.	Seasoned Funds	Section II.B.3.
General Instructions A.2 and F.3 of Form N–2.	Provide for backward and forward incorporation by reference.	Seasoned Funds	Section II.B.3.b.
Securities Act Rule 430B	Permits certain issuers to omit certain information from their prospectuses at effectiveness.	Seasoned Funds	Section II.B.3.d.

TABLE 2—Continued

Rule	Summary description of rule	Entities affected by changes	Discussed below in
Securities Act Rule 418	Exempts some registrants from an obligation to furnish certain engineering, management, or similar reports.	Seasoned Funds	Section II.G.1.
Regulation FD Rule 103	Provides that a failure to make a public disclosure required solely by 17 CFR 243.100 (rule 100 of Regulation FD) will not disqualify a ''seasoned'' issuer from use of certain forms.	Seasoned Funds	Section II.G.3.
Communication Provisions:			
Securities Act Rule 138	Permits a broker or dealer to publish or distribute certain research reports about securities other than those it is distributing.	Seasoned Funds	Section II.F.2.
Proxy Statements:			
Item 13 of Schedule 14A	Permits certain registrants to use incorporation by reference to provide information that otherwise must be furnished with certain types of proxy statements.	Seasoned Funds	Section II.G.2.
Periodic Reporting Provisions:			
Instruction 4.h.(2) to Item 24 of Form N–2.	A requirement for information about the investor's costs and expenses in the registrant's annual report.	Seasoned Funds	Section II.I.2.a.
Instruction 4.h.(3) to Item 24 of Form N–2.	A requirement for information about the share price of the registrant's stock and any premium or discount in the registrant's annual report.	Seasoned Funds	Section II.I.2.a.
Instruction 4.h.(1) to Item 24 of Form N–2.	A requirement for information about each of a fund's classes of senior securities in the registrant's annual report.	Seasoned Funds	Section II.I.2.a.
Instruction 4.h.(4) to Item 24 of Form N–2.	A requirement to disclose outstanding material unresolved staff comments that remain unresolved for a substantial period of time.	Seasoned Funds	Section II.I.2.d.
WKSIs			
Registration Provisions:			
Securities Act Rule 462	Provides for effectiveness of registration statements immediately upon filing with the Commission.	WKSIs	Section II.B.3.c.
Communication Provisions:			
Securities Act Rule 163	Permits oral and written communications by or on behalf of WKSIs at any time.	WKSIs	Section II.F.1.
ETPs			
Registration Provisions:			
Securities Act Rules 415, 424, 456 and 457; Forms S–1, S–3, F–1 and F–3.	Permits ETPs to register an indeterminate amount of certain securities and pay registration fees based on annual net sales.	ETPs	Section II.H.

II. Discussion

A. Scope of Closed-End Investment Companies Affected by the Final Rule

As we proposed, the final rule will apply to all BDCs and registered CEFs, with certain conditions and exceptions discussed below and generally illustrated in Tables 1 and 2 above. The BDC Act applies to all BDCs, including BDCs that are listed on a securities exchange and those that are unlisted.[21] In contrast, the Registered CEF Act extends to all registered CEFs listed on a securities exchange, as well as interval funds, but excludes other unlisted registered CEFs.[22]

Although the Registered CEF Act only requires us to allow interval funds and listed registered CEFs to use the securities offering rules available to operating companies, that Act does not preclude us from exercising our discretion to extend these rules to all registered CEFs. The Commission therefore proposed to apply the rules to all BDCs and all registered CEFs, including unlisted registered CEFs, with certain conditions and exceptions.[23] We believed that this approach would benefit unlisted registered CEFs and their investors by avoiding the adverse consequences that could result from treating unlisted registered CEFs differently from all other registered CEFs and unlisted BDCs.

We believed that applying such a distinction is unnecessary because, for purposes of these rules, unlisted registered CEFs are not distinguishable

[21] Listed BDCs are publicly traded BDCs that are listed on a stock exchange. Unlisted BDCs include non-traded BDCs, which are offered via a continuous offering up to a preset maximum amount, and private BDCs, which are offered via a private placement offering.

[22] *See* section 509(a) of the Registered CEF Act. Similar to BDCs, registered CEFs include listed and unlisted funds, including publicly traded CEFs that are listed on a stock exchange, non-traded CEFs, and interval funds.

[23] Proposing Release, *supra* footnote 10, at section II.

from unlisted BDCs, which the rule amendments must cover. Unlisted registered CEFs, like unlisted BDCs, also would benefit from parity of treatment.[24] We did not receive comment on this aspect of the proposal. Because we continue to believe that this approach will benefit unlisted registered CEFs and their investors by providing new investor protections and avoiding adverse consequences from differential treatment, the final rule will apply to all BDCs and registered CEFs as proposed.

The Commission proposed to generally apply the specific requirements of the BDC Act to both BDCs and registered CEFs because it believed that, except where dictated by meaningful differences between BDCs and registered CEFs, consistent application of the proposed rules across affected funds would result in more efficient offering processes and more consistent investor protections.[25] We continue to believe that both Acts share the overall purpose of providing offering and communication rule parity to the investment companies covered by each Act.[26] We did not receive public comment on this aspect of the proposal, and, for the reasons stated above, we are adopting it as proposed.

B. Registration Process

We are adopting, substantially as proposed, amendments to our rules and forms to streamline the registration process for affected funds by permitting them to use the more flexible registration process available to operating companies. These amendments collectively will allow affected funds to offer and sell securities ''off the shelf'' more quickly and efficiently in response to market opportunities.

1. Current Shelf Offering Process for Affected Funds

Issuers, including affected funds, whose offerings are registered or qualified to be registered on Form S–3 may conduct primary offerings ''off the shelf'' under Securities Act rule 415(a)(1)(x), the provision for offerings made on a delayed or continuous basis.[27] In a rule 415(a)(1)(x) shelf offering, a seasoned issuer can register an unallocated dollar amount of securities for sale at a later time.[28] The issuer can then take down securities ''off the shelf'' for sale in a public offering as market conditions warrant. This allows seasoned issuers to quickly access the public securities markets from time to time to take advantage of favorable market conditions.[29]

Affected funds currently can make shelf offerings under rule 415(a)(1)(x) if they meet the eligibility criteria for Form S–3, even though affected funds register their securities offerings on Form N–2.[30] Our rules for operating companies, however, are more flexible and efficient than for affected funds. In particular, seasoned operating companies can use a short-form registration statement on Form S–3. Certain seasoned operating companies also can rely on Securities Act rule 430B to omit certain information from the ''base'' prospectus when the registration statement becomes effective and later provide that information in a subsequent Exchange Act report incorporated by reference, a prospectus supplement, or a post-effective amendment.[31] The ability to ''forward incorporate'' information in Exchange Act reports filed *after* the registration statement becomes effective allows operating companies to efficiently update their prospectuses and access capital markets without the expense and delay of filing post-effective amendments in most cases.

Affected funds, on the other hand, currently have limited ability to incorporate information by reference into their registration statements and cannot forward incorporate information from subsequently-filed Exchange Act reports.[32] When an affected fund sells securities, including as part of a takedown ''off the shelf,'' its registration statement must include all required information.[33] In particular, the affected fund's registration statement must include current financial information, including any annual update required by section 10(a)(3) of the Securities Act.[34] Affected funds provide any section 10(a)(3) update to the registration statement by filing a post-effective amendment, which involves the expense and potential delay associated with the fund's preparation of the amendment and also provides our staff with time to review the amendment for compliance with the applicable disclosure and accounting requirements and to provide comments where appropriate.[35]

Affected funds also cannot currently rely on rule 430B, which allows certain issuers to omit information from a prospectus, or the process that operating companies follow to file prospectus supplements.[36] In addition, affected funds cannot currently file automatic shelf registration statements because only WKSIs can file these registration statements. These differences can result in additional expense or delay for affected funds relative to operating companies and can affect the timing of an affected fund's capital raising.[37]

2. Amendments to the Registration Process for Affected Funds

The amendments we are adopting are designed to streamline the registration process for affected funds in parity with operating companies. Specifically, and as discussed in more detail below, the amendments will permit affected funds to:

- File a short-form registration statement on Form N–2 that will

[24] *Id.*

[25] *Id.*

[26] *Id.* (explaining the similarity of the BDC Act's and the Registered CEF Act's broad mandates).

[27] *See* Proposing Release, *supra* footnote 10, at n.17 (discussing rule 415(a)(1)).

[28] In this release we use the term ''seasoned'' to refer generally to an issuer that meets the registrant requirements in General Instruction I.A of Form S–3 and, when referring to seasoned funds, a fund that meets these Form S–3 registrant requirements as well as certain modifications for registered CEFs. *See* Proposing Release, *supra* footnote 10, at n.18 (explaining the requirements under General Instruction I.A. of Form S–3).

[29] Issuers that rely on rule 415(a)(1)(x) must file a new registration statement every three years, with unsold securities and fees paid thereon carried forward to the new registration statement. *See* Securities Act rule 415(a)(5) and (6). If the new registration statement is an automatic shelf registration statement filed by a WKSI, it will be effective immediately upon filing.

[30] *See* Proposing Release, *supra* footnote 10, at n.20.

[31] The base prospectus of a shelf registration statement will generally describe in broad terms the types of securities and offerings that the issuer may conduct at some later time.

[32] *See* Proposing Release, *supra* footnote 10, at n.22 (discussing ''backward incorporation'').

[33] The fund's registration statement must include all required information to avoid liability from selling securities from an out-of-date prospectus and to satisfy section 10(a) of the Securities Act. *See infra* footnotes 83–84 and accompanying text.

[34] *See* Proposing Release, *supra* footnote 10, at n.24.

[35] These post-effective amendments become effective pursuant to section 8(c) of the Securities Act on such date as the Commission may determine and are typically declared effective by the staff acting pursuant to delegated authority. In contrast, Form S–3 is updated through the filing of an annual report on Form 10–K, which contains the issuer's audited financial statements for its most recently completed fiscal year. *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at n.61; *see also* Proposing Release, *supra* footnote 10, at n.25.

[36] *See id.* at n.26.

[37] The final rule will give certain affected funds greater flexibility to control the timing of their capital raising. As discussed in the Proposing Release, section 23(b) of the Investment Company Act generally prohibits a registered CEF from issuing its shares at a price below the fund's current net asset value (''NAV'') without shareholder approval (this provision applies to BDCs as well with certain modifications). *See id.* at n.27. Because the shares of affected funds often trade at a discount to NAV, by allowing certain affected funds to sell securities ''off the shelf,'' the final rule will avoid potential delays associated with updating the funds' registration statements if they seek to access the markets when their shares are trading at a premium.

function like a Form S–3 registration statement. An affected fund that files this short-form registration statement can use it to register shelf offerings, including shelf registration statements that are filed by affected funds that qualify as WKSIs and become effective automatically, and can satisfy Form N–2's disclosure requirements by incorporating by reference information from the fund's Exchange Act reports;

• Rely on rule 430B to omit information from their base prospectuses, and to use the process operating companies follow to file prospectus supplements; and

• Include additional information in periodic reports to update their registration statements.

Commenters generally supported our general approach to streamlining the registration process for affected funds. Commenters stated that the proposed amendments would allow affected funds to raise capital more efficiently and cost-effectively and would provide affected funds with greater flexibility to manage the timing of their offerings in response to market opportunities.[38] One commenter stated that affected funds will benefit from the proposed amendments because they no longer will have to file post-effective amendments to shelf registration statements to update their financial statements. Instead, that information will be in annual reports and incorporated by reference into their registration statements.[39]

3. Short-Form Registration on Form N–2

We are adopting, as proposed, new General Instruction A.2 in Form N–2, which will allow affected funds to file a short-form registration statement on Form N–2 that will function like a registration statement filed on Form S–3.[40] If a fund files a registration statement under this new instruction, the fund's registration statement will incorporate certain past and future Exchange Act reports by reference, allowing the fund to use a short-form registration statement and avoid the need to make post-effective amendments in most cases. An affected fund may use the new instruction to register a shelf offering under rule 415(a)(1)(x), and we are adopting conforming amendments to that rule to make this clear.[41] The new instruction, however, is not limited to offerings under rule 415(a)(1)(x). Rather, an affected fund may use the new instruction to register any of the securities offerings that operating companies are permitted to register on Form S–3.[42]

a. Eligibility To File a Short-Form Registration Statement

As proposed, we are adopting amendments to permit an affected fund to file a short-form registration statement under the short-form registration instruction on Form N–2 if:

• For either a BDC or a registered CEF, the fund meets both the registrant requirements and the transaction requirements of Form S–3 (*i.e.,* the fund could register the offering on Form S–3 if it were an operating company);[43] and

• for registered CEFs only, the fund also has been registered under the Investment Company Act for at least 12 calendar months immediately preceding the filing of the registration statement and has timely filed all reports required to be filed under section 30 of the Investment Company Act during that time.[44]

An affected fund generally will meet the registrant requirements of Form S–3 if it has timely filed all reports and other materials required under the Exchange Act during the prior year.[45] An affected fund will generally meet the transaction requirements of Form S–3 for a primary offering if the fund's public float is $75 million or more.[46] Requiring affected funds to satisfy the requirements of Form S–3 in order to file a short-form registration statement provides parity between affected funds and operating companies, consistent with Congress's mandates in the BDC Act and Registered CEF Act.

Commenters generally supported the proposal to permit affected funds to file short-form registration statements.[47] Several commenters, however, urged that we provide additional bases other than public float for an affected fund to be eligible to file a short-form registration statement (or to qualify as a WKSI).[48] While the arguments advanced by commenters apply to our proposed short-form registration requirement, commenters focused primarily on our proposed public float threshold for WKSI status.[49] Accordingly, we discuss these comments below in section II.C.2. For the reasons discussed in that section, we are not changing the public float requirement or adopting new requirements for affected funds to file a short-form registration statement. We are adopting the proposed $75 million public float requirement for an affected fund to file a short-form registration statement on Form N–2 to provide affected funds parity with operating companies.

Certain affected funds, including most interval funds,[50] do not list their securities on an exchange and thus do not have public float. As a result, these affected funds generally would not be able to satisfy the transaction requirement necessary to file a short-form registration statement.[51] In

[38] *See, e.g.,* ACC Comment Letter; ICI Comment Letter; Comment Letter of Securities Industry and Financial Markets Association (June 5, 2019) (''SIFMA Comment Letter'').

[39] *See* ICI Comment Letter.

[40] Throughout this release, we refer to General Instruction A.2 as the ''short-form registration instruction'' and refer to funds relying on this instruction as filing a ''short-form registration statement'' on amended Form N–2. Some of the required amendments and the conditions in our current rules are available only to issuers that meet the eligibility and transaction requirements of Form S–3 and therefore are eligible to file a short-form registration statement on that form. The short-form registration instruction in Form N–2 is designed to facilitate these amendments, as directed in the BDC Act and the Registered CEF Act.

[41] *See* amended rule 415(a)(1)(x) (conforming amendments for affected funds); *see also supra* section II.B.3.c.

[42] *See* General Instruction I.B of Form S–3 (identifying transactions that can be registered on the form); *see also* General Instruction A.2.c of amended Form N–2. Form S–3, and therefore the short-form registration instruction, also is available to a majority-owned subsidiary that is a closed-end management investment company eligible to register a securities offering on Form N–2 if it meets certain conditions. *See* Proposing Release, *supra* footnote 10, at n.29 (describing the conditions necessary for majority-owned subsidiaries of closed-end management companies to register a securities offering on Form N–2).

[43] *See* General Instructions A.2.a and A.2.c of amended Form N–2; General Instructions I.A (registrant requirements) and I.B (transaction requirements) of Form S–3.

[44] Under this amendment to Form N–2, the fund also must have timely filed all reports required to be filed under section 30 of the Investment Company Act during any portion of a month immediately preceding the filing of the registration statement. *See* new General Instruction A.2.b of amended Form N–2.

[45] *See* General Instruction I.A.3 of Form S–3.

[46] *See* General Instruction I.B of Form S–3.

[47] *See, e.g.,* SIFMA Comment Letter; Comment Letter of Mutual Fund Directors Forum (June 12, 2019) (''MFDF Comment Letter'').

[48] *See, e.g.,* ICI Comment Letter; ABA Comment Letter.

[49] *See infra* section II.C.2 (discussing comments on public float requirement for WKSI eligibility).

[50] Only one interval fund is currently exchange-listed.

[51] We intend for the short-form registration instruction to provide affected funds parity with operating companies so that affected funds can register the same transactions as operating companies register on Form S–3. To register a primary offering of equity securities on Form S–3, an issuer must meet the applicable eligibility and registrant requirements. For example, an issuer with the requisite public float may register a primary offering of securities to be offered for cash. *See* General Instruction I.B.1 of Form S–3. Alternatively, an issuer may register a primary offering if it has common equity securities listed on an exchange, limits the amount sold over a twelve-month period to no more than one-third of the aggregate value of voting and non-voting common equity held by non-affiliates, and meets certain

addition, as we noted in the Proposing Release, because interval funds make continuous offerings, they (as well as other continuously offered, non-listed affected funds) would not be able to file a short-form registration statement that omits information required to be in an issuer's prospectus when it is offering its securities.[52]

Interval funds also have their own offering provision, Securities Act rule 415(a)(1)(xi),[53] and post-effective amendments to their registration statements are immediately effective upon filing or automatically effective 60 days after filing under rule 486 under the Securities Act, depending on the substance of the amendments.[54] As a result, interval funds currently have a tailored registration process that, although different in certain respects from that of operating companies, may provide many of the same efficiencies, including the ability to raise capital as the opportunity arises. As discussed below in section II.D, we are adopting amendments to rule 486 to allow any affected fund that conducts continuous offerings under rule 415(a)(1)(ix), such as continuously-offered tender offer funds, to rely on rule 486. We believe these amendments will benefit such continuously-offered affected funds by allowing them to maintain effective registration statements in a more efficient, cost-effective manner, similar to the benefits that the rules we are adopting will provide to affected funds that file short-form registration statements.

As proposed, in addition to satisfying the registrant requirements of Form S–3, a registered CEF also must have timely filed all reports required under section 30 of the Investment Company Act for the preceding 12 months in order to register an offering under the short-form registration instruction. A registered CEF therefore must have timely filed during the prior year all required Exchange Act reports, such as annual and semi-annual reports to shareholders filed with the Commission on Form N–CSR, as well as reports required only under section 30 of the Act, such as reports on Forms N–CEN and N–PORT.

As we stated in the Proposing Release, an issuer's Exchange Act filings provide the basic source of information to the market and to potential purchasers, and investors in the secondary market use that information in making their investment decisions.[55] Although all affected funds file reports under the Exchange Act, registered CEFs also file reports under the Investment Company Act. These Investment Company Act reports also provide important information to the market and investors, including information about an affected fund's portfolio holdings that will be publicly reported on a quarterly basis on Form N–PORT. We believe that the market will analyze this portfolio holdings information in a similar manner to how it analyzes financial statements for operating companies to determine changes in prospects for growth and performance. Portfolio holdings disclosure on Form N–PORT, for example, provides important information that is comparable to information BDCs include in Exchange Act reports for purposes of providing a quarterly flow of key information to the market. Moreover, requiring registered CEFs to have timely filed their Investment Company Act reports also will provide parity among BDCs, registered CEFs, and operating companies. This is because once Form N–PORT fully replaces Form N–Q, registered CEFs will only file Exchange Act reports semi-annually on Form N–CSR, whereas BDCs and operating companies file Exchange Act reports on Forms 10–K, 10–Q and 8–K.[56] As such, all issuers will be required to have filed their quarterly and other required reports in order to file a short-form registration statement.

We received one comment on this particular aspect of the proposal. This commenter expressed support for this aspect of the proposal, stating that it provides parity between registered CEFs and operating companies.[57]

b. Information Incorporated by Reference

As proposed, the same rules on incorporation by reference that apply to Form S–3 registration statements also will apply to a short-form registration statement filed on Form N–2.[58] We did not receive comments on these amendments and are adopting them as proposed. Specifically, an affected fund relying on the short-form registration instruction will be required to:

- Specifically incorporate by reference into the prospectus and statement of additional information (''SAI''): (1) Its latest annual report filed pursuant to section 13(a) or section 15(d) of the Exchange Act that contains financial statements for the registrant's latest fiscal year for which a Form N–CSR or Form 10–K was required to be filed; and (2) all other reports filed pursuant to section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report (backward incorporation by reference);[59] and
- State that all documents subsequently filed pursuant to section 13(a), 13(c), 14, or 15(d) of the Exchange Act prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus and SAI (forward incorporation by reference).[60]

We also are adopting, as proposed, an instruction to Form N–2 that will permit an affected fund filing a short-form registration statement on Form N–2 to satisfy the disclosure requirements for its prospectus or SAI by incorporating the information by reference from Exchange Act reports.[61] This provision,

other requirements. *See* General Instruction I.B.6 of Form S–3. Interval funds that are not exchange-listed and without public float would not be qualified to register a primary offering of their shares on Form S–3.

[52] *See* Proposing Release, *supra* footnote 10, at text following n.37.

[53] 17 CFR 230.415(a)(1)(xi).

[54] *See* 17 CFR 230.486.

[55] *See* Proposing Release, *supra* footnote 10, at text accompanying nn.42–46.

[56] Because Form N–PORT will render reports on Form N–Q unnecessarily duplicative, once a registered fund begins filing reports on Form N–PORT, it will no longer be required to file reports on Form N–Q. *See* Investment Company Reporting Modernization, Investment Company Act Release No. 32936 (Dec. 8, 2017) [82 FR 58731 (Dec. 14, 2017)] (delaying the requirement for registered funds to submit reports on Form N–PORT through the EDGAR system until April 2019 for larger fund groups, and April 2020 for smaller fund groups). Form N–Q will be rescinded on May 1, 2020. *See id.*

[57] *See* Comment Letter of Teachers Insurance and Annuity Association of America (June 13, 2019) (''TIAA Comment Letter'').

[58] *See* section 803(c)(1) of the BDC Act (directing us to include an item or instruction that is similar to item 12 on Form S–3 to provide that a BDC that would otherwise meet the requirements of Form S–3 shall incorporate by reference the reports and documents filed by the BDC under the Exchange Act into the registration statement of the BDC filed on Form N–2). We are amending General Instruction F.3 of current Form N–2 in its entirety and replacing it with a new General Instruction F.3. In these provisions and others that are substantively identical to parallel provisions in Form S–3, we have included conforming references to a fund's SAI.

[59] *See* new General Instruction F.3.a.(1)–(2) of amended Form N–2; *cf.* Item 12(a)(1)–(2) of Form S–3. In addition, if sales of a class of capital stock are to be registered on Form N–2 and the same class is registered under section 12 of the Exchange Act, the affected fund must incorporate by reference the description of the class contained in the Exchange Act registration statement with respect to that class (including any amendment or reports filed for the purpose of updating such description). *See* new General Instruction F.3.a.(3) of amended Form N–2; *cf.* Item 12(a)(3) of Form S–3.

[60] *See* new General Instruction F.3.b of amended Form N–2; *cf.* Item 12(b) of Form S–3.

[61] *See* new General Instruction F.3 of amended Form N–2. The amendments will permit a fund to use this incorporated information to provide the disclosure required by Items 3–12 and Items 16–24 of Form N–2. *See* new General Instruction F.3.c of amended Form N–2; *cf.* Item 12(d) of Form S–3.

which is substantively identical to a parallel item in Form S–3, will give affected funds filing a short-form registration statement on Form N–2 the option to either provide required disclosure directly in the prospectus or SAI or to satisfy Form N–2's disclosure requirements with information incorporated by reference.[62] We did not receive any comments on these particular amendments to Form N–2.

We also are adopting, as proposed, conforming changes to Form N–2's undertakings.[63] Form N–2 currently requires an undertaking that would prevent seasoned funds that file a short-form shelf registration statement from incorporating information by reference as proposed, because it requires funds to file post-effective amendments in certain circumstances without providing an exception that would allow the required information to be supplied via incorporation by reference.[64] In contrast, operating companies registering an offering on Form S–3 are not required under the applicable undertaking to file post-effective amendments if the required information is included in an Exchange Act report incorporated by reference or a prospectus supplement that is part of the registration statement.[65] To implement the statutory mandates and provide parity for affected funds, we are adopting amendments to Form N–2's undertakings to provide the same approach for affected funds filing a short-form registration statement on that form that applies to operating companies that file on Form S–3.[66]

The Proposing Release requested comment on whether we should modify incorporation by reference provisions in other registration forms filed by affected funds to provide parity or consistency across registration statements. In particular, we asked if we should amend Form N–14 to provide that BDCs may incorporate by reference to the same extent as registered CEFs.[67] Commenters supported this approach,[68] which would provide for more consistent treatment between registered CEFs and BDCs.

We are modifying Form N–14 to allow BDCs to incorporate by reference to the same extent as registered CEFs. As commenters observed, this change will provide consistent treatment for BDCs and registered CEFs. This change also will reduce the length of a BDC's Form N–14 prospectus, which in some cases can exceed 1,000 pages, because BDCs cannot currently incorporate information by reference. To effectuate this change, we are amending the instruction in Form N–14 that governs incorporation by reference to specifically include BDCs and clarify that current reports include those filed pursuant to section 13(a) or 15(d) of the Exchange Act.[69] Additionally, in response to comments,[70] we are eliminating the requirement that registrants file with the Form N–14 registration statement the documents that contain information that is incorporated by reference into the prospectus or SAI.[71] Such documents are filed on EDGAR and readily available to Commission staff.

c. Affected Funds' Use of Rule 415(a)(1)(x) and Automatic Shelf Registration Statements [72]

We are adopting, as proposed, two additional amendments to allow

[62] The BDC Act directed us to extend this parallel item in Form S–3 (Item 12) to BDCs that meet Form S–3's requirements. *See supra* footnote 58; Item 12(d) of Form S–3; *see also* section 509(a) of the Registered CEF Act.

[63] *See* section 803(b)(2)(P) of the BDC Act (directing us to revise Item 34 of Form N–2 to require a BDC to provide undertakings ''that are no more restrictive than the undertakings that are required of a registrant under [Item 512 of Regulation S–K],'' which sets forth the undertakings an operating company must include in its registration statement for certain offerings).

Commenters suggested that the Item 34.1 undertaking to suspend an offering if a fund's NAV declines more than 10% from its NAV on its registration statement effective date until the fund amends the prospectus should not apply to continuous or delayed shelf offerings conducted by affected funds pursuant to proposed General Instruction A.2 of Form N–2. *See* Comment Letter of Dechert LLP (June 10, 2019) (''Dechert Comment Letter''); IPA Comment Letter; *see also* Item 34.1 of current Form N–2. Commenters urged that the undertaking should not apply in these circumstances because the shelf offering could extend over 3–1/2 years, and the undertaking did not seem necessary because the fund would amend its prospectus by incorporating by reference the information from its Exchange Act reports. *See* Dechert Comment Letter; IPA comment Letter. We agree, and are amending Item 34.1 to clarify that this undertaking is not applicable in the circumstance described by commenters. *See* Item 34.1 of amended Form N–2.

[64] Form N–2 currently requires an affected fund registering an offering under rule 415 to undertake to file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement under certain circumstances, including to provide any prospectus required by section 10(a)(3) of the Securities Act. *See* Item 34.4.a of current Form N–2.

[65] *See* 17 CFR 229.512(a)(1)(iii)(B) (Item 512(a)(1)(iii)(B) of Regulation S–K).

[66] Specifically, our amendments add a new provision to the relevant undertaking stating that the requirement to undertake to file a post-effective amendment does not apply if the registration statement is filed under the short-form registration instruction and the information required to be included in a post-effective amendment is contained in Exchange Act reports that are incorporated by reference into the fund's registration statement or is contained in a form of prospectus that is part of the registration statement. *See* Item 34.3.a of amended Form N–2; *cf.* Item 512(a) of Regulation S–K.

We also are amending Item 34 to make conforming changes to mirror parallel undertakings in Item 512 of Regulation S–K. *See, e.g.,* Item 34.3.a(2) of amended Form N–2; *cf.* Item 512(a)(1)(ii) of Regulation S–K; Item 34.3.d(1) of amended Form N–2; *cf.* Item 512(a)(5)(i) of Regulation S–K; Item 34.3.e(2)–(3) of amended Form N–2; *cf.* Item 512(a)(6)(ii)–(iii) of Regulation S–K; Item 34.5 of amended Form N–2; *cf.* Item 512(b) of Regulation S–K; and Item 34.6 of amended Form N–2; *cf.* Item 512(h) of Regulation S–K.

Additionally, in response to comments, we are eliminating the undertaking in Item 34.3 of current Form N–2, which requires affected funds to undertake to supplement the prospectus or file a post-effective amendment to disclose certain information if the securities being registered are to be offered to existing shareholders, and if not taken, to be reoffered to the public. *See* Dechert Comment Letter; IPA Comment. The Commission recently eliminated a parallel undertaking from Regulation S–K because other requirements make the undertaking duplicative and unnecessary. *See* FAST Act Modernization and Simplification of Regulation S–K, Investment Company Act Release No. 33426 (Mar. 20, 2019) [84 FR 12674 (Apr. 2, 2019)] (''FAST Act Modernization Adopting Release''), at n.171. We are eliminating this undertaking from Form N–2 for the same reasons, and renumbering Item 34's sub-items accordingly.

[67] Form N–14 currently permits a registered CEF—but not a BDC—to incorporate by reference certain information about the registrant and the company being acquired that is required by Items 5, 6 and 11–14 of Form N–14 from its prospectus, SAI, or Investment Company Act reports into the Form N–14 prospectus. *See* General Instruction G of current Form N–14.

[68] *See* Dechert Comment Letter; IPA Comment Letter.

[69] *See* General Instruction G of amended Form N–14. We also are eliminating the instruction's reference to sub-paragraph (d) of Section 30, and will instead reference Section 30 (no sub-part specified). This change will have the effect of requiring a Form N–14 registrant that seeks to incorporate by reference to be current in filing all Section 30 reports, including reports filed on Forms N–PORT and N–CEN. Commenters also suggested that we further amend Form N–14 to provide that a seasoned affected fund that incorporates by reference information about the registrant into the prospectus need not deliver copies of the documents containing such information with the prospectus. *See, e.g.,* Dechert Comment Letter. Because the delivery requirement applies to funds generally and not just affected funds, we believe that any changes to the requirement should be considered on a broader basis that is beyond the scope of this rulemaking.

[70] *See* Dechert Comment Letter; IPA Comment Letter.

[71] *See* General Instruction G of amended Form N–14. The requirement to file with the registration statement the documents that contain the information that is incorporated by reference is no longer necessary given the availability of such documents on EDGAR. We are similarly eliminating the requirement to file with the registration statement each document from which information is incorporated by reference into the SAI.

[72] As proposed, amended Form N–2 will become effective on August 1, 2020. The Commission also will need time to modify its systems to automatically reflect that automatic shelf registration statements are effective upon filing and process ''pay-as-you-go'' payments for affected funds that are WKSIs. *See infra* section II.J. Until such modifications are complete, which is anticipated to be September 2020, affected funds

affected funds to use the shelf registration system in parity with operating companies. First, we are amending rule 415(a)(1)(x) to clarify that affected funds may use that rule by adding references to a registration statement filed under the short-form registration instruction.[73] Second, we are adopting a new general instruction to permit affected funds that qualify as WKSIs to file an automatic shelf registration statement.[74] A WKSI can register unspecified amounts of different types or classes of securities on an automatic shelf registration statement.[75] An automatic shelf registration statement and any amendments to the registration statement will be effective immediately upon filing.[76] Automatic shelf registration provides WKSIs with significant flexibility to take advantage of market windows, structure terms of securities on a real-time basis to accommodate investor demand, and determine or change the plan of distribution in response to changing market conditions. WKSIs using an automatic shelf registration statement further benefit by being able to pay filing fees at any time in advance of a shelf takedown or on a ''pay-as-you-go'' basis at the time of each takedown off the shelf registration statement in an amount calculated for that takedown.[77] Our amendments will extend these same benefits to affected funds that qualify as WKSIs, as directed by the BDC Act and the Registered CEF Act.[78] We did not receive any comments on these particular amendments.[79]

d. Omitting Information From a Base Prospectus and Prospectus Supplements

The BDC Act directed us to include a process for a BDC to file a prospectus in the same manner as under rule 424(b).[80] Consistent with this directive and with the Registered CEF Act, we are amending, as proposed, rule 424(f) to allow affected funds to file a prospectus under rule 424.[81] As discussed in the Proposing Release, affected funds registering shelf offerings under Securities Act rule 415 generally can omit required information from the base prospectus that is unknown or not reasonably available to the fund when the registration statement becomes effective.[82] WKSIs and certain issuers eligible to use Form S–3 for primary offerings are permitted under rule 430B to omit certain additional information. A base prospectus that omits statutorily-required information is not a final prospectus under section 10(a) of the Securities Act.[83] Filing a prospectus supplement pursuant to rule 424 is one way to provide information required for a prospectus to satisfy the requirements of section 10(a).[84]

Our rules, however, provide different processes for operating companies and investment companies to file prospectuses. Operating companies currently follow rule 424 to file prospectus supplements, whereas investment companies follow rule 497.

Although these rules provide similar processes, they have certain key differences. For example, rule 424(b) is designed to work together with rule 415(a)(1)(x), and provides additional time for an issuer to file a prospectus. Rule 497 does not contain provisions specifically related to offerings under rule 415(a)(1)(x) and requires the fund to file a prospectus with the Commission before using it. Rule 424 also requires an issuer to file a prospectus when the issuer makes changes from or additions to a previously-filed prospectus that are substantive, whereas rule 497 requires funds to file every prospectus that varies from any previously-filed prospectus.

Under the amendment to rule 424(f), an affected fund will be able to file any type of prospectus enumerated in rule 424(b) to update, or to include information omitted from, a prospectus or in connection with a shelf takedown.[85] We also are amending rule 497 to provide that rule 424 would be the exclusive rule for affected funds to file a prospectus supplement other than an advertisement that is deemed to be a prospectus under 17 CFR 230.482 (rule 482).[86] This will avoid any confusion that might result if affected funds were permitted to file prospectuses under both rule 424 and rule 497, while also continuing to require affected funds to file rule 482 advertisements as they and other investment companies do today.

We also are adopting, as proposed, an amendment to permit affected funds to use rule 430B in parity with operating companies.[87] We received no comments on this aspect of the proposal. Thus an affected fund may omit certain information from its prospectus in two circumstances:

- A WKSI filing an automatic shelf registration statement may omit the plan

should contact the staff of the Division of Investment Management's Disclosure Review and Accounting Office if they are filing an automatic shelf registration statement.

[73] *See* rule 415(a)(1)(x) (amended to include securities registered pursuant to General Instruction A.2 of Form N–2). *See also* section 803(b)(2)(J) of the BDC Act (directing us to revise rule 415(a)(1)(x) to provide that a BDC that would otherwise meet the eligibility requirements of Form S–3 can register its securities under that provision). Our amendments also add a reference to a Form N–2 registration statement filed pursuant to General Instruction A.2 to rule 415(a)(2) to make clear that affected funds registering offerings pursuant to rule 415(a)(1)(ix), like other issuers relying on that provision, will not be subject to the limitation that they register an amount of securities that the issuer reasonably expected would be offered or sold within two years from the date that the registration statement became effective. *Cf.* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44774–44775.

[74] *See* General Instruction B of amended Form N–2; section 803(c)(2) of the BDC Act (directing that we amend Form N–2 to include an instruction that is similar to the instruction regarding automatic shelf registration offerings by WKSIs on Form S–3 to provide that a BDC that is a WKSI may file automatic shelf offerings on Form N–2). This instruction will provide that an affected fund that is a WKSI may use the form as an automatic shelf registration statement only for the transactions that are described in, and consistent with the requirements of, General Instruction I.D of Form S–3. This provides parity with operating companies because General Instruction I.D of Form S–3 specifies the transactions and requirements for an automatic shelf registration statement filed on Form S–3. Consistent with General Instruction I.D of Form S–3, General Instruction B specifies that the form could not be used as an automatic shelf registration statement for securities offerings under rule 415(a)(1)(vii) or (viii).

[75] *See* 17 CFR 230.430B(a) (Securities Act rule 430B(a)).

[76] *See* 17 CFR 230.462(e) and (f) (Securities Act rule 462(e) and (f)).

[77] *See* 17 CFR 230.457(r) and 17 CFR 230.456(b) (Securities Act rule 457(r) and rule 456(b)).

[78] As proposed, we are making conforming amendments to Securities Act rule 462(f) and to the registration fee table in Form N–2 to enhance consistency with Form S–3 and to allow affected funds that file as WKSIs to use the pay-as-you-go registration fee process. *See* section II.J for a discussion of applicable effective dates for pay-as-you-go registration fees.

[79] While we did not receive any comments specifically on the proposed general instruction to permit affected funds that qualify as WKSIs to file an automatic shelf registration statement, we did receive comments on the proposed WKSI standard for affected funds. Those comments are addressed in section II.C below.

[80] *See* section 803(b)(2)(K) of the BDC Act.

[81] These amendments will not apply to open-end funds or other registered investment companies. Accordingly, those investment companies would continue to file prospectuses pursuant to rule 497. *See* amended rule 424(f). We also are amending rule 424(f) to state that references to the term ''form of prospectus'' in the rule include the SAI.

[82] *See* 17 CFR 230.409 (Securities Act rule 409).

[83] 15 U.S.C. 77j(a).

[84] Omitted information also may be provided in a post-effective amendment or, where permitted, through Exchange Act filings that are incorporated by reference.

[85] An affected fund that seeks to file a rule 424(b)(1) or 424(b)(4) prospectus supplement to provide pricing information omitted pursuant to rule 430A must be able to satisfy the conditions of rule 430A, which include the requirement to furnish the ''undertakings required by Item 512(i) of Regulation S–K.'' *See* rule 430A(a)(2) under the Securities Act. To facilitate an affected fund's ability to rely on the rule, we are amending rule 430A to require affected funds to provide the parallel undertaking required by Item 34.4 of amended Form N–2.

[86] *See* amended Securities Act rule 497(l).

[87] *See* Proposing Release, *supra* footnote 10, at text preceding n.72.

of distribution and information as to whether the offering is a primary one or an offering on behalf of selling security holders.

• If an issuer is eligible to file a registration statement on Form S–3 to register a primary offering pursuant to General Instruction I.B.1 of Form S–3, and is registering the resale of securities on behalf of selling security holders, it may omit the identities of selling security holders and the amount of securities to be registered on their behalf, subject to certain conditions.[88]

e. Additional Information in Periodic Reports

As discussed above, the amendments we are adopting will permit certain affected funds to forward incorporate information from their Exchange Act reports. These funds may wish to include information in their periodic reports that is not required to be included in these reports in order to update their registration statements. We therefore proposed to include a new instruction to Form N–2 that would allow a fund to include additional information so as long as the fund included a statement in the report identifying information that it included for this purpose to provide context for investors.[89] After considering comments we received, we are not adopting this proposed instruction.

The commenters that addressed this proposed new instruction to Form N–2 recommended against requiring this identifying statement in periodic reports on the grounds that it unnecessarily emphasized information included to update the fund's registration statement and could potentially distract investors from other information that may be more material to their investment decisions.[90] These commenters also stated that requiring funds to identify this information would not be consistent with an integrated disclosure regime in which the information is incorporated by reference. We have determined not to adopt the identification requirement. After considering comments, we are persuaded that requiring an affected fund to highlight information just because it updates the fund's registration statement could unnecessarily emphasize it.

C. Well-Known Seasoned Issuer Status

We are adopting, as proposed, amendments that will allow certain affected funds to qualify as WKSIs. Issuers that qualify as WKSIs are permitted to receive the greatest degree of benefits from the modifications to the communications and registration rules that the Commission adopted in 2005.[91] A WKSI, for example, can file a registration statement or amendment that becomes effective automatically in a broader variety of contexts than a non-WKSI. In addition, subject to certain conditions, a WKSI may communicate at any time, including through a free writing prospectus, without violating the ''gun-jumping'' provisions of the Securities Act.[92]

To qualify as a WKSI, the issuer must meet the registrant requirements of Form S–3, *i.e.,* it must be ''seasoned'' [93] and generally must have at least $700 million in public float.[94] An issuer is not eligible for WKSI status if, among other bases: (1) It is not current and timely in its Exchange Act reports, or (2) it is the subject of a judicial or administrative decree or order arising out of a governmental action involving violations of the anti-fraud provisions of the Federal securities laws (the ''anti-fraud prong'' of the ineligible issuer definition).[95]

1. WKSI Definition

As proposed, we are amending rule 405 to delete the exclusion of affected funds from the definition of WKSI.[96] In addition, we are adopting, as proposed, an amendment to the WKSI definition to include a reference to the registrant requirements of the proposed short-form registration instruction on Form N–2.[97] We received no comments on our proposal to make these particular amendments to rule 405. Commenters generally supported permitting affected funds to qualify as WKSIs.[98]

2. WKSI Eligibility

The BDC Act directed us to amend Securities Act rule 405 to allow a BDC to qualify as a WKSI, and the Registered CEF Act directed us to allow a registered CEF covered by the Act to use the securities offering rules that are available to operating companies.[99] Consistent with these directives, and to provide parity in the offering rules for affected funds and operating companies, we are adopting, as proposed, amendments to allow affected funds to qualify as WKSIs if they satisfy the same $700 million public float requirement that applies to operating companies.

Our securities offering rules provide WKSIs with certain registration and communication flexibilities because, among other reasons, they have a demonstrated market following (*i.e.,* they are ''well-known'').[100] The Commission has used public float as an approximate measure of an issuer's market following and the extent to which the market absorbs information about the issuer that is ultimately reflected in the price of the issuer's securities.[101] The $700 million public

[88] *See* amended rule 430B (allowing affected funds eligible to register a primary offering under the short-form registration instruction to rely on rule 430B). We also are amending the undertakings in Form N–2 to require affected funds relying on rule 430B to make the same undertakings required of operating companies that rely on the rule. *See* Item 34.3.d(1) of amended Form N–2; *cf.* Item 512(a)(5)(i) of Regulation S–K. *See also supra* footnotes 63–66 and accompanying text. Rules 430B and 424 and 17 CFR 230.158 (rule 158) specify when information contained in a prospectus supplement will be deemed part of and included in the registration statement and circumstances that will trigger a new effective date of the registration statement for purposes of section 11(a) of the Securities Act. These rules apply to affected funds just as they apply to operating companies.

[89] *See* Proposing Release, *supra* footnote 10, at n.73 and accompanying text (discussing proposed Instruction 6.i to Item 24 of Form N–2).

[90] *See* Dechert Comment Letter; IPA Comment Letter.

[91] Securities Offering Reform Adopting Release, *supra* footnote 5, at 44727.

[92] *See infra* section II.F.

[93] *See supra* footnote 28.

[94] *See* paragraph (1)(i)(A) of the WKSI definition in rule 405. *See also supra* footnote 19. *See also* Proposing Release, *supra* footnote 10, at n.77 (identifying alternative bases for an issuer to qualify as a WKSI, including that an issuer may qualify if it has issued, for cash, within the last three years, at least $1 billion in aggregate principal amount of non-convertible securities, other than common equity, in primary offerings registered under the Securities Act).

[95] *See* paragraphs (1)(i) and (vi) of the definition of ineligible issuer in Securities Act rule 405.

[96] *See* amended paragraph (1)(v) of rule 405.

[97] *See* amended paragraph (1)(i) of the WKSI definition in rule 405. In addition, we are adopting, as proposed, amendments to the definition of WKSI to make conforming references to a registration statement filed under new General Instruction A.2 of amended Form N–2. *See* paragraphs (1)(i) introductory text and (1)(i)(B)(*2*) of the definition of WKSI in amended rule 405; new General Instruction A.2 of amended Form N–2. We also are making a conforming amendment, as proposed, to paragraph (2) of the definition of WKSI to add a reference to Form N–CSR, the form on which registered CEFs file their shareholder reports with the Commission. *See* amendment to paragraph (2) of the definition of WKSI in amended rule 405. We did not receive any comments on our proposal to make these conforming amendments to the WKSI definition in rule 405.

[98] *See, e.g.,* ICI Comment Letter; ACC Comment Letter; SIFMA Comment Letter; MFDF Comment Letter.

[99] *See* section 803(b)(2)(A)(i) of the BDC Act and section 509(a) of the Registered CEF Act.

[100] *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at n.49 and accompanying text. In establishing the WKSI category of issuers for operating companies, the Commission stated that issuers that meet the $700 million public float threshold or the alternative $1 billion registered offering of non-convertible securities threshold have a wide following by market participants, the media, and institutional investors. *See id.* at section II.A.

[101] *See, e.g., id.* at n.50 (stating that the determination of public float is based on a public trading market, such as an exchange or certain over-the-counter markets). *See also* Shelf Registration, Securities Act Release No. 6499, at 5 (Nov. 17,

float requirement is meant to encompass issuers that are presumptively the most widely followed in the marketplace and whose disclosures and other communications therefore are subject to market scrutiny by investors, the financial press, analysts, and others.[102]

Although the comments we received generally supported permitting affected funds to qualify as WKSIs, commenters also suggested specific modifications to the proposed amendments to permit certain additional affected funds to qualify. Several commenters recommended that we eliminate the public float requirement for affected funds.[103] Other commenters recommended that we adopt a substantially lower public float threshold for affected funds, among other reasons, to make WKSI status available to a greater percentage of affected funds that have listed securities.[104] One such commenter offered a specific suggestion: That we reduce the public float threshold for affected funds from $700 million to $480 million.[105] This commenter stated that the $700 million public float requirement adopted in 2005 for operating companies permitted approximately 30% of operating companies to qualify as WKSIs, and stated that we should seek to achieve a similar 30% ''target'' by adopting a $480 million public float requirement for affected funds.

As the basis for the recommended elimination of or modification to the $700 million public float requirement for affected funds, these commenters stated that while affected funds may not have the same level of market following as operating companies with the requisite public float, market following is a less relevant standard for affected funds than it is for operating companies. These commenters suggested that certain distinguishing characteristics of affected funds compensate for their relative lack of market following and corresponding market scrutiny. For example, commenters stated that affected funds, as pass-through investment vehicles, have a less complex business than traditional operating companies, and thus require less market scrutiny.[106] Commenters also stated that market scrutiny is less relevant for affected funds because, unlike operating companies, affected funds must satisfy the investor protection requirements of the Investment Company Act and related Commission rules, including requirements relating to financial transparency, valuation of portfolio securities, transactions with affiliates, and board oversight, among others.[107]

Similarly, on the basis that public float is not a suitable criterion for determining WKSI status for affected funds, commenters also urged that we permit unlisted affected funds (which do not have public float) to qualify for WKSI status on the basis of their aggregate NAVs.[108] In addition to the reasons provided by commenters, discussed above, for eliminating or modifying the public float requirement,[109] these commenters stated that the intermediaries and distribution platforms through which unlisted affected funds are sold perform extensive due diligence on unlisted affected funds, resulting in these funds being subject to scrutiny ''equal'' to the market scrutiny indicated by a large public float.[110] Commenters also stated that technological advancements have made unlisted affected funds' financial disclosures directly accessible to investors, and that, particularly in light of the extensive disclosure funds provide, investors are less dependent on market analysts for financial information.[111]

After considering these comments, we are adopting, as proposed, WKSI requirements for affected funds that are in parity with the requirements for operating companies. We are not eliminating or modifying the $700 million public float requirement for affected funds, or permitting affected funds to qualify as WKSIs based on their aggregate NAVs. Our amendments will implement the BDC Act and Registered CEF Act, and are designed to provide parity in the offering rules for affected funds and operating companies.

As discussed above, commenters stated that there are certain distinctions between affected funds and operating companies that suggest that the $700 million public float requirement is not an appropriate criterion for determining WKSI status for affected funds. For example, commenters noted that affected funds generally have less complex businesses than operating companies, are subject to the requirements of the Investment Company Act, and provide extensive financial information to the market. We agree with commenters that the WKSI framework, which the Commission designed specifically for operating

1983) [48 FR 52889] (''Forms S–3 and F–3 recognize the applicability of the efficient market theory to those companies which provide a steady stream of high quality corporate information to the marketplace and whose corporate information is broadly disseminated. Information about these companies is constantly digested and synthesized by financial analysts, who act as essential conduits in the continuous flow of information to investors, and is broadly disseminated on a timely basis by the financial press and other participants in the marketplace.''); *see also* Covered Investment Fund Research Reports, Investment Company Act Release No. 33311 (Nov. 30, 2018) [83 FR 64180 (Dec. 13, 2018)] (''Covered Investment Fund Research Reports Adopting Release'').

[102] *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at text accompanying n.40.

[103] *See* ICI Comment Letter (suggesting that we permit affected funds to qualify as WKSIs solely based on the other proposed requirements for WKSI status, such as meeting other registrant and transaction requirements of Form S–3); *see also* Comment Letter of Invesco Ltd. (June 10, 2019) (''Invesco Comment Letter'') (same). *See also* TIAA Comment Letter (recommending that we eliminate the public float requirement and adopt a standard for WKSI qualification for registered CEFs based on whether certain information about the fund is available to the public, such as information about the fund's holdings, total return performance, and daily NAV).

[104] *See* ABA Comment Letter. *See also* TIAA Comment Letter (recommending that we adopt a $480 million public float requirement for registered CEFs in order to permit approximately 30% of registered CEFs to qualify as WKSIs, which would be consistent with the percentage of operating companies that were permitted to qualify as WKSIs under the Commission's 2005 securities offering reforms).

[105] *See* TIAA Comment Letter (recommending that we reduce the public float threshold to $480 million as an alternative to its recommendation that we eliminate the public float requirement for affected funds). *See supra* footnote 103.

[106] *See, e.g.,* ICI Comment Letter; *see also* ABA Comment Letter (stating that, unlike operating companies, affected funds ''generally describe their operations in terms of a stated investment objective and investment strategies that tend to remain constant over time''). The ABA Comment Letter further asserted that the proposed $700 million public float requirement would be burdensome for affected funds relative to operating companies because, unlike operating companies, affected funds have a relatively fixed asset base (and therefore a relatively fixed public float) that would be unlikely to increase over time to a level that would satisfy the public float requirement.

[107] *See, e.g.,* ABA Comment Letter (stating that the ''operating limitations, oversight requirements and investor protection provisions'' that apply to affected funds under the Investment Company Act ''more than compensate for Affected Funds' lower level of research analyst coverage relative to large operating companies''); ICI Comment Letter (stating that affected funds ''are subject to important requirements under the Investment Company Act, including valuing their investments under board-approved valuation procedures and ongoing board oversight''); TIAA Comment Letter (stating that market following is less relevant to affected funds because, among other reasons, they are subject to ''the valuation framework of the 1940 Act'').

[108] *See, e.g.,* ABA Comment Letter; Dechert Comment Letter; ICI Comment Letter.

[109] Similar to the comments discussed above recommending that we eliminate or reduce the $700 million public float requirement, these commenters stated, among other things, that unlisted affected funds are subject to the Investment Company Act's investor protection, board oversight, and disclosure requirements, and that unlisted affected funds are structurally and operationally less complex than operating companies. *See supra* footnotes 106–107 and accompanying text.

[110] *See* Dechert Comment Letter; ABA Comment Letter.

[111] *See, e.g.,* Dechert Comment Letter. *See* section 509(a) of the Registered CEF Act.

companies, is not well-tailored to the specific characteristics of affected funds. However, these rules are designed to provide WKSI status to issuers with a demonstrated market following, and the Commission has for many years used public float, based on a public trading market, as an approximate measure of a stock's market following and, consequently, the degree of efficiency with which the market absorbs information and reflects it in the price of a security.[112] Moreover, the offering rules for operating companies, which Congress specifically directed the Commission to extend to certain affected funds, are not premised on the characteristics of specific types of issuers, such as whether an issuer's business is less complex than other issuers' businesses or whether an issuer is subject to different regulatory requirements. Further, the market following for closed-end funds is significantly less robust than is the case for operating companies. As a result, in our view, it would not be appropriate to select a public float figure that is below the figure used to determine WKSI status for operating companies.

We also are not persuaded by commenters that allowing an affected fund, including an unlisted affected fund, to qualify on the basis of its aggregate NAV would be consistent with the requirements for an issuer to qualify as a WKSI, which Congress directed us to extend to affected funds.[113] In addition, permitting unlisted affected funds to qualify as WKSIs based on their aggregate NAVs would result in disparate treatment between unlisted affected funds and similarly situated operating companies under these rules. For example, unlisted real estate investment trusts (''unlisted REITs'') do not have a public float and therefore generally cannot qualify as WKSIs under the rules for operating companies. Unlisted REITs, however, have many of the characteristics that commenters cited in support of permitting unlisted affected funds to use their aggregate NAVs to qualify as WKSIs.[114] Nonetheless, unlisted REITs and other unlisted operating companies may not qualify as WKSIs unless they have the requisite public float or satisfy one of the alternative bases (which we also are adopting for affected funds).

Moreover, many of the distinctions between affected funds and operating companies that commenters raised are based on the characteristics of registered funds and BDCs generally, and are not unique to affected funds. We believe that the particular characteristics of registered funds, including affected funds, may be appropriate for the Commission to examine as part of a more comprehensive consideration of whether the securities offering rules for funds should be modified rather than in this rulemaking related to affected funds specifically.[115]

We do not agree with the commenters who stated that changing or eliminating the WKSI requirements for affected funds would be consistent with the intent of the Acts. We do not believe, as commenters suggested, that the BDC Act and Registered CEF Act were designed to result in a higher percentage of affected funds qualifying for WKSI status.[116] Rather, as discussed above, the Acts directed us to extend to affected funds the benefits of our securities offering rules that are available to operating companies. We believe that designing specific WKSI requirements for affected funds to permit a particular percentage of those funds to qualify as WKSIs would not provide parity of treatment. Moreover, the $700 million public float requirement for operating companies was not designed to result in a certain percentage of operating companies qualifying as WKSIs, as suggested by the commenter who recommended that the public float requirement for affected funds be lowered to $480 million.[117] In describing the $700 million public float threshold for operating companies, the Commission observed that the threshold would make the WKSI provisions available to approximately 30% of listed issuers, but this was describing the effect of the provision and not its intent.[118]

We also do not agree with commenters that the Registered CEF Act, by referring to interval funds, requires us to permit affected funds to qualify as WKSIs based on criteria other than the criteria that apply to operating companies.[119] The Registered CEF Act directed us to allow interval funds (in addition to listed CEFs) to use the securities offering rules that are available to other issuers required to file reports under section 13 or 15(d) of the Exchange Act.[120] As discussed throughout this release and summarized in Tables 1 and 2 above, the rules that we are amending in this release are available to all affected funds, including interval funds, that satisfy the relevant conditions of those rules. In addition, many of the rules we are amending are not conditioned on an issuer's public

[112] *See* Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S–3 and F–3, Securities Act Release No. 8878 (Dec. 19, 2007) [72 FR 73534 (Dec. 27, 2007)], at text accompanying n.25; *See also* Securities Offering Reform Adopting Release, *supra* footnote 5, at text accompanying n.52 (''High levels of analyst coverage, institutional ownership, and trading volume are useful indicators of the scrutiny that an issuer receives from the market, although no one statistic can fully capture the extent to which an issuer is followed by the market.'').

[113] As discussed above, the Registered CEF Act, as enacted, requires us to allow only interval funds and listed registered CEFs to use the securities offering rules available to operating companies *See supra* section II.A. To provide parity of treatment for similarly situated affected funds, we are exercising our discretion to extend certain of these rules to unlisted registered CEFs that are not interval funds. We do not believe, however, that it would be consistent with the Registered CEF Act to provide these unlisted registered CEFs with new criteria for qualifying as WKSIs. Indeed, legislative language that preceded the passage of the Registered CEF Act would have applied to all registered closed-end investment companies, but the legislation enacted as the Registered CEF Act was subsequently narrowed in scope to apply only to listed closed-end funds and interval funds. *Compare* the Financial CHOICE Act of 2017, H.R. 10, 115th Cong. section 499A(a) (June 8, 2017) (directing us to revise rules to the extent necessary to allow a closed-end company, as defined in section 5(a)(2) of the Investment Company Act, that is registered as an investment company under the Act to use the securities offering and proxy rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Exchange Act) *with* section 509(a) of Registered CEF Act. *See also* 163 Cong. Rec. H4791, H4792 (2017) (daily ed. June 8, 2017) (statement of Rep. Ellison) (stating that the prior bill would ''allow even illiquid, nontraded funds to claim multiple exemptions,'' making it ''harder for the . . . Commission . . . to police these products for investors'').

[114] For example, both unlisted REITS and unlisted affected funds sell their shares through intermediaries and both types of entities' financial disclosures have been made directly accessible to investors through advances in technology.

[115] As discussed at *infra* section III.A.1, affected funds represent approximately 5.1% of all registered investment companies by number of funds and approximately 2% by assets. In addition, as discussed at *infra* section III.D, we believe that providing affected funds with specific WKSI-eligibility criteria would not provide affected funds parity with similarly-situated operating companies that do not have public float or do not meet the $700 million public float requirement and thus cannot qualify as WKSIs under the rules for operating companies.

[116] *See, e.g.,* Invesco Comment Letter (stating that the percentage of listed BDCs and registered CEFs that would meet the $700 million public float requirement, as set forth in the proposing release, were lower percentages than the Acts were designed to permit (citing Proposing Release, *supra* footnote 10, at section IV.A.1.); ABA Comment Letter (same); Dechert Comment Letter (stating that a goal of the BDC Act was to improve the flow of funds to middle-market companies, which would be furthered by permitting unlisted funds to qualify as WKSIs based on their aggregate NAVs).

[117] *See* TIAA Comment Letter.

[118] *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at text following n.48.

[119] *See, e.g.,* ICI Comment Letter (stating that the Registered CEF Act effectively requires the Commission to proceed without a public float standard to enable interval funds to qualify as seasoned funds and WKSI funds); Dechert Comment Letter (stating that adoption of a public float requirement for affected funds effectively would frustrate the intent of the Registered CEF Act).

[120] *See* section 509(a) of the Registered CEF Act.

float, such as the amendments to permit affected funds to use the ''access equals delivery'' prospectus delivery framework available to operating companies.

We are adopting certain targeted amendments to permit certain non-interval affected funds to rely on rule 486 under the Securities Act. Unlike the WKSI requirements, rule 486 is specifically designed to apply to funds. These amendments to rule 486 will permit certain registered CEFs and BDCs that conduct continuous offerings—regardless of whether they qualify as WKSIs—to file post-effective amendments and certain registration statements that become either effective immediately upon filing under rule 486(b) or automatically effective after 60 days under rule 486(a).[121] Similar to the benefits the final rule will provide to affected funds that qualify as WKSIs or that are eligible to file short-form registration statements, these amendments will facilitate certain unlisted affected funds' ability to raise capital without delay by allowing the funds to more efficiently maintain effective registration statements while they engage in continuous offerings. The final rule, therefore, will provide certain listed affected funds with the flexibility to use a short-form registration statement and to file registration statements and amendments that become effective automatically. Additionally, unlisted affected funds generally will have the flexibility to make filings that become effective either immediately upon filing or automatically after 60 days. Thus the final rule will provide additional flexibilities to both listed and unlisted affected funds.

3. Ineligible Issuer Definition

We are adopting, as proposed, amendments to the definition of ineligible issuer in rule 405. Although all of the provisions in the ineligible issuer definition would apply to affected funds, our amendments are designed to tailor certain of these provisions for affected funds specifically. First, we are amending the definition of ''ineligible issuer'' to provide that a registered CEF would be ineligible if it has failed to file all reports and materials required to be filed under section 30 of the Investment Company Act during the preceding 12 months. This provision is consistent with the proposed short-form registration instruction and would mirror the current Exchange Act reporting provision in the ineligible issuer definition.[122] We did not receive any comments on this particular proposed amendment.

Second, we are adopting, as proposed, an amendment to the definition of ineligible issuer to give effect to the definition's anti-fraud prong in the context of affected funds. Specifically, we are adopting a parallel anti-fraud prong for affected funds, which provides that an affected fund is an ineligible issuer if within the past three years its investment adviser, including any sub-adviser, was the subject of any judicial or administrative decree or order arising out of a governmental action that determines the investment adviser aided or abetted or caused the affected fund to have violated the anti-fraud provisions of the Federal securities laws.[123] We believe this amendment is appropriate because investment companies typically are externally managed by an investment adviser, which is primarily responsible for the day-to-day management of the fund and the preparation of the fund's disclosures.[124]

We received several comments requesting that we clarify or modify certain aspects of the proposed amendments. Commenters suggested that we clarify that a violation of section 206(4) of the Advisers Act, or the rules adopted under section 206(4) (except for 17 CFR 275.206(4)–8 (rule 206(4)–8)), by an affected fund's investment adviser or sub-adviser would not give rise to WKSI ineligibility for the affected fund.[125] These commenters also recommended that we modify the proposed anti-fraud provision so that an affected fund would not be an ineligible issuer if the investment adviser (or sub-adviser) that was the subject of a judicial or administrative decree or order as described in the proposed rule no longer advises the affected fund at the time the affected fund seeks WKSI status.[126]

Under the anti-fraud prong for affected funds, an affected fund is ineligible for WKSI status if the affected fund's adviser or sub-adviser is determined to have aided or abetted or caused a violation by the fund of the anti-fraud provisions of the Federal securities laws. As such, only the anti-fraud provisions of the securities laws that apply to the affected fund itself can give rise to WKSI ineligibility. There could not be a violation of section 206(4) or the rules adopted thereunder by an affected fund, because the fund is not itself an adviser.

We also do not believe it would be appropriate, as commenters suggested, to modify the proposed amendments to permit an affected fund whose adviser or sub-adviser was determined to have aided or abetted or caused a violation by the fund of the anti-fraud provisions of the securities laws to preserve its WKSI eligibility by terminating the adviser or sub-adviser.[127] An operating company currently will be an ineligible issuer under the anti-fraud prong even if the operating company terminates all of the employees who aided or abetted the underlying violation of the Federal securities laws, and our amendments will provide comparable treatment if an affected fund were to terminate its adviser. The affected fund also may have the same board of directors that was in place when the affected fund violated the anti-fraud provisions. The specific facts and circumstances relating to a particular issuer's WKSI status under the ineligible issuer definition may, however, be considered through the Commission's process under rule 405 for granting waivers of ineligible issuer status.[128]

For these reasons, we are adopting the amendments to the ineligible issuer definition as proposed.

D. Automatic or Immediate Effectiveness for Filings by Affected Funds Conducting Certain Continuous Offerings

Based on comments that we received, we are expanding the scope of rule 486 to permit any registered CEF or BDC that conducts continuous offerings under rule 415(a)(1)(ix) (*e.g.,* a continuously-offered tender offer fund) to rely on the rule. Rule 486 under the Securities Act currently permits interval funds to file post-effective amendments and certain registration statements that are either immediately effective upon filing under rule 486(b) or automatically effective 60 days after filing under rule 486(a).[129]

[121] *See infra* section II.D (discussing the Commission's request for comment on broadening rule 486(b) in the Proposing Release and comments received in response to this request, as well as the amendments we are adopting to rule 486).

[122] *See* amended paragraph (1)(i) of the ineligible issuer definition in rule 405.

[123] *See* amended paragraph (1)(ix) of the ineligible issuer definition in rule 405.

[124] *See* Proposing Release, *supra* footnote 10, at text following n.84.

[125] *See* ACC Comment Letter; CBD Comment Letter.

[126] *Id.*

[127] *See* ACC Comment Letter; CBD Comment Letter;

[128] *See* paragraph (2) of the ineligible issuer definition in rule 405 (providing that the Commission may grant waivers of ineligible issuer status upon a good-cause showing that it is not necessary under the circumstances for the issuer to be considered an ineligible issuer).

[129] Filings under rule 486(a) are generally effective on the sixtieth day after filing, but a registrant may designate a later date for

Continued

As discussed in the Proposing Release, our staff has previously stated that it would not recommend that the Commission take enforcement action under certain provisions of the Securities Act if, on a case-by-case basis, specific listed registered CEFs that conduct offerings under rule 415(a)(1)(x) use rule 486(b) to file certain post-effective amendments that are immediately effective upon filing.[130] The Proposing Release noted that staff in the Division of Investment Management were reviewing these no-action letters to determine if they should be withdrawn in connection with any final rules. The Commission also requested comment on whether it should make rule 486(b) available to all or a broader group of registered CEFs and BDCs.[131] In response to this request, several commenters asked that we allow certain non-interval funds that conduct delayed or continuous offerings under rule 415 to rely on rule 486, in whole or in part.[132] For example, one commenter suggested that the existing no-action letters be retained or codified. This commenter stated that withdrawing the no-action letters would be disruptive to relevant non-WKSI funds and their ability to update their registration statements and receive automatic effectiveness.[133] Additionally, two commenters recommended that we permit affected funds that are continuously-offered unlisted funds to rely on rule 486 in its entirety, including rule 486(a) and rule 486(b). The commenters suggested that, like interval funds, these unlisted funds are continuously offered and would benefit if their filings could become immediately effective or automatically effective 60 days after filing.[134] One of these commenters stated that, for example, allowing continuously-offered unlisted affected funds to rely on rule 486 would benefit investors in these funds by allowing the funds to avoid the time and expense of an annual staff review of registration statements where no changes are made beyond immaterial updates and updates to audited financial information.[135]

In response to these comments, we are amending rule 486 to allow any registered CEF or BDC that conducts a continuous offering under rule 415(a)(1)(ix) to rely on rule 486.[136] We believe this rule amendment will allow these continuously-offered affected funds to maintain effective registration statements in a more efficient, cost-effective manner. For example, under rule 486(a), these funds will be able to make material changes to their registration statements on an automatically effective basis 60 days after filing. In addition, under rule 486(b), continuously-offered unlisted affected funds will be able, for example, to update their financial statements under section 10(a)(3) or make non-material changes to their registration statements on an immediately effective basis. The rule amendment will allow these funds to more efficiently maintain effective registration statements while they engage in continuous offerings. This is similar to the benefits the final rule will provide to affected funds that file short-form registration statements or qualify as WKSIs, as those funds also will be able to make certain updates to their registration statements more efficiently (*i.e.,* through forward incorporation by reference or automatically effective registration statements and post-effective amendments).[137] We believe it is appropriate for any affected fund that conducts delayed or continuous offerings under rule 415(a)(1)(ix), (x), or (xi) to have a mechanism for bringing its financial statements up to date under section 10(a)(3) without delay.[138] Together, the amendments we are adopting in this release and current rule 486 will achieve this objective.

Continuously-offered unlisted affected funds relying on rule 486 will continue to be subject to applicable provisions in rule 415.[139] Moreover, these funds will need to comply with relevant conditions in rule 486.[140] If it appears to the Commission that a post-effective amendment or registration statement filed under rule 486(a) may be incomplete or inaccurate in any material respect, the Commission may suspend the effective date of that filing. Further, if it appears to the Commission that the fund has not complied with the conditions in rule 486(b), the Commission may suspend the fund's ability to rely on rule 486(b).[141]

In addition to allowing an affected fund to rely on rule 486 if the fund makes continuous offerings under rule 415(a)(1)(ix), we are also amending the scope of registration statements that rule 486 covers. Currently, rule 486 is available for post-effective amendments and for registration statements filed for purposes of registering additional shares of common stock for which a Form N–2 registration statement is effective. This generally reflects the scope of amendments and registration statement filings interval funds make after their initial registration statements are effective. However, unlike interval funds, the affected funds that will newly be eligible to rely on rule 486 generally are required to file new registration statements every three years under rule 415(a)(5) and (6). We are amending rule 486 to allow these registration statements to be immediately or automatically effective under the rule, depending on the substance of the disclosure.[142] Specifically, a registration

effectiveness (which must not be later than eighty days after filing). In addition, the Commission, having due regard to the public interest and the protection of investors, may declare an amendment or registration statement effective under rule 486(a) on an earlier date. *See* rule 486(a).

[130] *See, e.g.,* Nuveen California Select Tax-Free Income Portfolio, SEC Staff No-Action Letter (Nov. 21, 2017); PIMCO Dynamic Income Fund, SEC Staff No-Action Letter (Dec. 12, 2017); Eagle Point Credit Company, Inc., SEC Staff No-Action Letter (Feb. 14, 2018); PIMCO Corporate & Income Opportunity Fund and PIMCO Income Opportunity Fund, SEC Staff No-Action Letter (Sep. 13, 2018); and DNP Select Income Fund, Inc., SEC Staff No-Action Letter (Oct. 4, 2018).

[131] *See* Proposing Release, *supra* footnote 10, at section II.I.

[132] *See* ABA Comment Letter and ICI Comment Letter.

[133] *See* ICI Comment Letter.

[134] *See* ABA Comment Letter and ICI Comment Letter.

[135] *See* ABA Comment Letter.

[136] We also are making a technical amendment to rule 486(b)(1)(iv) to provide a more accurate cross reference to Item 9.1.c of Form N–2. Moreover, we are amending Form N–2 to recognize the broader scope of affected funds that may rely on rule 486. *See* General Instruction E.4 of amended Form N–2 and cover page of amended Form N–2.

[137] *See supra* sections II.B.3.b and II.B.3.c. Although affected funds that file short-form registration statements or qualify as WKSIs will be able to use forward incorporation by reference and automatically effective filings to make a broader range of updates to their registration statements on an immediate basis than those specified in rule 486(b), the majority of post-effective amendments that affected funds currently file are solely for one or more purposes described in rule 486(b). Moreover, interval funds, and affected funds that make continuous offerings under rule 415(a)(1)(ix), will be able to make other, material amendments that are automatically effective 60 days after filing.

[138] Rule 415(a)(1)(ix), (x), and (xi) are the provisions affected funds primarily use to conduct delayed or continuous offerings of their securities. Rule 415(a)(1)(ix) allows nontraded affected funds to engage in continuous offerings but does not allow delayed (or ''shelf'') offerings. Rule 415(a)(1)(x) allows affected funds that are eligible to file short-form registration statements on Form N–2 to engage in delayed or continuous offerings. Rule 415(a)(1)(xi) allows interval funds to engage in delayed or continuous offerings.

[139] For example, rule 415 limits the amount of securities that can be registered in a continuous offering under rule 415(a)(1)(ix) and generally requires an issuer relying on rule 415(a)(1)(ix) to file a new registration statement every three years. *See* rule 415(a)(2), (5), and (6).

[140] *See* rule 486(b)(2) (requiring certain written representations that a post-effective amendment filed under rule 486(b) is filed solely for one or more of the permissible purposes covered by the provision); rule 486(e) (requiring a fund to have filed a post-effective amendment or registration statement relating to its common stock that became effective within two years prior to the filing made under rule 486(a) or (b)).

[141] *See* rule 486(c).

[142] *See* amended rule 486(a), (b)(1)(vi), and (g).

statement a fund files to comply with rule 415(a)(5) and (6) could be immediately effective upon filing if it is filed for no purpose other than to comply with those provisions of rule 415 or for other purposes listed in rule 486(b), such as making non-material changes or updating the fund's financial statements under section 10(a)(3). If the registration statement does not qualify under rule 486(b) because, for example, it includes material changes to the fund's disclosure, the registration statement could be automatically effective 60 days after filing under rule 486(a). As a result of the amendments, affected funds that make continuous offerings under rule 415(a)(1)(ix) will be able to rely on rule 486 for registration statements filed to comply with rule 415(a)(5) and (6), regardless of whether they choose to register additional shares at the time these provisions requires them to file new registration statements. This will promote consistent treatment of these funds' filings under the rule.

Although one commenter suggested that we retain or codify the staff no-action letters discussed above to allow affected funds that conduct delayed or continuous offerings under rule 415(a)(1)(x) to file post-effective amendments that are immediately effective under rule 486(b), we believe the final rule makes such relief unnecessary.[143] For example, while these funds will need to file new registration statements every three years under rule 415, during the interim period they will be able to update their registration statements through the forward incorporation by reference provisions applicable to short-form registration statement filers.[144] The forward incorporation by reference provisions allow these funds to avoid filing the types of post-effective amendments that rule 486(b) covers, as well as other types of post-effective amendments (*e.g.,* those making material changes to the fund's disclosure). Thus, we do not believe that affected funds that make delayed or continuous offerings under rule 415(a)(1)(x) will need to file the types of post-effective amendments rule 486(b) covers.

Moreover, while the commenter only referred to post-effective amendments, rule 486(b) also covers new registration statements under certain circumstances. For instance, when an eligible fund has an effective registration statement and wants to register additional shares without making material amendments to its existing disclosure, rule 486(b) allows that new registration statement to be immediately effective.[145] If we were to permit a fund that makes delayed or continuous offerings under rule 415(a)(1)(x) to rely on rule 486(b) in its entirety, then the new registration statement the fund must file every three years could effectively become an automatic shelf registration statement, even though the fund does not qualify as a WKSI (*e.g.,* it does not have $700 million in public float).[146] As a result of these considerations, the no-action letters stating that the staff would not recommend an enforcement action if specific listed, registered CEFs conducted offerings under rule 415(a)(1)(x) using rule 486(b) will be withdrawn effective August 1, 2021 (one year from the effective date of the final rule).[147] Importantly, as recognized above, the final amendments provide a mechanism for these funds to efficiently update their registration statements.

E. Final Prospectus Delivery Reforms

We are adopting, as proposed, rule amendments that will allow an affected fund to satisfy its final prospectus delivery obligations by filing its final prospectus with the Commission.

The Securities Act requires registrants to deliver to each investor in a registered offering a prospectus meeting the requirements of section 10(a) (known as a ''final prospectus'').[148] Section 5(b)(2) makes it unlawful to deliver a security for the purpose of sale or for delivery after sale unless accompanied or preceded by a final prospectus. After the effectiveness of a registration statement, a written communication that offers a security for sale, or confirms the sale of a security, may be provided to investors if a final prospectus is sent or given previously or at the same time. Otherwise, such a communication may not be provided unless it is otherwise permitted under Commission rules or meets the requirements of section 10(a).[149]

Rule 172 allows issuers, brokers, and dealers to satisfy final prospectus delivery obligations if a final prospectus is or will be on file with the Commission within the time required by the rules and other conditions are satisfied.[150] For example, rule 172 provides that a final prospectus will be deemed to precede or accompany a security for sale for purposes of section 5(b)(2) as long as the final prospectus is filed with the Commission or it will be filed as part of the registration statement.[151] Rule 172 applies only to final prospectuses and not to other documents.[152] Rule 173 requires the delivery of a copy of the final prospectus or, in lieu of a final prospectus, a notice to purchasers stating that a sale of securities was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of rule 172.[153]

Rules 172 and 173 do not apply to offerings of affected funds.[154] The BDC Act directs us to remove the exclusion for BDC offerings.[155] To implement the BDC Act, and to provide parity for registered CEFs consistent with the Registered CEF Act, we proposed to amend rules 172 and 173 to remove the exclusion for offerings of all affected funds. Commenters supported this approach, stating that the proposed amendments would reduce prospectus printing and delivery costs and provide parity for affected funds, consistent with

[143] *See* ICI Comment Letter.

[144] *See* rule 415(a)(5) and (6); General Instructions A.2 and F.3 of amended Form N–2.

[145] *See* rule 486(b)(1)(i) and (v).

[146] Under these circumstances, a non-WKSI fund potentially could combine its ability to forward incorporate by reference and its ability to rely on rule 486(b) to achieve a WKSI-like status, with registration statements that would always be immediately effective upon filing. This could occur if, for example, a fund made material changes to its registration statement by forward incorporating information into its registration statement and then, to satisfy the requirement to file a new registration statement every three years, it filed a new registration statement under rule 486(b). In contrast, when an affected fund that may rely on rule 486 makes a material change to its registration statement, the relevant filing is not effective immediately. *See* rule 486(a).

[147] *See supra* footnote 130.

[148] 15 U.S.C. 77j(a).

[149] 15 U.S.C. 77e(b)(2).

[150] 17 CFR 230.172 (Securities Act rule 172); *see also* Securities Offering Reform Adopting Release, *supra* footnote 5, at nn.560–562 and accompanying text.

[151] *See* Securities Act rule 172. In the event that the issuer fails to file such a prospectus in a timely manner, the issuer must file the prospectus as soon as practicable thereafter. Securities Act rule 172(c)(3); *see also* Securities Offering Reform Adopting Release, *supra* footnote 5, at n.568 and preceding text (describing this ''cure'' provision).

[152] *See, e.g.,* Securities Offering Reform Adopting Release, *supra* footnote 5, at text following n.567.

[153] 17 CFR 230.173 (Securities Act rule 173). *See also* Proposing Release, *supra* footnote 10, at n.109. Rule 173(d) provides that a purchaser who receives a notification may request a copy of the final prospectus. We proposed a change to Item 34.6 of Form N–2, under which funds currently undertake to provide an SAI upon request, to require an affected fund to also undertake to provide a prospectus upon request. We received no comments regarding this aspect of the proposal and are making the change as proposed. *See* Item 34.7 of amended Form N–2.

[154] *See* Securities Act rule 172(d)(1)–(2); Securities Act rule 173(f)(2)–(3).

[155] Section 803(b)(2)(L) of the BDC Act; *see also* section 509(a) of Registered CEF Act (requiring parity of securities offering rules with operating companies for listed registered CEFs and interval funds).

the BDC Act and the Registered CEF Act.[156] We are adopting the amendments to rules 172 and 173 as proposed.[157]

F. Communications Reforms

1. Offering Communications

We are adopting amendments to the communications rules, as proposed, to extend to affected funds the rules that currently provide operating companies and other parties (such as underwriters) increased flexibility in their communications.[158] The amendments permit these communications notwithstanding the ''gun-jumping provisions'' in the Securities Act, which restrict the types of offering communications that issuers or other parties subject to the Act's provisions may use in connection with a registered public offering.[159] The gun-jumping provisions were designed to make the statutorily mandated prospectus the primary means for investors to obtain information regarding a registered securities offering.[160] Accordingly, the statute provides that unless otherwise permitted:

- Before an issuer files a registration statement, all offers, in whatever form, are prohibited;[161]
- After the issuer files a registration statement but before it has become effective, the only written offers that are permitted are those made using a preliminary prospectus that meets the requirements of section 10 of the Securities Act, which must be filed with the Commission;[162] and
- Even after the registration statement is declared effective, offering participants still may make written offers only through a statutory prospectus, except that they may use additional written offering materials if a final prospectus that meets the requirements of Securities Act section 10(a) is sent or given prior to or with those materials.[163]

Since the adoption of the Securities Act, the Commission has recognized that certain communications before, during, and after the filing of a registration statement do not raise the investor protection concerns that the gun jumping provisions aim to address. For this reason, the Commission has adopted several rules to provide clarity to issuers on the types of communications that are permissible and how to communicate with investors without violating the gun jumping provisions. We proposed to extend those rules to affected funds in the Proposing Release. Commenters generally supported the proposed amendments to the communications rules.[164] Two commenters stated that the amendments would allow increased flexibility in communications and provide parity with operating companies.[165] One commenter added that the amendments would make it easier to execute offerings by affected funds and would decrease costs, leading to lower offering costs and potentially enhance capital formation while not negatively impacting investor protections.[166]

The Commission continues to believe that investors and the market will benefit from access to greater communications under conditions that preserve investor protections. To implement the BDC Act, and to provide parity for registered CEFs consistent with the Registered CEF Act, we are extending, as proposed, the communications rules currently available to operating companies to affected funds by removing the exclusions for affected funds and making other conforming changes.[167] Specifically, the amended rules will:

- Permit affected funds to use rule 134 to publish factual information about the issuer or the offering, including ''tombstone ads.''[168]
- Permit affected funds to rely on rule 163A, which provides issuers a bright-line time period, ending 30 days prior to filing a registration statement, during which they may communicate without risk of violating the gun-jumping provisions.[169]
- Permit affected funds that are reporting companies to rely on rule 168 to publish or disseminate regularly released factual business information and forward-looking information at any time, including around the time of a registered offering.[170] The amendments to rule 169 will also permit affected funds' continued publication or dissemination of regularly released factual business information that is intended for use by persons other than in their capacity as investors or potential investors.[171] We also are adopting amendments to rule 156 to state that nothing in that rule may be construed to prevent an affected fund from qualifying for an exemption under rule 168 or 169.[172] The contents of any rule 168 or 169 communication remain subject to the anti-fraud provisions of the Federal securities laws.

[156] *See, e.g.,* SIFMA Comment Letter; ICI Comment Letter; Invesco Comment Letter; TIAA Comment Letter.

[157] *See* amended Securities Act rule 172(d); amended Securities Act rule 173(f).

[158] *See,* Proposing Release, *supra* footnote 10 at section II.E.1; *see also* Securities Act rule 134; Securities Act rule 168; Securities Act rule 156; Securities Act rule 163; Securities Act rule 163A; Securities Act rule 164; Securities Act rule 168; Securities Act rule 169; and Securities Act rule 433.

[159] Unless otherwise noted, offering communications generally refer to written communications. Rule 405 provides that ''[e]xcept as otherwise specifically provided or the context otherwise requires, a written communication is any communication that is written, printed, a radio or television broadcast, or a graphic communication as defined in [rule 405].''

[160] *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44731. *But see* section 5(d) of the Securities Act [15 U.S.C. 77e(d)], which permits an emerging growth company, or any person authorized to act on its behalf, to engage in oral or written communications with potential investors that are qualified institutional buyers, as defined in 17 CFR 230.144A (Securities Act rule 144A), or institutions that are accredited investors, as defined in 17 CFR 230.501(a) (Securities Act rule 501(a)), either prior to or after the filing of a registration statement, to determine their interest in a contemplated registered offering. These communications are often referred to as ''testing the waters.'' 17 CFR 230.163B (Securities Act rule 163B), recently adopted by the Commission, extends this accommodation to all issuers. Solicitations of Interest Prior to a Registered Public Offering, Securities Act Release No. 10699 (Sept. 25, 2019) [84 FR 53011 (Oct. 4, 2019)] (''Rule 163B Adopting Release'').

[161] *See* section 5(c) of the Securities Act [15 U.S.C. 77e(c)].

[162] This is because after the filing of the registration statement but before its effectiveness, offers made in writing (including electronically), by radio, or by television are limited to a ''statutory prospectus'' that conforms to the information requirements section 10 of the Securities Act. *See* sections 5(b)(1) and 10 of the Securities Act [15 U.S.C. 77e(b)(1) and 77(j)].

[163] *See* section 2(a)(10) and section 5(b)(1) of the Securities Act [15 U.S.C. 77b(a)(10) and 77e(b)(1)].

[164] *See, e.g.,* SIFMA Comment Letter; Comment Letter of Sidley Austin LLP (June 10, 2019); ICI Comment Letter; ACC Comment Letter; CBD Comment Letter; MFDF Comment Letter; TIAA Comment Letter.

[165] *See, e.g.,* SIFMA Comment Letter; ICI Comment Letter.

[166] *See, e.g.,* SIFMA Comment Letter.

[167] *See* amended rules 134(g), 163(b)(3), 163A(b)(4), 164(f), 168(d)(3), and 169(d)(4) (removing references to BDCs and limiting the rules' exclusion of registered investment companies from the safe harbor to exclude registered funds other than registered CEFs).

See also amended rule 168 (adding to paragraphs (b)(1) and (2) references to the Investment Company Act to parallel current references to the Exchange Act to provide that forward-looking information and factual business information may be included in materials filed under the Investment Company Act); amended rule 433 (adding to paragraphs (a)(1)(i) and (iv) references to registration statements filed on Form N–2 under adopted General Instruction A.2 to parallel current references to Form S–3; adding to paragraph (c)(1)(ii) a reference to reports filed under section 30 of the Investment Company Act as reports with which a free-writing prospectus may not conflict). *See also* amended rule 156(d); *infra* footnote 172.

[168] *See* Proposing Release, *supra* footnote 10, at n.122 (discussing rule 134).

[169] *See id.* at n.123 (discussing rule 163A).

[170] *See id.* at n.124 (discussing rule 168).

[171] Rule 169 is also a safe harbor from the definition of ''prospectus'' in section 2(a)(10) of the Securities Act.

[172] *See* amended rule 156(d); section 803(b)(2)(G) of the BDC Act; section 509(a) of Registered CEF Act.

• Permit affected funds to rely on rules 164 and 433 to use a ''free writing prospectus.'' [173]

• Permit affected funds that are WKSIs to engage at any time in oral and written communications, including use at any time of a free writing prospectus (before or after a registration statement is filed), subject to the same conditions applicable to other WKSIs.[174]

As we discussed in the Proposing Release, investment company communications currently are subject to rule 482.[175] Rule 482 communications can only be used by a fund that is selling or is proposing to sell its securities pursuant to a filed registration statement, and are prospectuses subject to prospectus liability under section 12 of the Securities Act.[176] The amendments to the communications rules provide affected funds with incremental flexibility in their communications, including additional flexibility to communicate before filing a registration statement, and some additional flexibility in using communications that are not subject to prospectus liability under section 12 of the Securities Act.[177] Moreover, as we discussed in the Proposing Release, both the BDC Act and Registered CEF Act direct the Commission to continue to make available Securities Act rule 482 communications, or ''ads,'' notwithstanding the amendments to the communications rules.[178] Affected funds therefore can now take advantage of additional flexibility under the communications rules as amended or continue to rely on rule 482 and other rules currently applicable to investment company communications.

In addition to comments on the proposed amendments to the communications rules, two commenters urged us to adopt rules that would extend the safe harbors for liability in private actions for certain forward looking statements under section 27A of the Securities Act and section 21E of the Exchange Act to affected funds.[179] Those commenters did not specify what the conditions or requirements of such a rule might be, and the public has not had the opportunity to comment on whether or how to extend safe harbors for forward-looking statements to affected funds. For these reasons, we believe commenters' request requires more extensive consideration beyond the scope of this rulemaking.

2. Broker-Dealer Research Reports

We are adopting the amendments to Securities Act rule 138 as proposed. Rule 138 permits a broker-dealer participating in the registered offering of an eligible issuer's common stock and similar securities to publish or distribute research reports about that issuer's fixed income securities, and vice versa, if it publishes or distributes that research in the regular course of its business.

Although rule 138 does not currently exclude affected funds from coverage, it does include references to Form S–3 but not Form N–2. We therefore proposed to amend the rule's references to shelf registration statements filed on Form S–3 to include a parallel reference to a registration statement filed on Form N–2 under the proposed short-form registration instruction. Rule 138 also currently provides that an issuer covered in a research report published in reliance on the rule must be required to file reports, and must have filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports), on Forms 10–K and 10–Q.[180] Because registered CEFs do not file the periodic reports currently specified in rule 138, we proposed to include parallel references to the reports that registered CEFs are required to file, *i.e.,* reports on Forms N–CSR, N–Q, N–CEN, and N–PORT.[181] We did not receive any comments on these amendments and are adopting them as proposed.

We are not adopting changes to 17 CFR 230.139 (rule 139).[182] That rule provides a safe harbor for a broker-dealer's publication or distribution of research reports where the broker-dealer is participating in the registered offering of the issuer's securities and, unlike rule 138, permits the research report to cover any class of the issuer's securities.

As we stated in the Proposing Release, in 2018 the Commission adopted new 17 CFR 230.139b (Securities Act rule 139b) to implement the Fair Access to Investment Research Act of 2017 (the ''FAIR Act'').[183] The FAIR Act directed that the Commission extend rule 139 to cover broker-dealers' publication or distribution of ''covered investment fund research reports.'' These include research reports about affected funds.[184]

Rule 139b includes specific provisions mandated by Congress for covered investment fund research reports. For example, rule 139b excludes from the rule's safe harbor research reports published or distributed by the covered investment fund itself, any affiliate of the covered investment fund, or any broker-dealer that is an investment adviser (or an affiliated person of an investment adviser) for the covered investment fund.[185] The Commission did not propose changes to rule 139 because it believed that rule 139b satisfies the directives of the BDC Act and Registered CEF Act by extending rule 139's safe harbor to research reports on BDCs and registered CEFs and is consistent with Congress's core objective regarding research reports covering these funds.[186] The Commission observed that, if it were to amend rule 139 to cover research reports on BDCs, or on affected funds generally, exactly the same conduct would be subject to different standards based on the rule a broker-dealer chose to use.[187] The Commission believed that it would be more appropriate to provide a consistent approach for affected fund research reports under rule 139b.[188]

One commenter suggested that we amend rule 139 and repeal rule 139b, in order to provide the same requirements for broker-dealer research reports on

[173] *See* Proposing Release, *supra* footnote 10, at n.127 (discussing rules 164 and 433).

[174] *See id.* at n.128 (discussing how communications rules apply to WKSIs).

[175] *See id.* at section II.E.1.

[176] 17 CFR 230.482 (Securities Act rule 482); *see also* 17 CFR 230.497(i) (Securities Act rule 497).

[177] *See* Proposing Release, *supra* footnote 10, at section II.E.1.

[178] *See id.* at text following n.128; *see also* sections 803(e)(2) of the BDC Act (prohibiting the Commission from interpreting the amendments directed by the BDC Act in a manner that would prevent BDCs from distributing sales material pursuant to rule 482 under the Securities Act); and 509(c)(1) of the Registered CEF Act (prohibiting the Commission from interpreting the amendments directed by the Registered CEF Act to impair or limit in any way a registered closed-end company from using rule 482 communications, under the Investment Company Act, to distribute sales material).

[179] *See* Dechert Comment Letter; IPA Comment Letter; *see also* sections 27A(b)(2)(B) and 27A(g) of the Securities Act [15 U.S.C. 77z–2(b)(2)(B) and 15 U.S.C. 77z–2(g)] and sections 21E(b)(2)(B) and 21E(g) of the Exchange Act [15 U.S.C. 78u–5(b)(2)(B) and 15 U.S.C. 78u–5(g)].

[180] *See* 17 CFR 230.138(a)(2)(i) (Securities Act rule 138(a)(2)(i)).

[181] *See supra* section II.B.3.a (Form N–Q will be rescinded on May 1, 2020).

[182] *See* Proposing Release, *supra* footnote 10, at section II.E.2.

[183] *See* Fair Access to Investment Research Act of 2017, Public Law 115–66, 131 Stat. 1196 (2017); *see also* Covered Investment Fund Research Reports Adopting Release, *supra* footnote 101.

[184] 17 CFR 230.139b; *see also* Covered Investment Fund Research Reports Adopting Release, *supra* footnote 101, at 64183 (providing that under rule 139b, the term ''covered investment fund'' includes, among other things, registered investment companies and BDCs).

[185] *See* Covered Investment Fund Research Reports Adopting Release, *supra* footnote 101 at sections II.A.1 and II.E.2; *see also* section 2(f)(3) of the FAIR Act.

[186] *See* Covered Investment Fund Research Reports Adopting Release, *supra* footnote 101, at nn.144–145 and accompanying paragraph.

[187] *Id.*

[188] *Id.*

affected funds and operating companies.[189] The commenter raised concerns regarding differences between these two rules' requirements, such as rule 139b's ''affiliate exclusion.'' That provision makes rule 139b's safe harbor inapplicable to research reports by a broker-dealer that is an investment adviser (or an affiliated person of an investment adviser) to the covered investment fund.

We acknowledged the differences between rule 139b and rule 139 in the Proposing Release. Indeed, the different requirements in rule 139b—which were mandated by Congress in the FAIR Act—are why we did not propose amendments to rule 139. We continue to believe that rule 139b already satisfies the directives of the BDC Act and Registered CEF Act by extending rule 139's safe harbor to research reports on BDCs and registered CEFs and is consistent with Congress's core objective regarding research reports covering these funds. If we were to amend rule 139 and rescind rule 139b as urged by this commenter, this would not give effect to Congress's more specific directives in the FAIR Act. Moreover, rule 139b, as directed by the FAIR Act, provides a consistent framework for research reports on ''covered investment funds,'' which are not limited to the affected funds covered in this rulemaking. Maintaining rule 139b therefore provides a consistent approach for all ''covered investment fund research reports.''

G. Other Rule Amendments

1. Rule 418 Supplemental Information

As proposed, we are adopting amendments to rule 418 to exempt affected funds that are eligible to file a short-form registration statement on Form N–2 from the requirement to furnish certain supplemental information to the Commission or staff on request under paragraph (a)(3) of the rule. As discussed in the Proposing Release, operating companies that are eligible to use Form S–3 are already exempt from having to furnish certain information under rule 418(a)(3).[190] Commenters did not address the amendments to rule 418, which we proposed to implement the BDC Act and to provide parity for registered CEFs consistent with the Registered CEF Act.[191] Consistent with the proposal, affected funds that are eligible to file a short-form registration statement on Form N–2 will not be required to furnish, on request, recent engineering, management, or similar reports or memoranda relating to broad aspects of the business, operations, or products of the registrant under amended rule 418(a)(3).[192]

2. Amendments to Incorporation by Reference Into Proxy Statements

We are adopting amendments to Schedule 14A under the Exchange Act as proposed, consistent with the BDC Act and the Registered CEF Act.[193] We did not receive comments on the proposed amendments to Schedule 14A. The amendments will allow affected funds that meet the requirements of the short-form registration instruction in Form N–2, as further described in Note E to Schedule 14A, to incorporate certain information by reference to previously-filed documents for proxy statements containing specific proposals under Item 13 of Schedule 14A.[194] The amendments allow eligible funds to incorporate by reference certain required information for relevant proxy proposals to the same extent that operating companies meeting the requirements of Form S–3 (as defined in Note E to Schedule 14A) may use incorporation by reference under the same circumstances.[195]

3. Rule 103 of Regulation FD

We are adopting amendments to rule 103(a) of Regulation FD, as proposed, to provide that an affected fund's failure to make a public disclosure required solely by rule 100 of Regulation FD will not affect the fund's eligibility under the short-form registration instruction of Form N–2.[196] We did not receive comments on the proposed amendments to rule 103(a). The final amendments to rule 103(a) will enhance parity between affected funds and operating companies, consistent with the BDC Act and the Registered CEF Act, as rule 103(a) already provides that an operating company's failure to make a public disclosure required solely by rule 100 of Regulation FD will not affect its eligibility to use Form S–3.[197]

H. New Registration Fee Payment Method for Interval Funds and Issuers of Certain Exchange-Traded Products

We are adopting a modernized approach to registration fee payment that will require interval funds to pay securities registration fees using the same method that mutual funds and ETFs use today.[198] Specifically, for interval funds, the final rule will provide that such funds register an indefinite amount of securities upon their registration statements' effectiveness.[199] Like mutual funds and ETFs, interval funds will be required to

[189] *See* ABA Comment Letter.

[190] *See* Proposing Release, *supra* footnote 10, at text accompanying n.147.

[191] *See* section 803(b)(2)(M) of the BDC Act.

[192] *See* Proposing Release, *supra* footnote 10, at n.148.

[193] Section 803(b)(2)(N) of the BDC Act (directing us to amend Item 13(b)(1) of Schedule 14A to include as an issuer to which Item 13(b)(1) applies a BDC that would otherwise meet the requirements of Note E of the Schedule); section 509(a) of the Registered CEF Act (requiring us to provide certain registered CEFs with the same flexibility under the proxy rules, subject to appropriate conditions, as is available to other issuers required to file reports under section 13 or section 15(d) of the Exchange Act).

[194] Item 13 applies to proxy statements seeking security holder approval to authorize, issue, modify, or exchange securities as described in Items 11 or 12 of Schedule 14A.

[195] The proposed definition in Note E of Schedule 14A of an affected fund that ''meets the requirements of General Instruction A.2 of Form N–2'' included certain conditions relating to the transaction requirements in General Instruction I.B or I.C of Form S–3, consistent with the conditions in the definition in Note E of an operating company that ''meets the requirements of Form S–3.'' We are adopting the definition in Note E as proposed to provide parity between affected funds and operating companies although, as discussed in the Proposing Release, we believe these conditions are less likely to be relevant to affected funds. *See* Proposing Release, *supra* footnote 10, at n.152.

[196] Rule 100 of Regulation FD generally requires an issuer to make either simultaneous or prompt public disclosure of any material nonpublic information regarding the issuer or its securities that the issuer or a person acting on its behalf has selectively disclosed to certain parties. *See* 17 CFR 243.100 (requiring simultaneous public disclosure in the case of an intentional selective disclosure or prompt public disclosure in the case of a non-intentional selective disclosure).

[197] *See* section 803(b)(2)(O) of the BDC Act; 17 CFR 243.103(a) (rule 103(a) of Regulation FD).

[198] In general, issuers today—including interval funds—are required under the Securities Act to pay a registration fee to the Commission at the time of filing a registration statement. *See* sections 6(b)(1) (requiring applicants to pay a fee to the Commission at the time of filing a registration statement) and (c) (providing that a registration statement shall not be deemed to have taken place without payment of a registration fee) of the Securities Act [15 U.S.C. 77f(b)(1)]. This means that they pay registration fees at the time they register the offering of securities, regardless of when (or if) they sell them. WKSIs using automatic shelf registration statements have additional flexibility to pay filing fees at or prior to the time of a securities offering. *See supra* footnote 78; *see also* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44780. This arrangement is commonly known as ''pay-as-you-go.'' *Id.* As a result, these filers may defer payment until a future takedown of shares off a shelf registration statement. Affected funds that become WKSIs as a result of our final rule will also gain that flexibility, but other affected funds will not. *See supra* section II.C.

[199] The final rule applies to interval funds the same treatment provided by rule 24f–2 to open-end funds and UITs. *See* amended rule 23c–3(e) (providing that an interval fund would be deemed to have registered an indefinite amount of securities under section 24(f) upon the effective date of its registration statement); *see also* amended rule 24f–2 (providing for interval funds to pay their registration fees on the same annual net basis as mutual funds, other open-end funds, and UITs). *See* section 4(e) of the Exchange Act [15 U.S.C. 78d–4(e)]; section 28 of the Securities Act [15 U.S.C. 77z–3)].

pay registration fees based on their net issuance of shares, no later than 90 days after the funds' fiscal year ends.[200] These issuers will be required to file information about the computation of this registration fee and other information on Form 24F–2 under the Investment Company Act when paying the fee.[201] In response to comments that we received, we also are extending similar treatment to certain ETPs that are not registered under the Investment Company Act.

We proposed to amend rules 23c–3 and 24f–2 so that interval funds would pay registration fees on this same annual net basis.[202] The commenters who addressed this aspect of the proposal supported it.[203] Two commenters suggested expanding the scope of this aspect of our proposal to include additional types of issuers.[204] One commenter recommended extending the scope of the provision to ''all other funds'' to confer the same benefits to those additional funds, such as eliminating the need to predict the number of shares the fund expects to sell.[205] Another commenter suggested extending the scope to ''tender offer funds''—those that make repurchase offers but that are not, like interval funds, required to periodically repurchase shares or to have a fundamental policy regarding its repurchase offers that can be changed only by a shareholder vote.[206] We are adopting this provision as proposed. Of the categories of investment companies contemplated by commenters, only interval funds routinely repurchase shares at NAV and are required to periodically offer to repurchase their shares, making these funds more like mutual funds and ETFs, which are required to use this method.

In response to a request for comment in the Proposing Release, a number of commenters also recommended that certain ETPs that are not registered under the Investment Company Act be permitted to register offerings of an indefinite number of securities and pay registration fees in a manner equivalent to that under rule 24f–2.[207] These commenters stated that these ETPs operate in a manner substantially similar to that of ETFs and would similarly benefit from paying registration fees on an annual net basis and from registering offerings of an indefinite number of securities.[208] Some of these commenters also noted that the attributes cited in the Proposing Release for extending the ability to pay registration fees on an annual net basis to interval funds (routine repurchases of shares at NAV and avoiding the possibility that an interval fund would inadvertently sell more shares than it had registered) would also apply to these ETPs.[209]

After considering these comments, we have determined to adopt amendments to enable certain ETPs that are not registered under the Investment Company Act to elect to register an offering of an indeterminate number of securities and to pay registration fees for such an offering in a manner equivalent to that for mutual funds and ETFs (*i.e.,* in arrears on an annual net basis). In view of the concerns raised by commenters as well as the similarities between these ETPs and ETFs, we agree that it is appropriate to extend the availability of this treatment to these ETPs under the Securities Act. Accordingly, issuers that offer exchange-traded vehicle securities, as the term will now be defined in amended rule 405,[210] will be eligible under new Securities Act rule 456(d) to elect to register an offering of an indeterminate amount of exchange-traded vehicle securities and pay registration fees for such an offering on an annual net basis no later than 90 days after the end of the fiscal year when making this election. We are also adopting Securities Act rule 457(u), which sets forth the calculation method for paying registration fees in this manner and is consistent with the fee calculation provisions of Form 24F–2.[211] Finally, we are adopting rule 424(i) pursuant to which issuers that elect to register an offering of an indeterminate amount of securities pursuant to rule 456(d) will be required to file a prospectus supplement when paying registration fees on an annual net basis.[212]

I. Disclosure and Reporting Parity Proposals

We are adopting amendments to our rules and forms, substantially as proposed, intended to tailor the disclosure and regulatory framework for affected funds in light of our amendments to the offering rules. Many of these amendments are not required by the BDC Act or the Registered CEF Act, but we believe are consistent with the respective Acts' requirements to increase regulatory parity of affected funds with otherwise similarly-situated issuers.[213] As discussed in detail below, these amendments include structured data requirements; new annual reporting requirements; amendments to provide all affected funds additional flexibility to incorporate information by reference; and enhancements to the disclosures that registered CEFs make to investors when the funds are not updating their registration statements.

1. Structured Data Requirements

We are adopting, substantially as proposed, certain new structured data reporting requirements for registered CEFs and BDCs. In particular, and as discussed in detail below, we are requiring:

[200] *See* section 24(f)(2) of the Investment Company Act [15 U.S.C. 80a–24(f)(2)]. Specifically, mutual funds and ETFs currently are required to pay fees on a net basis, based upon the sales price for securities sold during the fiscal year and reduced based on the price of shares redeemed or repurchased that year.

[201] 17 CFR 274.24.

[202] Proposing Release, *supra* footnote 10, at section II.G (discussing how and why interval funds are currently not permitted to pay registration fees on an annual net basis).

[203] ICI Comment Letter; Invesco Comment Letter. No commenter expressed opposition to the proposed provision.

[204] ABA Comment Letter; ICI Comment Letter.

[205] ICI Comment Letter.

[206] ABA Comment Letter.

[207] GraniteShares Comment Letter; Invesco Comment Letter; ProShares Comment Letter; Comment Letter of State Street Global Advisors (June 21, 2019) (''SSGA Comment Letter''); USCF Comment Letter; WGC Comment Letter; Comment Letter of Morgan, Lewis & Bockius LLP (Jan. 15, 2020).

[208] Invesco Comment Letter (stating that the provision would assist ETPs); ProShares Comment Letter (same); SSGA Comment Letter (same); GraniteShares Comment Letter (stating that the provision would assist ETPs, and would eliminate a competitive difference between ETPs and mutual funds); USCF Comment Letter (stating that the provision would provide ETPs with cost savings and efficiencies that would benefit investors); WGC Comment Letter (same). One commenter noted that the securities of these ETPs are issued and redeemed in large blocks called ''creation units'' through either in-kind transactions with brokerage firms and institutional investors or on a cash basis when the ETPs invest in futures contracts and other investments that cannot be transferred in-kind. GraniteShares Comment Letter.

[209] USCF Comment Letter; SSGA Comment Letter; WGC Comment Letter.

[210] We believe that the scope of this definition properly limits the availability of this treatment to offerings of securities that share substantially similar attributes with those issued by ETFs, such as being listed on a national securities exchange and routine purchases and redemptions of the securities in ''creation units'' at NAV. The reference to ''ratable share'' in the definition encompasses repurchases or redemptions of securities that occur at NAV on an in-kind basis or cash basis.

[211] We are amending a number of Securities Act registration statement forms (Forms S–1, S–3, F–1 and F–3) to provide that an issuer may elect to register an indeterminate amount of exchange-traded vehicle securities on these registration statement forms.

[212] Rule 424(i) also includes certain disclosure requirements modeled after Form 24F–2.

[213] For example, regulatory parity could mitigate any competitive disparities between affected funds and other issuers. It also could help investors in affected funds by providing them investor protections that are currently provided to investors in similarly-situated issuers. *See, e.g., infra* discussion in paragraphs accompanying footnotes 284–289.

• BDCs, like operating companies, to submit financial statement information using Inline XBRL format;
• registered CEFs and BDCs to include structured cover page information in their registration statements on Form N–2 using Inline XBRL format;
• certain information required in an affected fund's prospectus to be tagged using Inline XBRL format; and
• filings on Form 24F–2 to be submitted in eXtensible Markup Language (''XML'') format.

a. Inline XBRL Requirements for Financial Statements and Notes to Financial Statements

We are adopting, as proposed, an amendment to 17 CFR 229.601 (Item 601 of Regulation S–K) to subject BDCs to the Inline XBRL financial statement tagging requirements that apply to operating companies, by removing the exclusion for BDCs from the Inline XBRL financial statement tagging requirements.[214] We continue to believe that reporting in a structured data format makes financial information easier for investors to analyze and helps automate regulatory filings and business information processing.[215] We also believe that BDC investors and other market participants would benefit from the availability of relevant information in a structured data format.[216] These requirements will reduce the current disparity between the accessibility of financial information BDCs provide to the market and the accessibility of substantially similar financial information that operating companies provide to the market.[217]

The commenters who addressed this proposed requirement supported it.[218] Some of these commenters stated that structured financial statement data would be more useful to investors than information in only a HyperText Markup Language (''HTML'') or plain text format.[219] One of these commenters stated that more structured financial statement reporting would improve the clarity and transparency of reported information by using consistent, agreed-upon definitions, and would yield information that is less expensive to process and more timely than unstructured data.[220] Another commenter stated that eliminating the delay for data users to obtain information once it is public makes capital markets more efficient.[221]

Two commenters supported the use of the Inline XBRL format specifically.[222] One of these commenters noted that, because Inline XBRL is both machine-readable and human-readable, it will help investors in BDCs quickly access structured data just as investors in operating companies can.[223] This commenter also highlighted potential benefits of the format for issuers, stating that data in Inline XBRL format is easier to review than, for example, the same data in separate XBRL and HTML formats.[224] Some commenters also stated that the currently available XBRL taxonomies will be sufficient for BDCs.[225] After considering public comments received, and because we continue to believe that investors will benefit from the availability of relevant information in a structured data format, we are adopting this requirement as proposed.[226]

b. New Check Boxes and Structured Data Format for Form N–2 Cover Page Information

We are adopting, as proposed, a requirement that all affected funds tag all of the data points that appear on the cover page of Form N–2, except the Calculation of Registration Fee table, using Inline XBRL format.[227] These cover page data points will include, for example, the company name, the Act or Acts to which the registration statement relates, and check boxes relating to the effectiveness of the registration statement. We currently require operating companies to tag all of the data points on the cover page of Form 10–K, Form 10–Q, Form 8–K, Form 20–F, and Form 40–F using Inline XBRL format.[228] The Commission generally proposed to extend this requirement to mandatory tagging of the data points on the cover page of Form N–2 because it believed it would allow investors, other market participants, and other data users to automate their use of this information.[229]

The commenters who addressed the proposed requirement supported it.[230] As above, two commenters supported the proposed Inline XBRL format, stating that it would provide benefits for investors, regulators, and issuers.[231] One commenter specifically supported requiring the Inline XBRL format over allowing reporting entities to choose from more than one data standard or developing a custom schema for the required information.[232] After

[214] *Compare* 17 CFR 229.601(b)(101)(i) (amended Item 601(b)(101)(i) of Regulation S–K) (excluding registered investment companies from rule 601's tagging requirements) *with* current Item 601(b)(101)(i) of Regulation S–K (excluding all registrants that prepare financial statements in accordance with 17 CFR 210.6–01 through 210.6–10 (Article 6 of Regulation S–X); *see also* amended rule 405(b)(3)(i) of Regulation S–T (requiring a BDC to tag its financial statements). We also are making conforming amendments to Items 601(b)(101)(ii)(A) and (iii) of Regulation S–K to clarify the exclusion of registered investment companies from rule 601's tagging requirements.

[215] Proposing Release, *supra* footnote 10, at section II.H.1.a.

[216] *Id.* We also observed that having this information in a structured data format would enhance our staff's ability to review and analyze BDCs' financial statements.

[217] *Id.* (summarizing the structured data reporting requirements for operating companies and registered investment companies).

[218] Calcbench Comment Letter; Comment Letter of IRIS Business Services Ltd. (June 10, 2019) (''IRIS Comment Letter''); Comment Letter of XBRL US (June 10, 2019) (''XBRL US Comment Letter'').

[219] Calcbench Comment Letter; XBRL US Comment Letter.

[220] XBRL US Comment Letter.

[221] Calcbench Comment Letter.

[222] IRIS Comment Letter; XBRL US Comment Letter.

[223] IRIS Comment Letter.

[224] IRIS Comment Letter. The commenter also stated that it is appropriate to subject BDCs to the same format as operating companies—compared to requiring BDCs to report on Forms N–PORT and N–CEN—because the format of their financial statements is similar to that of operating companies. *Id.* Another commenter observed that the same applications used to prepare XBRL for operating companies could be leveraged for BDCs, increasing economies of scale. XBRL US Comment Letter.

[225] IRIS Comment Letter; XBRL US Comment Letter. Based on our staff's review of BDCs' disclosures and assessment of the XBRL taxonomies' development since they were first adopted in 2009, the Commission stated its belief that relevant XBRL taxonomies were sufficiently well developed for financial statement reporting by BDCs. Proposing Release, *supra* footnote 10, at section II.H.1.a. One commenter observed that BDC financial statement line items were already captured in the US GAAP Taxonomy and that a new custom schema would be an unnecessary cost for the Commission and the marketplace. XBRL US Comment Letter. Another commenter stated, however, that it would expect a greater use of non-standard reporting elements than for average operating companies. IRIS Comment Letter. We continue to believe that the relevant XBRL taxonomies are sufficiently well developed for use by BDCs, even if BDCs use non-standard elements more than the average operating company.

[226] *See supra* footnote 214.

[227] *See* new General Instruction I.1 of amended Form N–2; new rule 405(b)(3)(ii) of amended Regulation S–T.

We also are making certain conforming revisions to proposed General Instruction H (Interactive Data Files), which we renumbered as General Instruction I of amended Form N–2. In addition, and as a result, we renumbered General Instruction I of current Form N–2 (Registration of Additional Securities) as General Instruction J of amended Form N–2.

[228] *See* 17 CFR 232.406 [rule 406 of Regulation S–T]; FAST Act Modernization Adopting Release, *supra* footnote 66, at 12674.

[229] Proposing Release, *supra* footnote 10, at section II.H.1.b. The Commission noted that this requirement would enhance investors' ability to better identify, count, sort, aggregate, compare, and analyze registrants and disclosures to the extent these data points otherwise would be formatted only in HTML.

[230] IRIS Comment Letter; XBRL US Comment Letter.

[231] IRIS Comment Letter; XBRL US Comment Letter; *see also supra* footnotes 222–224 and accompanying text.

[232] XBRL US Comment Letter (stating that multiple data standards would cause confusion in the marketplace and unnecessary costs throughout the reporting supply chain and that a custom

considering public comments received, and because we continue to believe that it would allow investors, other market participants, and other data users to automate their use of this information, we are adopting this requirement as proposed.

The Commission did not propose to require affected funds to tag the table on the form's cover page that includes information about calculation of the fund's registration fee under the Securities Act.[233] One commenter recommended that the Commission require tagging of such registration fee information, stating that these are valuable data elements and that extending the requirement to fee information would not increase the burden of tagging on issuers.[234] The Commission recently proposed such amendments to Form N–2 as part of a larger proposal to modernize the filing fee disclosure and payment methods for most of the Commission's fee-bearing forms, statements, and related rules.[235] As a result, we believe that the filing fee disclosure and payment modernization rulemaking is a more appropriate vehicle for considering whether the fee calculation information on Form N–2 should be tagged.

In addition, we are amending Form N–2 to add new check boxes to its cover page, as proposed.[236] We proposed several new check boxes to allow investors, Commission staff, and others to more readily identify types of issuers and securities.[237] We continue to believe that this check box information will allow investors, Commission staff, and others to more readily identify types of issuers and securities, and so are adopting this provision as proposed.[238] These check boxes will be among the data points required to be tagged using Inline XBRL format.[239]

c. Tagging of Prospectus Disclosure Items

We are adopting, as proposed, a requirement that all affected funds tag certain information that is required to be included in an affected fund's prospectus using Inline XBRL format. All affected funds will be required to submit certain information in registration statements or post-effective amendments filed on Form N–2 and certain forms of prospectuses filed pursuant to rule 424 under the Securities Act to the Commission using Inline XBRL.[240] A seasoned fund filing a short-form registration statement on Form N–2 also will be required to tag information appearing in Exchange Act reports—such as those on Form N–CSR, 10–K, 10–Q, or 8–K—if that information is required to be tagged in the fund's prospectus.[241]

We will require affected funds to tag the following prospectus disclosure items using Inline XBRL format: Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities.[242] We continue to believe that these items are of greatest utility for investors and other data users that seek structured data to analyze and compare funds, as they provide important information about a fund's key features, costs, and risks.[243] We believe tagging the Fee Table, which provides detailed information about the fund's costs, could facilitate analysis of fund costs and allow investors and other data users to compare the costs of a particular affected fund to the costs of other funds or other investment products, such as mutual funds. The Senior Securities Table requires registrants to include information about each class of senior securities, including bank loans. Tagging this information will facilitate analyses of outstanding senior securities that may bear on the likelihood, frequency, and size of distributions from the fund to its investors. Tagging Investment Objectives and Policies, which provides information about the fund's principal portfolio emphasis, will help an investor determine the degree to which a fund's objectives and policies align with the investor's preferences. Risk Factors describes risks associated with an investment in the fund. Tagging Risk Factors will facilitate the aggregation, analysis, and comparison by investors and other data users of information about a fund's risks alongside the fund's features and benefits. Tagging Share Price Information is important because the presence of a premium or discount may bear on the likelihood, frequency, and size of distributions from the fund to its investors, which we believe may be of particular importance to many affected fund investors. Tagging Capital Stock, Long-Term Debt, and Other Securities better informs common shareholders how their rights, expenses, and risks are affected when the fund issues other types or classes of securities. We also continue to believe that these items are best suited to being tagged in a structured format.

The commenters who addressed the proposed requirement supported it.[244] These commenters stated that the tagged data would be useful, including both numeric and narrative information.[245] In addition, one commenter asserted that the Commission should require tagging all financial data that is required to be reported.[246] We believe that this rule is appropriately focused on the key items that are most suitable for tagging and of greatest utility for investors.

Because we continue to believe that structuring these data elements will allow investors, other market participants, and other data users to automate their use of this information,

schema would require the development of new tools to create and to extract and analyze the data).

[233] *See* Proposing Release, *supra* footnote 10, at section II.H.1.b.

[234] *See* XBRL US Comment Letter.

[235] *See* Filing Fee Disclosure and Payment Methods Modernization, Investment Company Act Release No. 33676 (Oct. 24, 2019) [84 FR 71580 (Dec. 27, 2019)].

[236] *See* cover page of amended Form N–2. For purposes of 17 CFR 230.401(g) (Securities Act rule 401(g)), an affected fund that checks a box on Form N–2 to indicate that it is relying on the short-form registration instruction or that it is a WKSI filing an automatic shelf registration statement will be deemed to have filed the relevant registration statement or post-effective amendment properly under the applicable provisions of Form N–2 unless the Commission objects in the manner set forth in rule 401(g). *See* 17 CFR 230.401(g).

[237] Proposing Release, *supra* footnote 10, at section II.G.1.b. (discussing proposed check box requirements on Form N–2 cover page). In a conforming change, we are also including a check box that is substantively identical to a parallel check box on Form S–3 for emerging growth companies that have elected not to use an extended transition period for complying with new or revised accounting standards. *See* cover page of amended Form N–2.

[238] Commenters recommended that the Commission clarify that the check box indicating that the only securities being registered are being offered pursuant to dividend or interest reinvestment plans is not intended to affect the ability of affected funds to rely on ''Guide 5. Dividend Reinvestment Plans'' to Form N–2. *See* Dechert Comment Letter; IPA Comment Letter. The new check box will not affect that ability.

[239] *See supra* footnote 227.

[240] *See* new General Instruction I.2 of amended Form N–2.

[241] *See* new General Instruction I.3 of amended Form N–2.

[242] *See* new General Instructions I.2 and I.3 of amended Form N–2; *see also* Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, and 10.5 of amended Form N–2. This information largely parallels similar information contained in the Form N–1A risk/return summary. *See* Item 2 (Risk/Return Summary: Investment Objectives/Goals), Item 3 (Risk/Return Summary: Fee Table), and Item 4 (Risk/Return Summary: Investments, Risks and Performance) of Form N–1A.

[243] *See generally* Proposing Release, *supra* footnote 10, at section II.H.1.b.

[244] IRIS Comment Letter; XBRL US Comment Letter.

[245] *Id.* One commenter also supported the proposed scope of the new requirement—all affected funds—stating that if some issuers are excluded, it would result in higher costs for preparer and users of data. XBRL US Comment Letter. One commenter offered support for the proposed Inline XBRL format, stating that it would provide benefits to investors, regulators, and issuers. IRIS Comment Letter; *see also supra* footnotes 222–224 and accompanying text.

[246] XBRL US Comment Letter.

we are adopting this requirement as proposed.[247] As with other new Commission XBRL taxonomies, staff will post for public review and feedback a draft Inline XBRL taxonomy for affected funds' tagged prospectus disclosures.[248] When available, affected funds will be required to use the most recent version of the Inline XBRL taxonomy for tagged prospectus disclosures, as specified by the EDGAR Filer Manual.[249]

As the Commission proposed, and as required of mutual funds and ETFs under the recently adopted Inline XBRL regime,[250] we will require affected funds to submit ''Interactive Data Files'' (*i.e.,* machine-readable computer code that presents information in XBRL format) [251] as follows:

- For any registration statements and post-effective amendments, Interactive Data Files must be filed either concurrently with the filing or in a subsequent amendment that is filed on or before the date that the registration statement or post-effective amendment that contains the related information becomes effective; [252]
- for any form of prospectus filed pursuant to rule 424, Interactive Data Files must be submitted concurrently with the filing; [253] and
- for any Exchange Act reports that a seasoned fund filing a short-form registration statement on Form N–2 will have to tag, as discussed above, Interactive Data files must be submitted concurrently with the filing.[254]

We proposed this approach to facilitate timely availability and promote the comparability and utility of important information in a structured data format for investors, other market participants, and other data users, which we believed would yield substantial benefits.[255] We did not receive comments on this aspect of the proposal. We continue to believe that this approach will yield the substantial benefits discussed above and therefore are adopting it as proposed.

d. Structured Data Format for Form 24F–2

We will require submission of filings on Form 24F–2 in a structured XML format.[256] We proposed this use of a structured data format, believing that it would make it easier for issuers to accurately prepare and submit the information required by Form 24F–2 and would make the submitted information more useful to Commission staff.[257] The commenters who addressed the proposed requirement to structure Form 24F–2 supported it,[258] with one commenter observing that the structured registration fee information could be useful in validating the submission.[259] Commenters were mixed on the proposed custom XML format, with one commenter supporting the proposed XML format,[260] and another recommending that the Commission use an XBRL format instead.[261]

Because Form 24F–2 is primarily used by Commission staff to validate registration fees paid by issuers and not for financial reporting purposes, we continue to believe that a custom XML schema will be an appropriate format for the required information. For example, while XBRL allows issuers to capture the rich complexity of financial information presented in accordance with GAAP, we believe that XML is more appropriate for the relatively simple characteristics of the fund's fee information in reports on Form 24F–2.[262] In addition we continue to believe that the XML format will improve the quality of information disclosed by providing a built-in validation framework of the data in the reports.[263] We therefore will require reports on Form 24F–2 to be filed in a structured XML format, as proposed.

2. Periodic Reporting Requirements

We are also adopting new annual report requirements, as proposed. As we discussed in the Proposing Release, we expect several of the reforms we are adopting in this release, such as those relating to automatically effective shelf registration, forward incorporation by reference, and final prospectus delivery, will elevate the importance of periodic reporting relative to prospectus disclosure for affected funds.

A seasoned fund filing a short-form registration statement on Form N–2 will be required to forward incorporate all periodic Exchange Act reports into its registration statement.[264] This should result in periodic reports becoming a more salient, convenient, and comprehensive source of updated information about a particular seasoned fund, relative to that fund's registration statement. As a result, these funds' annual reports may take on greater prominence, with investors looking to the annual reports for key

[247] *See* new General Instructions I.2 and I.3 of amended Form N–2; new rule 405(b)(3)(iii) of amended Regulation S–T. We also are making conforming amendments to rule 601(b)(101)(i)(C) of Regulation S–K, rule 11 of Regulation S–T, and adding a new general instruction to Form N–CSR to implement the specified prospectus disclosure tagging requirements for affected funds.

[248] Taxonomies are *available at https://www.sec.gov/structureddata/dera_taxonomies.*

[249] *See* rule 405(c)(1) of Regulation S–T.

[250] *See* Inline XBRL Filing of Tagged Data, Investment Company Act Release No. 33139 (June 28, 2018) (''Inline XBRL Adopting Release'').

[251] The term ''Interactive Data File'' is defined to mean ''the machine-readable computer code that presents information in [XBRL] electronic format pursuant to [rule 405 of Regulation S–T] and as specified by the EDGAR Filer Manual.'' *See* rule 11 of Regulation S–T. The EDGAR Filer Manual sets forth the technical formatting requirements for the presentation and submission of electronic filings through the EDGAR system.

[252] New General Instruction I.2 of amended Form N–2; *cf.* General Instruction C.3.(g)(i)(B) of Form N–1A.

[253] New General Instruction I.2 of amended Form N–2; *cf.* General Instruction C.3.(g)(ii) of Form N–1A.

[254] New General Instruction I.3 of amended Form N–2.

[255] Proposing Release, *supra* footnote 10, at section II.H.1.c.

[256] *See* General Instruction A.3 to amended Form 24F–2 (requiring reports on Form 24F–2 to be submitted in electronic format pursuant to the EDGAR Filer Manual and Appendices). We are expanding the group of issuers subject to filing on Form 24F–2 to include interval funds. *See supra* section II.H. We also are making a technical correction in Form 24F–2 to refer to the applicable paragraph of 17 CFR 232.101 (rule 101 of Regulation S–T). *See* General Instruction A.3 to amended Form 24F–2 (correcting ''rule 101(a)(1)(i)'' to ''rule 101(a)(1)(iv)''). In addition, we are amending Form 24F–2 to add a free text response field, and a requirement to provide the EDGAR series/class (contract) ID for each separately reported series/class (contract) to facilitate implementation of the new structured data format. *See* amended Form 24F–2.

[257] Proposing Release, *supra* footnote 10, at section II.H.1.d.

[258] IRIS Comment Letter; XBRL US Comment Letter.

[259] IRIS Comment Letter.

[260] IRIS Comment Letter. Additionally, two commenters recommended that the Commission require that reports on Forms N–CEN and N–PORT, which require reporting of information in a structured data format using a custom XML schema, be in XBRL or Inline XBRL format. *See* XBRL US Comment Letter; IRIS Comment Letter. The Commission considered requiring reporting in XBRL format in connection with its adoption of Forms N–CEN and N–PORT and determined that the relatively simple characteristics reported on those forms is more suited to XML than XBRL. *See* Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870, 81906–07 (Nov. 17, 2016)] (''Investment Company Reporting Modernization Adopting Release'').

[261] XBRL US Comment Letter (stating that a custom XML schema will result in added costs for reporting entities and data consumers relative to XBRL). This commenter also suggested requiring the use of validation rules and linking custom extensions to improve data quality for reported financial information. XBRL US Comment Letter. While we encourage the use of appropriate tools to improve data quality, we believe that consideration of a requirement to use validation rules or use custom extension linking would best be taken up on a separate, holistic basis, for BDCs and operating companies alike, rather than in the context of this final rule.

[262] *See* Investment Company Reporting Modernization Adopting Release, *supra* footnote 260, at nn.449–50 and accompanying text.

[263] *See id.*

[264] *See* new General Instruction F.3.b of amended Form N–2.

information.[265] Registered CEFs' shareholder reports may also take on greater prominence for investors because, under the final rule, affected funds will not be required to deliver final prospectuses but will still be required to deliver shareholder reports at least semi-annually.[266]

Accordingly, as proposed, we are requiring seasoned funds that register using the proposed short-form registration instruction to include key information in their annual reports regarding fees and expenses, premiums and discounts, and outstanding senior securities that the funds currently disclose in their prospectuses.[267] Because the annual report will be incorporated by reference into the fund's prospectus, requiring disclosure in both the prospectus and annual report should not require duplicative disclosure. Moreover, specifying identical disclosure requirements in both places may facilitate forward incorporation by reference, by making clear that the same required disclosure will satisfy both requirements. We continue to believe that investors should have no less current information than they do today about these items when the fund is offering its shares.[268] Finally, we are requiring, as proposed, registered CEFs to provide management's discussion of fund performance (or ''MDFP'') in their annual reports to shareholders, BDCs to provide financial highlights in their registration statements and annual reports, and affected funds filing a short-form registration statement on Form N–2 to disclose material unresolved staff comments.[269] These provisions are intended to modernize and harmonize our periodic report disclosure requirements for affected funds with those applicable to operating companies and mutual funds and ETFs.[270]

a. Fee and Expense Table, Share Price Data, and Senior Securities Table

We are adopting a requirement, as proposed, that funds filing a short-form registration statement on Form N–2 include key information in their annual reports that they disclose in their prospectuses in light of the importance of this information and the increased prominence of shareholder reports under our final rule. Specifically, we will require that these funds include the following information in their annual reports: [271]

- *Fee and Expense Table:* Form N–2 requires registrants to include information about the costs and expenses that the investor will bear directly or indirectly, using specified captions and a specified tabular format.[272] This table is designed to help investors understand the costs of investing in an affected fund and to compare those costs with the costs of other affected funds.[273] The Commission has previously noted the importance of costs to an investment decision and, in the case of registered open-end funds, has specified the location of the fee table to enhance the prominence of the cost information.[274]
- *Share Price Data:* Form N–2 requires registrants to include information about the share price of the registrant's stock as well as information about any premium or discount that the share price reflects, compared to the registrant's NAV.[275] The presence of a premium or discount may bear on the likelihood, frequency, and size of distributions from the fund to its investors, which we believe may be of particular importance to many affected fund investors.
- *Senior Securities Table:* Form N–2 requires registrants to include information about each of its classes of senior securities, including bank loans.[276] As with a premium or discount, any outstanding senior securities may bear on the likelihood, frequency, and size of distributions from the fund to its investors. A registrant must disclose information about its senior securities for the most recent ten years, the last five years of which must be audited.[277]

The commenters that addressed these proposed requirements related to the Fee and Expense Table, Share Price Data, and Senior Securities Table supported them.[278] Because we continue to believe in the importance of this information and the increased prominence of shareholder reports under our final rule,[279] we are adopting this aspect of the proposal as proposed.[280]

With respect to the Senior Securities Table, two commenters requested that we revise the instruction to Form N–2

[265] In 2005, the Commission observed that recent enhancements to Exchange Act reporting enabled us to rely on those reports to a greater degree in adopting our rules to reform the securities offering process. Securities Offering Reform Adopting Release, *supra* footnote 5, at 44726. As the Commission did then, we believe that enhanced periodic reporting is an important corollary to reform of the offering process under the Securities Act. *See id.*

[266] *Compare* Securities Act rule 172 *with* 17 CFR 270.30e-1 (Investment Company Act rule 30e-1); *see also supra* section II.C.

[267] In general, these requirements are expressed as a cross-reference to the specified registration statement requirements in Form N–2. *See* new Instructions 4.h.(1)–4.h.(3) to Item 24 of amended Form N–2 (referencing Items 4.3, 3.1, and 8.5 of amended Form N–2, respectively).

[268] Proposing Release, *supra* footnote 10, at section II.H.2.

[269] *See infra* sections II.I.2.a–II.I.2.d. *See* new Instruction 4.g to Item 24 of amended Form N–2 (MDFP); deletion of Instruction 1 to Item 4 of current Form N–2 (BDC financial highlights); and new Instruction 4.h.(4) to Item 24.4.h(4) of amended Form N–2 (material unresolved staff comments).

[270] We are also, as proposed, amending Form N–2 to apply certain of its requirements for annual reports to BDCs. *See* new Instruction 10 to Item 24 of amended Form N–2.

[271] *See* new Instructions 4.h.(1) (senior securities table), 4.h.(2) (fee and expense table), and 4.h.(3) (share price data) to Item 24 of amended Form N–2.

[272] *See* Item 3.1 of amended Form N–2; *see also* new Instruction 4.h.(2) to Item 24 of amended Form N–2.

[273] *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Release No. 28064 (Nov. 21, 2007) [72 FR 67790, 67794 (Nov. 30, 2007)].

[274] *See id.;* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546, 4553 (Jan. 26, 2009)]; Request for Comment on Fund Retail Investor Experience and Disclosure, Investment Company Act Release No. 33113 (June 5, 2018) [83 FR 26891, 26901 (June 11, 2018)] (''Investor Experience Request for Comment'').

[275] *See* Item 8.5 of amended Form N–2; *see also* new Instruction 4.h.(3) to Item 24 of amended Form N–2 (share price data).

[276] *See* Item 4.3 of amended Form N–2; *see also* new Instruction 4.h.(1) to Item 24 of amended Form N–2.

[277] *See* Instruction 1 to Item 4.3 (applying Instruction 8 to Item 4.1 to Item 4.3) and Instruction 8 to Item 4.1 (requiring the information to be audited) of amended Form N–2.

[278] ICI Comment Letter; Invesco Comment Letter. Two other commenters stated that they did ''not object'' to the proposed requirements. Dechert Comment Letter; IPA Comment Letter. Several commenters opposed related potential modifications addressed in the requests for comment within the Proposing Release that we are not adopting. Dechert Comment Letter (opposing expansion of proposed requirement to semi-annual reports; opposing expansion of requirement to ''portfolio companies'' table); IPA Comment Letter (same). One commenter recommended that the Commission continue to consider ways to enhance the fund retail investor experience, including the content of the annual report. ICI Comment Letter. The Commission staff is continuing to consider comment letters received in response to the Investor Experience Request for Comment. *See supra* footnote 274.

[279] Proposing Release, *supra* footnote 10, at section II.H.2.a.

[280] One commenter recommended that we add an instruction to Form N–2 to ''clarify'' that the schedules required by 17 CFR 210.12–12 (rule 12–12 of Regulation S–X) satisfy the Portfolio Companies table requirement in Item 8.6.a of Form N–2. *See* Dechert Comment Letter. We are not making this change because the two provisions do not require the same information. Disclosure satisfying the requirements of rule 12–12 of Regulation S–X would not always satisfy the requirements of Item 8.6.a. For example, Item 8.6.a of Form N–2 requires certain information about each portfolio company, such as the percentage of each class owned by the issuer, the issuer's relationship with the portfolio company, and the address of the portfolio company. Regulation S–X requires no such disclosures.

as it relates to affected funds to reduce the audit requirement from the last five-years (in the registration statement) to the same periods as contained in the audited balance sheet presented in the annual report.[281] However, such a change would alter the periods presented for the Senior Securities Table, which match the periods presented in the Financial Highlights.[282] Given the importance of asset coverage and the comparability of information contained in both the Financial Highlights and the Senior Securities Table, we do not believe such a change is appropriate. Additionally, because the annual report will be incorporated by reference into the fund's prospectus, filing the audited senior securities table in the annual report will not result in duplicative disclosure. For this reason, we have determined not to amend the requirements in the manner suggested by the commenters.

b. Management's Discussion of Fund Performance

We are also adopting, as proposed, an amendment to Form N–2 that will extend the MDFP disclosure requirements to all registered CEFs.[283] Currently, mutual funds and ETFs are required to include MDFP in their annual reports to shareholders.[284] MDFP disclosure aids investors in assessing a fund's performance over the prior year and complements other backward looking information required in the annual report, such as financial statements.[285] This required disclosure is grounded conceptually in the disclosure requirement for operating companies (as well as BDCs) to include a narrative discussion of the financial statements of the company—''management discussion and analysis'' or ''MD&A''—and to provide an opportunity to look at a company ''through the eyes of management.'' [286]

We proposed to amend Form N–2 to extend the MDFP disclosure requirements to all registered CEFs.[287] Specifically, we proposed to require that registered CEFs:

- Discuss the factors that materially affected their performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the fund;
- Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed ten fiscal years of the fund and a table of the fund's total returns for the 1-, 5-, and 10-year periods as of the last day of the fund's most recent fiscal year; and
- Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the fund's investment strategies and per share NAV during the last fiscal year, as well as the extent to which the registrant's distribution policy resulted in distributions of capital.

Commenters that addressed this aspect of the proposal supported it.[288] Because we continue to believe that investors in these funds—like investors in mutual funds, ETFs, BDCs, and operating companies—would benefit from annual report disclosure that aids them in assessing the fund's performance over the prior year and that complements other information in the report,[289] we are adopting this requirement as proposed.[290]

c. Financial Highlights

We are amending Form N–2, as proposed, to require that a BDC, like other affected funds, include financial highlights disclosure summarizing its financial statements in its registration statement and annual report.[291] Today, BDCs include their full financial statements in their prospectus, and we currently permit BDCs to omit financial highlights disclosure summarizing these financial statements.[292] We understand, however, that it is generally market practice for BDCs to include financial highlights disclosure. This information is arranged to allow investors to trace the operating performance of a fund on a per share basis from the fund's beginning NAV to its ending NAV so that investors may understand the sources of changes.[293] It summarizes the financial statements.[294] Commenters did not address this aspect of the proposal. Because we continue to believe that investors will benefit from required disclosure summarizing a BDC's financial statements,[295] we are adopting this change as proposed.[296]

[281] Dechert Comment Letter (''[W]e believe that the SEC should revise the instructions to Item 4.3 of Form N–2 to state that an Affected Fund need only audit the information in the senior securities table for the same periods as contained in the audited balance sheet included in the fund's annual report.''); IPA Comment Letter.

[282] *See* Instruction 1 to Item 4.3 of Form N–2 (applying Instruction 3 to Item 4.1 to the Senior Securities Table).

[283] New Instruction 4.g to Item 24 of amended Form N–2.

[284] Item 27(b)(7) of Form N–1A. This requirement applies to registered open-end management investment companies other than money market funds.

[285] Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11243, 11254 (Mar. 9, 2004)] (''Quarterly Portfolio Disclosure Adopting Release''); *see also* Proposing Release, *supra footnote* 10, at section II.H.2.b (summarizing the history and purpose of the requirement).

[286] Disclosure and Analysis of Mutual Fund Performance Information; Portfolio Manager Disclosure, Investment Company Act Release No. 17294 (Jan. 8, 1990) [55 FR 1460, 1462 (Jan. 16, 1990)].

[287] Proposing Release, *supra* footnote 10, at section II.H.2.b.

[288] ABA Comment Letter; ICI Comment Letter; Invesco Comment Letter; TIAA Comment Letter. One commenter stated that MDFP information can assist investors with understanding fund performance and market conditions over the reporting period from the fund manager's perspective. ICI Comment Letter. In the Proposing Release, we asked whether, instead of requiring MDFP information for registered CEFs, we should require such funds to disclose MD&A information like BDCs and operating companies. Proposing Release, *supra* footnote 10, at section II.H.2.b. A few commenters expressly opposed this change to the proposed requirement compared with the MDFP requirement in Form N–1A. ABA Comment Letter; ICI Comment Letter; Invesco Comment Letter; TIAA Comment Letter.

[289] Proposing Release, *supra* footnote 10, at section II.H.2.b.

[290] New Instruction 4.g to Item 24 of amended Form N–2.

[291] To effectuate this change, we are removing and reserving Instruction 1 to Item 4, and adding new Instruction 10 to Item 24 of amended Form N–2. Currently, only registered CEFs are required to include financial highlights in their registration statements, and annual reports to shareholders. *See* Instruction 1 to Item 4.1 (limiting the applicability of Item 4.1 in the case of BDCs), and Instruction 4.b (requiring the financial highlights required by Item 4.1 to be included in the annual report) to Item 24 of current Form N 2.

[292] General Instruction 1 to Item 4.1 of current Form N–2.

[293] Registration Form for Closed-End Management Investment Companies, Investment Company Act Release No. 19115 (Nov. 20, 1992) [57 FR 56826, 56829 (Dec. 1, 1992)].

[294] Registration Form for Closed-End Management Investment Companies, Investment Company Act Release No. 17091 (July 28, 1989) [54 FR 32993, 32997 (Aug. 11, 1989)].

[295] *See* Proposing Release, *supra* footnote 10, at section II.H.2.c.

[296] *See* Instruction 1 to Item 4.1 of amended Form N–2 (removed and reserved); new Instruction 10 to Item 24 of amended Form N–2.

In addition, we are adopting, as proposed, a conforming change to the financial highlights requirements to eliminate the current requirement that registered CEFs specify the average commission rate paid. *See* Item 4.1 of amended Form N–2 (removing Instructions 18–19 from Item 4.1). Although this information is currently required for registered CEFs, the Commission previously eliminated a similar requirement from Item 13(a) of Form N–1A for open-end funds registered on Form N–1A. Item 4.1.l of Form N–2; Instructions 18–19 to Item 4.1 of Form N–2; Item 13(a) of Form N–1A; *See* Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916, 13936 (Mar. 23, 1998)]. The Commission reached this determination after receiving and considering public comment arguing that these rates are technical information that typical investors are unable to understand. *Id.* We continue to believe that the same considerations supporting elimination of this requirement from Form N–1A also apply to registered CEFs.

d. Unresolved Staff Comments

We are also adopting, as proposed, a requirement that affected funds filing a short-form registration statement disclose outstanding staff comments that remain unresolved for a substantial period of time and that the fund believes are material.[297] As part of the Commission's 2005 securities offering reforms for operating companies, the Commission adopted a similar provision for operating companies, recognizing that the new rules could eliminate some incentives issuers may have to timely resolve any staff comments on their Exchange Act reports.[298] The Commission observed, in connection with this proposed requirement, that this rulemaking similarly may eliminate some incentives for certain affected funds to timely resolve staff comments.

Two commenters recommended that the Commission not adopt this proposed requirement.[299] One commenter stated that the proposed requirement would be inconsistent with Commission efforts to simplify disclosure and focus on key information important to investors.[300] We believe, however, that, because the requirement only relates to comments that the issuer believes are material and because they will relate to information about which the issuer and the Commission staff disagree, the disclosure of the comments is likely to be information that is important to investors. This commenter also stated that the requirement would be at odds with recent statements about the non-binding nature of staff guidance. However, the provision will not make the substance of statements by staff in their comments binding upon the public or the Commission. Rather, the Commission, by rule, will require affected funds to inform investors about their disagreements with the staff in connection with the staff's review of disclosures.

Two commenters expressed concern that differing views about whether a particular comment is ''material'' or ''unresolved'' could result in inconsistent disclosure among different funds in similar circumstances.[301] We recognize that analysis of whether a particular written comment must be disclosed may involve some subjective judgment regarding specific facts and circumstances. Many disclosure requirements inherently involve some subjective judgment and can result in some variance in the disclosure provided by different funds.

These commenters also suggested some alternatives to the proposed requirement. For example, one commenter suggested that the Commission, rather than require disclosure of material unresolved staff comments, issue a stop order to prevent an offering from going forward if necessary.[302] We believe that it is more appropriate to preserve an intermediate approach for the Commission, in appropriate circumstances, to allow an offering to proceed while informing investors and others about material disagreements between the issuer and the Commission's staff, so that investors can make an informed judgment about the disagreement. Another commenter recommended, as an alternative, that the Commission publish its staff's comments and issuer responses.[303] We believe, however, that investors and other interested persons are more likely to see and read disclosure of material, unresolved staff comments if they appear in a fund's annual report than comments and responses published separately.[304]

In addition, this requirement parallels the current requirement for operating companies that use the offering rules.[305] These commenters, however, provide no basis for distinguishing affected funds from those operating companies that are already subject to the requirement. After considering comments received, and because we continue to believe that these disclosure requirements will provide an incentive for affected funds to timely resolve staff comments and that investors may value information about areas of disagreement that the issuer believes are material, we are adopting the requirement as proposed.[306]

3. Current Reporting Requirements for Affected Funds

As discussed in the Proposing Release, operating companies and BDCs are required to promptly report certain events on Form 8–K, while registered CEFs generally are not required to report on Form 8–K. The Commission proposed to require registered CEFs to report information on Form 8–K to enhance parity with operating companies and BDCs, to improve information for investors and the market, and to recognize the role of Form 8–K reporting in the 2005 offering reform amendments.[307] It also proposed to amend Form 8–K to: (1) Add two new reporting items for affected funds on material changes to investment objectives or policies and material write-downs of significant investments, and (2) adapt the existing reporting requirements and instructions to affected funds. As discussed in more detail below, in response to comments, we are not adopting the proposed Form 8–K amendments.[308] However, we will continue to consider current reporting more generally as part of our ongoing review of the effectiveness of investment company disclosure.

a. Form 8–K Reporting for Registered CEFs

The Commission proposed to require registered CEFs that are reporting companies under section 13(a) or section 15(d) of the Exchange Act to report current information on Form 8–K. Commenters generally opposed a Form 8–K reporting requirement for registered CEFs.[309] Commenters suggested that registered CEFs should not be subject to Form 8–K reporting requirements because the commenters believe that: (1) Existing registered CEF

[297] *See* new Instruction 4.h.(4) to Item 24 of amended Form N–2. Specifically, such funds will be required to disclose the substance of any unresolved written staff comments that the fund believes are material and that were received not less than 180 days before the end of the fiscal period to which the annual report relates. *Id.*

[298] *See generally* Proposing Release, *supra* footnote 10, at section II.H.2.d.

[299] ICI Comment Letter; Invesco Comment Letter. One commenter opposed extending the proposed requirement to additional categories of issuers, including mutual funds and ETFs. ICI Comment Letter.

[300] ICI Comment Letter.

[301] ICI Comment Letter; Invesco Comment Letter.

[302] ICI Comment Letter.

[303] Invesco Comment Letter.

[304] Adopting this requirement does not prevent the Commission from also publishing staff comments or issuer responses, which may supplement this required disclosure. For example, publishing staff comments and issuer responses, which the staff currently disseminates using the EDGAR system, may also inform investors and the market about comments that are promptly resolved. *See* Press Release No. 2004–89; SEC Staff to Publicly Release Comment Letters and Responses (June 24, 2004) *available at https://www.sec.gov/news/press/2004-89.htm.*

[305] Proposing Release, *supra* footnote 10, at section II.H.2.d.

[306] New Instruction 4.h.(4) to Item 24 of amended Form N–2.

[307] *See* Proposing Release, *supra* footnote 10, at section II.H.3.a. *See also* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44726 (describing the availability of ongoing information about a public issuer and its securities, including current information on Form 8–K, as an important component of the offering reforms the Commission adopted for operating companies) and 44730 (declining to make the benefits of being a reporting issuer, seasoned issuer, or WKSI available to voluntary filers and stating that ''such issuers should be required to register under the Exchange Act, and thus become subject to all of the results of registration for all purposes, if they wish to avail themselves of'' these benefits).

[308] BDCs will continue to be required to report on Form 8–K, as they do today.

[309] *See* ABA Comment Letter; ICI Comment Letter; and Invesco Comment Letter.

disclosure is sufficient;[310] (2) Form 8–K reporting would be costly for registered CEFs;[311] (3) parity with operating companies and BDCs is unnecessary in the context of Form 8–K reporting;[312] and (4) investors, analysts, and regulators have not previously indicated that registered CEF disclosure is inadequate.[313]

With respect to existing disclosure practices, commenters stated that registered CEFs already provide material updates through other required or voluntary mechanisms (*e.g.,* prospectus supplements, press releases, shareholder reports, voluntary Form 8–K filings, and website disclosure) that result in adequate and timely disclosure of information to investors.[314] One commenter suggested that registered CEFs would be unlikely to provide meaningful new information under Form 8–K beyond what they already disclose under other regulatory requirements.[315] Two commenters expressed concern that Form 8–K reporting may not timely inform investors about important fund events.[316] One of these commenters suggested that fund investors are more likely to receive timely information through a registered CEF's typical practice of issuing a press release about an important event, posting the press release to its website, and including information about the event in its next shareholder report.[317]

Although they opposed a new Form 8–K reporting requirement, a few commenters suggested alternative approaches if we were to require registered CEFs to report on Form 8–K. One commenter suggested that, if the Commission requires registered CEFs to report on Form 8–K, we should require them to report only a subset of Form 8–K items.[318] Another commenter suggested that, rather than require registered CEFs to report on Form 8–K, we could require listed registered CEFs to file press releases containing material information on Form 8–K, similar to how continuously-offered registered CEFs file prospectus supplements on EDGAR.[319] Additionally, one commenter suggested that we require registered CEFs to more directly notify investors about material fund changes and stated that Form 8–K filings would not provide appropriate notice to a fund's investors.[320]

As we recognized in the Proposing Release and as noted by commenters, there are differences between the types of events that are important to registered CEFs and the types of events that are important to operating companies.[321] Moreover, for those Form 8–K events that would be relevant to registered CEFs, we recognize that these funds currently may disclose substantially similar information through other mechanisms, such as prospectus supplements, post-effective amendments, and press releases. We also are sensitive to commenters' concerns about the burdens to registered CEFs associated with a new Form 8–K reporting requirement, particularly for those registered CEFs that will not qualify as WKSIs or be eligible to file short-form registration statements under the amendments we are adopting.

As a result of these considerations, we are persuaded that a new Form 8–K reporting requirement for registered CEFs may not substantially improve the flow of important current information to investors and the market and, as a result, would not justify the additional burdens associated with Form 8–K reporting. Therefore, we are not adopting the proposed Form 8–K reporting requirements for registered CEFs.[322] However, we will continue to consider whether more current reporting requirements that are tailored to registered CEFs, or to registered investment companies more generally, may be appropriate in connection with our continuing review of investment company disclosure effectiveness.[323]

Although registered CEFs generally will not be required to file reports on Form 8–K, a registered CEF that is eligible to file a short-form registration statement may voluntarily file information on Form 8–K to forward incorporate that information into its registration statement or for other purposes (*e.g.,* to publicly disseminate information under exchange rules, as applicable).[324] These voluntary Form 8–K filings will not affect a registered CEF's ability to qualify as a seasoned fund. This is because the requirements to be current and timely with respect to the fund's Exchange Act and Investment Company Act reports only apply to materials a fund is required to file.[325]

[310] *See* ABA Comment Letter; ICI Comment Letter; and Invesco Comment Letter.

[311] *See* ABA Comment Letter (stating that the cost and administrative burden of Form 8–K reporting would outweigh the benefits discussed in the Proposing Release of establishing a uniform and centralized current reporting regime for registered CEFs); ICI Comment Letter (suggesting that registered CEFs already have a greater regulatory filing burden than operating companies because they report on Forms N–CEN, N–PORT, and N–PX); and Invesco Comment Letter.

[312] *See* ICI Comment Letter (suggesting there are reasons for registered CEFs to be subject to a different disclosure regime than operating companies, including that registered CEFs are highly regulated under the Investment Company Act).

[313] *See* ABA Comment Letter and ICI Comment Letter. *But see* White Comment Letter (stating that there should always be a current document where an investor can see a fund's strategy, risks, performance, and costs each year and suggesting that investors should receive notices of any material changes on a more timely basis); Proposing Release, *supra* footnote 10, at n.323 (citing a similar comment letter the Commission received in response to the Investor Experience Request for Comment).

[314] *See* ABA Comment Letter; ICI Comment Letter; and Invesco Comment Letter. As discussed in the Proposing Release, listed registered CEFs may disclose certain information on Form 8–K to comply with exchange requirements for listed company disclosure, although there are other mechanisms they may use to disclose the information (*e.g.,* press releases). *See* Proposing Release, *supra* footnote 10, at section II.H.3.a. Two commenters pointed to these requirements in support of their argument that existing disclosure is adequate. ABA Comment Letter and Invesco Comment Letter.

[315] *See* ABA Comment Letter (stating that Form 8–K is largely duplicative of information that listed registered CEFs disclose in press releases in accordance with exchange rules and that continuously-offered registered CEFs disclose in prospectus supplements or post-effective amendments under SEC rules).

[316] *See* Invesco Comment Letter and White Comment Letter.

[317] *See* Invesco Comment Letter.

[318] *See* ICI Comment Letter.

[319] *See* ABA Comment Letter.

[320] *See* White Comment Letter.

[321] *See* Proposing Release, *supra* footnote 10, at text following n.260; ABA Comment Letter (suggesting that, as a general matter, registered CEFs tend to have a simpler and more transparent business than operating companies (*e.g.,* many listed registered CEFs publish their NAVs on a daily or weekly basis)); ICI Comment Letter (stating that, for example, disclosure about departures of fund officers on Form 8–K would not be meaningful for registered CEFs because fund officers generally are not actively involved in the day-to-day management of a fund's portfolio).

[322] In addition to the proposed amendments to Form 8–K, we also are not adopting the associated proposed amendments to 17 CFR 240.13a–11 and 240.15d–11 (Exchange Act rule 13a–11 and rule 15d–11) because the proposed amendments to those rules were only necessary to carry out the proposal to require registered CEFs to report on Form 8–K.

[323] *See* Investor Experience Request for Comment, *supra* footnote 274. *See also supra* footnote 313.

[324] Although registered CEFs are only required to file Form 8–K reports under Item 5.04 (Temporary Suspension of Trading Under Registrant's Employee Benefit Plans), as applicable, other Form 8–K reports they file on a voluntary basis will be ''filed pursuant to Section 13(a) or 15(d) of the Exchange Act'' for purposes of the incorporation by reference instructions in Form N–2 that apply to funds that are eligible to file short-form registration statements. *See* General Instruction F.3 of amended Form N–2; Exchange Act rule 13a–11(b)(1) and rule 15d–11(b)(1). Information a registered CEF furnishes on a Form 8–K report will not be incorporated by reference into the fund's registration statement under this instruction. This is consistent with the incorporation by reference regime for operating companies on Form S–3, where information voluntarily filed on Form 8–K (*e.g.,* under Item 8.01 (Other Events)) is incorporated by reference into the company's registration statement while furnished Form 8–K reports are not incorporated by reference. *See also supra* footnote 314 (discussing exchange rules requiring listed registered CEFs to timely disclose certain information to the public).

[325] *See* new General Instruction A.2 of amended Form N–2; General Instruction I.A.3 of Form S–3.

b. Other Proposed Amendments to Form 8–K

We are similarly not adopting the other proposed amendments to Form 8–K, including the two proposed reporting items regarding material changes to investment objectives or policies and material write-downs.[326] Although the two proposed reporting items also would have applied to BDCs, we are not adopting these current reporting requirements for any affected funds. Commenters generally opposed these proposed reporting items and argued that existing disclosure is adequate.[327] We will continue to consider the adequacy of affected fund disclosure, including the availability and timeliness of information about material changes in investment objectives or policies and material write-downs of significant investments, as part of our ongoing review of the effectiveness of investment company disclosure.[328] Rather than establish new current reporting requirements for affected funds on a piecemeal basis in this release, we believe it is more appropriate to consider current reporting in connection with a broader, systematic review of investment company disclosure.

4. Online Availability of Information Incorporated by Reference

We are adopting, as proposed, amendments to Form N–2's General Instruction for Incorporation by Reference.[329] All registered CEFs and BDCs currently can backward incorporate their financial information from previously-filed Exchange Act reports into the prospectus or SAI. However, Form N–2 currently requires that a fund provide to new purchasers a copy of all previously-filed materials that the fund incorporated by reference into the prospectus and/or SAI.[330] Under the amendments, and as proposed, we are removing the requirement that a fund deliver to new investors information that it has incorporated by reference into the prospectus or SAI.[331] These amendments will allow the fund to make its prospectus, SAI, and the incorporated materials readily available and accessible on a website identified in the fund's prospectus and SAI.[332] Affected funds will also be required to provide incorporated materials upon request free of charge. We believe this approach will improve the online accessibility of the prospectus and SAI and any documents that are incorporated by reference for investors that wish to review such information online, and will facilitate the efficient use of incorporation by reference by affected funds.[333] The only commenter who addressed this approach supported it,[334] and we are adopting it as proposed.

5. Amendments to Certain Registered CEFs' Annual Report Disclosure

We are adopting, largely as proposed, amendments to rule 8b–16(b) that are designed to allow investors in registered CEFs that rely on the rule to more easily identify and understand key information about their investments.[335] Although rule 8b–16(a) generally requires registered investment companies to update their registration statements annually, rule 8b–16(b) currently allows registered CEFs to forgo an annual update provided that they disclose in their annual reports certain key changes that have occurred during the prior year.[336] Disclosures that describe a specific change to a fund strategy or risk may not have sufficient context to allow investors to understand the effect of such change, potentially leaving shareholders to have to look at a series of documents—from the fund's prospectus, which could be several years old, plus each subsequent annual report—to understand certain key information about the fund, such as its current investment strategy or principal risk factors.[337] Accordingly, we proposed to require funds that rely on rule 8b–16(b) to describe any changes in enough detail to allow investors to understand each change and how it may affect the fund.[338] For example, as stated in the Proposing Release, to the extent a fund's principal investment objectives, investment policies or principal risks have changed, the fund should describe its objectives, policies or risks before and after the change.[339]

The one commenter to address this aspect of the proposal stated that a closed-end fund's annual report should include a full description of the fund's current objectives, strategies and risks, as many closed-end funds do not maintain a current registration statement, which would otherwise include this information.[340] One

[326] *See* Proposing Release, *supra* footnote 10, at section II.H.3.b. Since we are not adopting the proposed items to Form 8–K, we also are not amending the safe harbor in Exchange Act rules 13a–11 and 15d–11 to include those items. *See* Proposing Release, *supra* footnote 10, at n.289.

[327] *See* ABA Comment Letter (suggesting that neither of the proposed items would provide additional important information); ACC Comment Letter (opposing the proposed material write-down item for BDCs in particular); CBD Comment Letter.

[328] *See* Investor Experience Request for Comment, *supra* footnote 274.

[329] *See* General Instruction F of amended Form N–2.

[330] *See* General Instruction F.3 of amended Form N–2 (requiring the material incorporated by reference to be provided with the prospectus and/or the SAI to each person to whom the prospectus and/or the SAI is sent or given, unless the person holds securities of the fund and otherwise has received a copy of the material); *see also* Proposing Release, *supra* footnote 10, at text accompanying nn.309–311.

[331] We also are amending Form N–2's current disclosure requirements for incorporation by reference, by replacing these current instructions with a new General Instruction F.4, which largely mirrors the disclosure requirements in Item 12(c) of Form S–3. The new instruction streamlines—but does not substantively change (other than the website disclosure provision discussed below)—the disclosure requirements for incorporation by reference in current Form N–2.

[332] New General Instruction F.4.a of amended Form N–2; *cf.* General Instruction VII.F of Form S–1; General Instruction F.4.b.(5) of amended Form N–2; *cf.* Item 12(c)(1)(v) of Form S–1. We are amending current General Instruction F.3 in its entirety, and moving its requirement directing a fund to state in the prospectus and SAI that it will furnish, without charge, a copy of the incorporated materials on request, to new General Instruction F.4.b of amended Form N–2. We also are conforming certain incorporation by reference provisions in Form N–2 to mirror parallel provisions in Form N–1A. *See* new General Instruction F.2.a–c of amended Form N–2; *cf.* General Instruction D.1.(a)–(c) of Form N–1A.

[333] *See* Proposing Release, *supra* footnote 10, at nn.313–317 and accompanying text.

[334] *See* SIFMA Comment Letter.

[335] *See* amended Investment Company Act rule 8b–16.

[336] Current rule 8b–16(b) (requiring disclosure in the annual report of information that repeats or updates certain key prospectus disclosures, specifically: (1) Information about the fund's dividend reinvestment plan; (2) material changes in the fund's investment objectives or policies that have not been approved by shareholders; (3) any change concerning the fund's control provisions that has not been approved by shareholders; (4) material changes in the principal risk factors associated with an investment in the fund; and (5) any portfolio manager changes). Except for information about the fund's dividend reinvestment plan (which requires a complete description of the plan), the fund must only disclose changes that have occurred during the year covered by the annual report.

[337] *See* Proposing Release, *supra* footnote 10, at n.323 and accompanying text. *See also* Investor Experience Request for Comment, *supra* footnote 274, in which we sought input from individual investors on how to enhance fund disclosures.

[338] *See* Proposing Release, *supra* footnote 10, at 136.

[339] *Id.*

[340] *See* Peres Comment Letter (noting that ''[i]f there is a change to an objective, strategy or risk in the past year, they describe the change in the annual report. However, there is no complete description of a fund's current objectives, strategies and risks. To learn this information, an investor would need to look at the fund's most recent registration statement (which could be from decades ago) and review each annual report since that time.'').

The Proposing Release requested comment on whether we should adopt different disclosure requirements for funds that rely on rule 8b–16, including whether we should require such funds to summarize in their annual reports certain key information that would be required in a current

Continued

commenter described difficulties faced by investors in determining an affected fund's current investment objectives and policies, with another requesting a single location where such key information could be found.[341]

As proposed, we are requiring funds that rely on rule 8b–16(b) to describe certain key changes in enough detail to allow investors to understand each change and how it may affect the fund.[342] We believe that in giving context for a change to one or more of the required disclosures, it is particularly effective for a fund to describe current information regarding related disclosures, as this approach may facilitate a more complete understanding of how a change to one aspect of the fund impacts the fund more broadly. Such disclosures must be prefaced with a legend clarifying that the disclosures provide only a summary of certain changes that have occurred in the past year, which may not reflect all of the changes that have occurred since the investor purchased the fund.[343]

In response to comments and in a change from the proposal, we also are requiring any affected fund that relies on rule 8b–16(b) to describe the fund's current investment objectives, investment policies, and principal risks in its annual report.[344] These key disclosures must be provided, even if there were no changes in the past year. This will ensure that investors can access in a single location current information about key aspects of the fund in which they invest. We believe that funds could increase the effectiveness of this disclosure by presenting it concisely, in accordance with ''plain English'' principles for organization, wording, and design. We similarly encourage funds to tailor their disclosures to how the fund operates rather than rely on generic, standard disclosures about the fund's investment policies and risks. Finally, we encourage funds to describe principal risks in order of importance, with most significant risks appearing first (*i.e.,* not listing risks in alphabetical order).

J. Effective and Compliance Dates

Effective Dates. The final rule will become effective on August 1, 2020. While we proposed that the rule would become effective 60 days from publication in the **Federal Register**, we are establishing a fixed date so that the amendments to certain rules and forms adopted pursuant to the Variable Contract Summary Prospectus Adopting Release will be effective prior to the amendments to the same rules and forms adopted herein.[345] The August 1, 2020 effective date will apply to all aspects of the final rule, except for the following:

• *Rules 23c–3, 24f–2, and Form 24F–2.* The amendments to rules 23c–3, 24f–2, and Form 24F–2 [346] will become effective August 1, 2021 (one year after other aspects of the final rule take effect, as proposed). One commenter suggested making the amendments to rules 23c–3 and 24f–2 immediately effective for new interval funds so they can pay registration fees based on the net issuance of shares sold during their initial fiscal year, and allow existing funds to use the new payment method as soon as possible thereafter.[347] While we agree that interval funds should be able to calculate fees on Form 24F–2 as soon as possible, as proposed, the amendments to rules 23c–3 and 24f–2 will become effective one year after the final rule's effective date to provide sufficient time to modify the Commission's systems to accept such filings from interval funds.[348]

• *Rules 456 and 457 and Forms S–1, S–3, F–1 and F–3:* The amendments to rules 456 and 457 and Forms S–1, S–3, F–1 and F–3 under the Securities Act will become effective August 1, 2021.

Compliance Dates. We are adopting compliance dates for certain new requirements to provide a transition period after the effective date of the final rule.

• *MDFP.* As proposed, an annual report filed by a registered CEF one year or more after the effective date of the final rule will be required to include the MDFP disclosures.[349] We received no comments on this proposed compliance period. Affected funds must comply with this requirement by August 1, 2021.

• *Structured Data Requirements (Financial Statement, Cover Page, and Prospectus Information).* We proposed that all affected funds subject to the Inline XBRL structured data reporting requirements for financial statement, registration statement cover page, and prospectus information that are eligible to file a short-form registration statement would be required to comply with those provisions 18 months after the effective date, and all other affected funds to comply 24 months after the effective date. The one commenter who addressed this aspect of the release recommended that any new Inline XBRL requirements have a compliance date later than that required for open-end funds.[350] We are extending the compliance period by an additional six months to align more closely with the Inline XBRL compliance periods for other fund registrants.[351] Accordingly, affected funds that are eligible to file a short-form registration statement will be required to comply with those provisions 24 months after the effective date, or August 1, 2022. All other affected funds subject to these requirements must comply 30 months after the effective date, or February 1, 2023. Affected funds will be permitted to file in Inline XBRL prior to the compliance date once EDGAR has been modified to accept submissions in Inline XBRL for all forms subject to the amendments, which is anticipated to be March 2021. Notice of EDGAR system readiness to accept filings in Inline XBRL will be provided in a manner similar to notices of taxonomy updates and EDGAR Filer Manual updates.

• *Structured Data Requirements (Form 24F–2).* As proposed, all filers on Form 24F–2 (including existing Form 24F–2 filers, such as open-end funds and unit investment trusts, as well as interval funds) will be required to file reports on the form in an XML structured data format 18 months after the effective date, or February 1,

prospectus. *See* Proposing Release, *supra* footnote 10, at section II.H.5.

[341] *See* ABA Comment Letter (''[M]any Affected Funds were organized many years ago, and since the relevant information may be spread among the prospectus used for the Affected Fund's most recent public offering (which may have taken place years or even decades ago), proxy statements and reports to shareholders spanning many years, it can be a burdensome undertaking to piece such information together.''); *see also* Dale White Comment Letter (''There should always be a current document where an investor can see a fund's strategy, risks, performance, and costs each year.'').

[342] *See* paragraph (e) of amended Investment Company Act rule 8b–16.

[343] *Id.*

[344] *See* amended rule 8b–16(b)(2), (4).

[345] *See* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (March 11, 2020) (''Variable Contract Summary Prospectus Adopting Release'').

[346] *See supra* section II.G.

[347] *See* ICI Comment Letter.

[348] To facilitate the transition to calculating fees on Form 24F–2, an interval fund's fee calculation should exclude excess shares that were registered under the fund's last registration statement on Form N–2 that remain unsold prior to the effectiveness of rule 24f–2 as applied to interval funds.

[349] *See supra* section II.H.2.b.

[350] *See* ICI Comment Letter (citing Inline XBRL Adopting Release, *supra* footnote 250, which requires open-end funds to comply with the Inline XBRL requirements on September 17, 2020 (24 months post-effective date) for ''large fund groups'' and September 17, 2021 (36 months post-effective date) for ''small fund groups'').

[351] *Id.; see also* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 345 (requiring variable contracts to comply with the Inline XBRL requirements on January 1, 2023 (30 months post-effective date)).

2022.[352] The one commenter who addressed the proposed 18-month transition period supported it.[353]

III. Economic Analysis

We are adopting amendments to our rules designed to carry out the requirements of section 803 of the BDC Act and section 509 of the Registered CEF Act and tailor the disclosure and regulatory framework for affected funds in light of the amendments to the offering rules applicable to them. Currently, affected funds face regulatory impediments to capital formation as they are not able to use the flexible and less costly offering process that operating companies use when conducting registered securities offerings. This may hinder affected funds' ability to raise capital, take advantage of favorable market conditions as operating companies do, and enjoy lower cost of capital and lower offering costs. Additionally, because of existing rules, affected funds generally are unable to communicate about an offering before a registration statement is filed, and their post-filing communications are subject to prospectus liability under section 12 of the Securities Act (or must be accompanied or preceded by the statutory prospectus). The final rule will provide incremental flexibility to funds in their communications, which may increase the flow of information to investors. As discussed in detail above, the final rule will affect numerous distinct aspects of how our securities offering and communications rules apply to affected funds.[354]

A. Introduction and Baseline

We are sensitive to the economic effects that may result from the final rule, 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, and section 2(c) of the Investment Company Act state that 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, we must 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 have considered the potential costs and benefits that would result from the final rule, as well as the potential effects on efficiency, competition, and capital formation. Many of the potential economic effects of the final rule would stem from the statutory mandates, while others would stem from the discretion we are exercising. We discuss the potential economic effects of the amendments to implement the statutory mandates in sections III.B and III.C. We considered certain alternatives to our approach to implementing the statutory mandates, as discussed in section III.D. We are also adopting certain other amendments to tailor affected funds' disclosure and regulatory framework. We discuss the potential economic effects of these discretionary amendments, as well as reasonable alternatives to these provisions, in section III.E. Where possible, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the final rule. 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.

The baseline we use to analyze the potential effects of the final rule is the current set of legal requirements and market practices. The final rule likely will have a significant impact on the security offering requirements and disclosure practices of affected funds. The overall magnitude of the benefits and the costs associated with the final rule will depend on many factors, including the number of affected funds that rely on the final rule. We recognize that some affected funds would not satisfy the conditions in certain of the amendments (*e.g.,* those limited to WKSIs or funds that file a short-form registration statement on Form N–2), and other affected funds may satisfy the conditions but choose not to rely on the final rule. The discussion below describes our understanding of the markets and issuers that will be affected by the final rule.

1. Number of Affected Funds

The final rule will affect BDCs and registered CEFs. As of June 30, 2019, there were 791 affected funds, including 105 BDCs and 686 registered CEFs. To estimate the number of BDCs, we use data from Form 10–K and Form 10–Q filings as of June 30, 2019, the latest data available.[355] We identify 51 listed BDCs and 54 unlisted BDCs. The average net assets of the listed BDCs is approximately $820 million, and the average of their total assets is $1.5 billion. Based on trading data as of June 30, 2019, 44 of the listed BDCs have public float greater than $75 million (*i.e.,* one of the transaction requirement thresholds for primary offerings under the short-form registration instruction) and 15 of those BDCs have public float greater than $700 million (*i.e.,* the WKSI public float threshold).[356]

We use data from Morningstar and SEC filings to estimate the number of registered CEFs.[357] We identify 497 registered CEFs that were listed on an exchange as of June 30, 2019, including 1 interval fund. There were 189 unlisted registered CEFs as of June 30, 2019, including 60 interval funds. The average net assets of the listed registered CEFs is approximately $551 million, while the average net assets of the unlisted registered CEFs is approximately $382 million.[358] Based on trading data as of June 30, 2019, 455 of the listed registered CEFs have public float greater than $75 million, and 85 of those funds have public float greater than $700 million.[359] Information about the types

[352] *See supra* section II.H.1.d.

[353] *See* ICI Comment Letter.

[354] *See supra* section I for summary of final rule.

[355] The estimated number of BDCs includes BDCs that have not registered a securities offering on Form N–2. Certain of our amendments, such as the requirement to tag certain Form N–2 prospectus disclosure items in Inline XBRL, will only apply to affected funds that have filed a registration statement on Form N–2. As a result, our quantitative estimates of the costs and paperwork burdens of these amendments with respect to BDCs may be over-estimates in certain respects.

[356] The data (as of June 30, 2019) on prices and shares outstanding, which are used to calculate the public float, is taken from the Center for Research of Securities Prices (''CRSP'') database. CRSP data on shares outstanding includes all publicly held shares.

[357] The estimated number of registered CEFs includes registered CEFs that have not registered a securities offering under the Securities Act. Certain of our amendments, such as the structured data requirements, will apply somewhat differently to these registered CEFs and may impose fewer burdens on them. For example, a registration statement that is filed under only the Investment Company Act is not required to include financial highlights information under Item 4 of Form N–2, while registered CEFs that file a registration statement under the Securities Act must disclose financial highlights information and tag that information in Inline XBRL. *See* General Instructions G and H of amended Form N–2. Thus, our quantitative estimates of the costs and paperwork burdens of certain of the amendments with respect to registered CEFs may be over-estimates in certain respects.

[358] The average of net assets of registered interval funds is $520 million.

[359] This includes the listed interval fund, which had public float of approximately $73 million as of

Continued

of offerings conducted by different categories of affected funds for the period of July 1, 2014—June 30, 2019 is reflected in the below table.[360]

TABLE 3

Types of offerings	Offering statistics	Listed BDCs	Unlisted BDCs	Listed registered CEFs	Unlisted registered CEFs
Registered offerings	Number of offerings	113	24	26	137
	Total amount raised	$12.2 bil	$1.7 bil	$5.2 bil	$20.3 bil
	Average (median) offering amount	$107.9 mil ($60.0 mil).	$7.8 mil ($7.2 mil).	$201.3 mil ($103.8 mil).	$176.3 mil ($31.0 mil)
Regulation D offerings	Number of offerings	21	67	1	165
	Total amount raised	$12.3 bil	$9.1 bil	$15.1 mil	$7.5 bil
	Average (median) offering amount	$584.7 mil ($100 mil).	$135.0 mil ($50.0 mil).	$15.1 mil ($15.1 mil).	$45.6 mil ($6.1 mil)

As of September 2019, there were 7,995 mutual funds, 2,076 ETFs, and 4,758 UITs. Thus, together with the 791 affected funds, there is a total of 15,620 funds, affected and non-affected. This means that affected funds represent about 5.1% of the total number of funds. As of September 2019, mutual funds had approximately $20,156 billion in assets, ETFs had approximately $4,024 billion in assets, UITs had approximately $76 billion in assets, and affected funds had approximately $459 billion in assets. Thus, affected funds represent about 1.8% of total investment company assets.

We use data from Morningstar and SEC filings to estimate the number of affected ETPs. We identify 68 such ETPs as of December 31, 2019.

2. Current Securities Offering Requirements for Affected Funds

The securities offering process for affected funds at present differs from that for operating companies. Affected funds register their securities offerings on Form N–2, while operating companies use other forms (*e.g.,* Form S–1 or Form S–3). As discussed in more detail above in sections II.B, II.C, and II.F, registered investment companies and BDCs are excluded from certain offering and communications rules available to operating companies.

Affected funds currently are expressly excluded from the WKSI definition. As a result, even if they would otherwise meet the WKSI definition, they are unable to, for example, file an automatic shelf registration statement or communicate about an offering before filing a registration statement.[361]

Affected funds currently can conduct shelf offerings under rule 415(a)(1)(x) if they meet the applicable eligibility criteria for Form S–3, even though affected funds register their securities offerings on Form N–2. Affected funds conducting shelf offerings, however, currently experience certain burdens not faced by operating companies.[362] For example, affected funds conducting shelf offerings currently must file post-effective amendments to make certain updates to their registration statements, while operating companies conducting shelf offerings may update their registration statements through forward incorporation by reference. As a result, affected funds can incur additional expense or delay for shelf offerings, which can affect the timing of their capital-raising. Similarly, different rules apply to affected fund communications as opposed to operating company communications.[363] These differences can impose additional costs or constraints on affected funds or others because, for example, underwriters may be more familiar with the operating company rules. Further, affected funds currently are required to deliver a final prospectus to investors.[364] Final prospectuses can be lengthy, particularly for BDCs because they generally do not take advantage of backward incorporation by reference currently permitted for certain financial and related information. For example, the median page length of prospectuses filed by listed BDCs is approximately 234 pages.[365]

3. Current Disclosure Obligations of Affected Funds

Affected funds differ in their periodic and current reporting obligations. Like operating companies, BDCs file annual reports with audited financials on Form 10–K, quarterly reports with unaudited financials on Form 10–Q, and current reports on Form 8–K. Registered CEFs file annual reports to shareholders with audited financials and semi-annual reports to shareholders with unaudited financials on Form N–CSR. Listed registered CEFs are also subject to exchange rules that require listed issuers to provide the market current information in response to certain events (*e.g.,* dividends announcements through a press release or report on Form 8–K).[366]

B. Potential Benefits Resulting From the Proposed Implementation of the Statutory Mandates

As discussed, the amendments to implement the statutory mandates are designed to provide securities offering parity between affected funds and operating companies and streamline the registration process for BDCs and registered CEFs, consistent with the BDC Act and the Registered CEF Act. We believe that the final rule will achieve this goal and consequently result in significant benefits in a number of areas, including by improving access to the public capital markets and possibly lowering the cost of capital by, among other things, modifying our rules related to affected funds' ability to qualify as WKSIs, to use the full shelf registration process, and to engage in

June 30, 2019. Data on prices and shares outstanding, which is used to calculate the public float, is taken from CRSP.

[360] Data on registered offerings (initial public offerings, equity offerings by seasoned issuers, convertible debt offerings, and public debt offerings) for BDCs and listed registered CEFs is taken from Securities Data Corporation's New Issues database (Thomson Financial). Data on Regulation D offerings was collected from all Form D filings (new filings and amendments) on EDGAR. Data on registered offerings for unlisted registered CEFs was collected from Form N–2 and Form N–CSR filings on EDGAR.

[361] *See supra* section II.C.

[362] *See supra* section II.B.1.

[363] *See supra* section II.F.

[364] *See supra* section II.E.

[365] This estimate is based on recent Form N–2 filings of the 49 listed BDCs. BDCs generally do not rely on existing Form N–2 backward incorporation by reference provisions because the form requires affected funds to provide to new purchasers a copy of all previously-filed materials that the fund incorporated by reference into the prospectus and/or SAI.

[366] *See supra* footnote 314.

certain communications during a registered offering.[367] Additionally, as discussed below, we believe that the final rule will provide benefits to investors as well, including by increasing the flow of valuable information that could be available to investors to inform their investment decisions. Finally, we believe that the final rule will provide cost-saving options to affected fund issuers and underwriters.

1. Improved Access to Capital and Lower Cost of Capital

We anticipate that the final rule will facilitate capital formation and possibly lower the cost of capital by improving access to the public capital markets for affected funds. The rule is designed to reduce regulatory impediments to capital formation and provide more flexibility to these funds to conduct registered securities offerings. The amount of flexibility accorded by the final rule will depend on the characteristics of the affected fund, consistent with our rules' treatment of similarly-situated operating companies. For example, and as explained below, certain affected funds like large listed BDCs and large listed registered CEFs are expected to benefit more from the final rule than unlisted BDCs and unlisted registered CEFs, including unlisted interval funds. The final rule will provide the most flexibility under the communications rules and the automatic shelf registration system to eligible WKSIs. Other affected funds, such as seasoned affected funds, also will benefit, albeit to a lesser degree, from the other revisions to the offering process and our communications rules.

a. Benefits From WKSI Status

The largest increase in capital formation and reduction in cost of capital that the final rule could generate will come from allowing affected funds to obtain WKSI status. Affected funds that qualify as WKSIs will enjoy additional flexibility compared to affected funds that are non-WKSIs.[368] There are 100 affected funds (15 listed BDCs and 85 listed registered CEFs) that meet the $700 million dollar public float criterion as of June 30, 2019.[369] A shelf registration statement and any subsequent amendments filed by a WKSI are automatically effective upon filing. This flexibility will allow affected funds that qualify as WKSIs to promptly tap favorable conditions in the public market, to structure terms of securities on a real-time basis to accommodate investor demand, and to determine or change the plan of distribution in response to changing market conditions. For example, because affected funds typically trade at a discount to their NAV,[370] affected funds that are WKSIs will be able to act more quickly to raise capital when their shares are trading at a premium,[371] thus increasing the amount of capital raised and enhancing capital formation.

Additionally, WKSIs are not required to pay any registration fees at the time of filing a registration statement. They are only required to pay the registration filing fee at the time securities are taken down and sold off the shelf registration statement. This will provide additional flexibility to qualifying affected funds in that they need only incur such filing fees if and when they decide to proceed with an offering. The final rule may also lower the cost of capital because it will provide significant flexibility to affected funds that are WKSIs and their underwriters in marketing securities. The final communications rules will allow these funds to communicate at any time regarding an offering.

Requiring an affected fund to have at least $700 million in public float to qualify as a WKSI will avoid providing affected funds with an advantage in the competition for capital over certain operating companies. For example, a lower public float threshold for affected funds would provide them with a competitive advantage over operating companies that may have similar characteristics to affected funds, such as listed REITs, but have public float below $700 million. In a similar vein, the use of alternative eligibility criteria for affected funds to qualify as WKSIs would put them at competitive advantage compared to similar operating companies without public float, such as unlisted REITs. Moreover, reducing the $700 million threshold or providing alternative eligibility criteria for affected funds to qualify as WKSIs would likely lead to potential higher incidences of disclosure and fund practices that may not comply with applicable law due to reduced staff review.[372]

Given the important benefits that WKSI status provides, and the fact that currently only few affected funds would qualify as WKSIs, it is possible that advisers to some affected funds may try, through various means, including raising additional capital and mergers and acquisitions, to increase their funds' public float to the WKSI threshold. Thus, the possible effects of the rule may include increased fund size and consolidation of affected funds. Such developments may increase efficiency by allowing the larger resulting funds to benefit from improved access and lower cost of capital. We also recognize that consolidation may be driven by other factors as well, in combination with the effects of the rule, and typically would be subject to certain approvals by a fund's board of directors or shareholders.[373] Potential consolidation and increases in fund size could also reduce costs to investors by, for example, allowing an affected fund to realize greater efficiencies and reduce its total operating expenses over time. However, consolidation also could inhibit competition and negatively affect the number of investment opportunities available to investors if it leads to a reduction of the number of strategies funds employ. It is possible that new funds will enter the market thereby increasing competition and investment opportunities. Potential consolidation of affected funds could make it more difficult for new or smaller funds to compete since funds with larger amounts of assets may have better access to certain investment opportunities or may be able to offer lower costs to investors. Smaller funds, however, may have better access to investment opportunities in smaller companies because these investments may be too small to be economically viable for larger funds. At present, we are not able to estimate the effects of these competitive dynamics.

b. Benefits From Shelf Registration

Other provisions of the final rule could also enhance capital formation and lower the cost of offerings for affected funds that qualify as seasoned funds and file a short-form registration statement on Form N–2.[374] For example,

[367] *See also infra* section III.E (discussing benefits associated with our discretionary rule amendments).

[368] *See supra* section II.C.

[369] *See supra* section III.A.1.

[370] *See, e.g.,* Jonathan B. Berk and Richard Stanton, *Managerial Ability, Compensation, and the Closed-End Fund Discount,* Journal of Finance, Vol. 62, 529–556 (2007); Jeffrey Pontiff, *Costly Arbitrage: Evidence from Closed-End Funds,* Quarterly Journal of Economics, Vol. 111, 1135–1151 (1996); Charles M. C. Lee, Andrei Shleifer, and Richard H. Thaler, *Investor Sentiment and the Closed-End Fund Puzzle,* Journal of Finance Vol. 46, 76–110 (1991).

[371] *See supra* footnote 37 (discussing restrictions on affected funds' ability to sell their shares at a price below NAV).

[372] *See also infra* section III.D (discussing considerations related to an alternative of modifying the public float standards in the WKSI definition by changing the required level of public float or providing alternative eligibility criteria).

[373] *See, e.g.,* 17 CFR 270.17a–8 (Investment Company Act rule 17a–8).

[374] *See supra* section II.B.

the final rule generally allows these funds to more efficiently use the shelf registration process if, like operating companies, they meet the eligibility requirements of Form S–3.[375] As of June 30, 2019, there were 499 affected funds that met the $75 million dollar public float criterion for primary offerings under Form S–3 (which criterion is incorporated into the short-form registration instruction of Form N–2).[376] Affected funds that qualify will bear fewer costs associated with updating the information in their registration statements because information in the fund's Exchange Act reports will be incorporated by reference into the fund's registration statement. For example, for PRA purposes, we estimate that eligible affected funds will file approximately 128 fewer post-effective amendments annually as a result of the amendments, resulting in an annual aggregate cost reduction of approximately $5,726,592 for these funds.[377] Additionally, we understand that currently BDCs often file prospectus supplements close-in-time to filing their current and periodic Exchange Act reports to make sure the BDC's prospectus disclosure provides the same information as that disclosed in its Exchange Act reports. Under the final rule, eligible BDCs will no longer file these prospectus supplements since their Exchange Act reports will be incorporated by reference into their registration statements. As a result, an eligible BDC may, on average, file approximately 14 fewer prospectus supplements on an annual basis under the rule.[378] We anticipate that eligible registered CEFs also will be able to make fewer prospectus supplement filings under the final rule, although they likely will not experience as large of a reduction in filings since, among other things, they file periodic reports on a semi-annual basis (rather than quarterly) and generally are not required to report on Form 8–K. While we believe that affected funds will likely file fewer prospectus supplements under the final amendments, we are unable to estimate any reduction in the number of prospectus supplements that affected funds will file under the final rule, and any associated cost savings for affected funds, due to certain counterbalancing factors. For example, if the final rule causes affected funds to increase their capital-raising activities, they may need to update their prospectuses more often and may file more prospectus supplements as a result. However, if affected funds begin to use their Exchange Act reports to update their prospectuses, as permitted under the final amendments, they may file fewer prospectus supplements.[379] On average, we believe that affected funds will likely file fewer prospectus supplements under the final amendments since they will be able to update their prospectus more efficiently by forward incorporating their Exchange Act reports, although an affected fund that greatly increases its capital-raising activities may not experience the same reduction in filing burdens.

In general, we believe affected funds that qualify for the short-form registration instruction will experience cost savings associated with making fewer filings and will be able to use a more efficient process to update their prospectus disclosure. This will decrease the costs of eligible funds' registered offerings and will also allow them to act more quickly to take advantage of favorable market conditions (*e.g.,* when trading at a premium). Certain seasoned funds registering shelf offerings also will be able to omit certain information from their prospectuses and use the same process as operating companies to provide omitted information by filing a prospectus supplement, which will generally make the shelf registration process less costly for these funds as compared to the baseline.

The final rule also may provide incremental cost savings to affected funds that are eligible to file a short-form registration statement in certain other respects. For example, the final rule will reduce the costs of these funds seeking shareholder approval for proposals to authorize, issue, modify, or exchange securities by allowing them to incorporate by reference certain materials rather than delivering these materials to security holders with the proxy statement.[380] We do not anticipate that these cost savings will be substantial, however, as we understand that affected funds do not often make these types of proposals to security holders. Affected funds that are eligible to file a short-form registration statement also could experience modest cost savings from the amendment to rule 418 since they will no longer be required by that rule to furnish certain information to the Commission or its staff promptly on request.[381]

c. Other Benefits for Affected Funds

The final rule will generate other benefits for affected funds generally, regardless of whether they are WKSIs or seasoned funds. For example, the amendment to require affected funds to follow the same process that operating companies follow to file prospectuses under rule 424 will require that affected funds file prospectus supplements when changes from or additions to a previously filed prospectus are substantive, whereas currently they are required to file every prospectus that varies from any previously filed prospectus under rule 497.[382] Rule 424 also is designed to work together with rule 415(a)(1)(x), and provides additional time for an issuer to file a prospectus. This change could modestly reduce filing burdens and should facilitate eligible funds using the shelf registration process efficiently and in parity with operating companies. Also, the final rule allows an affected fund to satisfy its obligation to deliver a final prospectus by filing it with the Commission and complying with certain other requirements, thus decreasing the cost of the offering.[383] For example, the final rule will permit affected funds to save on printing and mailing costs for delivering the final prospectus in paper.[384]

[375] The short-form registration instruction refers to the eligibility criteria in Form S–3, with additional references to reporting requirements under the Investment Company Act.

[376] *See supra* section III.A.1.

[377] *See infra* section IV.B.1. For purposes of the PRA, we estimate that the hour burden of preparing and filing a post-effective amendment is 125 hours. Reducing the number of post-effective amendments by 128 filings would decrease the aggregate annual burden of Form N–2 by 16,000 hours (125 hours × 128 post-effective amendments = 16,000 hours). We estimate that the monetized internal burden is $33,625 per post-effective amendment and the external burden is $11,114 per post-effective amendment. *See infra* section IV.B.1. The total annual cost is calculated by adding the monetized internal burden ($33,625 × 128 post-effective amendments = $4,304,000) to the cost of outside professionals ($11,114 × 128 post-effective amendments = $1,422,592). Although we have increased the expected reduction in the number of post-effective amendments discussed in the Proposing Release from 112 to 128 filings, the estimated annual aggregate cost reduction has decreased from $7,943,376 to $5,726,592 to better recognize how we have monetized internal burdens for purposes of the PRA. *See* Proposing Release, *supra* footnote 10, at n.359 and accompanying text; *infra* section IV.B.1.

[378] This analysis assumes that a BDC would file a prospectus supplement for each Form 10–Q filing (3 filings per year), Form 10–K filing (1 filing per year), and Form 8–K filing (estimated to be 10 filings per year), for a total of 14 periodic and current reports per year. *See* Proposing Release, *supra* footnote 10, at n.415 and accompanying text (discussing the estimated number of Form 8–K filings per BDC per year).

[379] *See supra* sections II.B.3.e and II.I.2.a.

[380] *See supra* section II.G.2.

[381] *See supra* section II.G.1.

[382] *See supra* section II.B.3.d.

[383] *See supra* section II.D.

[384] Because a fund is not required to report the extent to which it relies on Commission guidance, we lack information to estimate the percentage of funds that solely or predominantly rely on electronic delivery under existing Commission

In general, commenters stated that the rule will generate benefits for affected funds. Several commenters stated that the proposed rule would lead to a more efficient capital-raising process.[385] One commenter suggested that the proposed rule could also help encourage product development that would expand the universe of registered CEFs, but did not elaborate on the specific aspects of the rulemaking that would encourage product development.[386]

d. Benefits for Other Parties

The lower costs of registered offerings resulting from the final rule should benefit investors in affected funds because funds bear offering expenses. Lowering offering expenses may, all else equal, reduce the size of the discount or increase the size of the premium at which shares of the affected funds trade. Two commenters expressed similar views, arguing that the proposed rule would provide cost savings to funds' shareholders.[387]

In addition, the final rule could reduce the cost to underwriters of participating in registered offerings of affected funds, and these potential cost savings could be passed on to the affected funds. Based on the sheer volume and number of transactions,[388] underwriters may have more expertise and established procedures for operating companies' registered offerings, which are subject to the rules we are extending to affected funds. In contrast, underwriters probably have less, or more concentrated, expertise regarding the current requirements for offerings by affected funds. Standardization in the registered offering space, by making the offerings of affected funds more similar to those of operating companies, could make it easier for underwriters to execute such offerings and may decrease their compliance costs. If underwriters pass some of the cost savings on to affected funds and their investors, this could result in cheaper registered offerings for affected funds, thus encouraging them to raise more capital, which would lead to enhanced capital formation. Lastly, standardization may encourage a broader set of underwriters to participate in this market, potentially decreasing costs for affected funds and investors in these funds. One commenter agreed that the proposed rule would make it easier for underwriters to execute offerings by affected funds, which could lead to decreased costs.[389]

The final rule could level the securities offering playing field between affected funds and operating companies and streamline the registration process for affected funds, consequently making them potentially more competitive in the market for capital raising. The final rule may also make certain affected funds more competitive compared to affected funds that either cannot or choose not to rely on these amendments. Thus, the final rule will likely enhance competition in the public capital markets. The increased competition for capital in turn could lead to potentially better allocation of capital. The final rule may also benefit companies in which affected funds invest. Small and mid-size companies, because of their size, type of assets, risk profile, and the general lack of information about their activities and financial condition, typically find it more difficult to raise funds from traditional sources of capital such as bank loans and registered offerings.[390] This difficulty in sourcing more traditional financing constrains their ability to invest in profitable projects and grow. To the extent that the final rule improves capital-raising opportunities for affected funds that invest in these companies, this may result in investments in a greater number of small to mid-size U.S. companies, thus alleviating financial constraints of such companies and contributing to economic growth generally.[391] Commenters generally agreed that the proposed rule would facilitate capital formation, especially for small to mid-size businesses.[392] One commenter stated that the proposed rule could potentially stimulate economic growth.[393]

2. Facilitated Communication With Investors

The final rule will provide incremental flexibility to funds in their communications, which may increase the flow of information to investors.[394] Currently, affected funds generally are unable to communicate about an offering before a registration statement is filed, and their post-filing communications are subject to prospectus liability under section 12 of the Securities Act (or must be accompanied or preceded by the statutory prospectus).[395]

This standardization in the communications processes of affected funds, by making them similar to those of operating companies, will make it easier for underwriters to execute offerings by affected funds and thus may decrease their compliance costs, which in turn may lead to lower offering costs and potentially enhance capital formation. Additionally, under the final rule, affected funds that qualify as WKSIs can engage in the widest range of communications, including free writing prospectus communications about an offering with any party before a registration statement is filed. More generally, affected funds will be able to engage in certain other pre-filing communications, use free writing prospectuses after a registration statement is filed, and use certain communications that are not subject to prospectus liability. The changes in the communications rules for affected funds may increase the amount of valuable information that could be provided to investors before they make investment decisions, particularly with respect to WKSIs. We believe that more information could be provided on a timelier basis because the amendments will eliminate regulatory barriers to the dissemination of that information, and the markets may provide incentives for issuers, underwriters, and broker-dealers to produce additional

guidance. *See, e.g.,* Use of Electronic Media for Delivery Purposes, Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)]. Affected funds that rely to a greater extent on electronic delivery of final prospectuses under existing Commission guidance may realize smaller net cost savings under the rule.

[385] *See* ACC Comment Letter; CBD Comment Letter; SIFMA Comment Letter.

[386] *See* Invesco Comment Letter.

[387] *See* ICI Comment Letter; Invesco Comment Letter.

[388] For example, in 2017 non-fund issuers raised approximately $1.3 trillion in 1,846 registered debt offerings and $184 billion in 976 registered equity offerings. *See Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009–2017,* Division of Economic and Risk Analysis White Paper (Aug. 1, 2018), *available at https://www.sec.gov/dera/staff-papers/white-papers/dera_white_paper_regulation_d_082018.*

[389] *See* SIFMA Comment Letter.

[390] *See, e.g.,* Alan Berger and Gregory Udell, *The Economics of Small Business Finance: The Roles of Private Equity and Debt Markets in the Financial Growth Cycle,* Journal of Banking and Finance, Vol. 22, 613–673 (1998); Meghana Ayyagari, Asli Demirgüç-Kunt, and Vojislav Maksimovic, *How Important are Financing Constraints? The Role of Finance in the Business Environment,* World Bank Mimeo (2005); Crowdfunding, Securities Act Release No. 9974 (Oct. 30, 2015) [80 FR 71388 (Nov. 16, 2015)].

[391] *See, e.g.,* Torsten Beck, Asli Demirgüç-Kunt, and Ross Levine, *SMEs, Growth, and Poverty: Cross-Country Evidence,* Journal of Economic Growth, Vol. 10, 197–227 (2005); Ryan Decker, John Haltiwanger, Ron Jarmin, and Javier Miranda, *The Role of Entrepreneurship in U.S. Job Creation and Economic Dynamism,* Journal of Economic Perspectives, July, 3–24 (2014).

[392] *See* SIFMA Comment Letter; ACC Comment Letter; CBD Comment Letter.

[393] *See* ICI Comment Letter.

[394] *See supra* section II.F.

[395] *But see supra* footnote 144 (explaining that affected funds currently are permitted to engage in certain pre-filing test-the-waters communications under Securities Act rule 163B).

information. We also believe that the increased flexibility of affected funds in their communications with investors under the free writing prospectus rules will maintain appropriate investor protection, consistent with the protections that apply to affected funds' communications under rule 482. For example, the rules that allow affected funds to use free writing prospectuses are designed to assure that written issuer-provided or issuer-used information is publicly available. Additionally, the free writing prospectus will be a section 10(b) prospectus under the Securities Act and, as such, will be subject to liability under section 12(a)(2) as well as the anti-fraud provisions of the Federal securities laws.

Increased information flow can help promote efficient capital markets because the market may be able to value securities more accurately. For example, the final rule will permit broker-dealers to disseminate research about an affected fund if certain conditions are met. While broker-dealers currently may disseminate such research under rule 482, the amendments to rule 138 will likely reduce certain costs to broker-dealers associated with rule 482 (*e.g.,* filing costs and concerns associated with prospectus liability). This could allow more valuable information about affected funds to reach potential investors. Another benefit of increasing the information flow is that investors may become better informed in making portfolio allocation decisions in accordance with their particular risk-return profiles. In addition, the final rule may benefit broker-dealers who provide research reports on affected funds by reducing their potential liability exposure associated with such reports, relative to the baseline, which may encourage them to provide additional research and enhance information flow. Commenters generally agreed that the proposed rule would provide more flexibility for affected funds to communicate and would increase information flow.[396]

C. Potential Costs Resulting From the Proposed Implementation of the Statutory Mandates

1. Compliance Costs

The amendments we are adopting to implement the statutory mandates could increase affected funds' compliance costs in certain respects.[397] We also are cognizant of the fact that such an increase could be passed on to funds' investors. A potential cost of the final rule is that affected funds could incur increased filing or recordkeeping costs associated with issuer free writing prospectuses,[398] although affected funds currently face many of the same filing and recordkeeping costs under rule 482. For example, the ability of affected funds that qualify as WKSIs to use free writing prospectuses may increase the level of these funds' current communications (including certain communications prior to filing a registration statement that are presently prohibited), thus increasing the funds' filing and recordkeeping costs.[399] We estimate that affected funds that are WKSIs would have additional annual filing and recordkeeping costs of $200 per affected fund for free writing prospectuses used before the fund files a registration statement.[400] To the extent affected funds use free writing prospectuses for communications that currently occur under rule 482, the costs associated with free writing prospectuses could increase, and the costs associated with rule 482 advertisements could decrease. We are unable to predict, however, whether affected funds will be more likely to use free writing prospectuses than rule 482 communications or to engage in more communications with investors in practice as a result of the amendments.

Affected funds could also incur costs associated with adjusting their internal procedures for filing prospectus supplements.[401] Such costs could stem from the need to augment funds' information technology systems or train funds' employees, although, as recognized above, affected funds likely will be able to file fewer prospectus supplements under the final rule.

Parties that will be required to provide notices under rule 173,[402] including underwriters and dealers in certain circumstances, may incur additional costs due to the requirement to notify affected fund investors that they have purchased shares in a registered offering. In addition, these same parties may incur costs to establish procedures for receiving and complying with requests for final prospectuses. We believe that providing the notice to investors will not impose a significant incremental cost because the notice can consist of a pre-printed message that is automatically delivered with or as part of the confirmation required by 17 CFR 240.10b–10 (Exchange Act rule 10b–10). Accordingly, we estimate that the cost of complying with rule 173 will be approximately $0.05 per notice.[403] We estimate the annual cost of providing the notification will be approximately $831,729.[404] For the parties that are required to provide such notices, these additional costs of complying with rule 173 will be mitigated to a certain degree by the elimination of the requirement to supply a final prospectus to each investor.

2. Other Costs

Under the final rule, affected funds that qualify as WKSIs will be able to file shelf registration statements and post-effective amendments that become automatically effective. To the extent that investors previously benefited from the Commission staff's review of these filings before they become effective, allowing these filings of affected funds that are WKSIs to become automatically effective may eliminate such reviews and, as a result, possibly increase the costs to investors. Allowing affected funds that file short-form registration statements on Form N–2 to forward incorporate by reference could have a similar potential impact on investors. However, issuers will still face liability under the Federal securities laws for registration statement disclosures (*e.g.,* sections 12 and 17 of the Securities Act and section 10(b) of the Exchange Act

[396] *See* ACC Comment Letter; ICI Comment Letter; Invesco Comment Letter.

[397] *See also infra* section III.E (discussing compliance and other costs associated with the proposed discretionary amendments).

[398] *See supra* section II.F.1; *infra* section IV.B.4 (estimating the annual paperwork burden for free writing prospectuses under rules 163 and 433 for purposes of the PRA).

[399] *But see infra* Table 14 footnote 1 (discussing that only 10 WKSIs relied on rule 163 for the Commission's 2017 fiscal year).

[400] For purposes of the PRA, we estimate that, on average, affected funds that are eligible to be WKSIs (estimated as 100 funds) would file two free writing prospectuses under the proposed amendments to rule 163 each year. We estimate the total incremental burden would be approximately 0.125 hours and $150 for the service of outside professionals. *See infra* section IV.B.4. We monetize the internal burden of preparing and filing a free writing prospectus by multiplying the burden hours by an estimated wage rate of $400 per hour (0.125 × $400 = $50). The estimated wage figure is based on analysis in previous rulemakings. The total annual cost is calculated by adding the monetized internal burden ($50) to the cost of outside professionals ($150).

[401] *See supra* section II.B.3.d.

[402] *See supra* section II.D.

[403] The Commission has estimated the cost per rule 173 notice to be $0.05 for operating companies. *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44795. We assume the same cost will apply to rule 173 notices provided to affected fund investors.

[404] For the purpose of the PRA, we estimate that there will be 43,546 notices per year per affected fund with an effective Securities Act registration statement (estimated as 382 affected funds). The annual cost of providing rule 173 notification is calculated as the number of affected funds (382) × the number of notices per year (43,546) × the cost per notice ($0.05). *See infra* section IV.B.5.

and 17 CFR 240.10b-10 (rule 10b-5 under the Exchange Act)), which may ameliorate the potential costs associated with reduced staff review.[405]

More generally, allowing forward incorporation by reference under the short-form registration instruction could increase the analytical burden and search costs for potential investors. Currently, affected funds provide required information in the prospectus that is delivered to investors, and forward incorporation by reference is not allowed. Under the amendments, instead of having all the information available in one location, investors may need to separately access on a website or request the incorporated materials. As a result, costs to investors for assembling and assimilating necessary information could increase, with a potentially stronger effect for retail investors (*e.g.,* because they generally may not have the technical capabilities or monetary resources to efficiently search through several information sources). We do not have data to assess if, and to what extent, this revision will burden investors.

However, an affected fund making a shelf offering under rule 415(a)(1)(x) is required to file a new registration statement every three years, which provides investors with a periodic update of consolidated information.[406] The final rule will require that affected funds provide in their annual reports certain information currently disclosed in their prospectuses to make the information more readily available in one document for investors.[407] Further, Securities Act Forms S–3 and F–3 have long permitted incorporation by reference from the issuer's Exchange Act reports, and investors have not indicated they are unduly burdened when investing in offerings registered on these Forms.[408] Studies have shown, however, that the majority of investors in operating companies are institutional investors, whereas the majority of investors in the securities of affected funds are retail investors, who may face relatively higher costs associated with searching for information distributed across multiple documents.[409] In addition, the requirement to backward and forward incorporate by reference certain information into a short-form registration statement could increase an affected fund's liability with respect to information that has not previously been incorporated into its registration statement because this information will now be part of the registration statement. This could increase costs for relevant funds, including potential legal costs (*e.g.,* those associated with additional review of materials that would be incorporated by reference into the fund's registration statement, or counsel and other costs in connection with potential legal actions). These potential cost increases could be passed on to investors of affected funds.

The final rule will allow an affected fund to not deliver final prospectuses directly to investors if the fund files the final prospectus with the Commission and certain other conditions are satisfied. We acknowledge, however, that while this procedure has become commonplace in many aspects of our capital markets, there may be some investors who would prefer to receive the prospectus directly. While an investor could request a copy of the final prospectus under rule 173, there will be burdens on an investor to make such a request (*e.g.,* loss of time while making the request and a delay in receiving the prospectus). Thus, investors without home internet access, depending on their ability and preference to access fund information electronically, might experience a reduction in their ability to access a fund's final prospectus. To the extent that a reduction in this information by such investors decreases how informed they are about affected funds, it could potentially decrease their ability to efficiently allocate capital across affected funds and other investments. However, an investor's purchase commitment and the resulting contract of sale of securities to the investor in the offering generally occur before the final prospectus is required to be delivered under the Securities Act, and this is commonplace in other parts of our capital markets. Moreover, for sales occurring in the secondary market, as a result of our existing rules, investors in securities of reporting issuers generally are not delivered a final prospectus.[410]

D. Alternatives to Adopted Approach To Implementing Statutory Mandates

We considered certain alternative approaches to implementing the directives in the BDC Act and Registered CEF Act to allow affected funds to use the securities offering rules that are available to operating companies. Although the BDC Act identifies certain required amendments to our rules and forms, we could have, for example, made additional modifications to the relevant provisions for affected funds or further revised the current registration and offering framework affected funds use.

For example, as discussed above, we considered modifying the public float standards in the WKSI definition or the short-form registration instruction by changing the required level of public float or providing alternative eligibility criteria, such as the aggregate NAV of a certain size for funds whose shares are not traded on an exchange.[411] Several commenters supported changing the public float standards in the WKSI definition for affected funds.[412] These alternatives could have allowed more affected funds to qualify as WKSIs or to file short-form registration statements, with the associated benefits (*e.g.,* lower costs of registered offerings) and costs (*e.g.,* potential higher incidence of disclosure and fund practices that may not comply with applicable law due to reduced staff review) discussed above. For example, most interval funds do not list their securities on an exchange and do not have ''public float,'' and these alternatives therefore could have permitted these interval funds, as well as other unlisted affected funds, to qualify as WKSIs or file short-form registration statements. However, modifying the eligibility criteria in the WKSI definition or the short-form registration instruction could give affected funds that do not have the requisite public float under the current WKSI definition or Form S–3 eligibility requirements an advantage over certain operating companies that do not have public float or do not meet the $700 million public float requirement. In addition, certain of the benefits that flow from WKSI status or the ability to use a short-form registration statement may be less relevant to unlisted affected funds that engage in continuous

[405] Certain of our discretionary amendments may also ameliorate these costs. *See infra* section III.E.3 (discussing the benefits and costs of the requirement to disclose material unresolved staff comments) and section III.E.2 (discussing the benefits and costs of the structured data requirements).

[406] *See supra* footnote 29.

[407] *See supra* section II.I.2.a.

[408] *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44796.

[409] The average institutional holding is estimated to be approximately 30% for BDCs and 21% for registered CEFs. *See* Covered Investment Fund Research Reports Adopting Release, *supra* footnote 101, at 64199. The institutional ownership of U.S. public equities was approximately 67% as of 2010. *See* Marshall E. Blume and Donald B. Keim, *Institutional Investors and Stock Market Liquidity: Trends and Relationships,* Working Paper, The Wharton School, University of Pennsylvania (Aug. 21, 2012).

[410] *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44782.

[411] *See supra* section II.C.

[412] *See, e.g.,* ICI Comment Letter; ABA Comment Letter; Dechert Comment Letter; CBD Comment Letter; TIAA Comment Letter.

offerings.[413] Further, interval funds already have a tailored registration process that provides similar efficiencies. For example, certain of an interval fund's post-effective amendments are immediately effective upon filing (*e.g.,* filings solely to update the fund's financial statements or to make non-material changes), while other post-effective amendments (*e.g.,* filings to make material changes) are automatically effective 60 days after filing unless the fund designates a later date for effectiveness. In addition, we are extending this process to allow other continuously-offered unlisted affected funds to file immediately-effective post-effective amendments under the same circumstances as interval funds. Specifically, we are amending rule 486 to allow certain unlisted continuously-offered affected funds to maintain effective registration statements in a more efficient and cost-effective manner. We believe that amended rule 486 will provide these funds with benefits that are similar to the benefits we are providing to affected funds that qualify to file short-form registration statements or as WKSIs. Interval funds and other continuously-offered unlisted affected funds, however, will not experience the same efficiencies as affected funds that qualify to file short-form registration statements or as WKSIs when they make material changes to their registration statements. This is because these filings by interval funds and other continuously-offered unlisted affected will be subject to staff review and will not be immediately effective upon filing.

Under the BDC Act and the Registered CEF Act, we could have extended the final rule only to BDCs, listed registered CEFs, and interval funds. Under this approach, unlisted registered CEFs would not have been able to take advantage of certain benefits of the amendments that would otherwise be available to unlisted BDCs, such as the cost savings associated with the final prospectus delivery reforms.[414] This alternative also could have saved unlisted registered CEFs certain compliance costs stemming from the proposed rulemaking, such as the requirement to tag certain prospectus information using Inline XBRL. However, excluding unlisted registered CEFs from the final rule could create unnecessary competitive disparities between unlisted registered CEFs and unlisted BDCs and would not provide investors in unlisted registered CEFs with the benefits of the new investor protections we are adopting.

E. Discussion of Discretionary Choices

We discuss below the discretionary amendments that we are adopting, in light of the changes to implement the BDC Act and Registered CEF Act and the associated benefits and costs of those choices. We have tried to quantify the impact of each of the amendments, but in many cases, reliable, empirical evidence about the effects is not readily available to the Commission.

With respect to the proposed discretionary amendments, one commenter stated that the proposal would impose regulatory and compliance costs on unlisted affected funds, while at the same time providing unlisted interval funds with only small benefits and providing no benefits to other unlisted affected funds (*e.g.,* tender offer funds).[415] We believe interval funds and other continuously-offered unlisted affected funds will directly benefit from two of our discretionary amendments.[416] While the final rule also imposes certain costs on these funds, we believe those costs are warranted, as discussed in detail below. Moreover, we are not at this time adopting the proposed new reporting requirements on Form 8–K that would have imposed costs on unlisted affected funds.[417]

1. New Registration Fee Payment Method for Interval Funds and Issuers of Certain Exchange-Traded Products

We are adopting a modernized approach to registration fee payment for interval funds that will require them to pay securities registration fees using the same method that mutual funds and ETFs use today. In response to comments, we also are allowing certain ETPs that are not registered under the Investment Company Act to use a similar method to pay registration fees.

With respect to interval funds, the final rule requires these funds to pay their registration fees on a net basis once a year, rather than having to pay registration fees when the fund files its registration statement.[418] We believe this approach will make the registration fee payment process for interval funds more efficient. For example, it will avoid the possibility that an interval fund will inadvertently sell more shares than it has registered and will not require the issuer to periodically register new shares.

We believe the final rule could also benefit interval funds by reducing their initial registration fees. In the table below, we have attempted to quantify the potential initial cost-savings for interval funds under the modernized approach to registration fee payment over a 3-year period.[419]

TABLE 4

	Current average registration fee (paid upon filing) [1]	Estimated average registration fee that will be paid under the amendments (paid at the end of the fiscal year) [2]
Year 1	$31,501	$8,376
Year 2		7,015
Year 3		22,445

Notes:

[1.] The current average registration fee paid in year 1 is the average of the actual fees reported by the interval funds in the Calculation of Registration Fee table in Form N–2 in the year of registration with the Commission. For purposes of this analysis, we assume that interval funds did not register additional securities in years 2 or 3. If they did, the average registration fees under the current framework would be higher than $31,501.

[413] *See supra* paragraph accompanying footnotes 50–51.

[414] As previously recognized, unlisted registered CEFs would not be eligible for certain of the amendments. *See supra* section II.A.

[415] *See* ABA Comment Letter.

[416] *See infra* sections III.E.1 and III.E.5.

[417] *See supra* section II.I.3.

[418] *See supra* section II.G.3.

[419] The estimates are based on data collected for interval funds that were active as of June 30, 2018. We used their Form N–2 filings and Form N–CSR filings to identify current registration fees, proceeds from shares issued, and cost of shares repurchased.

[2] For each of the interval funds, the fees in years 1, 2, and 3 are estimated as [(dollar proceeds from shares issued + dollar cost of shares repurchased) / $1,000,000] × $129.80. The $129.80 is the fee rate (per million dollars) that funds pay to register shares for fiscal year 2020. Then we calculate the average fees per year.

Under the current regime, an interval fund would pay on average $31,501 at the time of filing, and then issue and repurchase securities over time. Under the regime we are adopting, the interval fund will pay its registration fees on a net basis once a year. Since the final rule allows interval funds to shift more of the fee payments to the future, it will decrease their cost of offering securities. An interval fund will, however, be required to annually file Form 24F–2.[420] We estimate the annual burden of filing Form 24F–2 for interval funds will be $140 per fund.[421]

We believe the final rule will provide similar benefits to certain ETPs that are not registered under the Investment Company Act by allowing these ETPs to elect to register an indeterminate number of securities and to pay registration fees in arrears on an annual net basis. Since now ETPs pay registration fees in advance whether or not they sell any securities and may not factor in redemptions in reducing the amount of the registration fees owed, this change will allow them to reduce their registration fees and shift their payment obligations into future periods. The amendments will also avoid the possibility that such an ETP will inadvertently sell more shares than it has registered and will not require the issuer to periodically register new shares. Moreover, the amendments will allow ETPs that are not registered under the Investment Company Act to use a similar registration fee payment method as ETFs that are registered under the Investment Company Act.

As an alternative, we considered allowing a wider range of affected funds, such as registered CEFs that are tender offer funds, to rely on rule 24f–2. This approach would have extended the benefits of rule 24f–2 to additional affected funds. However, as discussed above, interval funds have structural similarities to mutual funds and ETFs that other affected funds do not. In particular, interval funds routinely repurchase shares at NAV and are required to periodically offer to repurchase their shares, and therefore are more likely to realize the operational benefits of computing registration fees on a net annual basis than are funds that are not required to periodically offer to repurchase their shares at NAV.

2. Structured Data Requirements

The final rule includes new structured data reporting requirements for affected funds. Specifically, all affected funds will be required to tag in Inline XBRL format certain Form N–2 prospectus disclosure items. All affected funds also will be required to tag the information on the cover page of Form N–2 using Inline XBRL. Finally, BDCs will be required to tag financial statement information using Inline XBRL.

Under the final rule, affected funds will be required to tag the following Form N–2 prospectus disclosure items using Inline XBRL: Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities.[422] These items provide important information about an affected fund's key features, costs, and risks and may be particularly useful to investors to inform their investment decisions. With respect to the requirement that BDCs tag financial statement information, unlike operating companies and registered investment companies, BDCs currently are not required to report any structured data.[423] This requirement will extend to BDCs a requirement that currently applies to operating companies.

Requiring BDCs to tag financial statement information using Inline XBRL, and all affected funds to tag in Inline XBRL format certain important prospectus disclosure items, will provide important benefits to investors seeking to access information about affected funds, both directly and through information intermediaries such as data aggregators and financial analysts. Providing a standardized, interactive, computer-based framework for reporting could further facilitate more efficient investor comparisons of important information across affected funds by making it easier to aggregate and analyze information through automated means, which could increase competition for investor capital. The Inline XBRL tagging requirements may also potentially increase the efficiency of capital formation to the extent that making disclosures available in a structured format reduces some of the information barriers facing prospective investors and makes it easier for affected funds to attract investors. One commenter expressed similar views.[424]

Smaller affected funds in particular may benefit more from enhanced exposure to investors. To the extent that reporting the disclosures in a structured format increases the availability, or reduces the cost of collecting and analyzing, key information about affected funds, smaller affected funds may benefit from improved coverage by information intermediaries. Further, requiring affected funds to tag certain prospectus disclosures using Inline XBRL would facilitate monitoring of these disclosures by investors and information intermediaries, potentially increasing transparency and mitigating the potential informational costs stemming from other aspects of the proposal such as automatic shelf registration statements for WKSIs and short-form registration statements for eligible funds, which may result in required disclosures being distributed across multiple regulatory filings and could thereby affect investor protection.[425]

The cover page tagging requirement includes new check boxes that will help identify whether a registration statement is, for example, an automatic shelf registration statement or a short-form registration statement.[426] We already require registrants to tag all of the information on the cover page of Form 10–K, Form 10–Q, Form 8–K, Form 20–F, and Form 40–F using Inline XBRL.[427] The requirement to tag the Form N–2 cover page in Inline XBRL is expected to benefit investors by enabling investors and information intermediaries to automate their use of the cover page information, including company name, the Act or Acts to which the registration statement relates, and check boxes relating to the effectiveness of the registration statement. This will enhance the ability of investors and information intermediaries to identify, count, sort, and analyze registrants and disclosures

[420] As discussed below, interval funds and other funds that file on Form 24F–2 will be required to file the form in a structured XML format under the amendments.

[421] For PRA purposes, we estimate an annual burden per respondent of filing Form 24F–2 of two hours. *See infra* section IV.B.6. At an estimated wage rate of $70 per hour, the annual dollar cost for filing Form 24F–2 is $140 (2 hours × $70 per hour). This estimate does not account for burdens associated with filing Form 24F–2 in a structured XML format, which are discussed *infra* in section III.E.2.

[422] *See supra* section II.I.1.c.

[423] *See supra* section II.I.1.a.

[424] *See* Calcbench Comment Letter.

[425] *See supra* section III.C.2 (discussing these costs).

[426] *See supra* section II.I.1.b.

[427] *See* FAST Act Modernization Adopting Release, *supra* footnote 66.

to the extent these data points otherwise would be formatted, for example, in HTML. The check boxes, which are required to be tagged in Inline XBRL format, will allow investors and information intermediaries to distinguish between different categories of registration statements in much the same way they are currently able to do for operating companies. The availability of information in Inline XBRL could enable investors and information intermediaries to capture and analyze cover page information more quickly and at a lower cost, as well as to search and analyze the information dynamically. It could also facilitate comparison of information across filers and reporting periods.

Affected funds will incur some costs to tag and review the required information in Inline XBRL. Some filers may perform the tagging in-house while others may retain outside service providers. We expect filers will incur costs for the fees of the outside service providers. Various XBRL preparation solutions have been developed and used by operating companies and open-end fund filers, and some evidence suggests that, for operating companies, XBRL tagging costs have decreased over time.[428] While this evidence is specific to XBRL tagging costs rather than Inline XBRL tagging costs, because Inline XBRL allows filers to embed XBRL data directly into an HTML document, we expect Inline XBRL costs to be even lower than XBRL costs since Inline XBRL eliminates the need to tag a copy of the information in a separate XBRL exhibit. Costs of Inline XBRL preparation may depend on the familiarity of the filer and/or its service provider with Inline XBRL. Filers that currently report information in Inline XBRL for other investment products they offer, such as open-end funds, filing affected fund information in Inline XBRL under the amendments will likely incur lower costs of compliance than filers adopting Inline XBRL for the first time. Those registrants affected by the requirement that have not had experience structuring disclosures in other contexts will likely incur initial costs to acquire the necessary expertise and/or software as well as ongoing costs of tagging required information in Inline XBRL, and any fixed costs of complying with the Inline XBRL requirement may have a relatively greater impact on smaller filers. On an ongoing basis, registrants are expected to expend time to tag and review the tagged information in Inline XBRL using their in-house staff. Some registrants may also incur an initial cost to license filing preparation software with Inline XBRL capabilities from a software vendor, and some may also incur an ongoing licensing cost. Other registrants may incur an initial cost to modify their existing filing preparation software to accommodate Inline XBRL preparation. Some registrants will incur the costs of filing agent services to rely on a filing agent to prepare their Inline XBRL filings. Initial costs involving investments in expertise and modifications to disclosure preparation solutions, or switching to a different software vendor or outside service provider, may result in a higher compliance cost during the first year of using Inline XBRL than in subsequent years.

The costs of compliance with the Inline XBRL requirements are likely to vary across registrants. On average we estimate that the compliance cost to BDCs of tagging financial statement information, certain prospectus disclosure items, and Form N–2 cover page information using Inline XBRL will be approximately $161,179 per BDC per year in the 3 years following the adoption of the rule.[429] We estimate that the compliance cost to registered CEFs of tagging in Inline XBRL format certain prospectus disclosure items and tagging Form N–2 cover page information will be approximately $8,855 per registered CEF per year in the 3 years following the adoption of the rule.[430] We note that some recent surveys based on operating companies suggest that these current PRA-based burden estimates may be overstated with respect to affected funds, and particularly smaller affected funds.[431]

One commenter cited a study by the European Securities and Markets Authority estimating the cost of preparing Inline XBRL in-house to be on average around 8,200 euros for the first filing and 2,400 euros for each subsequent filing.[432] In case of outsourcing, the study estimates the costs to be on average around 13,000 euros for the first filing and 4,600 euros for each subsequent filing. However, we do not believe that these figures the commenter cited are salient to the structured data requirements we are adopting. For example, although not cited by the commenter, the same study mentions that in the United States, because of the detailed tagging and extended taxonomy, the average costs for outsourcing the preparation of the financial statements in XBRL is higher, between 9,000 euros and 19,000 euros.[433]

As an alternative, we could have allowed but not required affected funds to present cover page, financial statement, and certain prospectus disclosure information in Inline XBRL. Compared to the final rule, a fully voluntary Inline XBRL program would

[428] *See, e.g.,* Michael Cohn, *AICPA sees 45% drop in XBRL costs for small companies,* Accounting Today (Aug. 15, 2018), *available at https://www.accountingtoday.com/news/aicpa-sees-45-drop-in-xbrl-costs-for-small-reporting-companies* (stating that, according to an updated survey by AICPA and XBRL US, the cost of formatting financial statements in XBRL for smaller reporting companies has declined 45% since 2014 and that 68.6% of the companies paid $5,500 or less on an annual basis (as compared to 29.9% of companies in the 2014 survey) for fully outsourced creation and filing solutions for their XBRL filings, while 11.8% of the companies surveyed paid annual costs between $5,500 to as much as $8,000 for their full-service outsourced solutions).

[429] For BDCs, for the purposes of the PRA, we estimated the average annual compliance costs in the 3 years following the adoption of the rule to be 33,028 burden hours of in-house Inline XBRL preparation (31,095 burden hours for tagging financial statement information, 1,828 burden hours for certain prospectus disclosure items, and 105 burden hours for Form N–2 cover page information using Inline XBRL) and $3,712,565 in outside services ($3,555,931 for tagging financial statement information, $156,634 for certain prospectus disclosure items, and $0 for Form N–2 cover page information using Inline XBRL). *See infra* section IV.B.2. We monetize the burden of in-house Inline XBRL preparation by multiplying the burden hours by an estimated wage rate of $400 per hour (33,028 × $400 = $13,211,200). The estimated wage figure is based on analysis in previous rulemakings. The average cost per BDC is calculated by adding the monetized internal burden ($13,211,200) to the cost of outside services ($3,712,565) and dividing by the number of BDCs (105). *See also supra* footnote 355.

[430] For registered CEFs, for the purposes of the PRA, we estimated the average annual compliance costs in the 3 years following the adoption of the rule to be 12,628 burden hours of in-house Inline XBRL preparation (686 burden hours for Form N–2 cover page information using Inline XBRL and 11,942 burden hours for certain prospectus disclosure items) and $1,023,345 in outside services ($0 for Form N–2 cover page information using Inline XBRL and $1,023,345 for certain prospectus disclosure items). *See infra* section IV.B.2. We monetize the burden of in-house Inline XBRL preparation by multiplying the burden hours by an estimated wage rate of $400 per hour (12,628 × $400 = $5,051,200). The estimated wage figure is based on analysis in previous rulemakings. The average cost per registered CEF is calculated by adding the monetized internal burden ($5,051,200) to the cost of outside services ($1,023,345) and dividing by the number of registered CEFs (686).

[431] *See* American Institute of CPAs, *XBRL Costs for Small Companies Have Declined 45%, According to AICPA Study* (Aug. 18, 2018), *available at https://www.aicpa.org/press/pressreleases/2018/xbrl-costs-have-declined-according-to-aicpa-study.html;* CFA Institute, *The Cost of Structured Data: Myth vs. Reality* (2017), *available at https://www.cfainstitute.org/-/media/documents/survey/the-cost-of-structured-data-myth-vs-reality-august-2017.ashx.*

[432] *See* XBRL US Comment Letter.

[433] *See* European Securities and Markets Authority, Feedback Statement on the Consultation Paper on the Regulatory Technical Standard on the European Single Electronic Format (ESEF) (Dec. 21, 2016), *available at https://www.esma.europa.eu/sites/default/files/library/2016-1668_esma_feedback_statement_on_the_rts_on_esef_0.pdf.*

lower costs for those filers that do not find Inline XBRL to be cost efficient. We also could have required Inline XBRL tagging only for a subset of affected funds—for example, affected funds that file short-form registration statements on Form N–2 or WKSIs. We also could have permitted more than one structured data format or left the precise format unspecified. However, a voluntary program or the use of multiple structured data formats would also reduce potential data quality benefits compared to mandatory Inline XBRL, as would a program that captures only a subset of affected funds. If the information were not submitted by all affected funds in a standardized, structured, machine-readable format, investors who seek to instantly analyze, aggregate, and compare the data would have to incur the costs of paying a third-party service provider to manually rekey the data, review the data for data quality problems during the duplication process, and disseminate the data to the investors.[434] Alternatively, investors unwilling to pay a third-party service provider would have to incur the time to do that process themselves. In either scenario, the data would not be usable in as timely a manner as if it were made machine-readable in a standardized format. In addition, under a voluntary program, data that is not submitted in Inline XBRL would not be validated, thus decreasing the overall data quality of the data submitted. Unlike the machine-readable Inline XBRL format, data submitted in unstructured formats (*e.g.,* HTML, ASCII) is not machine-readable at the element level and thereby cannot be validated by EDGAR in any way. Thus, data submitted in the HTML format by affected funds that opted not to use Inline XBRL and XBRL data submitted by other affected funds could be different due to the level of pre-submission validation activities. Poor data quality reduces any data user's ability to meaningfully analyze, aggregate, and compare data. One commenter supported the use of Inline XBRL compared to unstructured formats, arguing that Inline XBRL data is significantly less expensive to process and more timely than unstructured data.[435]

As another alternative, we could have required the disclosures to be filed in a different structured format, such as the XBRL or XML format. Compared to the Inline XBRL requirement that we are adopting, using the XBRL format would entail duplicative entry, which can adversely affect the quality and usability of the structured data as well as the efficiency and cost of preparation and review of the structured data. Compared to the requirement to use Inline XBRL, the alternative of requiring affected funds to use XML could result in lower costs. However, compared to the amendments, XML would provide less flexibility in tagging complex information as well as less extensive data quality validation capabilities. Given the complexity of the information required to be tagged and its importance to investors, we believe the benefits of using Inline XBRL outweigh the higher costs compared to XML.[436] One commenter supported using Inline XBRL compared to XML, arguing that financial information is more efficiently reported in Inline XBRL.[437]

As another alternative, we could have expanded the scope of prospectus disclosure information required to be tagged in Inline XBRL under the final rule. Compared to the final rule, this alternative would improve the timeliness and usability of the required disclosure information, but would potentially impose additional costs on affected funds. To the extent that the other required prospectus disclosures of affected funds contain information that is more specific to individual funds without sufficient comparability or aggregation utility, the benefits of having those additional required disclosures in a structured format may be lower than the more limited subset of disclosures that we are requiring affected funds to file in Inline XBRL. As another alternative, we could have narrowed the scope of prospectus disclosure information required to be tagged in Inline XBRL under the rule. Compared to the final rule, this alternative could decrease the timeliness and usability of the information required to be disclosed, but could also potentially reduce costs for registrants. Overall, the prospectus disclosures that affected funds will be required to tag in Inline XBRL largely parallel the information that mutual funds and ETFs are required to disclose. We also believe these disclosures represent the information that will be most useful for investors that seek to use structured data to assist with investment decisions regarding affected funds.

We also are requiring issuers that file Form 24F–2 (including mutual funds and ETFs, as well as interval funds) to submit the form in a structured XML format.[438] We believe using a structured data format will make it easier for issuers to accurately prepare and submit the information Form 24F–2 requires and will make the submitted information more useful to Commission staff. Automated validation processes could help issuers compute registration fees accurately before submitting the filing, which could reduce administrative burdens associated with correcting inaccurate filings. A structured filing format could also facilitate pre-population of previously-filed information. We estimate the cost of tagging Form 24F–2 in a structured XML format to be $542 per fund.[439]

3. Periodic Reporting Requirements

We are adopting certain new annual report requirements for affected funds that file a short-form registration statement on Form N–2. These funds must include in their annual reports certain information that they currently disclose in their prospectus—a table of fees and expenses, share price information, and a table of senior securities—and a discussion of material unresolved staff comments.[440] In addition, all BDCs will be required to include financial highlights in their registration statements and annual reports.[441] We also are requiring all registered CEFs to provide management's discussion of fund performance in their annual reports.[442] Finally, registered CEFs that rely on rule 8b–16(b) under the Investment Company Act to avoid annually updating their registration statements will be required to describe in their annual reports the fund's current investment objectives and policies, and principal risks, and to provide more expansive disclosure about certain key changes that occurred during the relevant year in enough detail to allow investors to understand each change and how it may affect the fund.[443] We believe these requirements will promote

[434] Some studies have shown that investors use XBRL files often, even preferring them to non-XBRL files when both are available. *See* Yu Cong, Hui Du, and Miklos A. Vasarhelyi, *Are XBRL Files Being Accessed? Evidence from the SEC EDGAR Log File Dataset,* Journal of Information Systems, Vol. 32–3, 23–29 (2018).

[435] *See* XBRL US Comment Letter.

[436] In contrast, the information provided in Form 24F–2 is less complex and is generally only used by fund issuers and Commission staff for purposes of calculating certain registered investment companies' registration fees, so we have proposed to require Form 24F–2 information in a structured XML format rather than Inline XBRL.

[437] *See* XBRL US Comment Letter.

[438] *See supra* section II.I.1.d.

[439] We assume that the burden of tagging Form 24F–2 in a structured XML format would be 2 hours for each filing. *See infra* section IV.B.6. At an estimated wage rate of $271 per hour, the dollar cost for filing Form 24F–2 in a structured XML format is $542 (2 hours × $271 per hour) per fund.

[440] *See supra* section II.I.2.a and section II.I.2.d.

[441] *See supra* section II.I.2.c.

[442] *See supra* section II.I.2.b.

[443] *See supra* section II.I.5.

investor protection by making important information more readily accessible to investors.

With respect to affected funds filing short-form registration statements on Form N–2, the annual report requirements will compile certain information that is already available in a fund's registration statement. This could be beneficial to some investors in these funds since information will be readily available in one document instead of investors needing to compile it from several sources. As previously discussed, given the ability of affected funds to use forward incorporation by reference under the short-form registration instruction, these funds' annual reports may become a more convenient and comprehensive source of information about a particular seasoned fund, relative to that fund's registration statement. At the same time, the annual report requirements may increase the compliance costs for seasoned funds because new information items will have to be added to the annual report. However, because the annual report will be incorporated by reference into the fund's prospectus, requiring disclosure in both the prospectus and annual report should not require duplicative disclosure. Moreover, specifying identical disclosure requirements in both places may facilitate forward incorporation by reference, by making clear that the same required disclosure will satisfy both requirements. Alternatively, we could have required affected funds to include in their annual reports more or less information from their registration statements. While requiring less information would reduce costs to affected funds by reducing the amount of required annual report disclosure, it could also make it more difficult for investors to find important fund information. Requiring affected funds to include more prospectus information in their annual reports could increase the length and complexity of annual reports and make them less useful to investors overall. This alternative would also increase affected funds' compliance costs.

The requirement to disclose material unresolved staff comments in the annual report is designed to mitigate the concern that other aspects of the amendments may reduce certain affected funds' incentives to resolve staff comments in a timely manner. We believe disclosure of material unresolved staff comments will likely provide important information to investors. This requirement may, however, impose certain compliance costs to the extent a seasoned fund does not timely resolve staff comments and hence will be required to provide such disclosure. We do not believe these disclosure costs will be significant because the information will be readily available to the affected fund. We recognize, however, there could be some costs to affected funds associated with compliance and legal review to the extent an affected fund wants to provide additional information in its annual report disclosure beyond that provided in the fund's written response to the staff's comment (which would typically already be publicly available on EDGAR). We also recognize, as some commenters suggested, that determining whether a particular comment is ''material'' or ''unresolved'' involves some subjective judgment, which may contribute to compliance and legal costs.[444]

With respect to the requirement that BDCs provide financial highlights information, we believe investors will benefit from disclosure summarizing a BDC's financial statements. We believe the costs associated with this requirement should be minimal since we understand that it is general market practice for BDCs to include this information in their registration statements.

We believe the requirement for registered CEFs to include MDFP disclosure in their annual shareholder reports will be beneficial to investors by helping them assess a fund's performance over the prior year and complementing other information in the report, which may make the annual report disclosure more understandable as a whole. This requirement will also promote parity between different types of funds, as open-end funds and BDCs are already required to provide similar disclosure in their annual reports. This requirement will likely increase compliance burdens for registered CEFs, to the extent they do not voluntarily provide MDFP disclosure already. We believe that a majority of registered CEFs already provide MDFP-like disclosure in their annual shareholder reports. We estimate the annual cost of providing MDFP disclosure to be $6,400 per registered CEF,[445] although this cost will likely be lower for affected funds that already provide MDFP-like disclosure.

We considered adopting additional MDFP requirements, such as requirements to: (1) Disclose the impact of particular investments (including large positions and/or significant investments) or investment types that contributed to or detracted from performance; (2) explain a fund's performance in relation to its index; (3) explain how the use of leverage affected fund performance; (4) explain the reason for and effect of any large cash or temporary defensive positions on fund performance; (5) explain the effect of any tax strategies, or the effects of taxes, on fund performance; (6) explain the effect of non-recurring or non-cash income on fund performance; (7) include general discussion of purchases and sales of fund shares and the effects of any share repurchases or tender offers on fund performance; and/or (8) disclose whether the fund has high portfolio turnover and the effect of portfolio turnover on fund performance. We also considered changing the average annual total return table to provide additional or more useful information to investors, such as requiring total return based on per-share NAV, in addition to total return based on current market price. Although one or more of these changes could result in additional, potentially helpful information for investors, we also considered the administrative costs that additional disclosure requirements would impose and have determined not to adopt them at this time.

Under the amendments to rule 8b–16, registered CEFs relying on paragraph (b) of the rule must describe in their annual reports the fund's current investment objectives and policies, and principal risks, and certain key changes that occurred during the relevant year in enough detail to allow investors to understand each change and how it may affect the fund. We estimate that approximately 521 registered CEFs relied on rule 8b-16 as of December 31, 2019 and will therefore provide the new disclosure.[446] These registered CEFs also will be required to preface disclosure of these key changes with a legend clarifying that the disclosures provide only a summary of certain changes that have occurred in the past year, and that the summary may not reflect all of the changes that have occurred. We believe these new disclosure requirements will allow investors in funds relying on rule 8b–16(b) to more easily identify and understand key information about their

[444] *See* ICI Comment Letter; Invesco Comment Letter.

[445] For the purpose of the PRA, we estimate that the proposed amendments to require registered CEFs to provide MDFP in their annual reports will result in an additional 16 burden hours for registered CEFs. *See infra* section IV.B.3. We monetize the internal burden by multiplying the burden hours by an estimated wage rate of $400 per hour (16 × $400 = $6,400).

[446] *See infra* footnote 561.

investments by providing such information in one place. Because these funds are already required to disclose in their annual reports the enumerated changes to specified Form N–2 disclosure items—and therefore already must have and maintain, among other things, updated information about the investment objectives, policies and principal risks that we are requiring them to disclose in full—the new requirement will likely add only a small incremental compliance burden.

4. Discretionary Amendments to Incorporation by Reference Requirements

The final rule will modernize Form N–2's requirements for backward incorporation by reference for all affected funds.[447] Specifically, we are requiring that an affected fund make information that is incorporated by reference into its prospectus or SAI, as well as the corresponding prospectus and SAI, readily available and accessible on a website maintained by or for the fund and identified in the fund's prospectus or SAI.

We believe this new requirement will improve the information's online accessibility for investors. In particular, this new requirement will make the incorporated information, prospectus, and SAI more accessible to retail investors online because we believe they may be more inclined to look at a fund's website for information than to search the EDGAR system.[448] We recognize that investors without home internet access, depending on their ability and preference to access fund information electronically, might experience a reduction in their ability to access information that is incorporated by reference into its prospectus or SAI. However, affected funds will also be required to provide incorporated materials upon request free of charge, in recognition that some investors may prefer to review these materials in paper.[449]

This amendment also will facilitate the efficient use of incorporation by reference by affected funds. For example, if an investor requested a copy of the affected fund's prospectus in accordance with rule 173, the fund would in some cases need to deliver a much longer document if we did not amend Form N–2's backward incorporation by reference provisions.[450] We do not, however, expect that the backward incorporation by reference amendment will substantially reduce the amount of information affected funds deliver to investors by mail or electronically. This is because we expect that most affected funds will rely on rules 172 and 173 to satisfy their prospectus delivery obligations. An issuer that uses these rules will satisfy its final prospectus delivery obligations by filing the prospectus with the Commission rather than delivering the prospectus and any incorporated material to investors.[451]

We do not believe the requirement to make a fund's prospectus, SAI, and incorporated materials available on a website will generate significant compliance costs for affected funds because many funds currently post their annual and semi-annual reports and other fund information on their websites. We estimate the annual cost to comply with the website posting requirements to be $496 per fund.[452]

Affected funds may also incur printing and mailing costs under the final rule if some investors request paper copies of the prospectus[453] or of the information that has been incorporated by reference into the prospectus or SAI but not delivered with the prospectus or SAI.[454] In another release, the Commission estimated that the annual printing and mailing cost associated with providing copies of prospectuses and other documents upon request would be approximately $500 per registrant.[455] We are similarly adopting a requirement to send prospectuses and related information in this release, and we have no reason to assume significant differences in the average lengths of the associated materials or the frequency of investor requests under the amendments we are adopting. We estimate that the printing and mailing costs associated with the new requirements will be approximately $750 per fund in recognition that the requirement to deliver information that has been incorporated by reference may result in greater overall costs since affected funds that are eligible to file short-form registration statements under the final rule will be able to use incorporation by reference more frequently.[456] We anticipate, however, that investors may be less likely to request copies of materials that have been incorporated by reference into an affected fund's prospectus or SAI, so we believe this requirement will only incrementally increase costs.

Alternatively, we could have retained Form N–2's current backward incorporation by reference requirements and continued to require funds to deliver incorporated materials to new investors. Because current General Instruction F of Form N–2 does not require affected funds to make incorporated materials available online, funds would not have to incur costs associated with website posting. However, because affected funds that choose to rely on rules 172 and 173 will be deemed to have delivered their disclosures upon filing with the Commission instead of giving them to investors, the current backward incorporation delivery requirement will not result in delivery of incorporated materials to a fund's investors, thus making less accessible the disclosure materials that might affect their investment decision.

We are also modifying Form N–14 to decrease the disclosure burden of the form and reduce the length of Form N–14 prospectuses in certain circumstances.[457] The amendments will allow BDCs to incorporate by reference to the same extent as registered CEFs. This will provide for more consistent treatment between registered CEFs and BDCs. We also are eliminating the requirement that registrants file with the Form N–14 registration statement the documents containing the information that is incorporated by reference into the prospectus or SAI, thus decreasing

[447] *See supra* section II.I.4.

[448] For example, results from 2011 investor testing sponsored by the Commission suggest that an investor looking for a fund's annual report is most likely to seek it out on the fund's website. *See* Investor Testing of Selected Mutual Fund Annual Reports (Feb. 9, 2012), *available at https://www.sec.gov/comments/s7-08-15/s70815-3.pdf.* Additionally, a 2018 report by the Investment Company Institute suggests that over 90% of U.S. households owning mutual funds used the internet extensively. *See* ICI Research Perspective, Ownership of Mutual Funds, Shareholder Sentiment, and Use of the internet, 2019 (Oct. 2019), *available at https://www.ici.org/pdf/per25-08.pdf.*

[449] *See supra* paragraph accompanying footnote 410 (recognizing the effects of allowing affected funds to not deliver final prospectuses directly to investors if they meet certain requirements).

[450] *See, e.g., supra* footnote 365 and accompanying text.

[451] *See supra* section II.D.

[452] For the purpose of the PRA, we estimate an average burden to comply with the website posting requirements of 2 hours per fund. *See infra* section IV.B.1. The expected compliance cost associated with the proposed website posting requirements is calculated by multiplying the 2-hour burden by the estimated hourly wage based on published rates for webmasters ($248).

[453] *See supra* footnote 153.

[454] *See supra* section II.I.4.

[455] *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 345, at n.1233 and accompanying text.

[456] We requested data regarding how often investors may request copies of prospectuses or incorporated materials, how many materials affected funds would incorporate by reference into their prospectuses or SAIs, and how lengthy those materials would be. Commenters did not provide any data in response.

[457] *See supra* section II.B.3.b.

compliance costs. Commenters generally supported these changes.[458]

5. Automatic or Immediate Effectiveness of Filings by Affected Funds Conducting Certain Continuous Offerings

In response to comments, the final rule will allow any registered CEF or BDC that conducts continuous offerings under rule 415(a)(1)(ix) to file post-effective amendments and certain registration statements that become effective immediately upon filing or automatically 60 days after filing.[459] We believe this rule amendment will allow these unlisted continuously-offered affected funds to maintain effective registration statements in a more efficient, cost-effective manner, similar to the benefits the final rule provides to affected funds that file short-form registration statements or qualify as WKSIs. Under the amendments, continuously-offered unlisted affected funds, which generally will not qualify as WKSIs or be eligible to file short-form registration statements because they do not have public float, will be able to more efficiently update their financial statements under section 10(a)(3) of the Securities Act to maintain effective registration statements while they engage in continuous offerings. One commenter stated that allowing continuously-offered unlisted affected funds to rely on rule 486 would benefit investors in these funds by allowing the funds to avoid the time and expense of an annual staff review of registration statements where no changes are made beyond immaterial updates and updates to audited financial information.[460]

As an alternative, we could have continued to limit rule 486 to interval funds. Such an alternative would have made it less efficient for certain continuously-offered unlisted affected funds to update their financial statements or make other changes to their registration statements relative to the processes available to all other funds that conduct continuous or delayed offerings under the Commission's rules.

IV. Paperwork Reduction Act Analysis

A. Background

Certain provisions of the final amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[461] We are submitting the final amendments to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collections of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The titles for the collection of information are summarized in Table 5 below.

TABLE 5—COLLECTIONS OF INFORMATION

Title	OMB control No.
Form N–2	3235–0026
Investment Company Interactive Data [1]	3235–0642
Rule 30e–1	3235–0025
Form 10–K	3235–0063
Family of rules under section 8(b) of the Investment Company Act of 1940 [2]	3235–0176
Rule 163	3235–0619
Rule 433	3235–0617
Rule 173	3235–0618
Form 24F–2	3235–0456
Form S–1	3235–0065
Form S–3	3235- 0073
Form N-14	3235–0336
Form F–1	3235–0258
Form F–3	3235–0256

Notes:

1. Recently, we issued a release that, among other things, retitled this collection of information (previously, ''Mutual Fund Interactive Data'') ''Investment Company Interactive Data.'' *See* Variable Contract Summary Prospectus Adopting Release, *supra* footnote 345.

2. The paperwork burdens for the rules under section 8(b) of the Investment Company Act are imposed through the forms and reports that are subject to the requirements in these rules and are reflected in the PRA burdens of those documents. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to these rules.

The rules, forms, and regulations listed above were adopted under the Securities Act, the Exchange Act, or the Investment Company Act. They set forth the disclosure requirements for registration statements, prospectuses, periodic reports, and certified shareholder reports that are prepared by registrants to help investors make informed investment and voting decisions. They also permit additional communications by registrants during a registered offering. The final amendments will allow affected funds to use the securities offering rules that are already available to operating companies. In addition, the final rule includes amendments to our rules and forms intended to tailor the disclosure and regulatory framework to affected funds.

The Investment Company Interactive Data collection of information references current requirements for certain registered investment companies to submit to the Commission information included in their registration statements, or information included in or amended by any post-effective amendments to such registration statements, in response to certain form items in interactive data format. It also references the requirement for funds to submit an Interactive Data File to the Commission for any form of prospectus filed pursuant to rule 497(c) or (e) that includes information in response to certain form items. The final amendment will include several new structured data requirements, including requirements for: (1) BDCs to submit financial statement information using Inline XBRL format; (2) affected funds to include structured cover page information in their registration statements on Form N–2 using Inline XBRL format; and (3) affected funds to tag certain prospectus information using Inline XBRL format.[462] Although the interactive data filing requirements are included in the Form N–2 instructions, we are separately reflecting the hour and cost burdens for these requirements in the burden estimate for Investment Company Interactive Data and not in the estimate for Form N–2.

The information collection requirements related to registration statements and Exchange Act reports are mandatory. In addition, there is no mandatory retention period for the information disclosed, and the information gathered will be made publicly available. The information collection requirements related to the communications and prospectus delivery rules we are adopting apply only to affected funds and other offering participants choosing to rely on them. There will be a mandatory record retention period with respect to the communications and prospectus delivery information collections. Under rule 433, issuers and offering participants must retain all free writing prospectuses that have been used, for three years following the date of the initial bona fide offering of the securities in question that were not filed with the Commission. Moreover, free writing prospectuses that are made by or on behalf of an affected fund, and free

[458] *See* Dechert Comment Letter; IPA Comment Letter.

[459] *See supra* section II.D.

[460] *See* ABA Comment Letter.

[461] 44 U.S.C. 3501 *et seq.*

[462] We are also adopting new requirements for funds that file on Form 24F–2 to submit the form in XML format. We account for the burdens associated with this requirement in *infra* section IV.B.6.

writing prospectuses that are broadly disseminated by another offering participant, will have to be filed and will be publicly available on EDGAR, whereas free writing prospectuses prepared by or on behalf of, or used or referred to, by offering participants other than the issuer will not have to be filed.

B. Summary of the Amendments and Impact on Information Collections

We are amending several rules and forms to modify the registration, communications, and offering processes for affected funds under the Securities Act and Investment Company Act. The amendments are designed to carry out the requirements of section 803 of the BDC Act and section 509 of the Registered CEF Act. The amendments generally will allow affected funds to use the securities offering rules that are already available to operating companies.

The amendments principally affect five aspects of the application of our securities offering rules to affected funds. First, the amendments will streamline the registration process under the Securities Act for affected funds to allow them to sell securities more quickly and efficiently under a shelf registration process tailored to affected funds. Second, the amendments will allow affected funds to qualify as WKSIs under rule 405 under the Securities Act. Third, the amendments will allow affected funds to satisfy final prospectus delivery requirements using the same method as operating companies. Fourth, the amendments will allow affected funds to use communications rules currently available to operating companies, such as the use of the safe harbors for disseminating certain factual business information, forward-looking information, a ''free writing prospectus,'' and broker-dealer research reports. Finally, the amendments will tailor affected funds' disclosure and regulatory framework in light of the amendments to the offering rules applicable to them. These amendments include new structured data requirements, new disclosure requirements for annual reports, and a requirement for interval funds to pay securities registration fees using the same method that mutual funds and ETFs use today.

We anticipate that several provisions of the amendments will increase the burdens and costs for affected funds that will be subject to the amendments. We have estimated the average number of hours an affected fund will spend to prepare and file the information collections and the average hourly rate for the services of outside professionals. In deriving our estimates, we recognize that the burdens will likely vary among individual affected funds based on a number of factors, including their size and the nature of their investment activities.[463] In addition, some affected funds may experience costs in excess of our estimates, and some may experience less than the estimated average costs.

In addition to these amendments relating to affected funds, we are amending several rules and forms to enable certain ETPs that are not registered under the Investment Company Act to elect to register offerings of an indeterminate amount of exchange-traded vehicle securities and pay registration fees for these offerings on an annual net basis. We have estimated the average number of additional hours that such ETPs will spend when filing registration statements for these offerings to prepare and file the information collections and the average hourly rate for the services of outside professionals. We anticipate that the amendments will result in a decrease in the number of registration statements filed by these issuers and that, overall, these amendments will reduce the burdens and costs for these issuers.

1. Amendments to Form N–2 Registration Statement

Form N–2 is the form used by an affected fund to register offerings under the Securities Act and, as applicable, to register as an investment company under the Investment Company Act.

The amendments to Form N–2 will increase the existing disclosure burdens of the form by requiring:

- Affected funds to use new check boxes on the cover page to provide information about the fund, the purpose of the filing, and the type of offering, including whether the form is being used for automatic shelf registration;[464]
- BDCs to include financial highlights disclosure in their registration statements, as registered CEFs are currently required to do;[465]
- Affected funds to provide new undertakings to be furnished in registration statements being filed pursuant to rule 415;[466] and
- Affected funds to make certain documents available online if they incorporate them by reference, including the prospectus, SAI, and any Exchange Act reports filed under section 13 or section 15(d) of the Exchange Act that are incorporated by reference into the fund's prospectus or SAI.[467]

At the same time, the amendments to Form N–2 will decrease existing burdens for the form by:

- Permitting eligible affected funds to forward incorporate by reference Exchange Act reports, which will reduce the need for such funds to file a post-effective amendment or a prospectus supplement to update information in the registration statement.[468]

TABLE 6—CURRENTLY APPROVED FORM N–2 PRA ESTIMATES [1]

	Internal burden		Wage rate [2]	Cost of internal burden	Annual external cost burden
Burden per Initial Registration Statement					
Total burden per registration statement	517.6 hours	×	$269 (blended rate of $365 for compliance attorney and $172 for intermediate accountant).	$139,234	$32,241
Number of annual initial registration statements	× 136			× 136	× 136

[463] *See supra* footnotes 355 and 357.

[464] *See supra* section II.I.1.b; *see also* amended cover page of Form N–2.

[465] *See supra* section II.I.2.c; *see also* Instruction 1 to Item 4 of amended Form N–2.

[466] *See supra* footnote 63 and accompanying paragraph; *see also* Items 34.3–7 of amended Form N–2.

[467] *See supra* section II.I.4; *see also* General Instruction F.4.a of amended Form N–2.

[468] *See supra* section II.B.3.e; *see also* General Instruction F.3.b of amended Form N–2.

TABLE 6—CURRENTLY APPROVED FORM N–2 PRA ESTIMATES [1]—Continued

	Internal burden		Wage rate [2]	Cost of internal burden	Annual external cost burden
Total annual burden	70,394 hours			$18,935,824	$4,384,776
Burden per Post-Effective Amendment					
Total burden per post-effective amendment	125 hours	×	$269 (blended rate of $365 for compliance attorney and $172 for intermediate accountant).	$33,625	$11,114
Number of annual post-effective amendments	× 30			× 30	× 30
Total annual burden	3,751 hours			$1,008,750	$333,420
Total Burden					
Total initial registration statement burden	70,394 hours			$18,935,824	$4,384,776
Total post-effective amendment burden	3,751 hours			$1,008,750	$333,420
Total annual burden	74,145 hours			19,944,574	4,718,196

Notes:
1. These estimates were previously submitted to OMB in connection with a revision of the then-currently-approved collection in 2020.
2. Derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified to account for an 1,800-hour work year; multiplied by 5.35 to account for bonuses, firm size, employee benefits and overheard, and adjusted for inflation).

TABLE 7—PROPOSED FORM N–2 PRA ESTIMATES [1]

	Internal burden		Wage rate [2]	Cost of internal burden	Annual external cost burden
Burden for Initial Registration Statement					
Preparing and filing initial registration statement.	171.67 hours	×	$401 (attorney)	$68,838.33	$31,941
	171.67 hours	×	$210 (paralegal)	$36,050	
	171.67 hours	×	$449 (assistant general counsel)	$77,078.33	
Total burden per registration statement	515 hours			$181,966.67	$31,941
Number of annual initial registration statements.	× 138			× 138	× 138
Total annual burden	71,070 hours			$25,111,399.08	$4,407,858
Burden for Post–Effective Amendment					
Preparing and filing post-effective amendments.	35.67 hours	×	$401 (attorney)	$14,302.33	$10,814
	35.67 hours	×	$210 (paralegal)	$7,490	
	35.67 hours	×	$449 (assistant general counsel)	$16,014.33	
Total burden per post-effective amendment.	107 hours			$37,806.67	$10,814
Number of annual post-effective amendments.	× 190			× 190	× 190
Total annual burden	20,330 hours			$7,183,266.70	$2,054,660
Additional Burden for Affected Funds					
Proposed new check box requirements	0.1667	×	$352 (compliance attorney)	$58.67	$0
	0.1667	×	$319 (senior programmer)	$53.17	
	0.1667	×	$239 (webmaster)	$39.83	
Proposed online availability requirement	0.67 hours	×	$352 (compliance attorney)	$234.67.	
	0.67 hours	×	$319 (senior programmer)	$212.67	$0
	0.67 hours	×	$239 (webmaster)	$159.33	
Total additional burden per affected fund	2.5 hours			$758.33	$0
Number of affected funds	× 807			× 807	× 807
Total annual burden	2,018 hours			$611,975	$0
Additional Burden for BDCS					
Financial highlights requirement	0.5 hours	×	$352 (compliance attorney)	$176	$0
	0.5 hours	×	$319 (senior programmer)	$159.50	

TABLE 7—PROPOSED FORM N–2 PRA ESTIMATES [1]—Continued

	Internal burden		Wage rate [2]	Cost of internal burden	Annual external cost burden
	0.5 hours	×	$239 (webmaster)	$119.50	
Total additional burden per BDC	1.5 hours			$455	$0
Number of BDCs	× 103			× 103	× 103
Total annual burden	155 hours			$46,865	$0
Total Burden					
Total initial registration statement burden	71,070 hours			$25,111,399.08	$4,407,858
Total post-effective amendment burden	20,330 hours			$7,183,266.70	$2,054,660
Total additional burden for affected funds	2,018 hours			$611,975	$0
Total additional burden for BDCs	155 hours			$46,865	$0
Total annual burden	93,573 hours			$32,953,505.78	$6,462,518

Notes:
1. *See* Proposing Release, *supra* footnote 10, at section IV.B.1.
2. *See supra* Table 6, at footnote 2.

TABLE 8—FINAL FORM N–2 PRA ESTIMATES

	Internal burden		Wage rate [1]	Cost of internal burden	Annual external cost burden
Burden for Initial Registration Statement					
Total burden per registration statement	517.6 hours	×	$269 (blended rate of $365 for compliance attorney and $172 for intermediate accountant).	$139,234	$32,241
Number of annual initial registration statements.	× 140[2 3]			× 140[2 3]	× 140[2 3]
Total annual burden	72,464 hours			$19,492,760	$4,513,740
Burden for Post-Effective Amendment					
Total burden per post-effective amendment.	125 hours	×	$269 (blended rate of $365 for compliance attorney and $172 for intermediate accountant).	$33,625	$11,114
Number of annual post-effective amendments.	× 158[2, 4]			× 158[2 4]	× 158[2 4]
Total annual burden	19,750 hours			$5,312,750	$1,756,012
Additional Burden for Affected Funds					
New check box requirements	0.1667 hours	×	$365 (compliance attorney) [2]	$60.85	$0
	0.1667 hours	×	$331 (senior programmer) [2]	$55.18	
	0.1667 hours	×	$248 (webmaster) [2]	$41.34	
Online availability requirement	2 hours	×	$248 (webmaster) [2 4]	$496	$0
Total additional burden per affected fund	2.5 hours			$653.37	$0
Number of affected funds	× 791			× 791	× 791
Total annual burden	1,978 hours			$516,815.67	$0
Additional Burden for BDCS					
Financial highlights requirement	0.5 hours	×	$365 (compliance attorney) [2]	$182.50	$0
	0.5 hours	×	$331 (senior programmer) [2]	$165.50.	
	0.5 hours	×	$248 (webmaster) [2]	$124.	
Total additional burden per BDC	1.5 hours			$472	$0
Number of BDCs	× 105			× 105	× 105
Total annual burden	158 hours			49,560	$0
Total Burden					
Total initial registration statement burden	72,464 hours			$19,492,760	$4,513,740
Total post-effective amendment burden	19,750 hours	....		5,312,750	1,756,012
Total additional burden for affected funds	1,978 hours	....		516,815.67	0

TABLE 8—FINAL FORM N–2 PRA ESTIMATES—Continued

	Internal burden	Wage rate [1]	Cost of internal burden	Annual external cost burden
Total additional burden for BDCs	158 hours		49,560	0
Total annual burden	94,350 hours		$25,371,885.70	$6,269,752

Notes:

1. *See supra* Table 6, at footnote 2. In a change from the Proposing Release, we have revised the wage rate categories for existing Form N–2 burdens, consistent with the currently-approved Form N–2 PRA burden estimates.

2. Estimate revised to reflect updated industry data.

3. We considered whether deeming interval funds to have registered an indefinite number of shares under the amendments to rules 23c–3 and 24f–2 will result in fewer registration statement filings since these funds will no longer need to file registration statements to register additional shares. Based on staff analysis of interval fund filings between January 1, 2017 and December 31, 2019, interval funds very rarely filed registrations statements on Form N–2 solely to register additional shares (*i.e.,* the filing typically also updated the fund's financial statements or included other changes). On average, interval funds filed seven Form N–2 registration statements each year during this period that, among other things, registered additional shares. As a result, for purposes of this PRA estimate, we are not reducing the estimated number of Form N–2 filings to account for the change in how interval funds register additional shares.

4. Estimate revised to reflect the average number of post-effective amendments filed between January 1, 2017 and December 31, 2019 (286 post-effective amendments), minus an estimated reduction of 128 post-effective amendments resulting from the ability of affected funds that are eligible to file short-form registration statements to forward incorporate by reference information into their registration statements. The estimated reduction in the number of post-effective amendment filings has been increased from 112 to 128 filings to account for an increase in the percentage of affected funds that will be eligible to file short-form registration statements (based on updated industry data) and to account for post-effective amendments under rule 486(b) filed by funds that have received relevant staff no-action letters (an average of approximately 29 filings per year over the three-year period). *See supra* Section II.D (discussing relevant staff no-action letters); Proposing Release, *supra* footnote 10, at n.447 (discussing the initial estimated reduction in the number of post-effective amendments of 112).

Table 6 above summarizes the current PRA estimates associated with the requirements of Form N–2. Table 7 summarized the proposed PRA estimates included in the Proposing Release.[469] Table 8 summarizes the final PRA estimates associated with Form N–2 as amended. We did not receive public comment on our proposed PRA estimates, but we are revising our estimates as a result of updated industry data. Specifically, we are revising the estimated wage rates, the estimated number of affected funds, and the estimated number of annual initial registration statement and post-effective amendment filings to reflect updated industry data.

As summarized in Table 8 above, we estimate that the total hour burdens and time costs associated with Form N–2 will be an aggregate annual burden of 94,350 hours at an aggregate annual cost of internal burden of $25,371,886. We estimate an aggregate annual external time cost of $6,269,752.

2. Structured Data Reporting Requirements

We are amending Form N–2, as well as Regulation S–K and Regulation S–T,[470] to require certain new structured data reporting requirements for registered CEFs and BDCs.[471] Specifically, the amendments will require:

- BDCs to submit financial statement information using Inline XBRL format, as is currently required of operating companies.[472] The respondents for this collection of information are an estimated 105 BDCs.
- Affected funds to include structured cover page information in their registration statements on Form N–2 using Inline XBRL, including the tagging of the new check boxes to the cover page of Form N–2.[473] The respondents for this collection of information are an estimated 791 affected funds. As demonstrated in Table 9 below, we do not believe the cover page tagging requirement will result in significant additional burdens for affected funds.
- Affected funds to tag certain Form N–2 disclosure items using Inline XBRL.[474] The respondents for this collection of information are an estimated 791 affected funds.

The purposes of these information collections are to make financial information easier for investors to analyze and to help automate regulatory filings and business information processing, and to reduce the current disparity between operating companies and BDCs with respect to the accessibility of information they provide to the market. These collections of information are mandatory for the relevant respondents, discussed for each collection below. Confidential information will not be disclosed pursuant to these new reporting requirements.

[469] *See* Proposing Release, *supra* footnote 10, at section IV.B.1.

[470] *See* 17 CFR part 229 [OMB Control No. 3235–0071] (Regulation S–K specifies the requirements for exhibits to registration statements and reports); 17 CFR part 232 [OMB Control No. 3235–0424] (Regulation S–T specifies the requirements that govern the electronic submission of documents). Specifically, we are amending rule 601 of Regulation S–K, and rules 11 and 405 of Regulation S–T. The additional collection of information burden that will result from the amendments to rule 601 of Regulation S–K, rules 11 and 405 of Regulation S–T, and Forms N–2 and N–CSR to require structured data reporting for affected funds are included in our burden estimates for the ''Investment Company Interactive Data'' collection of information, and do not impose any separate burden aside from that described in our discussion of the burden estimates for this collection of information.

[471] We also are amending Form 24F–2 to require submission of this filing in a structured XML format. We discuss the PRA burdens of this and other amendments to the form below. *See infra* section IV.B.6.

[472] *See supra* section II.I.1.a; *see also* amended rule 601(b)(101) of Regulation S–K; amended rule 405(b)(3)(i) of Regulation of S–T.

[473] *See supra* section II.I.1.b; *see also* General Instruction I.1 of amended Form N–2; amended rule 405(b)(3)(ii) of Regulation S–T.

[474] *See supra* section II.I.1.c; *see also* General Instruction I.2–3 of amended Form N–2; amended rule 405(b)(3)(iii) of Regulation S–T. The amendments will require the following prospectus disclosure items be tagged using Inline XBRL: Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities.

A seasoned fund filing a short-form registration statement on Form N–2 also will be required to tag any information that is incorporated by reference from an Exchange Act report, such as those on Form N–CSR, 10–K, 10–Q, or 8–K, in response to a disclosure item of the registration statement that is required to be tagged. *See supra* footnote 241 and accompanying text.

TABLE 9—PROPOSED AND FINAL STRUCTURED DATA REPORTING PRA ANALYSIS

	Initial hours	Annual hours [1]	Initial cost burden	Annual cost burden
PROPOSED ESTIMATES [2]				
BDC Financial Statement Information—Per BDC Response (I)	81	65.81 hours	$9,262.50	$7,525.78
Number of BDC Responses Per Year		× 463.5 [2]		× 463.5 [2]
Total Annual Burden		30,503 hours		$3,488,199.03
Affected Funds Cover Page Information on Form N 2—Per Affected Fund Response (II).	0	1 hour	$0	$0
Number of Affected Fund Responses Per Year		× 807		× 807
Total Annual Burden		807 hours		$0
Affected Funds Form N–2 Disclosure Items—Per Affected Fund Response (III).	15.25	12.8 hours	$1,350.00	$1,096.88
Number of Affected Fund Responses Per Year		× 1097.5		× 1097.5
Total Annual Burden		14,048.26 hours		$1,203,825.80
Combined Total Annual Burden		45,358.26 hours		$4,692,024.83
FINAL ESTIMATES				
BDC Financial Statement Information—Per BDC Response (I)	81 hours	65.81	$9,262.50	$7,525.78
Number of BDC Responses Per Year		× 472.5		× 472.5
Total Annual Burden		31,095 hours		$3,555,931
Affected Funds Cover Page Information on Form N–2—Per Affected Fund Response (II).		1 hour		$0
Number of Affected Fund Responses Per Year		× 791		× 791
Total Annual Burden		791 hours		$0
Affected Funds Form N–2 Disclosure Items (III)	15.25	12.8 hours	$1,350.00	$1,097
Number of Affected Fund Responses Per Year		× 1,076		× 1,076
Total Annual Burden		13,773 hours		$1,180,372
Combined Total Annual Burden		45,659 hours		$4,736,303

Notes:

1. Includes initial and ongoing burden estimates annualized over a three-year period. Here, as discussed in the Proposing Release, *supra* footnote 10, at section V.B.2, we assumed that the one-time cost would result in a 50% incremental increase in the internal burdens and external costs of the BDC financial information and Form N–2 disclosure requirements (items I and III in the chart above) during the first year, and would subsequently decline in the second and third years by 75% from the immediately-preceding year.

2. The proposed estimates are discussed in additional detail in the Proposing Release, *supra* footnote 10, at section V.B.2.

Table 9 summarizes the proposed PRA estimates included in the Proposing Release and the final PRA estimates for the structured data reporting requirements. We did not receive public comment on our proposed PRA estimates, but we are revising our estimates as a result of updated industry data. Specifically, we are revising the estimated number of BDCs and affected funds to reflect updated industry data.

As summarized in Table 9, we estimate that the total hour burdens and time costs associated with the structured data reporting requirements will be an aggregate annual burden of 45,659 hours. We estimate an aggregate annual external time cost of $4,736,303.

3. New Annual Reporting Requirements Under Rule 30e-1 and Exchange Act Periodic Reporting Requirements for BDCs

Several of the amendments, such as the amendments that would allow certain affected funds to use an automatic shelf registration statement or to forward incorporate by reference Exchange Act reports, may raise the importance of an affected fund's Exchange Act reports to investors.[475] In light of this, we are adopting new disclosure requirements for affected funds' annual reports. Specifically, we are amending:

- Form N–2 to require affected funds using the short-form registration statement to disclose in their annual reports a fee and expense table, share price data, a senior securities table, and unresolved staff comments regarding the fund's periodic or current reports or registration statement;[476]
- Form N–2 to require registered CEFs to provide MDFP in their annual reports;[477]
- Form N–2 to require BDCs to include financial highlights in their annual reports on Form 10–K;[478] and
- Rule 8b-16 to require a registered CEF that relies on paragraph (b) of that rule to describe in its annual reports its current investment objectives and policies, and principal risks, and certain key changes that occurred during the relevant year in enough detail to allow investors to understand each change and how it may affect the fund.[479]

The collection of information burdens under these amendments correspond to information collections under rule 30e–1 for registered CEFs and Form 10–K for BDCs. Rule 30e–1 generally requires registered investment companies to transmit to their shareholders, at least semi-annually, reports containing the information that is required to be included in such reports by the fund's registration statement form under the Investment Company Act. BDCs, like operating companies, are required to file annual reports on Form 10–K pursuant to section 13 or 15(d) of the Exchange Act.

The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take an affected

[475] *See supra* section II.I.2.

[476] *See supra* section II.I.2.a; *see also* new Instructions 4.h.(1) (senior securities table), 4.h.(2) (fee and expense table), 4.h.(3) (share price data), and 4.h.(4) (unresolved staff comments) to Item 24 of amended Form N–2.

[477] *See supra* section II.I.2.b; *see also* new Instruction 4.g to Item 24 of amended Form N–2.

[478] *See supra* section II.I.2.c; *see also* Instruction 1 to Item 4 of amended Form N–2; new Instruction 10 to Item 24 of amended Form N–2. As discussed above, BDCs also will be required to include financial highlights in their registration statements on Form N–2. *See supra* section IV.B.1.

[479] *See supra* section II.I.5; *see also* amended rule 8b-16.

fund to prepare and review disclosure required under the amendments. For purposes of the PRA, the burden is allocated between internal burden hours and outside professional costs. For these purposes, we estimate that 75% of the burden of preparing annual reports under rule 30e–1 and on Form 10–K is undertaken by the fund internally, while 25% of this burden is undertaken by outside professionals, such as outside counsel and independent auditors, retained by the fund at an average cost of $400 per hour.[480]

TABLE 10—RULE 30E–1 INCREMENTAL BURDEN ESTIMATES

	Number of estimated affected responses (A)	Burden hour increase per current affected response (B)	Increase in burden hours for current affected responses (C) = (A) × (B)	Increase in company hours for current affected responses (D) = (C) × 0.75	Increase in professional hours for current affected responses (E) = (C) × 0.25	Increase in professional costs for current affected responses (F) = (E) × $400
PROPOSED ESTIMATES [1]						
MDFP requirement	704	16	11,264	8,448	2,816	$1,126,400
Requirements to disclose fee and expense table, share price data, a senior securities table, and unresolved staff comments	457	3	1,371	1,028	343	137,200
Amendments to rule 8b–16(b)	704	4	2,816	2,112	704	281,600
Total estimated burdens	11,588 hours					[2] $1,545,200
FINAL ESTIMATES						
MDFP requirement	[3] 686	16	10,976	8,232	2,744	1,097,600
Requirements to disclose fee and expense table, share price data, a senior securities table, and unresolved staff comments	[3] 455	3	1,365	1,024	341	136,400
Amendments to rule 8b–16(b)	[3] [4] 521	[5] 5	2,605	1,954	651	260,400
Total estimated burdens	11,210 hours					1,494,400

Notes:
1. *See* Proposing Release, *supra* footnote 10, at section V.B.3.
2. The Proposing Release reflected an estimate of $1,545,100. Since we are rounding internal burden and external cost estimates to the nearest whole number in this section, this table reflects an estimated annual cost burden of $1,545,200.
3. Revised to reflect updated industry data.
4. Revised to recognize that not all registered CEFs rely on rule 8b–16(b).
5. Revised to reflect a change from the proposed requirements.

Table 10 summarizes the proposed incremental PRA burden estimates and the final incremental PRA burden estimates associated with the new annual report requirements for registered CEFs. We did not receive comments on our proposed estimates, but we have revised them as a result of updated industry data and changes to the proposed amendments. Specifically, we are revising the estimated number of registered CEFs that will be subject to the new annual report requirements to reflect updated industry data and the estimated burden hours associated with the amendments to rule 8b–16(b). As summarized in Table 10 above, the revised additional burdens associated with the new annual report requirements for registered CEFs for purposes of the rule 30e–1 collection of information is 11,210 hours for internal time and external costs of $1,494,400.

[480] 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 for rule 30e–1 and Form 10–K, 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 persons who regularly assist registrants in preparing and filing reports with the Commission.

TABLE 11—FORM 10–K INCREMENTAL BURDEN ESTIMATES

	Number of estimated affected responses (A)	Burden hour increase per current affected response (B)	Increase in burden hours for current affected responses (C) = (A) × (B)	Increase in company hours for current affected responses (D) = (C) × 0.75	Increase in professional hours for current affected responses (E) = (C) × 0.25	Increase in professional costs for current affected responses (F) = (E) × $400
PROPOSED ESTIMATES [1]						
Requirements to disclose fee and expense table, share price data, a senior securities table, and unresolved staff comments	43	3	129	97	32	$12,800
Financial highlights requirement	103	1.5	155	116	39	15,600
Total estimated burdens	213 hours					28,400
FINAL ESTIMATES						
Requirements to disclose fee and expense table, share price data, a senior securities table, and unresolved staff comments	[2] 44	3	132	99	33	13,200
Financial highlights requirement	[2] 105	1.5	158	119	40	16,000
Total estimated burdens	218 hours					29,200

Notes:
1. *See* Proposing Release, *supra* footnote 10, at section V.B.3.
2. Revised to reflect updated industry data.

Table 11 summarizes the proposed incremental PRA burden estimates and the final incremental PRA burden estimates associated with the new annual report requirements for BDCs. We did not receive comments on our proposed estimates, but we have revised them as a result of updated industry data. Specifically, we are revising the estimated number of BDCs that will be subject to the new annual report requirements to reflect updated industry data. As summarized in Table 11 above, the revised additional burdens associated with the new annual report requirements for BDCs for purposes of the Form 10–K collection of information is 218 hours for internal time and external costs of $29,200.

TABLE 12—REQUESTED PAPERWORK BURDEN UNDER THE AMENDMENTS TO ANNUAL REPORT DISCLOSURE

Rule or form	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Number of affected responses (D)	Increase in company hours (E)	Increase in professional costs (F)	Annual responses (G) = (A)	Burden hours (H) = (B) + (E)	Cost burden (I) = (C) + (F)
	Current Burden [1]			**Program Change**			**Requested Change in Burden**		
30e–1	23,784	1,028,658	$147,750,391	Varies (*see* Table 10) [2].	11,210	$1,494,400	23,784	1,039,868	$149,244,791
10–K	8,137	14,198,780	$1,895,224,719	Varies (*see* Table 11) [2].	218	$29,200	8,137	14,198,998	1,895,253,919

Notes:
1. The rule 30e–1 estimates are based on the last time the rule's information collections were approved, pursuant to a submission for a PRA extension in 2019. The Form 10–K estimates are based on the last time the form's information collections were approved, pursuant to a submission for a PRA extension in 2019.
2. As reflected in Table 10 and Table 11, the number of registered CEFs and the number of BDCs that will need to comply with the new annual report disclosure requirements will vary depending on the type of new disclosure, although all registered CEFs (686) and all BDCs (105) will be required to provide some additional annual report disclosure.

As summarized above in Table 12, the revised aggregate estimates, including the new amendments, for rule 30e–1 are 1,039,868 hours and $149,244,791 in external costs. The revised aggregate estimates for Form 10–K, including the new amendments, are 14,198,998 hours and $1,895,253,919 in external costs.

4. Securities Offering Communications

Rule 163 permits WKSIs to make unrestricted oral and written offers before filing a registration statement, but any written offer will be considered a free writing prospectus and will generally have to be filed upon filing a registration statement or amendment covering the securities. Rule 433 governs the use of free writing prospectuses by WKSIs and non-WKSI issuers after the filing of a registration statement. A free writing prospectus used by or on behalf of an affected fund, or free writing prospectuses that are broadly disseminated by another offering participant, are required to be filed with the Commission. We have adopted amendments to rules 163 and 433 that will permit affected funds to

rely on these rules to use a free writing prospectus.

We did not receive public comment on our proposed estimates, but we have revised them as a result of updated industry data. Specifically, we are revising the estimated number of firms that will be subject to the rule to reflect updated industry data.

The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review disclosure required under the proposed amendments. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. Table 13 below sets forth the percentage estimates we typically use for the burden allocation for each rule.[481] We also estimate that the average cost of retaining outside professional to be $400 per hour.[482]

TABLE 13—STANDARD ESTIMATED BURDEN ALLOCATION FOR SECURITIES ACT RULES 163 AND 433

	Internal	Outside professionals
ESTIMATED BURDEN ALLOCATION		
Rule 163	25%	75%
Rule 433	25%	75%

The table below illustrates the incremental change to the total annual compliance burden of affected rules, in hours and costs, as a result of the proposed amendments.

TABLE 14—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE AMENDMENTS

	Number of estimated affected responses (A) [1] [2]	Burden hour increase per current affected response (B) [3]	Increase in burden hours for current affected responses (C) = (A) × (B)	Increase in company hours for current affected responses (D) = (C) × 0.25 or 0.75	Increase in professional hours for current affected responses (E) = (C) × 0.75 or 0.25	Increase in professional costs for current affect responses (F) = (E) × $400
Incremental Change in Burden Estimates						
163	2	0.25	0.50	0.125	0.375	$150
433	4,271	1.28	5,467	1,367	4,100	$1,640,000

Notes:

1. For a number of reasons, many issuers that are currently eligible to be WKSIs do not make use of free writing prospectuses in reliance on rule 163. At the time the Commission adopted rule 163, it estimated that 53 free writing prospectuses would be filed under rule 163 per year. However, during the Commission's 2017 fiscal year, only 10 free writing prospectuses in reliance on rule 163 were filed with the Commission. We estimate that 100 affected funds would be eligible to be WKSIs. *See supra* section III.A.1. If current practices regarding the use of free writing prospectuses under rule 163 continue with respect to affected funds, we do not believe that these affected funds would significantly increase the number of free writing prospectuses under rule 163. Accordingly, we estimate that, on average, affected funds that are eligible to be WKSIs would file 2 free writing prospectuses under the amendments to rule 163 each year.

2. The most recent data that we have available shows that each operating company files an average of approximately 5.4 free writing prospectuses per year in reliance on rule 433. We estimate that there will be 791 affected funds filing approximately 4,271 free writing prospectuses. *See supra* section III.A.1.

3. The burden hour estimates for rules 163 and 433 are based on the last time the rules' information collections were approved, pursuant to a submission for a PRA extension in 2017. The conditions under rule 433 to use a free writing prospectus, require a free writing prospectus to contain more information and contribute to the greater burden hour than for a rule 163 free writing prospectus.

The following table summarizes the requested paperwork burden, including the estimated total reporting burdens and costs, under the proposed amendments.

[481] We estimate that 25% of the burden of preparing and filing a free writing prospectus pursuant to rule 163 or rule 433 is undertaken by the issuer internally and that 75% of the burden is undertaken by outside professionals retained by the issuer.

[482] We recognize 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.

TABLE 15—REQUESTED PAPERWORK BURDEN UNDER THE AMENDMENTS TO SECURITIES ACT RULES 163 AND 433

	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Number of affected responses (D)	Increase in company hours (E)	Increase in professional costs (F)	Annual responses (G) = (A)	Burden hours (H) = (B) + (E)	Cost burden (I) = (C) + (F)
	Current Burden			Program Change			Requested Change in Burden		
163	10	1	$720	2	0.125	$150	12	1.125	$870
433	15,700	5,024	$6,028,800	4,271	1,367	$1,640,000	19,971	6,391	$7,668,800

As summarized above in Table 15, the revised aggregate estimates, including the new amendments, for rule 163 are 1.125 hours, and $870 in external costs. The revised aggregate estimates for rule 433, including the new amendments, are 6,391 hours and $7,669,017 in external costs.

5. Prospectus Delivery Requirements

Rule 173 requires the delivery of a copy of a final prospectus, or in lieu of a final prospectus, a notice to purchasers stating that a sale of securities was made based on a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of rule 172.[483] We have adopted amendments to rule 173 to remove the exclusion for offerings of affected funds.[484]

We did not receive public comment on our proposed PRA estimates for rule 173. We have revised our estimates regarding the number of funds likely to rely on rule 173, and to reflect updated industry data.[485] Specifically, based on a review of Form N–2 filings made with the Commission, we are revising downward the proposed estimate of the number of affected funds expected to rely on rule 173 as a result of the amendments, and thus incur burdens associated with the rule.

The burden estimates were calculated by multiplying the estimated number of registrants likely to rely on rule 173 by the number of responses per registrant by the estimated time it would take compile the necessary information and data, prepare and review disclosure, file documents and retain records for issuers that choose to rely on rule 173. We assume, similar to operating companies that rely on rule 173, that each affected fund will incur 100% of the burden. The table below illustrates the incremental change to the total annual burden for affected funds as a result of the amendments.

TABLE 16—RULE 173 (CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE AMENDMENTS)

	Number of estimated affected responses (A) [1]	Burden hour per current affected response (B) [2]	Burden hours for current affected responses (C) = (A) × (B)	Increase in professional hours for current affected responses	Increase in professional costs for current affect responses
173	16,634,572	0.0167	277,797	0	$0

Notes:

1. In the Proposing Release we estimated that all 807 affected funds would rely on rule 173. *See supra* footnote 10 at section V.B.5. However, because only a fund with an effective Securities Act registration statement may rely on rule 173, we are revising our estimates. Based on our staff's review of Form N–2 Securities Act registration statements filed annually between 2017 and 2019, we estimate 382 annual filings, each by a different affected fund. We estimate that each such fund will provide 43,546 responses annually, for a total of 16,634,572 annual responses per year (382 funds × 43,546 responses annually = 16,634,572).

2. The estimated burden hour per response of 0.0167 hours derives from the most recently-approved rule 173 PRA submission (2017).

The following table summarizes the total PRA burden, including the estimated total reporting burdens and costs, for rule 173 as a result of the amendments. As reflected below, the revised aggregate hourly burden associated with rule 173 as a result of the amendments is 4,159,688 internal burden hours, with no external costs.

TABLE 17—RULE 173 (REQUESTED PAPERWORK BURDEN UNDER THE AMENDMENTS)

	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Number of affected responses (D)	Increase in company hours (E)	Increase in professional costs (F)	Annual responses (A) + (D)	Burden hours (B) + (E)	Cost burden (C) + (F)
	Current Burden			Program Change			Requested Change in Burden		
173	232,448,548	3,881,891	$0	+ 16,634,572	+ 277,797	$0	249,083,120	4,159,688	$0

[483] *See supra* footnote 153.

[484] *See supra* section II.D.

[485] This estimate is based on the last time rule 173's information collections were approved, in 2017.

6. Form 24F–2

Rule 24f–2 requires any open-end management company, unit investment trust, or face-amount certificate company deemed to have registered an indefinite amount of securities to file a Form 24F–2 not later than 90 days after the end of any fiscal year in which it has publicly offered such securities. Form 24F–2 is the annual notice of securities sold by these funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year, net of securities redeemed or repurchased during the year. We are amending rules 23c–3 and 24f–2 so that interval funds will pay registration fees on the same annual basis using Form 24F–2. We are also adopting a requirement that funds submit reports on Form 24F–2 in an XML structured data format.

TABLE 18—FORM 24F–2 PRA ESTIMATES

	Internal burden		Wage rate [1]	Cost of internal burden	Annual external cost burden
Currently Approved Estimates [2]					
Clerical work to file Form 24F-2	2 hours	×	$66 (compliance clerk)	$132	$0
Number of annual responses	× 7,284			× 7,284	× 7,284
Total annual burden	14,568 hours			*$961,488	$0
Proposed Estimates [3]					
Clerical work to file Form 24F–2	2 hours	×	$67 (compliance clerk)	$134	$0
Submission in a structured data format	2 hours	×	$261 (programmer)	$522	$0
Total annual burden per response	4 hours			$656	$0
Number of annual responses	× 6,177			× 6,177	× 6,177
Total annual burden	24,708 hours			$4,052,112	$0
Final Estimates					
Clerical work to file Form 24F–2	2 hours	×	$70 (compliance clerk) [4]	$140	$0
Submission in a structured data format	2 hours	×	$271 (programmer) [4]	$542	$0
Total annual burden per response	4 hours			$682	$0
Number of annual responses	× 6,794[4]			[4] × 6,794	[4] × 6,794
Total annual burden	27,176 hours			$4,633,508	$0

Notes:
1. *See supra* Table 6, at footnote 2.
2. This estimate was previously submitted to OMB in connection with the renewal of approval for the collection of information required by Form 24F-2 in 2018.
3. Proposing Release, *supra* footnote 10, at section IV.B.7.
4. Estimate revised to reflect updated data. Based on a review of Form 24F–2 filings for the period 2017–2019, the staff estimates that 6,741 filings will be made annually, and that 53 interval funds (representing the 3-year average of interval funds registered with the Commission) will file Form 24F–2 as a result of the final amendments (6,741 + 53 = 6,794).

Table 18 above summarizes the current PRA estimates, the proposed PRA estimates, and the final PRA estimates associated with the requirement to file reports on Form 24F–2.[486] We did not receive public comment on our proposed estimates, but we have revised them as a result of updated industry data. Specifically, we are revising the estimated wage rates and estimated number of funds that will be subject to the requirements of Form 24F–2 to reflect updated industry data. As summarized in Table 18 above, the revised aggregate estimates for Form 24F–2, including the new amendments, are 27,176 hours, with no external costs.

[486] *See* Proposing Release, *supra* footnote 10, at section IV.B.7.

7. Amendments Permitting the Registration of Offerings of an Indeterminate Number of Exchange-Traded Vehicle Securities and the Payment of Registration Fees for Such Offerings on an Annual Net Basis

The amendments to certain Securities Act rules and to Forms S–1, S–3, F–1 and F–3 will allow issuers of exchange-traded vehicle securities to elect to register offerings of an indeterminate number of such securities and pay registration fees for these offerings on an annual net basis. We estimate that the amendments will increase the paperwork burden for registration statements on Form S–1 and Form S–3 for such offerings due to the requirement to calculate and pay registration fees on an annual net basis within 90 days after the end of the fiscal year.[487] However, because these issuers will have the ability to elect to register offerings of an indeterminate number of such securities, we also estimate that the amendments will result in a decrease in the number of registration statements on these forms filed by these issuers and that, overall, the amendments will reduce the paperwork burdens associated with Form S–1 and Form S–3. The amendments to Forms F–1 and F–3 are not expected to affect the burdens associated with those forms, in that we do not anticipate that any issuers at this time will use Form F–1 or Form F–3 to register offerings of an indeterminate number of exchange-

[487] The paperwork burdens for 17 CFR 230.400 through 230.498A (Regulation C) are imposed through the forms, schedules and reports that are subject to the requirements in these regulations and are reflected in the analysis of those documents. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulation C.

traded vehicle securities and pay registration fees for these offerings on an annual net basis.

Based on a review of registration statements filed by ETPs for the period 2017–2019, the staff estimates that, after the effectiveness of these amendments, an average of five registration statements on each of Form S–1 and Form S–3 will be filed each year for offerings of an indeterminate number of exchange-traded vehicle securities with the payment of registration fees on an annual net basis.[488] We estimate that the incremental increase in burden for these registration statements will be two hours, consistent with the estimated burden for Form 24F–2. We would expect there to be only a minimal initial burden of establishing a system for calculating fee payments in this manner, in that these issuers already track the issuances and redemptions of their securities on an ongoing basis. When paying registration fees, these issuers will file prospectus supplements under rule 424 and provide disclosures modeled after Form 24F–2. We estimate that, in filing these prospectus supplements in connection with registration statements on Form S–1 or Form S–3, 25% of the burden of preparation is carried by the issuer internally and that 75% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of $400 per hour.

TABLE 19—INCREMENTAL PAPERWORK BURDEN UNDER THE AMENDMENTS FOR REGISTRATION STATEMENTS

	Current burden			Estimated increase in burden for affected responses					
	Annual reponses	Burden hours	Costs	Estimated number of affected responses (A)	Burden hour change per affected response (B)	Change in burden hours for affected responses (C) = (A) × (B)	Change in company hours for affected responses (D) = (C) × 0.25	Change in professional hours for affected responses (E) = (C) × 0.75	Change in professional costs
S–1	901	147,208	$180,319,975	5	2	10	2.5	7.5	$3,000
S–3	1,657	193,626	236,198,036	5	2	10	2.5	7.5	3,000

In addition, we estimate that seven fewer Forms S–1 and ten fewer Forms S–3 will be filed by these issuers each year as a result of the ability to register offerings of an indeterminate number of exchange-traded vehicle securities, which could result in lower costs for these issuers through a reduction in the number of registration statements filed by these issuers.

TABLE 20—ESTIMATED DECREASE IN BURDEN AS A RESULT OF THE DECREASE IN THE NUMBER OF ANNUAL RESPONSES

	Current burden			Estimated decrease in burden as a result of the decrease in the number of annual responses		
	Annual reponses	Burden hours	Costs	Estimated decrease in the number of annual responses	Estimated decrease in burden hours	Estimated decrease in costs
S–1	901	147,208	$180,319,975	7	1,144	$1,400,932
S–3	1,657	193,626	236,198,036	10	1,169	1,425,456

The following table illustrates the total annual compliance burden, in hours and in costs, of the affected collections of information resulting from the amendments to these forms.

TABLE 21—CURRENT AND REVISED BURDENS UNDER THE AMENDMENTS TO SECURITIES ACT REGISTRATION STATEMENTS

	Current burden		Revised burden	
	Burden hours (A)	Costs (B)	Burden hours (C)	Costs (D)
S–1	147,208	$180,319,975	146,067	$178,922,043
S–3	193,626	236,198,036	192,460	234,775,580
F–1	26,692	32,275,375	26,692	32,275,375
F–3	4,441	5,703,600	4,441	5,703,600

[488] While we believe that the number of such registration statements to register an indeterminate number of exchange-traded vehicle securities will be higher immediately following the effectiveness of these amendments, we estimate that the number of registration statements for such offerings after this initial period will average a total of approximately 10 registration statements each year.

8. Amendments to Form N–14

Form N–14 is the form used by an affected fund for the registration of securities issued in business combination transactions. The amendments to Form N–14 will decrease the existing disclosure burden of the form by allowing BDCs to incorporate by reference to the same extent as is currently permitted for registered CEFs and eliminating the requirement for affected funds to file with the Form N–14 registration statement the documents that contain the information that is incorporated by reference into the prospectus or SAI.[489]

TABLE 22—CURRENTLY APPROVED FORM N–14 PRA ESTIMATES [1]

	Internal burden		Wage rate [2]	Cost of internal burden	Annual external cost burden
Burden per Initial Filing					
	310 hours	×	$401 (attorney)	$124,310	$27,500
Preparing and filing initial filing	248 hours	×	$209 (senior accountant)	$51,832	
	62 hours	×	$210 (paralegal)	$13,020	
Total burden per initial filing	620 hours			$189,162	$27,500
Number of annual initial filings	× 156			× 156	× 156
Total annual burden	96,720 hours			$29,509,272	$4,290,000
Burden per Amendment					
	150 hours	×	$401 (attorney)	$60,150	
Preparing and filing amendments	120 hours	×	$209 (senior accountant)	$25,080	$16,000
	30 hours	×	$210 (paralegal)	$6,300	
Total burden per amendment	300 hours			$91,530	$16,000
Number of annual amendments	× 97			× 97	× 97
Total annual burden	29,100 hours			$8,878,410	$1,552,000
Total Burden					
Total initial filing burden	96,720 hours			$29,509,272	$4,290,000
Total amendment burden	29,100 hours			$8,878,410	$1,552,000
Total annual burden	125,820 hours			$38,387,682	$5,842,000

Notes:
1. These estimates were previously submitted to OMB in connection with the renewal of approval for the collection of information required by Form N-2 in 2019.
2. *See supra* Table 6, at footnote 2.

TABLE 23—FINAL FORM N–14 PRA ESTIMATES

	Internal burden		Wage rate [2]	Cost of internal burden	Annual external cost burden
Burden per Initial Filing					
Current burden for preparing and filing initial filing.	310 hours	×	[2] $415 (attorney)	$128,650	$27,500
	248 hours	×	[2] $216 (senior accountant)	$53,568	
	62 hours	×	[2] $218 (paralegal)	$13,516	
Burden reduction from incorporation by reference amendments.	[3] (10 hours)	×	[2] $218 (paralegal)	$(2,180)	$(0)
Total burden per initial filing	610 hours	....		$193,554	$27,500
Number of annual initial filings	× [2] 156	....		× [2] 156	× [2] 156
Total annual burden	96,160 hours	....		$29,181,672	$4,290,000
Burden per Amendment					
Current burden for preparing and filing amendments.	150 hours	×	[2] $415 (attorney)	$62,250	$16,000
	120 hours	×	[2] $216 (senior accountant)	$25,920	
	30 hours	×	[2] $218 (paralegal)	$6,540	
Burden reduction from incorporation by reference amendments.	[3] (10 hours)	×	[2] $218 (paralegal)	$(2,180)	$(0)
Total burden per amendment	290 hours	....		$92,530	$16,000
Number of annual amendments	[2] × 97	....		[2] × 97	[2] × 97
Total annual burden	29,100 hours	....		$8,674,710	$1,552,000

[489] *See supra* section II.B.3.b.

TABLE 23—FINAL FORM N–14 PRA ESTIMATES—Continued

	Internal burden	Wage rate [2]	Cost of internal burden	Annual external cost burden
Total Burden				
Total initial filing burden	96,160 hours	....	$29,181,672	$4,290,000
Total amendment burden	29,100 hours	....	8,674,710	$1,552,000
Total annual burden	125,260 hours	....	$37,856,382	$5,842,000

Notes:
1. *See supra* Table 6, at footnote 2.
2. Estimate revised to reflect updated industry data.
3. Estimate revised to reflect modifications from the proposal.

Table 22 above summarizes the current PRA estimates associated with the requirements of Form N–14. Table 23 summarizes the final PRA amendments associated with Form N–14 as amended. We are revising our estimates as a result of updated industry data and modifications from the proposal. Specifically, we are deducting 10 hours of internal burden per filing to reflect the burden reduction associated with the incorporation by reference amendments affecting filings on Form N–14. In addition, we are revising the estimated wage rates to reflect updated industry data. As summarized in Table 23 above, we estimate that the total hour burdens and time costs associated with Form N–14 will be an aggregate burden of 125,260 hours at an aggregate annual cost of internal burden of $37,856,382. We estimate an aggregate annual external time cost of $5,842,000.

V. Final Regulatory Flexibility Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') in accordance with section 4(a) of the Regulatory Flexibility Act (''RFA''),[490] regarding the final rule modifications to the registration, communications, and offering processes for affected funds under the Securities Act and the rules and forms under the Exchange Act and Investment Company Act, that will allow affected funds to use the securities offering rules that are already available to operating companies. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and is included in the Proposing Release.[491]

A. Need and Objectives of the Final Rule

The BDC Act directs us to allow a BDC to use the securities offering rules that are available to other issuers required to file reports under section 13(a) or section 15(d) of the Exchange Act and specifically enumerates the required revisions. Similarly, the Registered CEF Act directs us to allow any listed registered CEF or interval fund to use the securities offering rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Exchange Act, subject to appropriate conditions.[492] Pursuant to both Acts, the final rule will modify the registration, communications, and offering processes for affected funds to allow them to use the securities offering rules that are available to other issuers required to file reports under section 13(a) or section 15(d) of the Exchange Act. We are also adopting amendments to our rules and forms, to tailor the disclosure and regulatory framework for affected funds, in light of the amendments to the offering rules applicable to them. The reasons for, and objectives of, the final rule are further discussed in more detail in Section II above. The costs and burdens of these requirements on smaller affected funds are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discusses the costs and burdens of the final rule on all affected funds.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on every aspect of the IRFA, including the number of small entities that would be affected by the proposed rule and form amendments, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis, and how to quantify the impact of the proposed amendments. We also requested comment on the proposed compliance burdens and the effect these burdens would have on smaller entities. Although we did not receive comments specifically addressing the IRFA, several commenters stated in their comment letters the impact they believed certain aspects of the proposed amendments would have on small affected funds.[493] Specifically, one commenter stated that the proposed rules would disadvantage smaller affected funds relative to larger affected funds that have obtained WKSI status, because smaller funds that would benefit from the ability to use automatic effective registration statements to quickly come to market during periods when their shares trade at a premium, may miss the opportunity to raise capital that the proposed rules were designed to facilitate. The commenter stated that this disparity was unnecessary because shareholders of smaller funds would not likely be disadvantaged by a lower level of market commentary about those funds as compared to larger funds given the investor protections afforded to those shareholders by the Investment Company Act.[494] Similarly, another commenter stated that the Commission should reconsider the public float requirement in order to encourage new CEF issuances and give smaller CEFs the opportunity to grow through the issuance of additional shares, because the offering size of most of the recent offerings by public CEFs have been relatively small, making them ineligible for treatment as a ''seasoned fund'' or WKSI.[495] The second commenter stated that forward incorporation by reference, which is allowed when an affected fund has met the requirements to use a short-form registration statement, should be made available to smaller affected funds.[496] However, as discussed below, commenters defined smaller funds as those funds that did not meet the WKSI

[490] *See* 5 U.S.C. 603.

[491] *See* Proposing Release, *supra* footnote 10, at section VI.

[492] As discussed above, we apply the final rule to all registered CEFs (and BDCs), with certain conditions and exceptions.

[493] *See e.g.,* ABA Comment Letter; Invesco Comment Letter; White Comment Letter; XBRL US Comment Letter.

[494] *See e.g.,* ABA Comment Letter.

[495] *See e.g.,* Invesco Comment Letter.

[496] *See e.g.,* White Comment Letter.

public float threshold of $700 million or more for purposes of using an automatic registration statement, or did not meet the seasoned public float threshold of $75 million or more for purposes of forward incorporation by reference.

Another commenter voiced support for the XBRL format proposed for certain filings by affected funds and recommended expanded use of the format for other disclosures.[497] The commenter noted that a study it conducted along with the AICPA in 2014 and again in 2017 evaluating the annual cost of XBRL preparation for small reporting companies had decreased from $10,000 in 2014 to $5,500 in 2017.[498] In citing to the Council of Institutional Investors (CII) July 19, 2018 comment letter in response to the SEC Draft Strategic Plan 2018–2022, the commenter stated that inline XBRL is an improvement to EDGAR functionality and makes disclosure documents more valuable and cost-effective for a broad range of users including market analysts and data vendors that conduct research on smaller companies.[499] In response to the Commission's request for comment regarding whether the current burdens of preparing financial statements and notes in XBRL format have changed over time for small reporting companies, the commenter reiterated that the cost of XBRL preparation has declined 45% for small reporting companies.[500]

After considering the comments we received on the proposed rule and form amendments, we are adopting the amendments, substantially as proposed, with two modifications intended to reduce the operational challenges commenters identified. Specifically, we are expanding the scope of rule 486 to any registered CEF or BDC conducting continuous offerings under rule 415(a)(1)(ix), and we are not adopting our proposed amendments to Form 8–K.[501] However, we do not believe there would be any meaningful reporting, recordkeeping, or other compliance costs associated with these modifications that would impact small entities.

C. Small Entities Subject to the Rule

An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[502] Commission staff estimates that, as of June 2019, 16 BDCs and 33 registered CEFs are small entities.[503]

A broker-dealer is a small entity if it has total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a-5(d) (Exchange Act rule 17a–5),[504] and it is not affiliated with any person (other than a natural person) that is not a small business or small organization.[505] Commission staff estimates that, as of June 30, 2019, there are approximately 942 broker-dealers that may be considered small entities.[506] To the extent a small broker-dealer participates in a securities offering or prepares research reports, it may be affected by the final rule. Generally, we believe larger broker-dealers engage in these activities, and we did not receive comments on whether or how the proposed amendments to rule 138 affect small broker-dealers.[507]

The final rule will also affect ETPs, permitting them to register offerings of an indeterminate number of exchange-traded vehicle securities and pay registration fees for such offerings on an annual net basis. For purposes of the RFA, 17 CFR 230.157 (Securities Act rule 157) defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding $5 million.[508] Exchange Act rule 0–10(a) defines an issuer, other than an investment company, to be 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. Commission staff estimates that, as of February 2020, there are approximately 7 ETPs that are issuers, other than an investment company, that may be considered small entities.[509]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final rule will create, amend, or eliminate current requirements for affected funds and broker-dealers, including those that are small entities discussed in section V.C above.[510]

1. Registration Process and Final Prospectus Delivery

The amendments to the registration process for affected funds will create a short-form registration statement on Form N–2 that will function like a registration statement filed on Form S–3.[511] An affected fund eligible to file the short-form registration statement can use it to register shelf offerings, including shelf registration statements (filed by a WKSI) that become effective

[497] *See e.g.,* XBRL US Comment Letter.

[498] *Id.* at 13.

[499] *Id.* at 10.

[500] *Id.* at 13.

[501] *See supra* sections II.D and II.I.3.

[502] 17 CFR 270.0–10(a) (Investment Company Act rule 0–10(a)).

[503] These estimates, reflecting the net assets of registered CEFs and of BDCs, are based on staff review of Forms N–CEN and N–Q filed with the Commission as of June 2019 and are based on the definition of small entity under Investment Company Act rule 0–10. Such funds will not necessarily be able to meet the transaction requirement to qualify to file a short-form registration statement on Form N–2 (*i.e.,* generally those affected funds with a public float of $75 million) or to be a WKSI (*i.e.,* generally those affected funds with a public float of $700 million). *See supra* section II.B.3 and II.C.

Based on data as of June 2019 from Morningstar Direct, Forms 10–K and 10–Q that are filed with the Commission by BDCs, and closed-end fund data reported on Forms N–CSR, N–Q, and N–PORT filed with the Commission, we estimate, of the 16 BDCs that are small entities, 3 were traded on an exchange with market capitalization below the $75 million public float threshold for qualifying to file a short-form registration statement on Form N–2, and 5 small BDCs traded on the over-the-counter (OTC) market with market capitalization below this same $75 million threshold. Likewise, of the 33 registered CEFs that qualified as small entities, 4 traded on an exchange with market capitalizations below this same $75 million threshold; while 3 were traded on the OTC market with market capitalizations below $75 million.

[504] *See* 17 CFR 240.0–10(c)(1) (Exchange Act rule 0–10(c)(1)). Alternatively, if a broker-dealer is ''not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter).'' *See id.*

[505] *See* Exchange Act rule 0–10(c)(2).

[506] This estimate is derived from an analysis of data for the period ending June 30, 2019 obtained from Financial and Operational Combined Uniform Single (FOCUS) Reports that broker-dealers generally are required to file with the Commission and/or SROs pursuant to Exchange Act rule 17a-5.

[507] *See supra* section II.F.2.

[508] *See* 17 CFR 230.157.

[509] Based on data as of February 2020 from Morningstar Direct and Form S–1 and Form S–3 registration statements filed with the Commission within the past three years. As discussed above, we do not anticipate that any issuers at this time will use Form F–1 to register offerings of an indeterminate number of exchange-traded vehicle securities and pay registration fees for these offerings on an annual net basis. *See* supra section IV.B.7. Consequently, our figures do not reflect F–1 filers as a ''small business'' or ''small organization.''

[510] *See also supra* section IV (discussing the skills necessary to perform the recordkeeping, reporting, and compliance requirements of the final rule, including those to be performed internally by a fund, and those to be performed externally by professionals). The PRA provides for the hours, costs, and skill level associated with preparing disclosures, filing forms, and retaining records in compliance with our adopted rules. These skills would apply for compliance with the adopted rules by all funds, large and small, and Commission staff further estimates that small funds will incur approximately the same initial and ongoing costs as large funds.

[511] *See supra* section II.B.3.

automatically.[512] Such a fund also can satisfy Form N–2's disclosure requirement by incorporating by reference information from the fund's Exchange Act reports. [513]

In addition, the final rule will allow certain affected funds eligible to register a primary offering under the adopted short-form registration instruction to rely on rule 430B to omit information from their base prospectuses, and to permit affected funds to use the process operating companies follow to file prospectus supplements.[514] Affected funds that choose to forward incorporate information by reference into their registration statements will also be able to include additional information in their periodic reports that is not required to be included in these reports in order to update their registration statements.[515]

The amendments to the WKSI definition in rule 405 will also permit affected funds to qualify for enhanced offering and communication benefits under our rules.[516] In order for an issuer to qualify as a WKSI, the issuer must meet the registrant requirements of Form S–3, *i.e.,* it must be ''seasoned,'' and generally must have at least $700 million in public float.[517] Qualifying as a WKSI will allow such funds to file a registration statement or amendment that becomes effective automatically in a broader variety of contexts than non-WKSIs, and to communicate at any time, including through a free writing prospectus, without violating the ''gun-jumping'' provisions of the Securities Act.[518]

Smaller affected funds will not be able to avail themselves of the aspects of the adopted rule amendments streamlining the registration process for affected funds or that make available the WKSI designation to affected funds. The adopted short-form registration instruction is designed to provide affected funds parity with operating companies by permitting them to use the instruction to register the same transactions that an operating company can register on Form S–3.[519] In order to qualify to use the short-form registration statement under Form N–2, General Instruction A.2 of Form N–2 generally requires an affected fund to meet the public float requirement of $75 million under the transaction requirements for Form S–3.[520] Likewise, the WKSI provision of rule 405 contains a public float requirement of $700 million, as discussed above. Smaller funds will not generally meet the public float thresholds to file a short-form registration statement or qualify as a WKSI and therefore will not generally be subject to either of these amendments.[521] However, smaller affected funds may be affected by these amendments in other ways. For example, smaller affected funds may be more likely to merge to obtain WKSI status, and could experience competitive disadvantages compared to larger funds that qualify as WKSIs or that file short-form registration statements on Form N–2.[522]

The final rule will also apply the delivery method for operating company final prospectuses to offerings of affected funds. As a result, an affected fund, broker, or dealer will be allowed to satisfy the final prospectus delivery obligations if a final prospectus is or will be on file with the Commission within the time required by the rules and other conditions are satisfied.[523] These requirements will apply to all affected funds, as well as all brokers or dealers.[524]

2. Communications Rules

For offerings of smaller affected funds, we are not adopting any new restrictions on communications. As discussed above, the amendments to Securities Act rules 134, 138, 156, 163, 163A, 164, 168, 169, and 433 will make available the use of certain types of communications that were previously not available to affected funds.[525] Except as otherwise discussed below, we believe that there are no significant reporting, recordkeeping, or other compliance requirements associated with these amendments. As such, except as otherwise discussed below, we believe that there are no attendant costs and administrative burdens for small affected funds associated with these amendments.

In addition, the communications rules themselves do not create any new restrictions for smaller affected funds. Instead, smaller affected funds now may be able to take advantage of new communications options not previously afforded to them.[526] We also note that rule 163, and the new amendments, apply only to WKSIs. Consequently, these amendments to rule 163 will not produce any benefit, or create any burden, for small affected funds because they would not qualify as WKSIs, as discussed above.[527]

To the extent that an affected fund uses a free writing prospectus under the adopted rules, any affected fund—large or small—will incur the burden of the requirement to file a free writing prospectus, or retain a record of the free writing prospectus for three years if it was not filed with the Commission.[528] However, we believe that the burden here will be negligible. Affected funds currently use rule 482 of the Securities Act to engage in communications similar to those that will be permitted under the amendments to rule 433, and these funds are required to file their rule 482 communication with either the Commission or, alternatively, with the Financial Industry Regulatory Authority (''FINRA'').[529] The burden associated with the filing requirements that the amendments to rule 433 will entail will therefore not be meaningfully different than the burden associated with the filing requirement for rule 482 communications. Rule 433 also creates a recordkeeping requirement. We do not believe that this requirement will create any significant burden given that records of rule 482 communications must also be retained for a period that

[512] *Id.*

[513] *Id.*

[514] *See supra* section II.B.3.d.

[515] *See supra* section II.B.3.e.

[516] *See supra* section II.C.

[517] *Id.*

[518] *Id.*

[519] *See supra* section II.B.3.a; *see also supra* footnote 51 and accompanying and preceding text.

[520] *See supra* sections II.B.3.a and III.B.1.

[521] *See supra* sections II.B.3 and III.B.1.

[522] *See supra* section III.B.1.

[523] *See supra* sections IV.B.5 and II.E.

[524] Affected funds using the new approach to prospectus delivery will be required to provide a notice to purchasers stating that a sale of securities was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of Securities Act rule 172. *See supra* footnote 153 and accompanying text.

[525] *See supra* sections II.F, III.B.2, III.C.1, and IV.B.4. The amendments to Securities Act rules 163 and 433, regarding the use of a free writing prospectus, create new recordkeeping, filing, and compliance requirements that are addressed further below.

[526] *See supra* sections II.F, III.B.2, III.C.1, and IV.B.4. These include, for example, amendments to rule 163A of the Securities Act, which provides a bright-line rule permitting communications more than 30 days before filing a registration statement, and amendments to rule 169 of the Securities Act, which provides affected funds the ability to engage in regular factual business communications.

[527] *See supra* section V.D.1.

[528] *See* amended rule 433(d) and (g). Paragraph (d) of the rule provides for the various conditions and exclusions applicable to the general requirement of 433(d)(1) that an issuer or offering participant file its free writing prospectus. Paragraph (g) requires that if a free writing prospectus is not filed pursuant to paragraph (d) or (f) of rule 433, issuers and offering participants must retain all free writing prospectuses that have been used, for three years following the initial bona fide offering of the securities in question.

[529] *See* note to paragraph (h) of Securities Act rule 482. Rule 482 requires that advertisements used in reliance on rule 482 are required to be filed in accordance with the requirements of rule 497, unless they are filed with FINRA. *See supra* footnote 528 and sections III.C and IV.B.4.; *see also* Securities Act rule 497(a) and (i).

will generally exceed that required under rule 433.[530] In addition, the recordkeeping requirement will apply only to affected funds (both large and small) that elect to use rule 433, as adopted.

The final rule also will affect broker-dealers participating in a registered offering. Specifically, the amended rules will affect: (1) Broker-dealers' publication and distribution of research reports on affected funds; and (2) broker-dealers' use of free writing prospectuses on affected funds.

The amendments to rule 138 will affect both large and small broker-dealers. These amendments will now permit broker-dealers to publish or distribute research reports with respect to a broader class of issuers and securities without this publication or distribution being an offer that otherwise could be a non-conforming prospectus in violation of section 5 of the Securities Act.[531] Broker-dealers that once used rule 482 ads styled as research reports, and instead rely on rule 138, as adopted, to publish or distribute similar communications, will no longer be subject to any filing requirement for these communications. Consequently, we expect that the amendments to rule 138 will result in fewer rule 482 communications being filed with FINRA.[532] This in turn will reduce filing-related administrative costs for broker-dealers publishing or distributing research reports on affected funds under the amendments to rule 138. However, large and smaller broker-dealers will not be affected differently by the amendments to rule 138.

In addition, the free writing prospectus rule amendments will permit broker-dealers to engage in these communications on behalf of the affected fund issuer.[533] This will require broker-dealers, both large and small, to file the free writing prospectuses that they use with the Commission, or maintain records of any free writing prospectuses used if it was not filed with the Commission.[534] However, certain of these broker-dealers are already required to file communications made under rule 482.[535] Broker-dealers that once used rule 482 ads and instead now choose to rely on adopted amended rule 433 to publish or distribute similar communications, will no longer be required to file these communications with FINRA. Consequently, the amendments to rule 433 could result in fewer rule 482 communications being filed with FINRA and a potential increase in filings of free writing prospectuses by affected funds with the Commission.[536] However, those broker-dealers that have not previously used rule 482 to publish or distribute the types of communications that the amendments to rule 433 permit, will newly be subject to both the filing and recordkeeping requirements of rule 433.

3. New Registration Fee Payment Method for Interval Funds

Interval funds, like other affected funds, are not currently permitted to pay registration fees on this same annual ''net'' basis as mutual funds and ETFs, and pay the registration fee at the time of filing the registration statement.[537] As discussed above, we believe that interval funds will benefit from the ability to pay their registration fees in the same manner as mutual funds and ETFs, and that this approach is appropriate in light of interval funds' operations.[538] In addition, in response to comments to the Proposing Release, we also are adopting amendments to enable ETPs to register an indeterminate number of securities and to pay registration fees in arrears on an annual net basis.[539] As we discussed above, ETPs operate in a manner substantially similar to that of ETFs, and as commenters noted, share similar attributes with interval funds, which we highlighted in extending to interval funds the ability to pay registration fees on an annual net basis, including routine repurchases of shares at NAV and avoiding the possibility of inadvertently selling more shares than it had registered.[540] As a result, the final rule will require interval funds and allow ETPs to pay securities registration fees using the same method that mutual funds and ETFs use.[541] We believe this will benefit small interval funds and ETPs as well as larger interval funds and ETPs equally, and will make the registration fee payment process for all interval funds and ETPs more efficient as discussed above.[542]

4. Disclosure and Reporting Requirements

We also are adopting amendments, substantially as proposed, to our rules and forms that are intended to tailor the disclosure and regulatory framework for affected funds in light of our amendments to the offering rules applicable to them.[543] These amendments include: Structured data requirements; new periodic requirements; amendments to provide affected funds additional flexibility to incorporate information by reference; and enhancements to the disclosures that registered CEFs make to investors when the funds are not updating their registration statements.[544]

Structured Data Requirements

The amendments will require BDCs, like operating companies, to submit financial statement information using Inline XBRL format; to require that affected funds include structured cover page information in their registration statements on Form N–2 using Inline XBRL format; to require that certain information required in an affected fund's prospectus be tagged using Inline XBRL format;[545] and to require that

[530] *See* 17 CFR 270.31a–2(a)(3) (Investment Company Act rule 31a-2(a)(3)) (requiring every registered investment company to preserve for no less than six years from the end of the fiscal year last used, any advertisement, pamphlet, circular form letter, or other sales literature addressed to or intended for distribution to prospective investors). Securities Act rule 433(g) requires an issuer and offering participants to retain all free writing prospectuses that have been used, and that have not been filed pursuant to paragraphs (d) or (f) of the rule, for three years following the initial bona fide offering of the securities in question. However, for a broker or dealer utilizing a free writing prospectus, rule 433 defers to the recordkeeping requirements under 17 CFR 240.17a–4 (Exchange Act rule 17a–4) (requiring sales literature to be retained for not less than three years).

[531] *See* amended Securities Act rule 138.

[532] *See supra* footnote 529 and FINRA rule 2210(c)(7)(F) (requiring a broker-dealer to file with FINRA an investment company prospectus published pursuant to Securities Act rule 482).

[533] *See* amended rule 433(b). Paragraph (b)(1) states that for WKSIs and seasoned issuers, both an issuer or offering participant may use a free writing prospectus, while paragraph (b)(2) states that for non-reporting and unseasoned issuers, any person participating in the offer or sale of the issuer's securities may use a free writing prospectus. Although the term ''offering participant'' is not defined, paragraph (h)(3) of rule 433 gives some context to this term.

[534] *See supra* footnote 528.

[535] *See supra* footnote 529.

[536] *See supra* section III.C.1 and IV.B.4 (noting that we are unable to predict whether affected funds will engage in more communications with investors as a result of the final rule). To the extent affected funds or broker-dealers will use a free writing prospectus for communications that currently occur under rule 482, we would expect an increase in such filings of free writing prospectuses as well as an increase in the number of rule 138 research reports, and a decrease in the number of rule 482 ads filed with FINRA. *See supra* footnote 532 and accompanying text.

[537] *See supra* section II.H and III.E.1.

[538] *See supra* section II.H.

[539] *Id.*

[540] *Id.*

[541] *Id.*

[542] *Id.; see also* section III.E.1.

[543] *See supra* section II.I. Some of the amendments reflect our consideration of the availability of information to investors, as required by the Registered CEF Act. *See* section 509(a) of the Registered CEF Act.

[544] *See supra* sections II.I.1–II.I.5.

[545] *See supra* footnote 241 and accompanying text noting that a seasoned fund filing a short-form registration statement on Form N–2 also will be required to tag information appearing in Exchange Act reports, such as those on Forms N–CSR, 10–K, or 8–K, if that information is required to be tagged in the fund's prospectus.

filings on Form 24F–2 be submitted in XML format.[546] Large and small affected funds will both incur on a proportional basis, the costs associated with these adopted structured data requirements. Furthermore, as noted above, based on our experience implementing the XBRL format, we recognize that some registrants affected by the adopted requirement, particularly filers with no Inline XBRL experience, likely will incur initial costs to acquire the necessary expertise and/or software as well as ongoing costs of tagging required information in Inline XBRL, and the incremental effect of any fixed costs, including ongoing fixed costs, of complying with the Inline XBRL requirement may be greater for smaller filers.[547] However, we believe that smaller affected funds in particular may benefit more from enhanced exposure to investors that could result from these adopted requirements.[548] If reporting the disclosures in a structured format increases the availability of, or reduces the cost of collecting and analyzing, key information about affected funds, smaller affected funds may benefit from improved coverage by third-party information providers and data aggregators.

Periodic Reporting Requirements

The final rule also will require registered CEFs to provide the MDFP in their annual reports to shareholders, BDCs to provide financial highlights in their registration statements and annual reports, and affected funds filing a short-form registration statement on Form N–2 to disclose material unresolved staff comments.[549] These requirements are intended to modernize and harmonize our periodic reporting disclosure requirements for affected funds with those applicable to operating companies and mutual funds and ETFs.

The final rule requirement for registered CEFs to include an MDFP section in the annual report and for BDCs to provide financial highlights in their registration statement and annual reports will apply to all applicable affected funds, large and small. We do not believe it would be appropriate to treat large and small entities differently for purposes of the MDFP requirement because such disclosures helps investors assess fund performance over the prior year and complements other information in the report, which may make the annual report disclosure more understandable as a whole.[550] Such investor protection benefits are equally significant to investors in smaller affected funds as well as larger affected funds.[551]

For similar reasons, we believe that the informational benefit of BDCs' inclusion of the financial highlights in their registration statements should apply equally to investors in large and small BDCs. We also believe the costs associated with this adopted requirement should be minimal for both large and small BDCs, since we understand that it is general market practice for BDCs to include this information in their registration statements.[552]

Finally, the final rule will require affected funds that file a short-form registration statement on Form N–2 to disclose material unresolved staff comments. Such a requirement will apply only to those entities that qualify for the short-form registration statement, which generally would not include smaller affected funds.[553]

Online Availability of Information Incorporated by Reference

The final rule will modernize Form N–2's requirements for backward incorporation by reference by all affected funds. Affected funds will no longer be required to deliver to new investors information that they have incorporated by reference.[554] Instead, we are adopting new requirements that these funds make the incorporated materials and corresponding prospectus and SAI readily available and accessible on a website maintained by or for the fund and identified in the fund's prospectus or SAI.[555] We do not believe this requirement will generate significant compliance costs for affected funds because many funds currently post their annual and semi-annual reports and other fund information on their websites.[556] Nor do we think it would be appropriate to treat large and small entities differently for these purposes. The adopted requirement will make the incorporated information, prospectus, and SAI more accessible to retail investors, who we believe may be more inclined to look at a fund's website for information than to search the EDGAR system.[557] The final rule also will increase the likelihood that fund investors view the information in their preferred format, and thereby increase their use of the information to make investment decisions.[558] We believe that these investor protection benefits should be available equally for investors in smaller and larger affected funds.

Enhancements to Certain Registered CEFs' Annual Report Disclosure

Finally, the amendments to rule 8b–16(b) under the Investment Company Act will require a fund relying on that rule to describe in its annual report the fund's current investment objectives, policies, and principal risks.[559] The amendments also will require a fund to describe in its annual report certain key changes that occurred during the relevant year in enough detail to allow investors to understand each change and how it may affect the fund, and to preface such disclosures with a legend.[560] The amendments to rule 8b–16(b) will only affect that portion of registered CEFs that rely on the rule.[561] We do not think it would be appropriate to treat large and small entities differently for purposes of the amendments to rule 8b–16(b), as this new requirement will allow investors in funds relying on the rule to more easily identify and understand key information about their investments.[562] We believe that this investor protection benefit should be available equally for investors in smaller and larger affected funds. In addition, the adopted new requirement will likely add only a small incremental compliance burden because funds relying on rule 8b–16(b) are already required to disclose the enumerated changes.[563] The amendments described in section II.I above will apply to affected funds that are small entities as well as other affected funds unless noted otherwise.[564]

[546] *See supra* sections II.I.1 and III.E.1.

[547] *See supra* section III.E.2. *But see supra* footnote 428 (noting that since 2014, costs incurred utilizing XBRL have significantly reduced for smaller companies).

[548] *Id.*

[549] *See supra* sections II.I.2.b, II.I.2.c, and II.I.2.d.

[550] *See supra* section III.E.3.

[551] *See supra* section II.I.2.b and II.I.2.c; *see also supra* section IV.B.3 (discussing the burden hours associated with complying with the adopted disclosure requirements for both small and large affected funds).

[552] *Id.; see also supra* sections IV.B.1 and IV.B.3.

[553] *See supra* footnote 503.

[554] *See supra* sections II.I.4 and IV.E.5.

[555] *Id.*

[556] *See supra* section III.E.4.

[557] *Id.*

[558] *Id.*

[559] *See supra* sections II.I.5 and III.E.3.

[560] *Id.*

[561] *See supra* section III.E.3. Based on staff review of data derived from Morningstar Direct and Commission filings for the period ending June 30, 2019, approximately 521 registered CEFs currently rely on rule 8b–16(b). Of these, we estimate that 22 will be small issuers based on net assets of $50 million or less.

[562] *See supra* section III.E.3.

[563] *Id.*

[564] *See also supra* sections III.E.3 and IV.B.3 (discussing the economic impact, and the estimated compliance costs and burdens, of the final rule described in section II.I).

5. Automatic or Immediate Effectiveness for Filings by Affected Funds Conducting Certain Continuous Offerings

As we discussed above, the amendments we are adopting to rule 486 will permit any registered CEF or BDC that conducts continuous offerings under rule 415(a)(1)(ix), including unlisted continuously-offered affected funds such as tender offer funds, to rely on rule 486.[565] Our amendment to rule 486 will allow such funds to file post-effective amendments and registration statements that become effective immediately upon filing or automatically effective 60 days after filing, depending on the substance of the disclosure changes.[566] In doing so, we believe that such funds will be able to more efficiently update their financial statements under section 10(a)(3) of the Securities Act to maintain effective registration statements while they engage in continuous offerings.[567]

These amendments will benefit both large and small continuously-offered unlisted affected funds, and we believe that they provide benefits similar to the benefits the adopted rule offers affected funds that will file short-form registration statements or qualify as WKSIs.[568] Because the amended rule applies only to those affected funds that conduct continuous offerings under rule 415(a)(1)(ix), we expect this subset of affected funds to be limited.[569] In addition, although reliance on rule 486 is voluntary for continuously-offered affected funds who are newly permitted to rely on the rule, we expect many will rely on it due to the cost efficiencies sustained from a regime providing immediate or automatic effectiveness for post-effective amendments and certain registration statements. Notwithstanding this increased use, and because it will provide greater efficiencies, we do not believe the final rule will create any new meaningful reporting, recordkeeping, or other compliance costs in relation to how affected funds currently file post-effective amendments or registration statements. In addition, immediate or automatic effectiveness would permit smaller funds the ability to engage in offerings that meet investor demand, on a timely basis, for such offerings.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic impact on small entities. Although the BDC Act and Registered CEF Act required certain amendments to our rules and forms, we could have, for example, made additional modifications to the relevant provisions with respect to affected funds that are small entities. Alternatively, we also could have limited the scope to BDCs (as the BDC Act specified) and to interval funds and listed registered CEFs (as the Registered CEF Act specified), which would have excluded from the scope of the adopted rules certain small entities that are registered CEFs but that are not interval funds or listed registered CEFs.[570] Where our final rules reflect an exercise of discretion, we considered the following alternatives for small entities in relation to our amendments:

- Exempting affected funds that are small entities from the adopted disclosure, reporting, or recordkeeping requirements, to account for resources available to small entities;
- Establishing different compliance or reporting requirements or frequency to account for resources available to small entities;
- Clarifying, consolidating, or simplifying the compliance requirements under the amendments for small entities; and
- Using performance rather than design standards.

1. Alternatives to the Adopted Approach to Implementing Statutory Mandates

In accordance with the BDC Act and Registered CEF Act, to the final rule modifies the restrictions regarding offerings and communications permitted around the time of a Securities Act registered offering. The flexibility provided by our amendments will be greatest for larger and seasoned affected funds, but will also provide greater flexibility to all affected funds and broker-dealers, including small entities.

We considered modifying the public float standards in the WKSI definition or the short-form registration instruction by reducing the required level of public float or providing alternative eligibility criteria, such as an aggregate NAV of a certain size for funds whose shares are not traded on an exchange or through the use of ''performance'' rather than ''design'' standards.[571] These alternatives would have allowed more affected funds, potentially including small entities, to qualify as WKSIs or file short-form registration statements. However, we believe that modifying the eligibility criteria in the WKSI definition or the short-form registration instruction could weaken the investor protection benefits provided by those criteria.

We also considered extending the adopted rule amendments only to BDCs, listed registered CEFs, and interval funds.[572] However, excluding unlisted registered CEFs from the adopted rule amendments will create unnecessary competitive disparities between unlisted registered CEFs (which will potentially include smaller funds) and unlisted BDCs and will not provide investors in unlisted registered CEFs with the benefits of the new investor protections we are adopting.[573]

2. Alternative Approaches to Discretionary Choices

New Registration Fee Payment Method for Interval Funds

We considered, but are not adopting, provisions allowing a wider range of affected funds, such as registered CEFs that are tender offer funds, to rely on rule 24f–2.[574] To the extent that this alternative would have brought in additional small affected funds, it could have extended the benefits of this fee payment method to additional small entities. However, we did not adopt this alternative approach because interval funds and ETPs have structural similarities to mutual funds and ETFs that other affected funds do not.[575]

Structured Data Requirements

As an alternative, we could have adopted amendments requiring the Inline XBRL requirements only for a subset of affected funds—for example, affected funds that file short-form registration statements on Form N–2 or WKSIs.[576] This would have lessened the burden associated with the structured data requirements on smaller affected funds. However, a structured data program that captures only a subset of affected funds would reduce potential data quality benefits compared to mandatory Inline XBRL requirements

[565] *See supra* section II.D.

[566] *Id.*

[567] *Id.; see also supra* section III.E.5.

[568] *See supra* section III.E.5.

[569] Based on staff review of fund filings, as of August 2019, we estimate that approximately 65 continuously-offered unlisted affected funds (that are not interval funds) conduct continuous offerings under rule 415(a)(1)(ix), of which 14 are BDCs, and 51 are registered CEFs.

[570] *See supra* section II.A.

[571] *See supra* section II.C.

[572] *See supra* section III.D.

[573] *Id.*

[574] *See supra* section III.E.1.

[575] *See id.*

[576] *See supra* section IV.B.2.

for all affected funds.[577] This in turn would reduce data users' ability to meaningfully analyze, aggregate, and compare data.

However, we are adopting an extended compliance period for the new XBRL reporting requirements we adopted for affected funds that are not eligible to file a short-form registration statement. This extended compliance period—which will apply to affected funds that do not meet the transaction requirement to qualify to file a short-form registration statement on Form N–2 (*i.e.,* generally those affected funds with a public float of $75 million), and which encompasses the small entities subject to the adopted rule amendments discussed above—should enable small entities to defer the burden of additional cost associated with the adopted XBRL requirements and learn from affected funds that comply earlier.

Periodic Reporting Requirements and Online Availability of Information Incorporated by Reference

We also considered a partial or complete exemption from the adopted periodic reporting requirements, and for the adopted requirements to make information incorporated by reference available on a website, for small entities.[578] With respect to the periodic reporting requirements, small entities that are not affected funds currently follow the same requirements that large entities do when filing periodic reports, and we believe that establishing different reporting requirements or frequency for small entities that are affected funds would not be consistent with the Commission's goal of investor protection and industry oversight. For example, we could have adopted amendments to require smaller affected funds to include in their annual reports less information from their registration statements. While requiring less information would reduce costs to smaller affected funds by reducing the amount of required annual report disclosure, it could also make it more difficult for investors in these funds to find important fund information. Similarly, we believe that the investor protection benefits associated with the other adopted periodic reporting requirements that apply to large and small affected funds—for example, the MDFP requirement for registered CEFs and the inclusion of BDCs' financial highlights in their registration statement—should apply equally to investors in large and small affected funds.[579] We also believe that the investor protection benefits stemming from the adopted requirement to make materials incorporated by reference available on a website should be available equally for investors in smaller and larger affected funds, and therefore this adopted rule applies equally to large and small affected funds.[580]

VI. Other Matters

Pursuant to the Congressional Review Act,[581] the Office of Information and Regulatory Affairs has designated this rule a ''major rule,'' as defined by 5 U.S.C. 804(2). If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

VII. Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in the Securities Act, particularly sections 6, 7, 8, 10, 19, and 28 thereof [15 U.S.C. 77a *et seq.*]; the Exchange Act, particularly sections 3, 4, 10, 12, 13, 14, 15, 17, 23, 35A, and 36 thereof [15 U.S.C. 78a *et seq.*]; the Investment Company Act, particularly sections 6, 8, 20, 23, 24, 30, 31, and 38 thereof [15 U.S.C. 80a *et seq.*]; the BDC Act, particularly section 803(b) thereof [Pub. L. 115–141, div. S, title VIII, 132 Stat. 348 (2018)]; and the Registered CEF Act, particularly section 509(a) thereof [Pub. L. 115–174, title V, 132 Stat. 1296 (2018)].

List of Subjects

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Advertising, Confidential business information, Investment Companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 243

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities

17 CFR Part 270

Confidential business information, Fraud, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For reasons set forth in the preamble, we are amending title 17, chapter II of the *Code of Federal Regulations* as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78l, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78ll, 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

■ 2. Amend § 229.601 by revising paragraphs (b)(101)(i) introductory text, (b)(101)(i)(C), (b)(101)(ii)(A), and (b)(101)(iii) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(101) * * *

(i) *Required to be submitted.* Required to be submitted to the Commission in the manner provided by § 232.405 of this chapter if the registrant is not registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), except that an Interactive Data File:

* * * * *

(C) Is required for a Form 8–K (§ 249.308 of this chapter):

[577] *See id.*

[578] *See supra* section III.E.3.

[579] *See supra* section V.D.4.

[580] *See id.*

[581] 5 U.S.C. 801 *et seq.*

(*1*) Only when the Form 8–K contains audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission and that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle. In such case, the Interactive Data File will be required only as to such revised financial statements regardless of whether the Form 8–K contains other financial statements; and

(*2*) Except that a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)) also is required to submit an Interactive Data File to the extent required by § 232.405(b)(3)(iii) of this chapter.

(ii) * * *

(A) Registrant is not registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); and

* * * * *

(iii) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

* * * * *

PART 230—GENERAL RULES and REGULATIONS, SECURITIES ACT OF 1933

■ 3. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

Sec. 230.457 also issued under secs. 6 and 7, 15 U.S.C. 77f and 77g.

* * * * *

■ 4. Amend § 230.134 by revising paragraph (g) to read as follows:

§ 230.134 Communications not deemed a prospectus.

* * * * *

(g) This section does not apply to a communication relating to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

■ 5. Amend § 230.138 by:

■ a. Removing Instruction to paragraph (a)(1);

■ b. Adding paragraph (a)(1)(iii); and

■ c. Revising paragraph (a)(2)(i).

The addition and revision read as follows:

§ 230.138 Publications or distributions of research reports by brokers or dealers about securities other than those they are distributing.

(a) * * *

(1) * * *

(iii) Note: If the issuer has filed a shelf registration statement under § 230.415(a)(1)(x) (Rule 415(a)(1)(x)) or pursuant to General Instruction I.D. of Form S–3, General Instruction I.C. of Form F–3 (§ 239.13 or § 239.33 of this chapter), or pursuant to General Instructions A.2 and B of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) with respect to multiple classes of securities, the conditions of paragraph (a)(1) of this section must be satisfied for the offering in which the broker or dealer is participating or will participate.

(2) * * *

(i)(A) Is required to file reports, and has filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports) on Forms 10–K (§ 249.310 of this chapter), 10–Q (§ 249.308a of this chapter), and 20–F (§ 249.220f of this chapter) pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

(B)(*1*) Is a registered closed-end investment company; and

(*2*) Is required to file reports, and has filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports) on Forms N–CSR (§§ 249.331 and 274.128 of this chapter), N–PORT (§ 274.150 of this chapter), and N–CEN (§§ 249.330 and 274.101 of this chapter) pursuant to Section 30 of the Investment Company Act; or

* * * * *

■ 6. Amend § 230.156 by adding paragraph (d) to read as follows:

§ 230.156 Investment company sales literature.

* * * * *

(d) Nothing in this section may be construed to prevent a business development company or a registered closed-end investment company from qualifying for an exemption under § 230.168 or § 230.169.

■ 7. Amend § 230.163 by:

■ a. In paragraph (b)(3)(i):

■ i. Removing ''Rule 165 (§ 230.165) or Rule 166 (§ 230.166)'' and adding ''§ 230.165 (Rule 165) or § 230.166 (Rule 166)'' in its place; and

■ ii. Adding ''or'' after the semicolon at the end of the paragraph;

■ b. Revising paragraph (b)(3)(ii); and

■ c. Removing paragraph (b)(3)(iii).

The revision reads as follows:

§ 230.163 Exemption from section 5(c) of the Act for certain communications by or on behalf of well-known seasoned issuers.

* * * * *

(b) * * *

(3) * * *

(ii) Communications by an issuer that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

* * * * *

■ 8. Amend § 230.163A by revising paragraph (b)(4) to read as follows:

§ 230.163A Exemption from section 5(c) of the Act for certain communications made by or on behalf of issuers more than 30 days before a registration statement is filed.

* * * * *

(b) * * *

(4) Communications made by an issuer that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

* * * * *

■ 9. Amend § 230.164 by revising paragraph (f) to read as follows:

§ 230.164 Post-filing free writing prospectuses in connection with certain registered offerings.

* * * * *

(f) *Excluded issuers.* This section and Rule 433 are not available if the issuer is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

* * * * *

■ 10. Amend § 230.168 by revising paragraphs (b)(1) introductory text, (b)(2) introductory text, and (d)(3) to read as follows:

§ 230.168 Exemption from sections 2(a)(10) and 5(c) of the Act for certain communications of regularly released factual business information and forward-looking information.

* * * * *

(b) * * *

(1) *Factual business information* means some or all of the following

information that is released or disseminated under the conditions in paragraph (d) of this section, including, without limitation, such factual business information contained in reports or other materials filed with, furnished to, or submitted to the Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*):

* * * * *

(2) *Forward-looking information* means some or all of the following information that is released or disseminated under the conditions in paragraph (d) of this section, including, without limitation, such forward-looking information contained in reports or other materials filed with, furnished to, or submitted to the Commission pursuant to the Securities Exchange Act of 1934 or pursuant to the Investment Company Act of 1940:

* * * * *

(d) * * *

(3) The issuer is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

■ 11. Amend § 230.169 by revising paragraph (d)(4) to read as follows:

§ 230.169 Exemption from sections 2(a)(10) and 5(c) of the Act for certain communications of regularly released factual business information.

* * * * *

(d) * * *

(4) The issuer is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

■ 12. Amend § 230.172 by:
■ a. Revising paragraph (d)(1);
■ b. Removing paragraph (d)(2);
■ c. Redesignating paragraphs (d)(3) and (4) as paragraphs (d)(2) and (3); and
■ d. In newly redesignated paragraph (d)(2), removing ''Rule 165(f)(1) (§ 230.165(f)(1)'' and adding ''§ 230.165(f)(1) (Rule 165(f)(1))'' in its place.

The revision reads as follows:

§ 230.172 Delivery of prospectuses.

* * * * *

(d) * * *

(1) Offering of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company;

* * * * *

■ 13. Amend § 230.173 by:
■ a. Revising paragraph (f)(2);
■ b. Removing paragraph (f)(3);
■ c. Redesignating paragraphs (f)(4) and (5) as paragraphs (f)(3) and (4); and
■ d. In newly redesignated paragraph (f)(3), removing ''Rule 165(f)(1) (§ 230.165(f)(1))'' and adding ''§ 230.165(f)(1) (Rule 165(f)(1))'' in its place.

The revision reads as follows:

§ 230.173 Notice of registration.

* * * * *

(f) * * *

(2) Offering of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company;

* * * * *

■ 14. Amend § 230.405 by:
■ a. Revising the definition of ''Automatic shelf registration statement'';
■ b. Adding the definition for ''Exchange-traded vehicle security'' in alphabetical order;
■ c. In the definition of ''Ineligible issuer'':
■ i. Revising paragraph (1)(i);
■ ii. In paragraph (1)(vii), removing the word ''or'' at the end of the paragraph;
■ iii. In paragraph (1)(viii), removing the period and adding in its place ''; or''; and
■ iv. Adding paragraph (1)(ix);
■ d. Adding the definition for ''Registered closed-end investment company'' in alphabetical order; and
■ e. In the definition ''Well-known seasoned issuer'', revising paragraphs (1)(i) introductory text, (1)(i)(B)(*2*), (1)(v), and (2)(iii).

The additions and revisions read as follows:

§ 230.405 Definitions of terms.

* * * * *

Automatic shelf registration statement. The term *automatic shelf registration statement* means a registration statement filed on Form S–3, Form F–3, or Form N–2 (§ 239.13, § 239.33, or §§ 239.14 and 274.11a–1 of this chapter) by a well-known seasoned issuer pursuant to General Instruction I.D. of Form S–3, General Instruction I.C. of Form F–3, or General Instruction B of Form N–2.

* * * * *

Exchange-traded vehicle security. The term *exchange-traded vehicle security* means a security:

(1) Of an issuer:

(i) That is not a registered investment company under the Investment Company Act of 1940; and

(ii) The assets of which consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies, or interests in the foregoing;

(2) Offered or sold in a registered offering on a continuous basis pursuant to § 230.415 (Rule 415) by or on behalf of the issuer;

(3) Of a class of securities that is listed for trading on a national securities exchange at or immediately after the time of effectiveness of the registration statement; and

(4) Which is able to be purchased or redeemed, subject to conditions or limitations as described in the registration statement for the offering of such security, by the issuer for a ratable share of the issuer's assets (or the cash equivalent thereof) at their net asset value each business day.

* * * * *

Ineligible issuer. (1) * * *

(i) Any issuer that is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) that has not filed all reports and other materials required to be filed during the preceding 12 months (or for such shorter period that the issuer was required to file such reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934 or section 30 of the Investment Company Act of 1940), other than reports on Form 8–K (§ 249.308 of this chapter) required solely pursuant to an item specified in General Instruction I.A.3(b) of Form S–3 (§ 239.13 of this chapter) or General Instruction A.2.a of Form N–2 (§§ 239.14 and 274.11a-1 of this chapter) (or in the case of an asset-backed issuer, to the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor (as such terms are defined in § 229.1101 of this chapter (Item 1101 of Regulation AB) are or were at any time during the preceding 12 calendar months required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all reports and other material required to be filed for such period (or such shorter period that each such entity was required to file such reports), other than reports on Form 8–K required solely pursuant to an item specified in General Instruction I.A.2 of Form SF–3);

* * * * *

(ix) In the case of an issuer that is a registered closed-end investment

company or a business development company, within the past three years any person or entity that at the time was an investment adviser to the issuer, including any sub-adviser, was made the subject of any judicial or administrative decree or order arising out of a governmental action that determines that the investment adviser aided, abetted or caused the issuer to have violated the anti-fraud provisions of the Federal securities laws.

* * * * *

Registered closed-end investment company. The term *registered closed-end investment company* means a closed-end company, as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(2)), that is registered under the Investment Company Act.

* * * * *

Well-known seasoned issuer. * * *

(1)(i) Meets all the registrant requirements of General Instruction I.A. of Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), or General Instructions A.2.a and A.2.b of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) and either:

* * * * *

(B) * * *

(*2*) Will register only non-convertible securities, other than common equity, and full and unconditional guarantees permitted pursuant to paragraph (1)(ii) of this definition unless, at the determination date, the issuer also is eligible to register a primary offering of its securities relying on General Instruction I.B.1. of Form S–3 or Form F–3 or is eligible to register a primary offering described in General Instruction I.B.1. of Form S–3 relying on General Instruction A.2 of Form N–2.

* * * * *

(v) Is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

(2) * * *

(iii) In the event that the issuer has not filed a shelf registration statement or amended a shelf registration statement for purposes of complying with section 10(a)(3) of the Act for sixteen months, the time of filing of the issuer's most recent annual report on Form 10–K (§ 249.310 of this chapter), Form 20–F (§ 249.220f of this chapter), or Form N–CSR (§§ 249.331 and 274.128 of this chapter) (or if such report has not been filed by its due date, such due date).

* * * * *

■ 15. Amend § 230.415 by revising paragraphs (a)(1)(x) and (xi), adding paragraph (a)(1)(xiii), and revising paragraph (a)(2) to read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(1) * * *

(x) Securities registered (or qualified to be registered) on Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), or on Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) pursuant to General Instruction A.2 of that form, which are to be offered and sold on an immediate, continuous or delayed basis by or on behalf of the registrant, a majority-owned subsidiary of the registrant or a person of which the registrant is a majority-owned subsidiary; or

(xi) Shares of common stock which are to be offered and sold on a delayed or continuous basis by or on behalf of a registered closed-end investment company or business development company that makes periodic repurchase offers pursuant to § 270.23c–3 of this chapter.

* * * * *

(xiii) Exchange-traded vehicle securities which are to be offered and sold on a continuous basis by or on behalf of the registrant in accordance with § 230.456(d) (Rule 456(d)).

(2) Securities in paragraphs (a)(1)(viii) and (ix) of this section that are not registered on Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), or on Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) pursuant to General Instruction A.2 of that form, may only be registered in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of the registration.

* * * * *

■ 16. Amend § 230.418 by revising paragraph (a)(3) introductory text to read as follows:

§ 230.418 Supplemental information.

(a) * * *

(3) Except in the case of a registrant eligible to use Form S–3 (§ 239.13 of this chapter), or Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) under General Instruction A.2 of that form, any engineering, management or similar reports or memoranda relating to broad aspects of the business, operations or products of the registrant, which have been prepared within the past twelve months for or by the registrant and any affiliate of the registrant or any principal underwriter, as defined in § 230.405 (Rule 405), of the securities being registered except for:

* * * * *

■ 17. Amend § 230.424 by revising paragraph (f) and adding paragraph (i) to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(f) This section shall not apply with respect to prospectuses of an investment company registered under the Investment Company Act of 1940, other than a registered closed-end investment company. References to ''form of prospectus'' in paragraphs (a), (b), and (c) of this section shall be deemed also to refer to the form of Statement of Additional Information.

* * * * *

(i)(1) A form of prospectus filed pursuant to this section that operates to reflect the payment of filing fees for an offering of an indeterminate amount of exchange-traded vehicle securities pursuant to §§ 230.456(d) and 230.457(u) (Rule 456(d) and Rule 457(u)) shall be filed with the Commission within the time period set forth in Rule 456(d). The form of prospectus must be accompanied by the appropriate registration fee.

(2) The form of prospectus must include the following information:

(i) The name and address of issuer;

(ii) The name of the securities for which the prospectus is filed;

(iii) The Securities Act file number(s) of the registration statement(s) associated with the offering;

(iv) The last day of the fiscal year for the issuer for which the prospectus is filed;

(v) The calculation of registration fee information calculated pursuant to Rule 457(u); and

(vi) The total interest due pursuant to Rule 456(d)(5) and the total amount of registration fee due including any such interest, if the prospectus is being filed more than 90 days after the end of the issuer's fiscal year.

■ 18. Amend § 230.430A by revising paragraph (a)(2) to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

(a) * * *

(2) The registrant furnishes the undertakings required by § 229.512(i) of this chapter (Item 512(i) of Regulation S–K), or the undertakings required by Item 34.4 of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter); and

* * * * *

■ 19. Amend § 230.430B by revising paragraphs (b) introductory text, (f)(4)

introductory text, (f)(4)(ii), and (i) to read as follows:

§ 230.430B Prospectus in a registration statement after effective date.

* * * * *

(b) A form of prospectus filed as part of a registration statement for offerings pursuant to Rule 415(a)(1)(i) by an issuer eligible to use Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter) for primary offerings pursuant to General Instruction I.B.1 of such forms, or an issuer eligible to register such a primary offering under General Instruction A.2 of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), may omit the information specified in paragraph (a) of this section, and may also omit the identities of selling security holders and amounts of securities to be registered on their behalf if:

* * * * *

(f) * * *

(4) Except for an effective date resulting from the filing of a form of prospectus filed for purposes of including information required by section 10(a)(3) of the Act or pursuant to § 229.512(a)(1)(ii) of this chapter (Item 512(a)(1)(ii) of Regulation S–K) or Item 34.3.a(2) of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), the date a form of prospectus is deemed part of and included in the registration statement pursuant to this paragraph (f)(4) shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

* * * * *

(ii) Any person signing any report or document incorporated by reference into the registration statement, except for such a report or document incorporated by reference for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S–K or Item 34.3.a(2) of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) (such person except for such reports being deemed not to be a person who signed the registration statement within the meaning of section 11(a) of the Act).

* * * * *

(i) Issuers relying on this section shall furnish the undertakings required by Item 512(a) of Regulation S–K or Item 34.3 of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) as applicable.

■ 20. Amend § 230.433 by revising paragraphs (b)(1)(i) and (iv) and (c)(1)(ii) to read as follows:

§ 230.433 Conditions to permissible post-filing free writing prospectuses.

* * * * *

(b) * * *

(1) * * *

(i) Offerings of securities registered on Form S–3 (§ 239.33 of this chapter) pursuant to General Instruction I.B.1, I.B.2, I.C., or I.D. thereof or on Form SF–3 (§ 239.45 of this chapter) or on Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) pursuant to General Instruction A.2 with respect to the same transactions;

* * * * *

(iv) Any other offering not excluded from reliance on this section and Rule 164 of securities of an issuer eligible to use Form S–3 or Form F–3 for primary offerings pursuant to General Instruction I.B.1 of such Forms or an issuer eligible to use General Instruction A.2 of Form N–2 to register a primary offering described in General Instruction I.B.1 of Form S–3.

* * * * *

(c) * * *

(1) * * *

(ii) Information contained in the issuer's periodic and current reports filed or furnished to the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference into the registration statement and not superseded or modified, or pursuant to section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29).

* * * * *

■ 21. Effective August 1, 2021, amend § 230.456 by adding paragraph (d) to read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(d)(1) Notwithstanding paragraph (a) of this section, where a registration statement relates to an offering of exchange-traded vehicle securities, an issuer may elect to register an offering of an indeterminate amount of such securities if it meets the following conditions:

(i) The issuer must state in the ''Calculation of Registration Fee'' table that it is offering an indeterminate amount of such securities; and

(ii) The issuer must, not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, pay a registration fee to the Commission calculated in accordance with § 230.457(u) (Rule 457(u)) and file a prospectus in accordance with § 230.424(i) (Rule 424(i)).

Instruction 1 to paragraph (d)(1)(ii): To determine the date on which the registration fee must be paid, the first day of the 90-day period is the first calendar day of the fiscal year following the fiscal year for which the registration fee is to be paid. If the last day of the 90-day period falls on a Saturday, Sunday, or Federal holiday, the registration fee is due on the first business day thereafter.

(2) If a registrant elects to register an offering of an indeterminate amount of exchange-traded vehicle securities pursuant to paragraph (d)(1) of this section, the securities sold will be considered registered, for purposes of section 6(a) of the Act, if the registration fee has been paid and a prospectus is filed pursuant to paragraph (d)(1) not later than the end of the 90-day period.

(3) A registration statement filed relying on the registration fee payment provisions of paragraph (d)(1) of this section will be considered filed as to the securities identified in the registration statement for purposes of this section and section 5 of the Act when it is received by the Commission, if it complies with all other requirements under the Act, including this part.

(4) For purposes of this section, if an issuer ceases operations, the date the issuer ceases operations will be deemed to be the end of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the assets (''merger'') of the issuer, the issuer will be deemed to have ceased operations for the purposes of this section on the date the merger is consummated; provided, however, that in the case of a merger of an issuer or a series of an issuer (''Predecessor Issuer'') with another issuer or a series of an issuer (''Successor Issuer''), the Predecessor Issuer will not be deemed to have ceased operations and the Successor Issuer will assume the obligations, fees, and redemption credits of the Predecessor Issuer incurred pursuant to this section if the Successor Issuer:

(i) Had no assets or liabilities, other than nominal assets or liabilities, and no operating history immediately prior to the merger;

(ii) Acquired substantially all of the assets and assumed substantially all of the liabilities and obligations of the Predecessor Issuer; and

(iii) The merger is not designed to result in the Predecessor Issuer merging with, or substantially all of its assets being acquired by, an issuer (or a series of an issuer) that would not meet the conditions of paragraph (d)(4)(i) of this section.

(5) An issuer paying the fee required by paragraph (d)(1) of this section or any portion thereof more than 90 days after the end of the fiscal year of the issuer shall pay to the Commission interest on

unpaid amounts, calculated based on the interest rate in effect at the time of the interest payment by reference to the ''current value of funds rate'' on the Treasury Department's Financial Management Service internet site at *http://www.fms.treas.gov,* or by calling (202) 874–6995, and using the following formula: I = (X) (Y) (Z/365), where: I = Amount of interest due; X = Amount of registration fee due; Y = Applicable interest rate, expressed as a fraction; Z = Number of days by which the registration fee payment is late. The payment of interest pursuant to this paragraph (d)(5) shall not preclude the Commission from bringing an action to enforce the requirements of this paragraph (d).

(6) An immaterial or unintentional failure to comply with a requirement of this paragraph (d) will not result in a violation of section 6(a) of the Act (15 U.S.C. 77f(a)), so long as:

(i) A good faith and reasonable effort was made to comply with the requirement; and

(ii) In the case of a late payment of a registration fee, the issuer pays the registration fee and any interest due thereon as soon as practicable after discovery of the failure to pay the registration fee.

■ 22. Effective August 1, 2021, amend § 230.457 by adding paragraph (u) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(u) Where an issuer elects to register an offering of an indeterminate amount of exchange-traded vehicle securities in accordance with § 230.456(d) (Rule 456(d)), the registration fee is to be calculated in the following manner:

(1) Determine the aggregate sale price of securities sold during the fiscal year.

(2) Determine the sum of:

(i) The aggregate redemption or repurchase price of securities redeemed or repurchased during the fiscal year; and

(ii) The aggregate redemption or repurchase price of securities redeemed or repurchased during any prior fiscal year ending no earlier than August 1, 2021, that were not used previously to reduce registration fees payable to the Commission.

(3) Subtract the amount in paragraph (u)(2) of this section from the amount in paragraph (u)(1) of this section. If the resulting amount is positive, the amount is the net sales amount. If the resulting amount is negative, it is the amount of redemption credits available for use in future years to offset sales.

(4) The registration fee is calculated by multiplying the net sales amount by the fee payment rate in effect on the date of the fee payment. If the issuer determines that it had net redemptions or repurchases for the fiscal year, no registration fee is due.

■ 23. Amend § 230.462 by revising paragraph (f) to read as follows:

§ 230.462 Immediate effectiveness of certain registration statements and post-effective amendments.

* * * * *

(f) A post-effective amendment filed pursuant to paragraph (e) of this section for purposes of adding a new issuer and its securities as permitted by § 230.413(b) (Rule 413(b)) that satisfies the requirements of Form S–3, Form F–3, or General Instruction A.2 of Form N–2 (§ 239.13, § 239.33, or §§ 239.14 and 274.11a–1 of this chapter), as applicable, including the signatures required by § 230.402(e) (Rule 402(e)), and contains a prospectus satisfying the requirements of § 230.430B (Rule 430B), shall become effective upon filing with the Commission.

■ 24. Amend § 230.486 by:

■ a. Revising paragraphs (a), (b) introductory text, and (b)(1)(iv);

■ b. Removing ''and'' at the end of paragraph (b)(1)(v);

■ c. Redesignating paragraph (b)(1)(vi) as paragraph (b)(1)(vii);

■ d. Adding new paragraph (b)(1)(vi);

■ e. Revising the introductory text to paragraph (b)(2); and

■ f. Adding paragraph (g).

The revisions and additions read as follows:

§ 230.486 Effective date of post-effective amendments and registration statements filed by certain closed-end management investment companies.

(a) *Automatic effectiveness.* Except as otherwise provided in this section, a post-effective amendment to a registration statement, or a registration statement described in paragraph (g) of this section, filed by a registered closed-end management investment company or business development company which makes periodic repurchase offers under § 270.23c–3 of this chapter or which offers securities under § 230.415(a)(1)(ix), shall become effective on the sixtieth day after the filing thereof, or a later date designated by the registrant on the facing sheet of the amendment or registration statement, which date shall not be later than eighty days after the date on which the amendment or registration statement is filed, *Provided,* that the Commission, having due regard to the public interest and the protection of investors, may declare an amendment or registration statement filed under this paragraph (a) effective on an earlier date.

(b) *Immediate effectiveness.* Except as otherwise provided in this section, a post-effective amendment to a registration statement, or a registration statement, filed by a registered closed-end management investment company or business development company which makes periodic repurchase offers under § 270.23c–3 of this chapter or which offers securities under § 230.415(a)(1)(ix), shall become effective on the date on which it is filed with the Commission, or a later date designated by the registrant on the facing sheet of the amendment or registration statement, which date shall be not later than thirty days after the date on which the amendment or registration statement is filed, except that a post-effective amendment including a designation of a new effective date under paragraph (b)(1)(iii) of this section shall become effective on the new effective date designated therein, *Provided,* that the following conditions are met:

(1) * * *

(iv) Disclosing or updating the information required by Item 9.1.c of Form N–2 [17 CFR 239.14 and 274.11a–1];

* * * * *

(vi) Complying with § 230.415(a)(5) and (6); and

* * * * *

(2) The registrant represents that the amendment is filed solely for one or more of the purposes specified in paragraph (b)(1) of this section and that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) or one for which the Commission has approved a filing under paragraph (b)(1)(vii) of this section, has occurred since the latest of the following three dates:

* * * * *

(g) *Registration statements.* A registration statement can become effective under paragraph (a) of this section if it is filed for the purpose of:

(1) Registering additional shares of common stock for which a registration statement filed on Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) is effective; or

(2) Complying with § 230.415(a)(5) and (6).

■ 25. Amend § 230.497 by:

■ a. Remove from paragraphs (c) and (e) the text ''Form N–2 (§§ 239.14 and 274.11a–1 of this chapter),'';

■ b. Removing the heading from paragraph (k);

■ c. Adding paragraph (l); and

■ d. Removing the parenthetical authority citation at the end of the section.

The addition reads as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(l) Except for an investment company advertisement deemed to be a section 10(b) prospectus pursuant to § 230.482, this section shall not apply with respect to prospectuses of a registered closed-end investment company, or a business development company.

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

■ 26. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 27. Amend § 232.11 by revising the section heading and the definition of ''Related Official Filing'' to read as follows:

§ 232.11 Definition of terms used in this part.

* * * * *

Related Official Filing. The term *Related Official Filing* means the ASCII or HTML format part of the official filing with which all or part of an Interactive Data File appears as an exhibit or, in the case of a filing on Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), Form N–3 (§§ 239.17a and 274.11b of this chapter), Form N–4 (§§ 239.17b and 274.11c of this chapter), Form N–6 (§§ 239.17c and 274.11d of this chapter), and Form N–CSR (§ 274.128 of this chapter), and, to the extent required by § 232.405 [Rule 405 of Regulation S–T] for a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), Form 10–K (§ 249.310 of this chapter), Form 10–Q (§ 249.308a of this chapter), and Form 8–K (§ 249.308 of this chapter), the ASCII or HTML format part of an official filing that contains the information to which an Interactive Data File corresponds.

* * * * *

■ 28. Amend § 232.405 by:

■ a. Revising the introductory text and paragraphs (a)(2), (a)(3)(i) introductory text, (a)(3)(ii), and (a)(4);

■ b. Adding a heading for paragraph (b);

■ c. Removing the heading and revising the introductory text of paragraph (b)(1);

■ d. Adding paragraph (b)(3); and

■ e. Redesignating the note to § 232.405 as note 2 to § 232.405 and revising the last sentence of newly redesignated note 2 to § 232.405.

The revisions and addition read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§ 274.128 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 2 to this section. This section imposes content, format, and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), or General Instruction C.4 of Form N–CSR (§ 274.128 of this chapter), as applicable;

(3) * * *

(i) If the electronic filer is neither a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), nor a separate account as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, nor a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

* * * * *

(ii) If the electronic filer is either a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, either Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of

this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter); or General Instruction C.4 of Form N–CSR (§ 274.128 of this chapter).

(b) *Content—categories of information presented.* (1) If the electronic filer is neither a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), nor a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, nor a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)) an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

* * * * *

(3) If the electronic filer is either a closed-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), an Interactive Data File must consist only of a complete set of information for all corresponding data in the Related Official Filing, no more and no less, as follows:

(i) For a business development company, for all periods required to be presented:

(A) The complete set of the electronic filer's financial statements (which includes the face of the financial statements and all footnotes); and

(B) All schedules set forth in §§ 210.12–01 through 210.12–29 of this chapter (Article 12 of Regulation S–X) related to the electronic filer's financial statements;

(ii) All of the information required on the cover page of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) except the Calculation of Registration Fee table; and

(iii) As applicable, all of the information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, and 10.5 of Form N–2 in any registration statement or post-effective amendment thereto filed on Form N–2; or any form of prospectus filed pursuant to § 230.424 of this chapter (Rule 424 under the Securities Act); or, if a Registrant is filing a registration statement pursuant to General Instruction A.2 of Form N–2, any filing on Form N–CSR, Form 10–K, Form 10–Q, or Form 8–K to the extent such information appears therein.

* * * * *

Note 2 to § 232.405: * * * For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§ 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 29. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*,78m,78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78*ll*,78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

Sections 239.31, 239.32 and 239.33 are also issued under 15 U.S.C. 78*l,* 78m, 78*o,* 78w, 80a–8, 80a–29, 80a–30, 80a–37 and 12 U.S.C. 241.

* * * * *

■ 30. Effective August 1, 2021, amend Form S–1 (referenced in § 239.11) by revising the note that immediately follows the ''Calculation of Registration Fee'' table to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

CALCULATION OF REGISTRATION FEE

* * * * *

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. If an offering of an indeterminate amount of exchange-traded vehicle securities is being registered, state that the registration statement covers an indeterminate amount of securities to be offered or sold and that the filing fee will be calculated and paid in accordance with Rule 456(d) and Rule 457(u) (§ 230.456(d) and § 230.457(u) of this chapter), respectively. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

■ 31. Effective August 1, 2021, amend Form S–3 (referenced in § 239.13) by adding Instruction 5 to the notes that immediately follow the ''Calculation of Registration Fee'' table to read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

CALCULATION OF REGISTRATION FEE

* * * * *

5. If an offering of an indeterminate amount of exchange-traded vehicle securities is being registered, the Fee Table must state that the registration statement covers an indeterminate amount of securities to be offered or sold and the filing fee will be calculated and paid in accordance with Rule

456(d) and Rule 457(u) (§ 230.456(d) and § 230.457(u) of this chapter), respectively.

* * * * *

■ 32. Amend Form N–14 (referenced in § 239.23) by revising the first and second undesignated paragraphs of General Instruction G to read as follows:

Note: The text of Form N–14 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM N–14

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

G. Incorporation by Reference and Delivery of Prospectuses or Reports Filed With the Commission

If any party to a transaction registered on Form N–14 is registered under the 1940 Act or is a business development company as defined by Section 2(a)(48) of the 1940 Act and has a current prospectus which meets the requirements of Section 10(a)(3) of the 1933 Act or is current in its reports filed pursuant to Section 13(a) or 15(d) of the 1934 Act and Section 30 of the 1940 Act, the registrant may, if it so elects, incorporate by reference the prospectus, the corresponding Statement of Additional Information, or reports, or any information in the prospectus, the corresponding Statement of Additional Information, or reports, which satisfies the disclosure required by Items 5, 6, and 11 through 14 of this Form. If the registrant elects to incorporate information by reference into the prospectus, a copy of each document from which information is incorporated by reference must accompany the prospectus, except that a prospectus from which information has been incorporated by reference need not be sent to an investor if the obligation to deliver a prospectus under Section 5(b)(2) of the Securities Act [15 U.S.C. 77e] has already been satisfied with respect to that investor pursuant to Rule 498A(j) for the offering described in the prospectus being incorporated by reference. Notwithstanding the foregoing the registrant may, at its discretion, incorporate any or all of the Statement of Additional Information into the prospectus delivered to investors, without delivering the Statement with the prospectus, so long as the Statement of Additional Information is available to investors as provided in General Instruction F. The registrant also may incorporate by reference into the prospectus information about the company being acquired without delivering the information with the prospectus under certain conditions pursuant to Item 6 of Form N–14, and in accordance with the requirements of Instruction F.

If the registrant elects to incorporate information by reference into the Statement of Additional Information, a copy of each document from which information is incorporated by reference must accompany the Statement of Additional Information sent to shareholders.

* * * * *

■ 33. Effective August 1, 2021, amend Form F–1 (referenced in § 239.31) by revising the note that immediately follows the ''Calculation of Registration Fee'' table to read as follows:

Note: The text of Form F–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM F–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

CALCULATION OF REGISTRATION FEE

* * * * *

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. If an offering of an indeterminate amount of exchange-traded vehicle securities is being registered, state that the registration statement covers an indeterminate amount of securities to be offered or sold and that the filing fee will be calculated and paid in accordance with Rule 456(d) and Rule 457(u) (§ 230.456(d) and § 230.457(u) of this chapter), respectively. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

■ 34. Effective August 1, 2021, amend Form F–3 (referenced in § 239.33) by adding Instruction 5 to the notes that immediately follow the ''Calculation of Registration Fee'' table to read as follows:

Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM F–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

5. If an offering of an indeterminate amount of exchange-traded vehicle securities is being registered, the Fee Table must state that the registration statement covers an indeterminate amount of securities to be offered or sold and that the filing fee will be calculated and paid in accordance with Rule 456(d) and Rule 457(u) (§ 230.456(d) and § 230.457(u) of this chapter), respectively.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 35. 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, 78o, 78o–4, 78o–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.

* * * * *

■ 36. Amend § 240.14a–101 by:

■ a. Revising paragraph E of the ''Notes'' section; and

■ b. Revising paragraph (b)(1) of ''Item 13. Financial and other information. (See Notes D and E at the beginning of this Schedule.)''.

The revisions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

* * * * *

Notes

Notes: * * *

E. In Item 13 of this Schedule, the reference to ''meets the requirement of Form S–3'' or ''meets the requirements of General Instruction A.2 of Form N–2'' shall refer to a registrant who meets the following requirements:

(a) A registrant meets the requirements of Form S–3 if:

(1) The registrant meets the requirements of General Instruction I.A. of Form S–3 (§ 239.13 of this chapter); and

(2) One of the following is met:

(i) The registrant meets the aggregate market value requirement of General Instruction I.B.1 of Form S–3; or

(ii) Action is to be taken as described in Items 11, 12, and 14 of this schedule which concerns non-convertible debt or preferred securities issued by a registrant meeting the requirements of General Instruction I.B.2. of Form S–3 (referenced in 17 CFR 239.13); or

(iii) The registrant is a majority-owned subsidiary and one of the conditions of General Instruction I.C. of Form S–3 is met.

(b) A registrant meets the requirements of General Instruction A.2 of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) if the registrant meets the conditions included in such General Instruction, provided that General Instruction A.2.c of Form N–2 is subject to the same limitations described in paragraph (a)(2) of this Note E.

* * * * *

Item 13. Financial and other information. (See Notes D and E at the beginning of this Schedule.)

* * * * *

(b) * * *

(1) *S–3 registrants and certain N–2 registrants.* If the registrant meets the requirements of Form S–3 or General Instruction A.2 of Form N–2 (see Note E to this Schedule), it may incorporate by reference to previously-filed documents any of the information required by paragraph (a) of this Item, provided that the requirements of paragraph (c) are met. Where the registrant meets the requirements of Form S–3 or General Instruction A.2 of Form N–2 and has elected to furnish the required information by incorporation by reference, the registrant may elect to update the information so incorporated by reference to information in subsequently-filed documents.

* * * * *

PART 243—REGULATION FD

■ 37. The authority citation for part 243 continues to read as follows:

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a–29, unless otherwise noted.

■ 38. Amend § 243.103 by revising paragraph (a) to read as follows:

§ 243.103 No effect on Exchange Act reporting status.

* * * * *

(a) For purposes of Forms S–3 (17 CFR 239.13), S–8 (17 CFR 239.16b) and SF–3 (17 CFR 239.45) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), or Form N–2 (17 CFR 239.14 and 274.11a–1) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), an issuer is deemed to have filed all the material required to be filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) or where applicable, has made those filings in a timely manner; or

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 39. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Section 270.23c–3 also issued under 15 U.S.C. 80a–23(c).

Section 270.24f–2 also issued under 15 U.S.C. 80a–24(f)(4).

* * * * *

■ 40. Amend § 270.8b–16 by revising paragraphs (b)(2) and (4) and adding paragraph (e) to read as follows:

§ 270.8b–16 Amendments to registration statement.

* * * * *

(b) * * *

(2) The company's investment objectives and policies (described in Item 8.2 of Form N–2), and any material changes to same that have not been approved by shareholders;

* * * * *

(4) The principal risk factors associated with investment in the company (described in Item 8.3 of Form N–2), and any material changes to same; and

* * * * *

(e) The changes required to be disclosed by paragraphs (b)(2) through (5) of this section must be described in enough detail to allow investors to understand each change and how it may affect the fund. Such disclosures must be prefaced with the following legend: ''The following information [in this annual report] is a summary of certain changes since [date]. This information may not reflect all of the changes that have occurred since you purchased [this fund].''

■ 41. Effective August 1, 2021, amend § 270.23c–3 by adding paragraph (e) to read as follows:

§ 270.23c–3 Repurchase offers by closed-end companies.

* * * * *

(e) *Registration of an indefinite amount of securities.* A company that makes repurchase offers pursuant to paragraph (b) of this section shall be deemed to have registered an indefinite amount of securities pursuant to Section 24(f) of the Act (15 U.S.C. 80a–24(f)) upon the effective date of its registration statement.

■ 42. Effective August 1, 2021, amend § 270.24f–2 by revising the first sentence of paragraph (a) to read as follows:

§ 270.24f–2 Registration under the Securities Act of 1933 of certain investment company securities.

(a) *General.* Any face-amount certificate company, open-end management company, closed-end management company that makes periodic repurchase offers pursuant to § 270.23c–3(b), or unit investment trust (''issuer'') that is deemed to have registered an indefinite amount of securities pursuant to Section 24(f) of the Act (15 U.S.C. 80a–24(f)) must not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, file Form 24F–2 (17 CFR 274.24) with the Commission. * * *

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT of 1940

■ 43. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

Section 274.128 is also issued under 15 U.S.C. 78j–1, 7202, 7233, 7241, 7264, and 7265; and 18 U.S.C. 1350.

■ 44. Revise Form N–2 (referenced in §§ 239.14 and 274.11a–1) to read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the *Code of Federal Regulations.*

BILLING CODE 8011–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM N-2

Check appropriate box or boxes

[ ] REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

[ ] Pre-Effective Amendment No. _____

[ ] Post-Effective Amendment No. _____

and/or

[ ] REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

[ ] Amendment No. _____

_____
Registrant Exact Name as Specified in Charter

_____
Address of Principal Executive Offices (Number, Street, City, State, Zip Code)

_____
Registrant's Telephone Number, including Area Code

_____
Name and Address (Number, Street, City, State, Zip Code) of Agent for Service

_____
Approximate Date of Commencement of Proposed Public Offering

[ ] Check box if the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans.

[ ] Check box if any securities being registered on this Form will be offered on a delayed or continuous basis in reliance on Rule 415 under the Securities Act of 1933 ("Securities Act"), other than securities offered in connection with a dividend reinvestment plan.

[ ] Check box if this Form is a registration statement pursuant to General Instruction A.2 or a post-effective amendment thereto.

[ ] Check box if this Form is a registration statement pursuant to General Instruction B or a post-effective amendment thereto that will become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act.

[ ] Check box if this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction B to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act.

It is proposed that this filing will become effective (check appropriate box)

[ ] when declared effective pursuant to Section 8(c) of the Securities Act

The following boxes should only be included and completed if the registrant is making this filing in accordance with Rule 486 under the Securities Act.

[ ] immediately upon filing pursuant to paragraph (b)

[ ] on (date) pursuant to paragraph (b)

[ ] 60 days after filing pursuant to paragraph (a)

[ ] on (date) pursuant to paragraph (a)

If appropriate, check the following box:

[ ] This [post-effective] amendment designates a new effective date for a previously filed [post-effective amendment] [registration statement].

[ ] This Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, and the Securities Act registration statement number of the earlier effective registration statement for the same offering is: _____.

[ ] This Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, and the Securities Act registration statement number of the earlier effective registration statement for the same offering is: _____.

[ ] This Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, and the Securities Act registration statement number of the earlier effective registration statement for the same offering is: _____.

Check each box that appropriately characterizes the Registrant:

[ ] Registered Closed-End Fund (closed-end company that is registered under the Investment Company Act of 1940 ("Investment Company Act")).

[ ] Business Development Company (closed-end company that intends or has elected to be regulated as a business development company under the Investment Company Act).

[ ] Interval Fund (Registered Closed-End Fund or a Business Development Company that makes periodic repurchase offers under Rule 23c-3 under the Investment Company Act).

[ ] A.2 Qualified (qualified to register securities pursuant to General Instruction A.2 of this Form).

[ ] Well-Known Seasoned Issuer (as defined by Rule 405 under the Securities Act).

[ ] Emerging Growth Company (as defined by Rule 12b-2 under the Securities Exchange Act of 1934 ("Exchange Act").

[ ] If an Emerging Growth Company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

[ ] New Registrant (registered or regulated under the Investment Company Act for less than 12 calendar months preceding this filing).

BILLING CODE 8011–01–C

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Instructions.

Complete the Registration Fee table and provide the following (unless payment will be provided using Form 24F–2 [17 CFR 274.24]).

If the registration statement or amendment is filed under only one of the Acts, omit reference to the other Act from the facing sheet. Include the ''Approximate Date of Commencement of Proposed Public Offering'' and the table showing the calculation of the registration fee only where shares are being registered under the Securities Act.

If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act [17 CFR 230.457], only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities, and the amount of registration fee need to appear in the Calculation of Registration Fee table.

If the filing fee is calculated pursuant to Rule 457(r) under the Securities Act, the Calculation of Registration Fee table must state that it registers an unspecified amount of securities of each identified class of securities and must provide that the Registrant is relying on Rule 456(b) [17 CFR 230.456] and Rule 457(r). If the Calculation of Registration Fee table is amended in a post-effective amendment to the registration statement or in a prospectus filed in accordance with Rule 456(b)(1)(ii), the table must specify the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee.

Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 457 under the Securities Act.

Fill in the 811–_____, 814–_____ and 33–_____ blanks only if these filing numbers (for the Investment Company Act registration and/or the Securities Act registration, respectively) have already been assigned by the Securities and Exchange Commission.

Form N–2 is to be used by closed-end management investment companies, except small business investment companies licensed as such by the United States Small Business Administration, to register under the Investment Company Act and to offer their shares under the Securities Act. The Commission has designed Form N–2 to provide investors with information that will assist them in making a decision about investing in an investment company eligible to use the Form. The Commission also may use the information provided on Form N–2 in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N–2, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N–2 unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

Contents of Form N–2

General Instructions

A. Use of Form N–2
B. Automatic Shelf Offerings by Well-Known Seasoned Issuers
C. Registration Fees
D. Application of General Rules and Regulations
E. Amendments
F. Incorporation by Reference
G. Documents Composing the Registration Statement or Amendment
H. Preparation of the Registration Statement or Amendment
I. Interactive Data Files
J. Registration of Additional Securities
Part A: The Prospectus
Part B: Statement of Additional Information
General Instructions for Parts A and B
Part A—Information Required in a Prospectus
Item 1. Outside Front Cover
Item 2. Cover Pages; Other Offering Information
Item 3. Fee Table and Synopsis
Item 4. Financial Highlights
Item 5. Plan of Distribution
Item 6. Selling Shareholders
Item 7. Use of Proceeds
Item 8. General Description of the Registrant
Item 9. Management
Item 10. Capital Stock, Long-Term Debt, and Other Securities
Item 11. Defaults and Arrears on Senior Securities
Item 12. Legal Proceedings
Item 13. [Removed and reserved.]
Part B—Information Required in a Statement of Additional Information
Item 14. Cover Page
Item 15. Table of Contents
Item 16. General Information and History
Item 17. Investment Objective and Policies
Item 18. Management Instructions
Item 19. Control Persons and Principal Holders of Securities
Item 20. Investment Advisory and Other Services
Item 21. Portfolio Managers
Item 22. Brokerage Allocation and Other Practices
Item 23. Tax Status
Item 24. Financial Statements
Part C—Other Information
Item 25. Financial Statements and Exhibits
Item 26. Marketing Arrangements
Item 27. Other Expenses of Issuance and Distributions
Item 28. Persons Controlled by or Under Common Control
Item 29. Number of Holders of Securities
Item 30. Indemnification
Item 31. Business and Other Connections of Investment Adviser
Item 32. Location of Accounts and Records
Item 33. Management Services
Item 34. Undertakings

Signatures

General Instructions

A. Use of Form N–2

1. *General.* Form N–2 is used by all closed-end management investment companies (''Registrant'' or ''Fund''), except small business investment companies licensed as such by the United States Small Business Administration, to file: (1) An initial registration statement under Section 8(b) of the Investment Company Act and any amendments to the registration statement, including amendments required by Rule 8b–16 under the Investment Company Act [17 CFR 270.8b–16]; (2) a registration statement under the Securities Act and any amendment to it; or (3) any combination of these filings.

2. *Optional Use of Form for Certain Registrants.* A Registrant may elect to file a registration statement pursuant to this General Instruction A.2, including a registration statement used in connection with an offering pursuant to Rule 415(a)(1)(x) under the Securities Act [17 CFR 230.415], if it meets all of the following requirements:

a. The Registrant meets the requirements of General Instruction I.A. of Form S–3 [17 CFR 239.13];

b. if the Registrant is registered under the Investment Company Act, it has been registered for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form, and has timely filed all reports required to be filed pursuant to Section 30 of the Investment Company Act during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement; and

c. the registration statement to be filed pursuant to this General Instruction A.2 relates to a transaction specified in General Instruction I.B. or I.C of Form S–3, as applicable, and meets all of the conditions to the transaction specified in the applicable instruction.

A registration statement filed pursuant to this instruction shall specifically incorporate by reference into the prospectus and statement of additional information (''SAI'') all of the materials specified in General Instruction F.3, pursuant to the requirements set forth in that instruction.

A Registrant must indicate that the registration statement is being filed pursuant to this instruction by checking the appropriate box on the facing sheet.

Note to General Instruction A.2. Attention is directed to the General Instructions of Form S–3, including General Instructions II.D, F, and G, which contain general information regarding the preparation and filing of automatic and non-automatic shelf registration statements.

B. Automatic Shelf Offerings by Well-Known Seasoned Issuers

Any Registrant that is a Well-Known Seasoned Issuer as defined in Rule 405 of the Securities Act [17 CFR 230.405] at the most recent eligibility determination date specified in paragraph (2) of that definition may use a registration statement filed under General Instruction A.2 of this Form as an automatic shelf registration statement for registration under the Securities Act of securities offerings, other than pursuant to Rule 415(a)(1)(vii) or (viii) of the Securities Act, only for the transactions that are described in, and consistent with the requirements of, General Instruction I.D. of Form S–3.

Note to General Instruction B. Attention is directed to the General Instructions of Form S–3, including General Instructions II.E, F, G, and IV.B, which contain general information regarding the preparation and filing of automatic shelf registration statements.

C. Registration Fees

Section 6(b) of the Securities Act and Rule 457 thereunder set forth the fee requirements under the Securities Act. Registrants that are required to pay registration fees on an annual net basis

pursuant to Rule 24f–2 under the Investment Company Act must provide payment using Form 24F–2.

D. Application of General Rules and Regulations

If the registration statement is being filed under both the Securities and Investment Company Acts or under only the Securities Act, the General Rules and Regulations under the Securities Act, particularly Regulation C, shall apply. If the registration statement is being filed under only the Investment Company Act, the General Rules and Regulations under the Investment Company Act, particularly those under Section 8(b), shall apply.

E. Amendments

1. Paragraph (a) of Rule 8b–16 under the Investment Company Act requires closed-end management investment companies to annually amend the Investment Company Act registration statement. Paragraph (b) of Rule 8b–16 exempts a closed-end management investment company from this requirement if it provides certain information specified by that rule to shareholders in its annual report.

2. If Form N–2 is used to file a registration statement under both the Securities and Investment Company Acts, any amendment of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet.

3. Registrants offering securities on a delayed or continuous basis in reliance upon Rule 415 under the Securities Act must provide the undertakings with respect to post-effective amendments required by Item 34 of Form N–2.

4. A post-effective amendment to a registration statement on this Form, or a registration statement filed for the purpose of registering additional shares of common stock for which a registration statement filed on this Form is effective or for the purpose of complying with Rule 415(a)(5) and (a)(6), filed on behalf of a Registrant which makes periodic repurchase offers pursuant to Rule 23c–3 under the Investment Company Act [17 CFR 270.23c–3] or which makes a continuous offering of securities pursuant to Rule 415(a)(1)(ix) under the Securities Act may become effective automatically in accordance with Rule 486 under the Securities Act [17 CFR 230.486], as applicable. In accordance with Rule 429 under the Securities Act [17 CFR 230.429], a Registrant filing a new registration statement for the purpose of registering additional shares of common stock may use a prospectus with respect to the additional shares also in connection with the shares covered by earlier registration statements if such prospectus includes all of the information which would currently be required in a prospectus relating to the securities covered by the earlier statements. The filing fee required by the Securities Act and Rule 457 under the Securities Act shall be paid with respect to the additional shares only.

F. Incorporation by Reference

1. *General Requirements.* All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); Rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and Rule 0–4 [17 CFR 270.0–4], (additional rules on incorporation by reference for investment companies).

2. Specific Requirements for Incorporation by Reference for Registrants Not Relying on General Instruction A.2.

a. A Registrant may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of this Form or paragraph F.2.d below.

b. A Registrant may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

c. A Registrant may incorporate by reference into the SAI or its response to Part C, information that Parts B and C require to be included in the Registrant's registration statement.

d. A Registrant may incorporate by reference into the prospectus or the SAI in response to Items 4.1 or 24 of this Form the information contained in Form N–CSR [17 CFR 249.331 and 274.128] or any report to shareholders meeting the requirements of Section 30(e) of the Investment Company Act and Rule 30e–1 [17 CFR 270.30e–1] thereunder (and a Registrant that has elected to be regulated as a business development company may so incorporate into Items 4.1, 4.2, 8.6.c, or 24 of this Form the information contained in its annual report under the Exchange Act), provided:

(1) The material incorporated by reference is prepared in accordance with, and covers the periods specified by, this Form; and

(2) the Registrant states in the prospectus or the SAI, at the place where the information required by Items 4.1, 4.2, 8.6.c., or 24 of this Form would normally appear, that the information is incorporated by reference from a report to shareholders or a report on Form N–CSR or an annual report on Form 10–K [17 CFR 249.310]. (The Registrant also may describe briefly, in either the prospectus, the SAI, or Part C of the registration statement (in response to Item 25.1) those portions of the report to shareholders or report on Form N–CSR or Form 10–K that are not incorporated by reference and are not a part of the registration statement.)

3. *Specific Requirements for Incorporation by Reference for Certain Registrants.* If a Registrant is filing a registration statement pursuant to General Instruction A.2, the following requirements apply:

a. Backward Incorporation by Reference. The documents listed in (1) and (2) below shall be specifically incorporated by reference into the prospectus and SAI by means of a statement to that effect in the prospectus and SAI listing all such documents:

(1) The Registrant's latest annual report filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act that contains financial statements for the Registrant's latest fiscal year for which a Form N–CSR or Form 10–K was required to be filed;

(2) all other reports filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (1) above; and

(3) if capital stock is to be registered and securities of the same class are registered under Section 12 of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description.

b. *Forward Incorporation by Reference.* The prospectus and SAI shall also state that all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus and SAI.

c. *Use of Information to be Incorporated.* Any information required in the prospectus and SAI in response to Items 3–12 and Items 16–24 of this Form may be included in the prospectus and SAI through documents filed pursuant to Sections 13(a), 14, or 15(d) of the Exchange Act that are incorporated or deemed incorporated by

reference into the prospectus and SAI that are part of the registration statement.

Instruction. Attention is directed to Rule 439 under the Securities Act [17 CFR 230.439] regarding consent to use of material incorporated by reference.

4. *Disclosure.*

a. The Registrant must make its prospectus, SAI, and any periodic and current reports filed pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference readily available and accessible on a website maintained by or for the Registrant and containing information about the Registrant.

b. The Registrant must state in its prospectus and SAI:

(1) That it will provide to each person, including any beneficial owner, to whom a prospectus or SAI is delivered, a copy of any or all information that has been incorporated by reference into the prospectus or SAI but not delivered with the prospectus or SAI;

(2) that it will provide this information upon written or oral request;

(3) that it will provide this information at no charge;

(4) the name, address, telephone number, and email address, if any, to which the request for this information must be made; and

(5) the Registrant's website address where the prospectus, SAI, and any incorporated information may be accessed.

Instruction. If the Registrant sends any of the information that is incorporated by reference into the prospectus or SAI to security holders, it also must send any exhibits that are specifically incorporated by reference into that information.

c. The Registrant also must:

(1) Identify the reports and other information that it files with the SEC; and

(2) state that the SEC maintains an internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*).

G. Documents Composing the Registration Statement or Amendment

1. A registration statement or an amendment to it filed under both the Securities and Investment Company Acts consists of the facing sheet of the Form, Part A, Part B, Part C, required signatures, all other documents filed as a part of the registration statement, and documents or information permitted to be incorporated by reference.

2. A registration statement or amendment to it that is filed under only the Securities Act shall contain all the information and documents specified in paragraph 1 of this Instruction G.

3. A registration statement or an amendment to it that is filed under only the Investment Company Act shall consist of the facing sheet of the Form, responses to all items of Parts A and B except Items 1, 2, 3.2, 4, 5, 6, and 7 of Part A, responses to all items of Part C except Items 25.2.h, 25.2.*l,* 25.2.n, and 25.2.o, required signatures, and all other documents that are required or which the Registrant may file as part of the registration statement.

H. Preparation of the Registration Statement or Amendment

The following instructions for completing Form N–2 are divided into three parts. Part A relates to the prospectus required by Section 10(a) of the Securities Act. Part B relates to the SAI that must be provided upon request to recipients of the prospectus. Part C relates to other information that is required to be in the registration statement.

I. Interactive Data Files

1. An Interactive Data File as defined in Rule 11 of Regulation S–T [17 CFR 232.11] is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T [17 CFR 232.405] for any registration statement or post-effective amendment thereto filed on Form N–2 that contains the cover page information specified in Rule 405 of Regulation S–T. The Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which it relates that is submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

2. An Interactive Data File is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T for any registration statement or post-effective amendment thereto filed on Form N–2 or for any form of prospectus filed pursuant to Rule 424 under the Securities Act [17 CFR 230.424] that includes or amends information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, or 10.5. The Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which it relates, on or before the date the registration statement or post-effective amendment that contains the related information becomes effective. Interactive Data Files must be submitted with the filing made pursuant to Rule 424.

3. If a Registrant is filing a registration statement pursuant to General Instruction A.2, an Interactive Data File is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T for any of the documents listed in General Instruction F.3.(a) or General Instruction F.3.(b) that include or amend information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, or 10.5. The Interactive Data File must be submitted with the filing of the document(s) listed in General Instruction F.3.(a) or General Instruction F.3.(b).

4. The Interactive Data Files must be submitted in accordance with the specifications in the EDGAR Filer Manual, and must be submitted in such a manner that—for any information that does not relate to all of the classes of a Registrant—will permit each class of the Registrant to be separately identified.

J. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act [17 CFR 230.462], the Registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A [17 CFR 230.430A] that the Registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rules 411(c), 439(b), and 483(c) under the Securities Act [17 CFR 230.483].

Part A: The Prospectus

The purpose of the prospectus is to provide essential information about the Registrant in a way that will help investors make informed decisions

about whether to purchase the securities being offered. THE INFORMATION IN THE PROSPECTUS SHOULD BE CLEAR, CONCISE, AND UNDERSTANDABLE. AVOID THE USE OF TECHNICAL OR LEGAL TERMS, COMPLEX LANGUAGE, OR EXCESSIVE DETAIL.

Responses to the items of Part A should be as simple and direct as possible and should include only information needed to understand the fundamental characteristics of the Registrant. Descriptions of practices that are required by law generally should not include detailed discussions of the law itself. No response is required for inapplicable items.

Part B: Statement of Additional Information

The items in Part B call for additional information about the Registrant that may be of interest to some investors. Part B also allows the Registrant to augment discussions of matters described in the prospectus with additional information the Registrant believes may be of interest to some investors. If information is included in the prospectus, it need not be repeated in the SAI, and a Registrant need not prepare a SAI or refer to it in the prospectus (or provide the undertaking required by Item 34.7 as to the SAI) if all of the information required to be in the SAI is included in the prospectus. A Registrant placing information in Part B should not repeat information that is in the prospectus, except where necessary to make Part B understandable.

Information in the SAI need not be included in the prospectus or be sent to investors with the prospectus provided that the cover page of the prospectus states that the SAI is available upon oral or written request and without charge, and includes a toll-free telephone number and email address, if any, for use by prospective investors to request the SAI. If the request is made prior to delivery of a confirmation with respect to a security offered by the prospectus, the SAI must be sent in a manner reasonably calculated for it to arrive prior to the confirmation. The SAI may be sent to the address to which the prospectus was delivered, unless the requester provides an alternate address for delivery of the SAI.

General Instructions for Parts A and B

1. The information in the prospectus and the SAI should be organized to make it easy to understand the organization and operation of the Registrant. The information need not be in any particular order, with the exception that Items 1, 2, 3, and 4 must appear in order in the prospectus and may not be preceded or separated by any other information.

2. The prospectus or the SAI may contain more information than called for by this Form, provided the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of required information.

3. The requirements for dating the prospectus apply equally to dating the SAI for purposes of Rule 423 under the Securities Act [17 CFR 230.423]. The SAI should be made available at the same time that the prospectus becomes available for purposes of Rules 430 and 460 under the Securities Act [17 CFR 230.430 and 230.460].

4. The prospectus should not be presented in fold-out or road-map type fashion.

5. Instructions for charts, graphs, and sales literature:

(a) A registration statement may include any chart, graph, or table that is not misleading; however, only the fee table and the table of contents (required by Rule 481(c) under the Securities Act [17 CFR 230.481]) may precede the financial highlights specified in Item 4.

(b) If ''sales literature'' is included in the prospectus, (1) it should not significantly lengthen the prospectus nor obscure essential disclosure, and (2) members of the Financial Industry Regulatory Authority (''FINRA'') are not relieved of the filing and other FINRA requirements for investment company sales literature. (*See* Securities Act Release No. 5359, Jan. 26, 1973 [38 FR 7220 (Mar. 19, 1973)].)

Part A—Information Required in a Prospectus

Item 1. Outside Front Cover

1. The outside front cover must contain the following information:

a. the Registrant's name;

b. identification of the type of Registrant (*e.g.,* bond fund, balanced fund, business development company, etc.) or a brief statement of the Registrant's investment objective(s);

c. the title and amount of securities offered and a brief description of such securities (unless not necessary to indicate the material terms of the securities, as in the case of an issue of common stock with full voting rights and the dividend and liquidation rights usually associated with common stock);

d. a statement that (A) the prospectus sets forth concisely the information about the Registrant that a prospective investor ought to know before investing; (B) the prospectus should be retained for future reference; and (C) additional information about the Registrant has been filed with the Commission and is available upon written or oral request and without charge (this statement should explain how to obtain the SAI, and whether any of it has been incorporated by reference into the prospectus). This statement should also explain how to obtain the Registrant's annual and semi-annual reports to shareholders. Provide a toll-free (or collect) telephone number for investors to call, and email address, if any, to request the Registrant's SAI; annual report; semi-annual report; or other information about the Registrant; and to make shareholder inquiries. Also state whether the Registrant makes available its SAI and annual and semi-annual reports, free of charge, on or through the Registrant's website at a specified internet address. If the Registrant does not make its SAI and shareholder reports available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Registrant does not have an internet website). Also include the information that the Commission maintains a website (*http://www.sec.gov*) that contains the SAI, material incorporated by reference, and other information regarding Registrants;

e. the date of the prospectus and the date of the Statement of Additional Information;

f. if any of the securities being registered are to be offered for the account of shareholders, a statement to that effect;

g. information in substantially the tabular form indicated as to all securities being registered that are to be offered for cash (estimate, if necessary):

Price to public	Sales load	Proceeds to registrant or other persons
Per Share		
Total		

Instructions.

1. If it is impracticable to state the price to the public, briefly explain how the price will be determined (*e.g.,* by reference to net asset value). If the securities will be offered at the market, indicate the market involved and the market price as of the latest practicable date.

2. The term ''sales load'' is defined in Section 2(a)(35) of the Investment Company Act. Subject to Instruction 3, only include the portion of the sales load that consists of underwriting discounts and commissions, and include any commissions paid by selling shareholders (the term ''commissions'' is defined in paragraph 17 of Schedule A of the Securities Act [15 U.S.C. 77aa(17)]). Commissions paid by other persons and other consideration to underwriters shall be noted in the second column and briefly described in a footnote.

3. Include in the table as sales load amounts borrowed to pay underwriting discounts and commissions or any other offering costs that are required to be repaid in less than one year. Exclude from the table, but include in a note thereto, the amount of funds borrowed to pay such costs that are required to be repaid in more than one year, and provide a cross-reference to the prospectus discussion of the borrowed amounts and the effect of repayment on fund assets available for investment.

4. Where an underwriter has received an over-allotment option, present maximum-minimum information in the price table or in a note thereto, based on the purchase of all or none of the shares subject to the option. The terms of the option may be described briefly in response to Item 5 rather than on the prospectus cover page.

5. If the securities are to be offered on a best efforts basis, set forth the termination date of the offering, any minimum required purchase, and any arrangements to place the funds received in an escrow, trust, or similar arrangement. If no arrangements have been made, so state. Set forth the following table in lieu of the ''Total'' information called for by the required table.

Price to public	Sales load	Proceeds to registrant or other persons
Total Minimum		
Total Maximum		

6. Set forth in a note to the proceeds column the total of other expenses of issuance and distribution called for by Item 27, stated separately for the Registrant and for the selling shareholders, if any.

h. the statements required by paragraphs (1) and (2) of Rule 481(b) under the Securities Act;

i. if the Registrant's securities have no history of public trading, a prominent statement to that effect and a statement describing the tendency of closed-end fund shares to trade frequently at a discount from net asset value and the risk of loss this creates for investors purchasing shares in the initial public offering;

Instruction. A Registrant may omit the discount statement if it believes that, as a result of its investment or other policies, its capital structure, or the markets in which its shares trade, its shares are unlikely to trade at a discount from net asset value.

j. a cross-reference to the prospectus discussion of any factors that make the offering speculative or one of high risk, printed in bold face common type at least as large as ten point modern type and at least two points leaded; and

Instruction. No cross-reference is required where the risks associated with securities in which the Registrant is authorized to invest are only the basic risks of investing in securities (*e.g.,* the risk that the value of portfolio securities may fluctuate depending upon market conditions, or the risks that debt securities may be prepaid and the proceeds from the prepayments invested in debt instruments with lower interest rates). Include the cross-reference if the nature of the Registrant's investment objectives, investment policies, capital structure, or the trading markets for the Registrant's securities increase the likelihood that an investor could lose a significant portion of his or her investment.

k. any other information required by Commission rules or by any other governmental authority having jurisdiction over the Registrant or the issuance of its securities.

l. A statement to the following effect, if applicable:

Beginning on [date], as permitted by regulations adopted by the Securities and Exchange Commission, paper copies of the Registrant's shareholder reports will no longer be sent by mail, unless you specifically request paper copies of the reports from the Registrant [or from your financial intermediary, such as a broker-dealer or bank]. Instead, the reports will be made available on a website, and you will be notified by mail each time a report is posted and provided with a website link to access the report.

If you already elected to receive shareholder reports electronically, you will not be affected by this change and you need not take any action. You may elect to receive shareholder reports and other communications from the Registrant [or your financial intermediary] electronically by [insert instructions].

You may elect to receive all future reports in paper free of charge. You can inform the Registrant [or your financial intermediary] that you wish to continue receiving paper copies of your shareholder reports by [insert instructions]. Your election to receive reports in paper will apply to all funds held with [the fund complex/your financial intermediary].

2. The cover page may include other information if it does not, by its nature, quantity, or manner of presentation impede understanding of the required information.

Item 2. Cover Pages; Other Offering Information

1. Disclose whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identify the trading symbol(s) for those securities on the inside front or outside back cover page of the prospectus, unless the information appears on the front cover page.

2. Provide the information required by paragraph (d) of Rule 481 under the Securities Act in an appropriate place in the prospectus.

3. Provide the information required by paragraph (e) of Rule 481 under the Securities Act on the outside back cover page of the prospectus.

Item 3. Fee Table and Synopsis

1. If the prospectus offers common stock of the Registrant, include information about the costs and expenses that the investor will bear directly or indirectly, using the captions and tabular format illustrated below:

Shareholder Transaction Expenses

Sales Load (as a percentage of offering price)	_____%
Dividend Reinvestment and Cash Purchase Plan Fees	_____

Annual Expenses (as a percentage of net assets attributable to common shares)

Management Fees	_____%
Interest Payments on Borrowed Funds	_____%
Other expenses	
	_____%
_____	_____%
_____	_____%
_____	_____%
Total Annual Expenses	_____%

Example	**1 year**	**3 years**	**5 years**	**10 years**
You would pay the following expenses on a $1,000 investment, assuming a 5% annual return:	$ _____	$ _____	$ _____	$ _____

Instructions.

General Instructions

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the investor in understanding the various costs and expenses that an investor in the fund will bear directly or indirectly. Include, where appropriate, cross-references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses.

2. Any caption not applicable to the Registrant may be omitted from the table.

3. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

Shareholder Transaction Expenses

4. ''Dividend Reinvestment and Cash Purchase Plan Fees'' include all fees (except brokerage commissions) that are charged to participating shareholder accounts. The basis on which such fees are imposed should be described briefly in a note to the table.

5. If the Registrant (or any other party under an agreement with the Registrant) charges any other transaction fee, add another caption describing it, and list the maximum amount of the fee or basis on which the fee is deducted. Underwriters' compensation that is paid with the proceeds of debt that is not to be repaid within one year need not be identified as sales load, but should be set forth as a shareholder transaction expense with a brief narrative following the table explaining the nature of such payments.

Annual Expenses

6. State the basis on which payments will be made. ''Other Expenses'' should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net asset value attributable to common shares. State in the narrative following the table that ''Other Expenses'' are based on estimated amounts for the current fiscal year.

7.a. ''Management Fees'' include investment advisory fees (including any component thereof based on the performance of the Registrant), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as ''Other Expenses,'' and any expenses incurred within the Registrant's own organization in connection with the research, selection, and supervision of investments. Where management fees are ''tiered'' or based on a ''sliding scale,'' they should be calculated based on the fund's asset size after giving effect to the anticipated net proceeds of the present offering. In the case of a performance fee arrangement, assume the base fee. With respect to a best-efforts offering with breakpoints, assume the maximum fee will be payable.

b. In lieu of the information about management fees required by Item 3.1, a business development company with a fee structure that is not based solely on the aggregate amount of assets under management should provide disclosure concerning the fee arrangement to allow investors to assess its impact on the Registrant's expenses; a business development company may use any appropriate expense categories and may include items that may not, for accounting purposes, be treated as expenses. A business development company with special fee arrangements should provide a cross-reference, where applicable, to the discussion in Item 9.1.a of special management compensation plans.

8. ''Interest Payments on Borrowed Funds'' include all interest paid in connection with outstanding loans

(including interest paid on funds borrowed to pay underwriting expenses), bonds, or other forms of debt. Show interest expenses as a percentage of net assets attributable to common shares and not the face amount of debt.

9. ''Other Expenses'' include all expenses (except fees and expenses reported in other items in the table) that are deducted from the Registrant's assets and will be reflected as expenses in the Registrant's statement of operations (including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X).

10. a. If the Registrant invests, or intends to invest based upon the anticipated net proceeds of the present offering, in shares of one or more ''Acquired Funds,'' add a subcaption to the ''Annual Expenses'' portion of the table directly above the subcaption titled ''Total Annual Expenses.'' Title the additional subcaption: ''Acquired Fund Fees and Expenses.'' Disclose in the subcaption fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more Acquired Funds. For purposes of this Item, an ''Acquired Fund'' means any company in which the Registrant invests or intends to invest (A) that is an investment company or (B) that would be an investment company under Section 3(a) of the Investment Company Act but for the exceptions to that definition provided for in Sections 3(c)(1) and 3(c)(7) of the Investment Company Act. If a Registrant uses another term in response to other requirements of this Form to refer to Acquired Funds, it may include that term in parentheses following the subcaption title. In the event the fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more Acquired Funds do not exceed 0.01 percent (one basis point) of average net assets of the Registrant, the Registrant may include these fees and expenses under the subcaption ''Other Expenses'' in lieu of this disclosure requirement.

b. Determine the ''Acquired Fund Fees and Expenses'' according to the following formula:

$$AFFE = [(F1/FY)*AI1*D1]+[(F2/FY)*AI2*D2]+[(F3/FY)*AI3*D3] + \text{Transaction Fees} + \text{Incentive Allocations}$$

	Average Net Assets of the Registrant
Where:	
AFFE	Acquired Fund fees and expenses;
F1, F2, F3, . . .	Total annual operating expense ratio for each Acquired Fund;
FY	Number of days in the relevant fiscal year;
AI1, AI2, AI3, . . .	Average invested balance in each Acquired Fund;
D1, D2, D3, . . .	Number of days invested in each Acquired Fund;
''Transaction Fees''	The total amount of sales loads, redemption fees, or other transaction fees paid by the Registrant in connection with acquiring or disposing of shares in any Acquired Funds during the most recent fiscal year; and
''Incentive Allocations''	Any allocation of capital from the Acquiring Fund to the adviser of the Acquired Fund (or its affiliate) based on a percentage of the Acquiring Fund's income, capital gains and/or appreciation in the Acquired Fund.

c. Calculate the average net assets of the Registrant for the most recent fiscal year, as provided in Item 4.1 (*see* Instruction 15 to Item 4.1), and include the anticipated net proceeds of the present offering.

d. The total annual operating expense ratio used for purposes of this calculation (F1) is the annualized ratio of operating expenses to average net assets for the Acquired Fund's most recent fiscal period as disclosed in the Acquired Fund's most recent shareholder report. If the ratio of expenses to average net assets is not included in the most recent shareholder report or the Acquired Fund is a newly formed fund that has not provided a shareholder report, then the ratio of expenses to average net assets of the Acquired Fund is the ratio of total annual operating expenses to average annual net assets of the Acquired Fund for its most recent fiscal period as disclosed in the most recent communication from the Acquired Fund to the Registrant. If the Registrant has a written fee agreement with the Acquired Fund that would affect the ratio of expenses to average net assets as disclosed in the Acquired Fund's most recent shareholder report, the Registrant should determine the ratio of expenses to average net assets for the Acquired Fund's most recent fiscal period using the written fee agreement. For purposes of this instruction: (i) Acquired Fund expenses include increases resulting from brokerage service and expense offset arrangements and reductions resulting from fee waivers or reimbursements by the Acquired Funds' investment advisers or sponsors; and (ii) Acquired Fund expenses do not include any expenses (*i.e.,* performance fees) that are calculated solely upon the realization and/or distribution of gains, or the sum of the realization and/or distribution of gains and unrealized appreciation of assets distributed in-kind. If an Acquired Fund has no operating history, include in the Acquired Funds' expenses any fees payable to the Acquired Fund's investment adviser or its affiliates stated in the Acquired Fund's registration statement, offering memorandum or other similar communication without giving effect to any performance.

e. If a Registrant has made investments in the most recent fiscal year, to determine the average invested balance (AI1), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund no less frequently than monthly during the period the investment is held by the Registrant (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.,* if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

f. For investments based upon the anticipated net proceeds from the present offering, base the ''Acquired Fund Fees and Expenses'' on: (i) Assumptions about specific funds in which the Registrant expects to invest, (ii) estimates of the amount of assets the Registrant expects to invest in each of those Acquired Funds, and (iii) an assumption that the investment was held for all of the Registrant's most

recent fiscal year and was subject to the Acquired Funds' fees and expenses for that year. Disclose in a footnote to the table that Acquired Fund fees and expenses are based on estimated amounts for the current fiscal year.

g. If an Acquired Fund charges an Incentive Allocation or any other fee based on income, capital gains and/or appreciation (*i.e.,* performance fee), the Registrant must include a footnote to the ''Acquired Fund Fees and Expenses'' subcaption that:

(1) discloses the typical Incentive Allocation or such other fee (expressed as a percentage) to be paid to the investment advisers of the Acquired Funds (or an affiliate);

(2) discloses that Acquired Funds' fees and expenses are based on historic fees and expenses; and

(3) states that future Acquired Funds' fees and expenses may be substantially higher or lower because certain fees are based on the performance of the Acquired Funds, which may fluctuate over time.

h. If the Registrant is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in the ''Acquired Fund Fees and Expenses.'' The aggregate expenses of the Master-Feeder Fund must include the fees and expenses incurred indirectly by the Feeder Fund as a result of the Master Fund's investment in shares of one or more companies (A) that are investment companies or (B) that would be investment companies under Section 3(a) of the Investment Company Act but for the exceptions to that definition provided for in Sections 3(c)(1) and 3(c)(7) of the Investment Company Act. For purposes of this instruction, a ''Master-Feeder Fund'' means a two-tiered arrangement in which one or more investment companies registered under the Investment Company Act (each a ''Feeder Fund'') holds shares of a single management investment company registered under the Investment Company Act (the ''Master Fund'') in accordance with Section 12(d)(1)(E) of the Investment Company Act.

i. The Registrant may clarify in a footnote to the fee table that the total annual expenses item under Item 3.1 is different from the ratio of expenses to average net assets given in response to Item 4.1, which reflects the operating expenses of the Registrant and does not include Acquired Fund fees and expenses.

Example

11. For purposes of the Example in the table:

a. assume that the rates listed under ''Annual Expenses'' remain the same each year, except to reduce annual expenses to reflect the scheduled maturity of outstanding debt or the completion of organization expense amortization;

b. assume reinvestment of all dividends and distributions at net asset value;

c. reflect all recurring and nonrecurring fees including underwriting discounts and commissions; and

d. prominently disclose that the Example should not be considered a representation of future expenses and that actual expenses may be greater or lesser than those shown.

2. Include a synopsis of information contained in the prospectus when the prospectus is long or complex. Normally, a synopsis should not be provided where the prospectus is twelve or fewer printed pages.

Instruction. The synopsis should provide a clear and concise description of the key features of the offering and the Registrant, with cross-references to relevant disclosures elsewhere in the prospectus or Statement of Additional Information.

3. In the case of a business development company, include the information required by Item 101(e) of Regulation S–K [17 CFR 229.101] (concerning reports and other information filed with the Commission).

Item 4. Financial Highlights

1. General. Furnish the following information for the Registrant, or for the Registrant and its subsidiaries, consolidated as prescribed in Rule 6–03 of Regulation S–X [17 CFR 210.6–03]:

Financial Highlights

Per Share Operating Performance

a. Net Asset Value, Beginning of Period
(1) Net Investment Income
(2) Net Gains or Losses on Securities (both realized and unrealized)
b. Total From Investment Operations
c. Less Distributions
(1) Dividends (from net investment income)
(A) To Preferred Shareholders
(B) To Common Shareholders
(2) Distributions (from capital gains)
(A) To Preferred Shareholders
(B) To Common Shareholders
(3) Returns of Capital
(A) To Preferred Shareholders
(B) To Common Shareholders
d. Total Distributions
e. Net Asset Value, End of Period
f. Per Share Market Value, End of Period
g. Total Investment Return

Ratios/Supplemental Data

h. Net Assets, End of Period
i. Ratio of Expenses to Average Net Assets
j. Ratio of Net Income to Average Net Assets
k. Portfolio Turnover Rate

Instructions.

General Instructions

1. [Removed and reserved.]

2. Briefly explain the nature of the information contained in the table and its source. The auditor's report as to the financial highlights need not be included in the prospectus. Note that the auditor's report is contained elsewhere in the registration statement, specify its location, and state that it can be obtained by shareholders.

3. Present the information in comparative columns for each of the last ten fiscal years of the Registrant (or for the life of the Registrant and its immediate predecessors, if less), but only for periods subsequent to the effective date of the Registrant's first Securities Act registration statement. In addition, present the information for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities. Where the period for which the Registrant provides financial highlights is less than a full fiscal year, the ratios set forth in the table may be annualized but the fact of this annualization must be disclosed in a note to the table.

4. List per share amounts at least to the nearest cent. If the offering price is computed in tenths of a cent or more, state the amounts on the table in tenths of a cent. Present all information using a consistent number of decimal places.

5. Provide all information in the table, including distributions to preferred shareholders, on a common share equivalent basis.

6. Make, and indicate in a note, appropriate adjustments to reflect any stock split or stock dividend during the period.

7. If the investment adviser has been changed during the period covered by this Item, indicate the date(s) of the change(s) in a note.

8. The financial highlights for at least the latest five fiscal years must be audited and must so state.

Per Share Operating Performance

9. Derive the amount for caption a(1) by adding (deducting) the increase (decrease) per share in undistributed net investment income for the period to

(from) dividends from net investment income per share for the period. The increase (decrease) may be derived by comparing the per share figures obtained by dividing undistributed net investment income at the beginning and end of the period by the number of shares outstanding on those dates. Other methods may be acceptable but should be explained briefly in a note to the table.

10. The amount shown at caption a(2) is the balancing figure derived from the other figures in the statement. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of the Registrant's shares in relation to fluctuating market values for the portfolio.

11. For any distributions made from sources other than net investment income and capital gains, state the per share amounts thereof separately at caption c(3) and note the nature of the distributions.

12. In caption e, use the net asset value for the end of each period for which information is being provided. If the Registrant has not been in operation for a full fiscal year, state its net asset value immediately after the closing of its first public offering in a note to the caption.

Total Investment Return

13. When calculating ''total investment return'' for caption g:

a. Assume a purchase of common stock at the current market price on the first day and a sale at the current market price on the last day of each period reported on the table;

b. note that the total investment return does not reflect sales load; and

c. assume reinvestment of dividends and distributions at prices obtained by the Registrant's dividend reinvestment plan or, if there is no plan, at the lower of the per share net asset value or the closing market price of the Registrant's shares on the dividend/distribution date.

14. A Registrant also may include, as a separate caption, total return based on per share net asset value, provided the Registrant briefly explains in a note the differences between this calculation and the calculation required by caption g.

Ratios and Supplemental Data

15. Compute ''average net assets'' for captions i and j based on the value of net assets determined no less frequently than the end of each month. Indicate in a note that the expense ratio and net investment income ratio do not reflect the effect of dividend payments to preferred shareholders.

16. Compute the ''ratio of expenses to average net assets'' using the amount of expenses shown in the Registrant's statement of operations for the relevant fiscal year, including increases resulting from complying with paragraph 2(g) of Rule 6–07 of Regulation S–X, and including reductions resulting from complying with paragraphs 2(a) and (f) of Rule 6–07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of Rule 6–07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for fiscal years ending after September 1, 1995.

17. Compute portfolio turnover rate as follows:

a. Divide (A) the lesser of purchases or sales of portfolio securities for the fiscal year by (B) the monthly average of the value of portfolio securities owned by the Registrant during the fiscal year. Calculate the monthly average by totaling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding eleven months and dividing the sum by 13.

b. Exclude from both the numerator and denominator all securities, including options, whose maturity or expiration date at the time of acquisition was one year or less. Include all long-term securities, including U.S. Government securities. Purchases include cash paid upon conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights or warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

c. If during the fiscal year the Registrant acquired the assets of another investment company or of a personal holding company in exchange for its own shares, exclude from purchases the value of securities so acquired, and, from sales, all sales of the securities made following a purchase-of-assets transaction to realign the Registrant's portfolio. Appropriately adjust the denominator of the portfolio turnover computation, and disclose the exclusions and adjustments.

d. Include in purchases and sales short sales that the Registrant intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of portfolio securities sold during the period.

2. Business Development Companies. If the Registrant is regulated as a business development company under the Investment Company Act, furnish in a separate section the information required by Items 301, 302, and 303 of Regulation S–K.

3. Senior Securities. Furnish the following information as of the end of the last ten fiscal years for each class of senior securities (including bank loans) of the Registrant. If consolidated statements were prepared as of any of the dates specified, furnish the information on a consolidated basis:

Year	Total amount outstanding exclusive of treasury securities	Asset coverage per unit	Involuntary liquidating preference per unit	Average market value per unit (exclude bank loans)
(1)	(2)	(3)	(4)	(5)

Instructions.

1. Instructions 2, 3, and 8 to Item 4.1 also apply to this sub-item.

2. Use the method described in Section 18(h) of the Investment Company Act to calculate the asset coverage to be set forth in column (3). However, in lieu of expressing asset coverage in terms of a ratio, as described in Section 18(h), express it for each class of senior securities in terms of dollar amounts per share (in the case of preferred stock) or per $1,000 of indebtedness (in the case of senior indebtedness).

3. Column (4) need be included only with respect to senior stock.

4. Set forth in a note to the table the method used to determine the averages called for by column (5) (*e.g.,* weighted, monthly, daily, etc.).

5. Briefly explain the terms used in the headings of the columns.

Item 5. Plan of Distribution

Briefly describe how the securities being registered will be distributed. Include the following information:

1. For each principal underwriter distributing the securities being offered set forth:

a. Its name and principal business address;

b. a brief discussion of the nature of any material relationship with the Registrant (other than that of principal underwriter), including any arrangement under which a principal underwriter or its affiliates will perform administrative or custodial services for the Registrant;

Instruction. Any material relationship between the underwriter (or its affiliates) and the investment adviser (or its affiliates) of the Registrant relating to the business or operation of the Registrant constitutes a material relationship of the underwriter with the Registrant.

c. the amount of securities underwritten; and

d. the nature of the obligation to distribute the Registrant's securities.

Instruction. All that is required to be disclosed as to the nature of the underwriter's obligation is whether the underwriter will be committed to take and pay for all the securities if any are taken, or whether it is merely an agency or ''best-efforts'' arrangement under which the underwriter is required to take and pay for only such securities as it may sell to the public. Conditions precedent to the underwriter's taking the securities, including ''market outs,'' need not be described, except in the case of an agency or ''best-efforts'' arrangement.

2. The price to the public.

Instructions.

1. If it is impracticable to state the price to the public, concisely explain the manner in which the price will be determined, including a description of the valuation procedure used by the Registrant in determining the price. If the securities are to be offered at the market price, or if the offering price is to be determined by a formula related to market price, indicate the market involved and the market price as of the latest practicable date.

2. For restrictions on distributions and repurchases of closed-end company securities, see Section 23 of the Investment Company Act, and Investment Company Act Rel. No. 3187 (Feb. 6, 1961) [26 FR 1275 (Feb. 15, 1961)].

3. Briefly explain the basis for any differences in the price at which securities are offered to the public, as individuals and/or as groups, and to officers, directors and employees of the Registrant, its adviser or underwriter.

3. To the extent not set forth on the cover page of the prospectus, state the amount of the sales load, if any, as a percentage of the public offering price, and concisely describe the commissions to be allowed or paid to (i) underwriters, including all other items that would be deemed by FINRA to constitute underwriting compensation for purposes of FINRA's rules regarding securities offerings, underwriting and compensation, and (ii) dealers, including all cash, securities, contracts, and/or other considerations to be realized by any dealer in connection with the sale of securities.

Instruction. If any dealers are to act in the capacity of sub-underwriters and are allowed or paid any additional discounts or commission for acting in such capacity, a general statement to that effect will suffice without giving the additional amounts to be sold.

4. If the underwriting agreement provides for indemnification by the Registrant of the underwriters or their controlling persons against any liability arising under the Securities Act or Investment Company Act, briefly describe such indemnification provisions.

5. Provide the identity of any finder and, if applicable, concisely describe the nature of any material relationship between such finder and the Registrant, its officers, directors, principal shareholders, finders or promoters or the principal underwriter(s), or the managing underwriter(s), if any, and, in each case, the affiliates or associates thereof.

6. Indicate the date by which investors must pay for the securities.

7. If the securities are being offered in conjunction with any retirement plan, provide a statement regarding the manner in which further information about the plan can be obtained.

8. If investors' funds will be forwarded to an escrow account, identify the escrow agent, and briefly describe the conditions for release of the funds, whether such funds will accrue interest while in escrow, and the manner in which the monies in such account will be distributed if such conditions are not satisfied, including how accrued interest, if any, will be distributed to investors.

9. If the securities offered by the Registrant are not being listed on a national securities exchange, disclose whether any of the underwriters intends to act as a market maker with respect to such unlisted securities.

10. Briefly outline the plan of distribution of any securities that are to be offered other than through underwriters.

a. If the securities are to be offered through the selling efforts of brokers or dealers, concisely describe the plan of distribution and the terms of any agreement, arrangement, or understanding entered into with broker(s) or dealer(s) prior to the effective date of the registration statement, including volume limitations on sales, parties to the agreement, and the conditions under which the agreement may be terminated. If known, identify the broker(s) or dealer(s) that will participate in the offering, and state the amount to be offered through each.

b. If any of the securities being registered are to be offered other than for cash, describe briefly the general purposes of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and the person(s) responsible for such expenses.

c. If the distribution is to be made under a plan of acquisition, reorganization, readjustment, or succession, provide a statement regarding the general effect of the plan and when it becomes operative. As to any material amount of assets to be acquired under the plan, furnish the information required by Instruction 4 to Item 7.1 below.

Item 6. Selling Shareholders

If any securities being registered are to be offered for the account of shareholders, furnish the information required by Item 507 of Regulation S–K [17 CFR 229.507].

Item 7. Use of Proceeds

1. State the principal purposes for which the net proceeds of the offering are intended to be used and the approximate amount intended to be used for each purpose.

Instructions.

1. If any substantial portion of the proceeds will not be allocated in accordance with the investment objectives and policies of the Registrant, a statement to that effect should be made together with a statement of the amount involved and an indication of how that amount will be invested.

2. If a material part of the proceeds will be used to discharge indebtedness, state the interest rate and maturity of the indebtedness.

3. If the Registrant intends to incur loans to pay underwriting commissions or any other organizational or offering expenses, disclose this fact and state the name of the lender, the amount of the first installment, the rate of interest, the date on which payments will begin, the dates and amounts of subsequent installments, and the final maturity date. Explain that the interest paid on such borrowing will not be available for investment purposes and will increase the expenses of the fund.

4. If any material part of the proceeds will be used to acquire assets other than in the ordinary course of business, briefly describe the assets, the names of the persons from whom they are to be acquired, the cost of the assets to the Registrant, and how the costs were determined.

2. Disclose how long it is expected to take to fully invest net proceeds in accordance with the Registrant's investment objectives and policies, the reasons for any anticipated lengthy delay in investing the net proceeds, and the consequences of any delay.

Item 8. General Description of the Registrant

Concisely discuss the organization and operation, or proposed operation, of the Registrant. Include the information specified below.

1. *General.* Briefly describe the Registrant, including:

a. The date and form of organization and the name of the state or other jurisdiction under whose laws it is organized; and

b. the classification and subclassification under Sections 4 and 5 of the Investment Company Act.

2. *Investment Objectives and Policies.* Concisely describe the investment objectives and policies of the Registrant that will constitute its principal portfolio emphasis, including the following:

a. If these objectives may be changed without a vote of the holders of a majority of voting securities, a brief statement to that effect;

b. how the Registrant proposes to achieve its objectives, including:

(1) The types of securities in which the Registrant invests or will invest principally;

(2) the identity of any particular industry or group of industries in which the Registrant proposes to concentrate.

Instruction. Concentration, for purposes of this Item, is deemed 25 percent or more of the value of the Registrant's total assets invested or proposed to be invested in a particular industry or group of industries. The policy on concentration should not be inconsistent with the Registrant's name.

c. identify other policies of the Registrant that may not be changed without the vote of a majority of the outstanding voting securities, including those policies that the Registrant deems to be fundamental within the meaning of Section 8(b) of the Investment Company Act; and

d. briefly describe the significant investment practices or techniques that the Registrant employs or intends to employ (such as risk arbitrage, reverse repurchase agreements, forward delivery contracts, when-issued securities, stand-by commitments, options and futures contracts, options on futures contracts, currency transactions, foreign securities, investing for control of management, and/or lending of portfolio securities) that are not described pursuant to subparagraph 2.c above or subparagraph 3 below.

3. *Risk Factors.* Concisely describe the risks associated with an investment in the Registrant, including the following:

a. *General.* Discuss the principal risk factors associated with investment in the Registrant specifically as well as those factors generally associated with investment in a company with investment objectives, investment policies, capital structure, or trading markets similar to the Registrant's.

b. *Effects of Leverage.* If the prospectus offers common stock of the Registrant and the Registrant has outstanding or is offering a class of senior securities as defined in Section 18 of the Investment Company Act, then:

(1) Set forth the annual rate of interest or dividend payments on the senior securities;

Instruction. If payments will vary because the interest or dividend rate is variable, provide the initial rate or, if the security is currently outstanding, the current rate.

(2) Set forth the annual return that the Registrant's portfolio must experience in order to cover annual interest or dividend payments on senior securities; and

(3) provide a table illustrating the effect on return to a common stockholder of leverage (using senior securities) in the format illustrated below, using the captions provided, and assuming annual returns on the Registrant's portfolio (net of expenses) of minus ten, minus five, zero, five, and ten percent.

(4) The table should be accompanied by a brief narrative explaining that the purpose of the table is to assist the investor in understanding the effects of leverage. Indicate that the figures appearing in the table are hypothetical and that actual returns may be greater or less than those appearing in the table.

Assumed Return on Portfolio (Net of Expenses)	−10%	−5%	0%	5%	10%
Corresponding Return to Common Stockholder	%	%	%	%	%

Instructions.

1. Round all percentages to the nearest hundredth of one percent.

2. A Registrant may assume additional rates of return on its portfolio; however, to the extent a Registrant shows an additional positive rate of return, it must also show an additional negative rate of return of the same magnitude. A Registrant may show the positive rate of return at which the corresponding rate of return to the common stockholder is zero without showing the corresponding negative rate of return.

3. Compute the ''corresponding return to common stockholder'' as follows: Multiply the total amount of fund assets at the beginning of the period by the assumed rate of return; subtract from the resulting product all interest accrued or dividends declared on senior securities that would be made during the year following the offering; and divide the resulting difference by the total amount of fund assets attributable to common stock. If payments will vary because the interest or dividend rate is variable, use the initial rate or, if the security is currently outstanding, the current rate.

4. *Other Policies.* Briefly discuss the types of investments that will be made by the Registrant, other than those that will constitute its principal portfolio emphasis (as discussed in Item 8.2 above), and any policies or practices relating to those investments.

Instructions.

1. This discussion should receive less emphasis in the prospectus than that required by Item 8.2 and, if appropriate in light of Instructions 2 and 3 below, may be omitted or limited to the

information necessary to identify the type of investment, policy, or practice.

2. Do not discuss a policy that prohibits a particular practice or permits a practice that the Registrant has not used within the past twelve months (or since its initial public offering, if that period is shorter) and does not intend to use in the future.

3. If a policy limits a particular practice so that no more than five percent of the Registrant's net assets are at risk, or if the Registrant has not followed that practice within the last year (or since its initial public offering, if such period is shorter) in such a manner that more than five percent of net assets were at risk and does not intend to follow such practice so as to put more than five percent of net assets at risk, limit the prospectus disclosure about such practice to that necessary to identify the practice. Disclose whether or not the Registrant will provide prior notice to security holders of its intention to commence or expand the use of such practice.

The amount of the Registrant's net assets that are at risk for purposes of determining whether ''more than five percent of net assets are at risk'' is not limited to the initial amount of the Registrant's assets that are invested in a particular practice, *e.g.,* the purchase price of an option. The amount of net assets at risk is determined by reference to the potential liability or loss that may be incurred by the Registrant in connection with a particular practice.

5. *Share Price Data.* If the prospectus offers common stock or other type of common equity security (collectively ''common stock'') and if the Registrant's common stock is publicly held, provide the following information:

a. Identify the principal United States market or markets in which the common stock is being traded. Where there is no established public trading market, furnish a statement to that effect.

Instruction. The existence of limited or sporadic quotations should not itself be deemed to constitute an ''established public trading market.''

b. If the principal United States market for the common stock is an exchange, state the high and low sales prices for the stock for each full quarterly period within the two most recent fiscal years and each full fiscal quarter since the beginning of the current fiscal year, as reported in the consolidated transaction reporting system or, if not so reported, as reported on the principal exchange market for the stock. If the principal United States market for the common stock is not an exchange, state the range of high and low bid information for the common stock for the periods described in the preceding sentence, as regularly quoted in the automated quotation system of a registered securities association or, if not so quoted, the range of reported high and low bid quotations, indicating the source of the quotations.

Instructions.

1. This information should be set forth in tabular form.

2. Indicate, as applicable, that such over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down, or commission and may not necessarily represent actual transactions.

3. Where there is an absence of an established public trading market, qualify reference to quotations by an appropriate explanation.

4. With respect to each quotation, disclose the net asset value and the discount or premium to net asset value (expressed as a percentage) represented by the quotation.

5. Where the shares of the Registrant trade at their high or low share price for more than one day during the period, the Registrant should provide the discount or premium information for the day on which the premium or discount was greatest.

c. Include share price and corresponding net asset value and premium/discount information as of the latest practicable date.

d. Disclose whether the Registrant's common stock has historically traded for an amount less than, equal to, or exceeding net asset value. Disclose any methods undertaken or to be undertaken by the Registrant that are intended to reduce any discount (such as the repurchase of fund shares, providing for the ability to convert to an open-end investment company, guaranteed distribution plans, etc.), and briefly discuss the effects that these measures have or may have on the Registrant.

e. If the shares of the Registrant have no history of public trading, discuss the tendency of closed-end fund shares to trade frequently at a discount from net asset value and the risk of loss this creates for investors purchasing shares in the initial public offering. If the Registrant has omitted the statement required by Item 1.i, describe the basis for the Registrant's belief that its shares will not trade at a discount from net asset value.

6. *Business Development Companies.* A Registrant that is a business development company should, in addition, provide the following information:

a. *Portfolio Companies.* For each portfolio company in which the Registrant is investing, disclose: (1) The name and address; (2) nature of business; (3) title, class, percentage of class, and value of portfolio company securities held by the Registrant; (4) amount and general terms of all loans to portfolio companies; and (5) the relationship of the portfolio companies to the Registrant.

Instructions.

1. The description of the nature of the business of a portfolio company in which the Registrant is investing may vary according to the extent of the Registrant's investment in the particular portfolio company. The Registrant need only briefly identify the nature of the business of a portfolio company in which the Registrant's investment constitutes less than five percent of the Registrant's assets.

2. In describing the nature of the business of a portfolio company, include matters such as the competitive conditions of the business of the company; its market share; dependence on a single or small number of customers; importance to it of any patents, trademarks, licenses, franchises, or concessions held; key operating personnel; and particular vulnerability to changes in government regulation, interest rates, or technology.

3. In describing the relationship of portfolio companies to the Registrant, include a discussion of the extent to which the Registrant makes available significant managerial assistance to its portfolio companies. Disclose any other material business, professional, or family relationship between the officers and directors of the Registrant and any portfolio company, its officers, directors, and affiliates (as defined in Rule 12b–2 under the Exchange Act [17 CFR 240.12b–2]).

b. *Certain Subsidiaries.* If the Registrant has a wholly-owned small business investment company subsidiary, disclose: (1) Whether the subsidiary is regulated as a business development company or investment company under the Investment Company Act; (2) the percentage of the Registrant's assets invested in the subsidiary; and (3) material information about the small business investment company's operations, including the special risks of investing in a portfolio heavily invested in securities of small and developing or financially troubled businesses.

c. *Financial Statements.* Unless the business development company has had less than one fiscal year of operations, provide the financial statements of the Registrant.

Instructions.

1. a. Furnish, in a separate section following the responses to the above

items in Part A of the registration statement, the financial statements and schedules required by Regulation S–X [17 CFR 210]. A business development company should comply with the provisions of Regulation S–X generally applicable to registered management investment companies. (*See* Section 210.3–18 and Sections 210.6–01 through 210.6–10 of Regulation S–X.)

b. A business development company should provide an indication in its Schedule of Investments of those investments that are not qualifying investments under Section 55(a) of the Investment Company Act and, in a footnote, briefly explain the significance of non-qualification.

2. Notwithstanding the requirements of Instruction 1 above, the following statements and schedules required by Regulation S–X may be omitted from Part A and included in Part C of the Registration statement:

a. The statement of any subsidiary that is not a majority-owned subsidiary; and

b. columns C and D of Schedule IV [17 CFR 210.12–03] in support of the most recent balance sheet.

3. A business development company with less than one fiscal year of operations should provide its financial statements in the Statement of Additional Information in response to Item 24.

d. *Prior Operations.* If the Registrant has had an operating history prior to electing to be regulated as a business development company, disclose any anticipated changes in its operations as a result of coming into compliance with Section 55(a) of the Investment Company Act. This information may be omitted in a prospectus used a sufficient time after election to be regulated as a business development company so that it is no longer material.

e. *Special Risk Factors.* To the extent not disclosed in response to this Item or Item 8.3, concisely describe the special risks of investing in a business development company, including the risks associated with investing in a portfolio of small and developing or financially troubled businesses. (*See* Section 64(b)(1) of the Investment Company Act.)

Item 9. Management

1. *General.* Describe concisely how the business of the Registrant is managed, including:

a. *Board of Directors.* A description of the responsibilities of the board of directors with respect to the management of the Registrant;

Instructions.

1. In responding to this Item, it is sufficient to include a general statement as to the responsibilities of the board of directors under the applicable laws of the Registrant's jurisdiction of organization.

2. A Registrant that has elected to be regulated as a business development company should briefly describe the terms of any special compensation plans available to management.

b. *Investment Advisers.* For each investment adviser of the Registrant:

(1) Its name and principal business address, a description of its experience as an investment adviser, and, if the investment adviser is controlled by another person, the name of that person and the general nature of its business;

Instruction. If the investment adviser is subject to more than one level of control, it is sufficient to provide the name of the ultimate control person.

(2) A description of the services provided by the investment adviser;

Instructions.

1. If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the investment adviser are subject to the authority of the board of directors, responsible for overall management of the Registrant's business affairs, it is sufficient to state that fact instead of listing all services provided.

2. A Registrant that has elected to be regulated as a business development company should describe briefly the type of managerial assistance that is or will be provided to the businesses in which it is investing and the qualifications of the investment adviser to render such management assistance.

(3) A description of its compensation; and

Instructions.

1. State generally what the adviser's fee is or will be as a percentage of average net assets, including any break-point. It is not necessary to include precise details as to how the fee is computed or paid.

2. If the investment advisory fee is paid in some manner other than on the basis of average net assets, briefly describe the basis of payment.

(4) A statement, adjacent to the disclosure required by paragraph 1(b)(3) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Registrant is available in the Registrant's annual or semi-annual report to shareholders, as applicable, and providing the period covered by the relevant annual or semi-annual report.

c. *Portfolio Management.* The name, title, and length of service of the person or persons employed by or associated with the Registrant or an investment adviser of the Registrant who are primarily responsible for the day-to-day management of the Registrant's portfolio (''Portfolio Manager''). Also state each Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Registrant.

Instruction. If a committee, team, or other group of persons associated with the Registrant or an investment adviser of the Registrant is jointly and primarily responsible for the day-to-day management of the Registrant's portfolio, information in response to this Item is required for each member of such committee, team, or other group. For each such member, provide a brief description of the person's role on the committee, team, or other group (*e.g.,* lead member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day- to-day management of the Registrant's portfolio. If more than five persons are jointly and primarily responsible for the day-to-day management of the Registrant's portfolio, the Registrant need only provide information for the five persons with the most significant responsibility for the day-to-day management of the Registrant's portfolio.

d. *Administrators.* The identity of any other person who provides significant administrative or business affairs management services (*e.g.,* an ''Administrator'' or ''Sub-Administrator''), a description of the services provided, and the compensation to be paid;

e. *Custodians.* The name and principal business address of the custodian(s), transfer agent, and dividend paying agent;

f. *Expenses.* The type of expenses for which the Registrant is responsible, and, if organization expenses of the Registrant are to be paid out of its assets, how the expenses will be amortized and the period over which the amortization will occur; and

g. *Affiliated Brokerage.* If the Registrant pays (or will pay) brokerage commissions to any broker that is an (1) affiliated person of the Registrant, (2) affiliated person of such person, or (3) affiliated person of an affiliated person of the Registrant, its investment adviser,

or its principal underwriter, a statement to that effect.

2. *Non-Resident Managers.* If any non-resident officer, director, underwriter, investment adviser, or expert named in the registration statement has a substantial portion of its assets located outside the United States, identify each person, and state how the enforcement by investors of civil liabilities under the federal securities laws may be affected. This disclosure should indicate whether:

a. Investors will be able to effect service of process within the United States upon these persons;

b. investors will be able to enforce, in United States courts, judgments against these persons obtained in such courts predicated upon the civil liability provisions of the federal securities laws;

c. the appropriate foreign courts would enforce judgments of United States courts obtained in actions against these persons predicated upon the civil liability provisions of the federal securities laws; and

d. the appropriate foreign courts would enforce, in original actions, liabilities against these persons predicated solely upon the federal securities laws.

Instruction. If any portions of this disclosure are stated to be based upon an opinion of counsel, name the counsel in the prospectus, and include an appropriate manually signed consent to the use of counsel's name and opinion as an exhibit to the registration statement.

3. *Control Persons.* Identify each person who, as of a specified date no more than 30 days prior to the date of filing the registration statement (or amendment to it), controls the Registrant.

Instruction. For the purposes of this Item, ''control'' means (1) the beneficial ownership, either directly or through one or more controlled companies, of more than 25 percent of the voting securities of a company; (2) the acknowledgment or assertion by either the controlled or controlling party of the existence of control; or (3) an adjudication under Section 2(a)(9) of the Investment Company Act, which has become final, that control exists.

Item 10. Capital Stock, Long-Term Debt, and Other Securities

1. *Capital Stock.* For each class of capital stock of the Registrant, state the title of the class and briefly describe all of the matters listed in paragraphs 1.a through 1.f that are relevant:

a. concisely discuss the nature and most significant attributes, including, where applicable, (1) dividend rights, policies, or limitations; (2) voting rights; (3) liquidation rights; (4) liability to further calls or to assessments by the Registrant; (5) preemptive rights, conversion rights, redemption provisions, and sinking fund provisions; and (6) any material obligations or potential liability associated with ownership of the security (not including investment risks);

Instructions.

1. A complete legal description of the securities should not be given.

2. If the Registrant has a policy of making distribution or dividend payments at predetermined times and minimum rates, disclosure should include a statement that, if the fund's investments do not generate sufficient income, the fund may be required to liquidate a portion of its portfolio to fund these distributions, and therefore these payments may represent a reduction of the shareholders' principal investment. The tax consequences of such payments also should be described briefly.

b. with respect to preferred stock, (1) state whether there are any restrictions on the Registrant while there is an arrearage in the payment of dividends or sinking fund installments, and, if so, concisely describe the restrictions and (2) briefly describe provisions restricting the declaration of dividends, requiring the maintenance of any ratio or assets, requiring the creation or maintenance of reserves, or permitting or restricting the issuance of additional securities;

c. if the rights of holders of the security may be modified other than by a vote of a majority or more of the shares outstanding, voting as a class, so state, and briefly explain;

d. if rights evidenced by, or the amounts payable with respect to, any class of securities being described are, or may be, materially limited or qualified by the rights of any other authorized class of securities, include sufficient information regarding the other securities to enable investors to understand such rights and limitations;

e. if the Registrant has a dividend reinvestment plan, briefly discuss the material aspects of the plan including, but not limited to, whether the plan is automatic or whether shareholders must affirmatively elect to participate; (2) the method by which shareholders can elect to reinvest stock dividends or, if the plan is automatic, to receive cash dividends; (3) from whom additional information about the plan may be obtained (including a telephone number or address); (4) the method of determining the number of shares that will be distributed in lieu of a cash dividend; (5) the income tax consequences of participation in the plan (*i.e.,* that capital gains and income are realized, although cash is not received by the shareholder); (6) how to terminate participation in the plan and rights upon termination; (7) if applicable, that an investor holding shares that participate in the dividend reinvestment plan in a brokerage account may not be able to transfer the shares to another broker and continue to participate in the dividend reinvestment plan; (8) the type and amount (if known) of fees, commissions, and expenses payable by participants in connection with the plan; and (9) if a cash purchase plan option is available, any minimum or maximum investment required; and

f. briefly describe any provision of the Registrant's charter or bylaws that would have an effect of delaying, deferring, or preventing a change of control of the Registrant and that would operate only with respect to an extraordinary corporate transaction involving the Registrant, such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation.

Instruction. Provisions and arrangements required by law or imposed by governmental or judicial authority need not be discussed. Provisions or arrangements adopted by the Registrant to effect or further compliance with laws or governmental or judicial mandate must be described where compliance does not require the specific provisions or arrangements adopted.

2. *Long-Term Debt.* If the Registrant is issuing or has outstanding a class of long-term debt, state the title of the debt securities and their principal amount, and concisely describe any of the matters listed in paragraphs 2.a through 2.e that are relevant:

a. provisions concerning maturity, interest, conversion, redemption, amortization, sinking fund, and/or retirement;

b. provisions restricting the declaration of dividends, requiring the maintenance of any ratio or assets, and/or requiring the creation or maintenance of reserves;

c. provisions permitting or restricting the issuance of additional securities, the ability to incur additional debt, the release or substitution of assets securing the issue, and/or the modification of the terms of the securities;

Instruction. A complete legal description of the securities should not be given.

d. for each trustee, its name, the nature of any material relationship it has with the Registrant or any of its affiliates, the percentage of securities

necessary to require the trustee to take action, and any indemnification the trustee may require before proceeding against assets of the Registrant; and

e. to the extent not otherwise disclosed in response to this Item, whether the rights evidenced by the long-term debt are, or may be, materially limited or qualified by the rights of any other authorized class of securities, and, if so, include sufficient information regarding such other securities to enable investors to understand such rights and limitations.

3. *General.* Concisely describe the significant attributes of each other class of the Registrant's authorized securities. The description should be comparable to that called for by paragraphs 1 and 2 of this Item. If the securities are subscription warrants or rights, state the title and amount of securities called for and the period during which, and the prices at which, the warrants or rights are exercised.

4. *Taxes.* Concisely describe the tax consequences to investors of an investment in the securities being offered. If the Registrant intends to qualify for treatment under Subchapter M of the Internal Revenue Code of 1986 [26 U.S.C. 851–856], it is sufficient, in the absence of special circumstances, to state that: (i) the Registrant will distribute all of its net investment income and gains to shareholders and that these distributions are taxable as ordinary income or capital gains; (ii) shareholders may be proportionately liable for taxes on income and gains of the Registrant but shareholders not subject to tax on their income will not be required to pay tax on amounts distributed on them: and (iii) the Registrant will inform shareholders of the amount and nature of the income or gains.

Instructions.

1. The description should not include detailed discussions of applicable law.

2. The Registrant should specifically address whether shareholders will be subject to the alternative minimum tax.

5. Outstanding Securities. Furnish the following information, in substantially the tabular form indicated, for each class of authorized securities of the Registrant. The information must be current within 90 days of the filing of this registration statement or amendment to it.

Title of class	Amount authorized	Amount held by registrant or for its account	Amount outstanding exclusive of amount shown under (3)
(1)	(2)	(3)	(4)

6. Securities Ratings. If the prospectus relates to senior securities of the Registrant that have been assigned a rating by a nationally recognized securities rating organization and the rating is disclosed in the prospectus, briefly discuss the significance of the rating, the basis upon which ratings are issued, any conditions or guidelines imposed by the NRSRO for the Registrant to maintain the rating, and whether or not the Registrant intends, or has any contractual obligation, to comply with these conditions or guidelines. In addition, disclose the material terms of any agreement between the Registrant or any of its affiliates and the NRSRO under which the NRSRO provides such rating. If the prospectus relates to securities other than senior securities of the Registrant that have been assigned a rating by a NRSRO, the information required by this paragraph may be provided in the Statement of Additional Information unless the rating criteria will materially affect the investment policies of the Registrant (*e.g.,* if the rating agency establishes criteria for selection of the Registrant's portfolio securities with which the Registrant intends to comply), in which case it should be included in the prospectus.

Instructions.

1. The term ''nationally recognized securities rating organization'' has the same meaning as used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act [17 CFR 240.15c3–1].

2. Rule 436(g)(1) of Regulation C under the Securities Act [17 CFR 230.436] provides that a security rating assigned by an NRSRO to a class of debt securities, a class of convertible debt securities, or a class of preferred stock is not considered a part of the registration statement for purposes of Sections 7 and 11 of the Securities Act. Therefore, in the case of disclosure of a rating assigned to these types of securities issued by the Registrant, the Registrant need not include a written consent of the NRSRO as an exhibit to the registration statement as required by Item 25.2.n but must provide the disclosure called for by this Item.

3. Reference should be made to the statement of the Commission's policy on security ratings set forth under the section ''General'' in Regulation S–K [17 CFR 229.10] for the Commission's views on other important matters to be considered in disclosing securities ratings.

Item 11. Defaults and Arrears on Senior Securities

1. State the nature, date, and amount of default of payment of principal, interest, or amortization for each issue of long-term debt of the Registrant that is in default on the date of filing.

2. If an issue of capital stock has any accumulated dividend in arrears at the date of filing, state the title of each issue and the amount per share in arrears.

Item 12. Legal Proceedings

Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, any subsidiary of the Registrant, or the Registrant's investment adviser or principal underwriter is a party. Include the name of the court where the case is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any proceeding instituted by a governmental authority or known to be contemplated by a governmental authority.

Instruction. Legal Proceedings, for purposes of this Item, are material only to the extent that they are likely to have a material adverse effect upon: (1) the ability of the investment adviser or principal underwriter to perform its contract with the Registrant; or (2) the Registrant.

Item 13. [Removed and reserved.]

Part B—Information Required in a Statement of Additional Information

Item 14. Cover Page

1. The outside cover page must contain the following information:

a. the Registrant's name;

b. a statement or statements (1) that the Statement of Additional Information is not a prospectus, (2) that the Statement of Additional Information should be read with the prospectus, and (3) how a copy of the prospectus may be obtained;

c. the date of the Statement of Additional Information;

d. the date of the related prospectus and any other identifying information

that the Registrant deems appropriate; and

e. the statement required by paragraph (b)(2) of Rule 481 under the Securities Act.

2. The cover page may include other information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 15. Table of Contents

List the contents of the Statement of Additional Information, and, where useful, provide a cross-reference to related disclosure in the prospectus.

Item 16. General Information and History

If the Registrant has engaged in a business other than that of an investment company during the past five years, state the nature of the other business and give the approximate date on which the Registrant commenced business as an investment company. If the Registrant's name was changed during that period, state its former name and the approximate date on which it was changed. If the change in the Registrant's business or name occurred in connection with any bankruptcy, receivership, or similar proceeding or any other material reorganization, readjustment, or succession, briefly describe the nature and results of the same.

Item 17. Investment Objective and Policies

1. Describe clearly and concisely the investment policies of the Registrant. It is not necessary to repeat information contained in the prospectus, but, in augmenting the disclosure about those types of investments, policies, or practices that are briefly discussed or identified in the prospectus, the Registrant should refer to the prospectus when necessary to clarify the additional information called for by this Item.

2. Concisely describe any fundamental policy of the Registrant not described in the prospectus with respect to each of the following activities:

a. the issuance of senior securities;

b. short sales, purchases on margin, and the writing of put and call options;

c. the borrowing of money (describe briefly any fundamental policy that limits the Registrant's ability to borrow money, and state the purpose for which the proceeds will be used);

d. the underwriting of securities of other issuers (include any fundamental policy concerning the acquisition of restricted securities, *i.e.,* securities that must be registered under the Securities Act before they may be offered or sold to the public);

e. the concentration of investments in a particular industry or groups of industries;

f. the purchase or sale of real estate and real estate mortgage loans;

g. the purchase or sale of commodities or commodity contracts, including futures contracts;

h. the making of loans (for purposes of this Item, the term ''loans'' does not include the purchase of a portion of an issue of publicly distributed bonds, debentures, or other securities, whether or not the purchase was made upon the original issuance of the securities; however, the term ''loan'' includes the loaning of cash or portfolio securities to any person); and

i. any other policy that the Registrant deems fundamental.

Instructions.

1. For purposes of this Item, the term ''fundamental policy'' is defined as any policy that the Registrant has deemed to be fundamental or that may not be changed without the approval of a majority of the Registrant's outstanding voting securities.

2. If the Registrant reserves freedom of action with respect to any of the foregoing activities (other than the activity described in paragraph e), it must disclose the maximum percentage of assets to be devoted to the particular activity.

3. Describe fully any significant investment policies of the Registrant not described in the prospectus that are not deemed fundamental and that may be changed without the approval of the holders of a majority of the voting securities (*e.g.,* investing for control of management, investing in foreign securities, or arbitrage activities).

Instruction. The Registrant should disclose the extent to which it may engage in the above policies and the risks inherent in such policies.

4. Briefly explain any significant change in the Registrant's portfolio turnover rates over the last two fiscal years. If the Registrant anticipates a significant change in the portfolio turnover rate from that reported under caption k of Item 4.1 for its most recent fiscal year, so state. In the case of a new registration, the Registrant should state its policy with respect to portfolio turnover.

Item 18. Management

General Instructions.

1. For purposes of this Item 18, the terms below have the following meanings:

a. The term ''family of investment companies'' means any two or more registered investment companies that:

(1) Share the same investment adviser or principal underwriter; and

(2) Hold themselves out to investors as related companies for purposes of investment and investor services.

b. The term ''fund complex'' means two or more registered investment companies that:

(1) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(2) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

c. The term ''immediate family member'' means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in Section 152 of the Internal Revenue Code [26 U.S.C. 152].

d. The term ''officer'' means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Registrant, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, separately from the information for directors who are not interested persons of the Registrant. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

1. Provide the information required by the following table for each director and officer of the Registrant, and, if the Registrant has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

Name, address, and age	Position(s) held with registrant	Term of office and length of time served	Principal occupation(s) during past 5 years	Number of portfolios in fund complex overseen by director	Other directorships held by director
(1)	(2)	(3)	(4)	(5)	(6)

Instructions.

1. For purposes of this paragraph, the term ''family relationship'' means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Registrant, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of the Exchange Act or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

2. For each individual listed in column (1) of the table required by paragraph 1 of this Item 18, except for any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Registrant.

Instruction. When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

3. Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction. Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

4. For each non-resident director or officer of the Registrant listed in column (1) of the table required by paragraph 1, disclose whether he has authorized an agent in the United States to receive notice and, if so, disclose the name and address of the agent.

5. a. Briefly describe the leadership structure of the Registrant's board, including whether the chairman of the board is an interested person of the Registrant, as defined in Section 2(a)(19) of the Investment Company Act. If the chairman of the board is an interested person of the Registrant, disclose whether the Registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the Registrant. This disclosure should indicate why the Registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Registrant. In addition, disclose the extent of the board's role in the risk oversight of the Registrant, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure.

b. Identify the standing committees of the Registrant's board of directors, and provide the following information about each committee:

(1) A concise statement of the functions of the committee;

(2) The members of the committee;

(3) The number of committee meetings held during the last fiscal year; and

(4) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

6. a. Unless disclosed in the table required by paragraph 1 of this Item 18, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years with:

(1) The Registrant;

(2) An investment company, or a person that would be an investment company but for the exclusions provided by Sections 3(c)(1) and 3(c)(7) of the Investment Company Act, having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

(3) An investment adviser, principal underwriter, or affiliated person of the Registrant; or

(4) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

b. Unless disclosed in the table required by paragraph 1 of this Item 18 or in response to paragraph 6.a of this Item 18, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of the Exchange Act or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships were held.

Instruction. When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

7. For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

a. In the Registrant; and

b. On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Registrant.

Name of director	Dollar range of equity securities in the registrant	Aggregate dollar range of equity securities in all registered investment companies overseen by director in family of investment companies
(1)	(2)	(3)

Instructions.

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine ''beneficial ownership'' in accordance with Rule 16a–1(a)(2) under the Exchange Act [17 CFR 240.16a–1].

3. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, or over $100,000.

8. For each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

a. An investment adviser or principal underwriter of the Registrant; or

b. person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant:

Name of director	Name of owners and relationships to director	Company	Title of class	Value of securities	Percent of class
(1)	(2)	(3)	(4)	(5)	(6)

Instructions.

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a ''beneficial owner'' of a security if he is a ''beneficial owner'' under either Rule 13d–3 [17 CFR 240.13d–3] or Rule 16a–1(a)(2) under the Exchange Act.

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter, describe the company's relationship with the investment adviser or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

9. Unless disclosed in response to paragraph 8 of this Item 18, describe any direct or indirect interest, the value of which exceeds $120,000, of each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years, in:

a. An investment adviser or principal underwriter of the Registrant; or

b. A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

Instructions.

1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $120,000.

10. Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $120,000 and to which any of the following persons was a party:

a. The Registrant;

b. An officer of the Registrant;

c. An investment company, or a person that would be an investment company but for the exclusions provided by Sections 3(c)(1) and 3(c)(7) of the Investment Company, having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

d. An officer of an investment company, or a person that would be an investment company but for the exclusions provided by Sections 3(c)(1) and 3(c)(7) of the Investment Company Act, having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

e. An investment adviser or principal underwriter of the Registrant;

f. An officer of an investment adviser or principal underwriter of the Registrant;

g. A person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant; or

h. An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

Instructions.

1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or

other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs 10.a through 10.h of this Item 18 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed ''material'' within the meaning of paragraph 10 of this Item 18 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs 10.a through 10.h of this Item 18, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs 10.a through 10.h of this Item 18 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs 10.a through 10.h of this Item 18 unless the director is accorded special treatment.

11. Describe briefly any direct or indirect relationship, in which the amount involved exceeds $120,000, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, that existed at any time during the two most recently completed calendar years, with any of the persons specified in paragraphs 10.a through 10.h of this Item 18. Relationships include:

a. Payments for property or services to or from any person specified in paragraphs 10.a through 10.h of this Item 18;

b. Provision of legal services to any person specified in paragraphs 10.a through 10.h of this Item 18;

c. Provision of investment banking services to any person specified in paragraphs 10.a through 10.h of this Item 18, other than as a participating underwriter in a syndicate; and

d. Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs 11.a through 11.c of this Item 18.

Instructions.

1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs 10.a through 10.h of this Item 18 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs 10.a through 10.h of this Item 18 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $120,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs 10.a through 10.h of this Item 18 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs 10.a through 10.h of this Item 18 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph 11.a of this Item 18, the following may be excluded:

a. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

b. Payments that arise solely from the ownership of securities of a person specified in paragraphs 10.a through 10.h of this Item 18 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs 10.a through 10.h of this Item 18 unless the director is accorded special treatment.

12. If an officer of an investment adviser or principal underwriter of the Registrant, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Registrant who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

a. The company;

b. The individual who serves or has served as a director of the company and the period of service as director;

c. The investment adviser or principal underwriter or person controlling, controlled by, or under common control with the investment adviser or principal underwriter where the individual named in paragraph 12.b of this Item 18 holds or held office and the office held; and

d. The director of the Registrant or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

13. In the case of a Registrant that is not a business development company, provide the following for all directors of the Registrant, all members of the advisory board of the Registrant, and for each of the three highest paid officers or any affiliated person of the Registrant with aggregate compensation from the Registrant for the most recently completed fiscal year in excess of $60,000 (''Compensated Persons'').

a. Furnish the information required by the following table:

COMPENSATION TABLE

Name of person, position	Aggregate compensation from fund	Pension or retirement benefits accrued as part of fund expenses	Estimated annual benefits upon retirement	Total compensation from fund and fund complex paid to directors
(1)	(2)	(3)	(4)	(5)

Instructions.

1. For column (1), indicate, if necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Registrant, compensation is amounts received for service as a director.

2. If the Registrant has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)] or otherwise for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant, any of its subsidiaries, or other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

b. Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement other than fee arrangements disclosed in paragraph (a) pursuant to which Compensated Persons are or may be compensated for any services provided, including amounts paid, if any, to the Compensated Person under any such arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event which gives rise to payments under the plan, and whether the payment of benefits is secured or funded by the Registrant.

14. In the case of a Registrant that is a business development company, provide the information required by Item 402 of Regulation S–K [17 CFR 229.402].

15. *Codes of Ethics.* Provide a brief statement disclosing whether the Registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j–1 under the Investment Company Act [17 CFR 270.17j–1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant. Also, explain in the statement that these codes of ethics are available on the EDGAR Database on the Commission's internet site at *http://www.sec.gov,* and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following email address: *publicinfo@sec.gov.*

Instruction. A Registrant that is not required to adopt a code of ethics under Rule 17j–1 under the Investment Company Act is not required to respond to this Item.

16. Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of the Registrant's shareholders, on the one hand, and those of the Registrant's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act and the rules thereunder) of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; sending an email to a specified email address, if any; or on or through the Registrant's website at a specified internet address; and (ii) on the Commission's website at *http://www.sec.gov.*

Instructions.

1. A Registrant may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies

relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number or sending an email to a specified email address, if any, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX [17 CFR 274.129], within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Registrant discloses that the Registrant's proxy voting record is available on or through its website, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must remain available on or through the Registrant's website for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the Investment Company Act [17 CFR 270.30b1–4] and discloses that the Registrant's proxy voting record is available on or through its website.

17. For each director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Registrant at the time that the disclosure is made, in light of the Registrant's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

Item 19. Control Persons and Principal Holders of Securities

Furnish the following information as of a specified date no more than 30 days prior to the date of filing of the registration statement or amendment to it.

1. State the name and address of each person who controls the Registrant, and briefly explain the effect of such control on the voting rights of other shareholders. For each control person, state the percentage of the Registrant's voting securities owned or any other basis of control. If the control person is a company, disclose the state or other jurisdiction under the laws of which it is organized. List all parents of each control person.

Instructions.

1. The term ''control'' is defined in the instruction to Item 9.3 of this Form.

2. A Registrant that is controlled by its adviser or underwriter(s) before the effective date of the registration statement need not respond to this Item if, immediately after the public offering, there will be no control person.

2. State the name, address, and percentage of ownership of each person who owns of record or is known by the Registrant to own of record or beneficially five percent or more of any class of the Registrant's outstanding equity securities.

Instructions.

1. Calculate the percentages on the basis of the amount of common stock outstanding.

2. If securities are being registered in connection with or pursuant to a plan of acquisition, reorganization, readjustment, or succession, indicate, to the extent practicable, the status to exist upon consummation of the plan on the basis of present holdings and commitments.

3. If, to the knowledge of the Registrant or any principal underwriter of its securities, five percent or more of any class of voting securities of the Registrant are or will be held subject to any voting trust or other similar agreement, disclose this fact.

4. Indicate whether the securities are owned both of record and beneficially, or of record only, or beneficially only, and disclose the respective percentage owned in each manner.

3. Disclose all equity securities of the Registrant owned by all officers, directors, and members of the advisory board of the Registrant as a group, without naming them. In any case where the amount owned by directors and officers as a group is less than one percent of the class, a statement to that effect is sufficient.

Item 20. Investment Advisory and Other Services

1. Furnish the following information about each investment adviser:

a. The names of all controlling persons, the basis of such control, and, if material, the business history of any organization that controls the adviser;

b. the names of any affiliated person of the Registrant who is also an affiliated person of the investment adviser and a list of all capacities in which such person named is affiliated with the Registrant and/or with the investment adviser; and

Instruction. If an affiliated person of the Registrant, either alone or together with others, is a controlling person of the investment adviser, the Registrant must disclose that fact but need not supply the specific amount of percentage of the outstanding voting securities of the investment adviser that are owned by the controlling person.

c. The method of computing the advisory fee payable by the Registrant, including:

(1) The total dollar amounts paid to the adviser by the Registrant under the investment advisory contract for the last three fiscal years;

(2) if applicable, any credits that reduced the advisory fee for any of the last fiscal years; and

(3) any expense limitation provision.

Instructions.

1. If the advisory fee payable by the Registrant varies depending on the Registrant's investment performance in relation to some standard, set forth the standard along with a fee schedule in tabular form. The Registrant may include examples showing the fees the adviser would earn at various levels of performance, but such examples must include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State each type of credit or offset separately.

3. Where the Registrant is subject to more than one expense limitation provision, describe only the most restrictive provision.

2. Concisely describe all services performed for or on behalf of the Registrant that are supplied or paid for wholly or in substantial part by the investment adviser in connection with the investment advisory contract.

3. Describe briefly all fees, expenses, and costs of the Registrant that are to be paid by persons other than the investment adviser or the Registrant, and identify such persons.

4. Summarize any management-related service contract under which services are provided to the Registrant that is not otherwise disclosed in response to an Item of this Form and may be of interest to a purchaser of the Registrant's securities, indicating the parties to the contract and the total dollars paid, and by whom, for the past three years.

Instructions.

1. A ''management-related service contract'' includes any agreement whereby another person contracts with the Registrant to keep, prepare, and/or file accounts, books, records, or other documents that the Registrant may be required to keep under federal or state law, or to provide any similar services with respect to the daily administration

of the Registrant, but does not include the following: (1) Any contract with the Registrant to provide investment advice; (2) any agreement to act as custodian, transfer agent, or dividend-paying agent; and (3) bona fide contracts for outside legal or auditing services, or bona fide contracts for personal employment entered into in the ordinary course of business.

2. No information is required about the service of mailing proxies or periodic reports to shareholders of the Registrant.

3. In summarizing the substantive provisions of a management-related service contract, include: (1) The name of the person providing the service; (2) any direct or indirect relationship of that person with the Registrant, its investment adviser, or its principal underwriter; (3) the nature of the services provided; and (4) the basis of the compensation paid for the last three fiscal years.

5. If any person (other than a bona fide director, officer, member of an advisory board, employee of the Registrant, or a person named as an investment adviser in response to paragraph 1 of this Item), pursuant to any understanding, whether formal or informal, regularly furnishes advice to the Registrant or the investment adviser of the Registrant with respect to the desirability of the Registrant's investing in, purchasing, or selling securities or other property, or is empowered to determine which securities or other property should be purchased or sold by the Registrant, and receives direct or indirect remuneration from the Registrant, furnish the following information:

a. The name of the person;

b. a description of the nature of the arrangement and the advice or information given; and

c. any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Registrant's portfolio securities) paid for the advice or information, and a statement as to how and by whom such remuneration was paid for the last three fiscal years.

Instruction. No information is required with respect to any of the following:

1. Persons whose advice was furnished solely through uniform publications distributed to subscribers;

2. persons who furnished only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities by the Registrant;

3. a company that is excluded from the definition of ''investment adviser'' of an investment company by reason of Section 2(a)(20)(iii) of the Investment Company Act;

4. any person the character and amount of whose compensation for such service must be approved by a court; or

5. such other persons as the Commission has by rules and regulations or order determined not to be an ''investment adviser'' of an investment company.

6. Furnish the name and principal business address of each of the Registrant's custodians, the nature of the business of each such person, and a general description of the services performed by each.

7. Furnish the name and principal business address of the Registrant's independent public accountant, and provide a general description of the services performed by such person.

8. If an affiliated person of the Registrant, or an affiliated person of an affiliated person of the Registrant, acts as custodian, transfer agent, or dividend-paying agent for the Registrant, furnish a description of the services performed by that person and the basis for remuneration (*e.g.,* the method by which that person's fee is calculated).

Item 21. Portfolio Managers

1. *Other Accounts Managed.* If a Portfolio Manager required to be identified in response to Item 9.1.c is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

a. The Portfolio Manager's name;

b. The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:

(1) Registered investment companies;

(2) Other pooled investment vehicles; and

(3) Other accounts.

c. For each of the categories in Item 21.1.b, the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and

d. A description of any material conflicts of interest that may arise in connection with the Portfolio Manager's management of the Registrant's investments, on the one hand, and the investments of the other accounts included in response to Item 21.1.b, on the other. This description would include, for example, material conflicts between the investment strategy of the Registrant and the investment strategy of other accounts managed by the Portfolio Manager and material conflicts in allocation of investment opportunities between the Registrant and other accounts managed by the Portfolio Manager.

Instructions.

1. Provide the information required by Item 21.1 as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily responsible for the day-to-day management of the portfolio of an account, include the account in responding to Item 21.1.

2. *Compensation.* Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager required to be identified in response to Item 9.1.c. For each type of compensation (*e.g.,* salary, bonus, deferred compensation, retirement plans and arrangements), describe with specificity the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether (and, if so, how) compensation is based on the Registrant's pre- or after-tax performance over a certain time period, and whether (and, if so, how) compensation is based on the value of assets held in the Registrant's portfolio. For example, if compensation is based solely or in part on performance, identify any benchmark used to measure performance and state the length of the period over which performance is measured.

Instructions.

1. Provide the information required by Item 21.2 as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements,

whether the compensation is cash or non-cash. Group life, health, hospitalization, medical reimbursement, and pension and retirement plans and arrangements may be omitted, provided that they do not discriminate in scope, terms, or operation in favor of the Portfolio Manager or a group of employees that includes the Portfolio Manager and are available generally to all salaried employees. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the Registrant, the Registrant's investment adviser, or any other source with respect to management of the Registrant and any other accounts included in the response to Item 21.1.b. This description must clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with respect to the Registrant and other accounts, *e.g.,* if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the Registrant, this must be disclosed.

3. *Ownership of Securities.* For each Portfolio Manager required to be identified in response to Item 9.1.c, state the dollar range of equity securities in the Registrant beneficially owned by the Portfolio Manager using the following ranges: none; $1–$10,000; $10,001–$50,000; $50,001–$100,000; $100,001–$500,000; $500,001–$1,000,000; or over $1,000,000.

Instructions.

1. Provide the information required by Item 21.3 as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Specify the valuation date.

2. Determine ''beneficial ownership'' in accordance with Rule 16a–1(a)(2) under the Exchange Act.

Item 22. Brokerage Allocation and Other Practices

1. Concisely describe how transactions in portfolio securities are or will be effected. Provide a general statement about brokerage commissions and mark-ups on principal transactions and the aggregate amount of any brokerage commissions paid by the Registrant during the three most recent fiscal years. Concisely explain any material change in brokerage commissions paid by the Registrant during the most recent fiscal year as compared to the two prior fiscal years.

2. a. State the total dollar amount, if any, of brokerage commissions paid by the Registrant during the three most recent fiscal years to any broker that: (1) Is an affiliated person of the Registrant; (2) is an affiliated person of an affiliated person of the Registrant; or (3) has an affiliated person that is an affiliated person of the Registrant, its investment adviser, or principal underwriter. In the case of an initial public offering, disclose whether or not the Registrant intends to use any brokers described in this subparagraph, a. Identify each broker, and state the relationships that cause the broker to be identified in this Item.

b. State for each broker identified in response to paragraph 2.a of this Item:

(1) The percentage of the Registrant's aggregate brokerage commissions paid to the broker during the most recent fiscal year; and

(2) the percentage of the Registrant's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.

c. Where there is a material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any broker identified in response to paragraph 2.a of this Item, state the reasons for the difference.

3. Describe briefly how brokers will be selected to effect securities transactions for the Registrant and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered.

Instructions.

1. If the receipt of products or services other than brokerage or research services is a factor considered in the selection of brokers, specify the products and services.

2. If the receipt of research services is a factor in selecting brokers, identify the nature of the research services.

3. State whether persons acting on behalf of the Registrant are authorized to pay a broker a commission in excess of that which another broker might have charged for effecting the same transaction because of the value of brokerage or research services provided by the broker.

4. If applicable, explain that research services furnished by brokers through whom the Registrant effects securities transactions may be used by the Registrant's investment adviser in servicing all of its accounts and that not all the services may be used by the investment adviser in connection with the Registrant; or, if other policies or practices are applicable to the Registrant with respect to the allocation of research services provided by brokers, concisely explain the policies and practices.

5. Registrants should refer to Rule 17e–1 under the Investment Company Act [17 CFR 270.17e–1] with respect to securities transactions executed by exchange members.

4. If during the last fiscal year the Registrant or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed the Registrant's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.

5. If the Registrant has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers, as defined in Rule 10b–1 under the Investment Company Act [17 CFR 270.10b-1], or their parents, identify those brokers or dealers, and state the value of the Registrant's aggregate holdings of the securities of each subject issuer as of the close of the Registrant's most recent fiscal year.

Instruction. The Registrant need only disclose information with respect to the parent of a broker or dealer that derived more than fifteen percent of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser.

Item 23. Tax Status

Provide information about the Registrant's tax status that is not required to be in the prospectus but that the Registrant believes is of interest to investors, including, but not limited to, an explanation of the legal basis for the Registrant's tax status. If the Registrant is qualified or intends to qualify under Subchapter M of the Internal Revenue Code and has not disclosed that fact in the prospectus, then disclosure of that fact will be sufficient. If not otherwise disclosed, concisely describe any special or unusual tax aspects of the Registrant, *e.g.,* taxes resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which the Registrant may be entitled.

Item 24. Financial Statements

Provide the financial statements of the Registrant.

Instructions.

1. a. Furnish, in a separate section following the responses to the above items in Part B of the registration statement, the financial statements and schedules required by Regulation S–X [17 CFR 210]. (*See* Section 210.3–18 and Sections 210.6–01 through 210.6–10 of Regulation S–X.)

b. A business development company that has had at least one fiscal year of operations need provide financial statements under Item 8.6.c of Part A only. A business development company with less than one fiscal year of operations should refer to Item 8.6.c of Part A and Instructions 1 and 2 thereunder in responding to this Item 24.

2. Notwithstanding the requirements of Instruction 1 above, the following statements and schedules required by Regulation S–X may be omitted from Part B and included in Part C of the registration statement:

a. The statement of any subsidiary that is not a majority-owned subsidiary; and

b. Columns C and D of Schedule III [17 CFR 210.12–14].

3. In addition to the requirements of Rule 3–18 of Regulation S–X [17 CFR 210.3–18], any company registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act shall include in its initial registration statement under the Securities Act such additional financial statements and financial highlights (which need not be audited) as are necessary to make the financial statements and financial highlights included in the registration statement as of a date within 90 days prior to the date of filing.

4. Every annual report to shareholders required by Section 30(e) of the Investment Company Act and Rule 30e–1 thereunder shall contain the following information:

a. The audited financial statements required by Regulation S–X for the periods specified by Regulation S–X, modified to permit the omission of the statements and schedules that may be omitted from Part B of the registration statement by Instruction 2 above and as permitted by Instruction 7 below;

b. the financial highlights required by Item 4.1 of this Form, for the five most recent fiscal years, with at least the most recent year audited;

c. unless shown elsewhere in the report as part of the financial statements required by a above, the aggregate remuneration paid by the company during the period covered by the report (1) to all directors and to all members of any advisory board for regular compensation; (2) to each director and to each member of an advisory board for special compensation; (3) to all officers; and (4) to each person of whom any officer or director of the company is an affiliated person;

d. the information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K [17 CFR 229.304];

e. the management information required by paragraph 1 of Item 18; and

f. a statement that the SAI includes additional information about directors of the Registrant and is available, without charge, upon request, and a toll-free (or collect) telephone number and email address, if any, for shareholders to use to request the SAI.

g. Management's Discussion of Fund Performance. Disclose the following information:

(1) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund. The information presented may include tables, charts, and other graphical depictions.

(2) (A) Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Assume a $10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

1. Line Graph Computation.

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the market price (or, if shares are not listed, the net asset value) of the Fund on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and sale was at the market price (or, if shares are not listed, the net asset value) on the last business day of the most recent fiscal year.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds $10,000.

2. Multiple Class Funds. The Fund can select which Class to include, consistent with the requirements of Instruction 3(a) to Item 4(b)(2) of Form N–1A [17 CFR 274.11A].

(B) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10- year periods as of the end of the last day of the most recent fiscal year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Average annual total returns should be computed in accordance with Item 26(b)(1) of Form N–1A, except with respect to reinvestments of dividends and distributions, which must be calculated consistent with Item 4 of this Form. Include a statement accompanying the graph and table to the effect that past performance does not predict future performance and that the graph and table do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the sale of fund shares.

(C) Sales Load. Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.,* assume that the maximum sales load, and other charges deducted from payments, is deducted from the initial $10,000 investment). For a Fund whose shares are subject to a contingent deferred sales load, assume the deduction of the maximum deferred sales load (or other charges) that would apply for a complete sale that received the market price (or, if shares are not listed, the net asset value) on the last business day of the most recent fiscal year. For any other deferred sales load, repurchase fee, or withdrawal charge, assume that the deduction is in the amount(s) and at the time(s) that the sales load, repurchase fee, or withdrawal charge actually would have been deducted.

(D) *Dividends and Distributions.* Assume reinvestment of all of the Fund's dividends and distributions on the reinvestment dates during the period, and reflect any sales load imposed upon reinvestment of dividends or distributions or both.

(E) Account Fees. Reflect recurring fees that are charged to all accounts.

1. For any account fees that vary with the size of the account, assume a $10,000 account size.

2. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by sale of the Fund's shares.

3. Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: Divide the total amount of account fees collected during the year by the Funds' total average market price, multiply the resulting percentage by the

average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

(F) Appropriate Index. For purposes of this Item, an ''appropriate broad-based securities market index'' is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser, or principal underwriter, unless the index is widely recognized and used. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

(G) Additional Indexes. A Fund is encouraged to compare its performance not only to the required broad-based index, but also to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.,* the Consumer Price Index), so long as the comparison is not misleading.

(H) Change in Index. If the Fund uses an index that is different from the one used for the immediately preceding fiscal year, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

(I) Other Periods. The line graph may cover earlier fiscal years and may compare the ending values of interim periods (*e.g.,* monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

(J) Scale. The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

(K) New Funds. A New Fund is not required to include the information specified by this Item in its prospectus (or annual report), unless Form N–2 (or the annual report) contains audited financial statements covering a period of at least 6 months.

(L) Change in Investment Adviser. If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date that the current adviser began to provide advisory services to the Fund so long as:

1. Neither the current adviser nor any affiliate is or has been in ''control'' of the previous adviser under Section 2(a)(9) of the Investment Company Act;

2. The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

3. The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

(3) Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the last fiscal year. Also discuss the extent to which the Fund's distribution policy resulted in distributions of capital.

h. If the Registrant has filed a registration statement pursuant to General Instruction A.2:

(1) Senior Securities. Include the information required by Item 4.3.

(2) Fee and Expense Table. Include the information required by Item 3.1.

(3) Share Price Data. Include the information required by Item 8.5.

(4) Unresolved Staff Comments. If the Registrant has received written comments from the Commission staff regarding its periodic or current reports under the Exchange Act or Investment Company Act or its registration statement not less than 180 days before the end of its fiscal period to which the annual report relates, and such comments remain unresolved, disclose the substance of any such unresolved comments that the Registrant believes are material. Such disclosure may provide other information including the position of the Registrant with respect to any such comment.

5. Every report to shareholders required by Section 30(e) of the Investment Company Act and Rule 30e–1 thereunder, except the annual report, shall contain the following information (which need not be audited):

a. The financial statements required by Regulation S–X for the period commencing either with (1) the beginning of the company's fiscal year (or date of organization, if newly organized); or (2) a date not later than the date after the close of the period included in the last report conforming with the requirements of Rule 30e–1 and the most recent preceding fiscal year, modified to permit the omission of the statements and schedules that may be omitted from Part B of the registration statement by Instruction 2 above and as permitted by Instruction 7 below;

b. the financial highlights required by Item 4.1 of this Form, for the period of the report as specified by subparagraph a of this instruction, and the most recent preceding fiscal year;

c. unless shown elsewhere in the report as part of the financial statements required by subparagraph a of this instruction, the aggregate remuneration paid by the company during the period covered by the report (1) to all directors and to all members of any advisory board for regular compensation; (2) to each director and to each member of an advisory board for special compensation; (3) to all officers; and (4) to each person of whom an officer or director of the company is an affiliated person; and

d. the information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K.

6. Every annual and semi-annual report to shareholders required by Section 30(e) of the Investment Company Act and Rule 30e–1 thereunder shall contain the following information:

a. One or more tables, charts, or graphs depicting the portfolio holdings of the Registrant by reasonably identifiable categories (*e.g.,* type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value or total investments attributable to each. The categories and the basis of presentation (*e.g.,* net asset value or total investments) should be selected, and the presentation should be formatted, in a manner reasonably designed to depict clearly the types of investments made by the Fund, given its investment objectives. If the Fund depicts portfolio holdings according to credit quality, it should include a description of how the credit quality of the holdings were determined, and if credit ratings, as defined in Section 3(a)(60) of the Exchange Act, assigned by a credit rating agency, as defined in Section 3(a)(61) of the Exchange Act, are used, explain how they were identified and selected. This description should be included near, or as part of, the graphical representation.

b. *Statement Regarding Availability of Quarterly Portfolio Schedule.* A statement that: (i) The Registrant files its complete schedule of portfolio holdings with the SEC for the first and third quarters of each fiscal year as an exhibit to its reports on Form N–PORT [17 CFR 274.150]; (ii) the Registrant's Form N–PORT reports are available on the Commission's website at *http://www.sec.gov;* (iii) if the Registrant makes the information on Form N–PORT available to shareholders on its website or upon request, a description of how the information may be obtained from the Registrant.

c. A statement that a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities is

available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number or sending an email to a specified email address, if any; (2) on the Registrant's website, if applicable; and (3) on the Commission's website at *http://www.sec.gov;* and

d. A statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; sending an email to a specified email address, if any; or on or through the Registrant's website at a specified internet address; and (2) on the Commission's website at *http://www.sec.gov.*

e. If the Registrant's board of directors approved any investment advisory contract during the Registrant's most recent fiscal half-year, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. Include the following in the discussion:

(1) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Registrant under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Registrant and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Registrant; the extent to which economies of scale would be realized as the Registrant grows; and whether fee levels reflect these economies of scale for the benefit of the Registrant's investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.,* pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(2) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating the Registrant's brokerage.

f. Board approvals covered by Instruction 6.e to this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by Instruction 6.e include subadvisory contracts. Conclusory statements or a list of factors will not be considered sufficient disclosure under Instruction 6.e. Relate the factors to the specific circumstances of the Registrant and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract. If any factor enumerated in Instruction 6.e.(1) to this Item is not relevant to the board's evaluation of an investment advisory contract, note this and explain the reasons why the factor is not relevant.

g. Include on the front cover page or at the beginning of the annual or semi-annual report a statement to the following effect, if applicable:

Beginning on [date], as permitted by regulations adopted by the Securities and Exchange Commission, paper copies of the Registrant's shareholder reports like this one will no longer be sent by mail, unless you specifically request paper copies of the reports from the Registrant [or from your financial intermediary, such as a broker-dealer or bank]. Instead, the reports will be made available on a website, and you will be notified by mail each time a report is posted and provided with a website link to access the report.

If you already elected to receive shareholder reports electronically, you will not be affected by this change and you need not take any action. You may elect to receive shareholder reports and other communications from the Registrant [or your financial intermediary] electronically by [insert instructions].

You may elect to receive all future reports in paper free of charge. You can inform the Registrant [or your financial intermediary] that you wish to continue receiving paper copies of your shareholder reports by [insert instructions]. Your election to receive reports in paper will apply to all funds held with [the fund complex/your financial intermediary].

7. Schedule IX—Summary schedule of investments in securities of unaffiliated issuers [17 CFR 210.12–12C] may be included in the financial statements required under Instructions 4.a and 5.a of this Item in lieu of *Schedule I—Investments in securities of unaffiliated issuers* [17 CFR 210.12–12] if:

a. The Registrant states in the report that the Registrant's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number or sending an email to a specified email address, if any; (ii) on the Registrant's website, if applicable; and (iii) on the Commission's website at *http://www.sec.gov;* and

b. whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's schedule of investments in securities of unaffiliated issuers, the Registrant (or financial intermediary) sends a copy of Schedule I—Investments in securities of unaffiliated issuers within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

8. a. When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information most recently disclosed in response to Item 18.16 of this Form or Item 7 of Form N–CSR within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

b. If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number or sending an email to a specified email address, if any, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX, within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

c. If a Registrant discloses that the Registrant's proxy voting record is available on or through its website, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report

on Form N–PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must remain available on or through the Registrant's website for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the Investment Company Act and discloses that the Registrant's proxy voting record is available on or through its website.

9. See General Instruction F regarding Incorporation by Reference.

10. Every annual report filed under the Exchange Act by a business development company must contain the information required by Instructions 4.b and 4.h.

Part C—Other Information

Item 25. Financial Statements and Exhibits

List all financial statements and exhibits filed as part of the registration statement.

1. *Financial statements.*

Instruction. Identify those financial statements that are included in Parts A and B of the registration statement.

2. *Exhibits.*

Subject to General Instruction F regarding incorporation by reference and Rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated, unless otherwise required by Rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

a. Copies of the charter as now in effect.

b. Copies of the existing bylaws or instruments corresponding thereto.

c. Copies of any voting trust agreement with respect to more than five percent of any class of equity securities of the Registrant.

d. Copies of the constituent instruments defining the rights of the holders of the securities.

e. A copy of the document setting forth the Registrant's dividend reinvestment plan, if any.

f. Copies of the constituent instruments defining the rights of the holders of long-term debt of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed (The instrument relating to any class of long-term debt of the Registrant or any subsidiary need not be filed if the total amount of securities authorized thereunder amounts to less than two percent of the total assets of the Registrant and its subsidiaries on a consolidated basis, and if the Registrant files an agreement to furnish such copies to the Commission upon request.).

g. Copies of all investment advisory contracts relating to the management of the assets of the Registrant.

h. Copies of each underwriting or distribution contract between the Registrant and a principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers.

i. Copies of all bonus, profit sharing, pension, or other similar contracts or arrangements wholly or partly for the benefit of directors or officers of the Registrant in their capacity as such (a reasonably detailed description of any plan that is not set forth in a formal document should be furnished).

j. Copies of all custodian agreements and depository contracts entered into in conformance with Section 17(f) of the Investment Company Act or rules thereunder with respect to securities and similar investments of the Registrant, including the schedule of remuneration.

k. Copies of all other material contracts not made in the ordinary course of business that are to be performed in whole or in part at or after the date of filing the registration statement.

l. An opinion of counsel and consent to its use as to the legality of the securities being registered, indicating whether they will be legally issued, fully paid, and nonassessable.

m. If a non-resident director, officer, investment adviser, or expert named in the registration statement has executed a consent to service of process within the United States, a copy of that consent to service.

n. Copies of any other opinions, appraisals, or rulings, and consents to their use, relied on in preparing the registration statement, and consents to the use of accountants' reports relating to audited financial statements required by Section 7 of the Securities Act.

o. All financial statements omitted from Items 8.6 or 24.

p. Copies of any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, the underwriter, adviser, promoter, or initial stockholders and written assurance from the promoters or initial stockholders that their purchases were made for investment purposes without any present intention of reselling.

q. Copies of the model plan used in the establishment of any retirement plan in conjunction with which the Registrant offers its securities, any instructions to it, and any other documents making up the model plan (such form(s) should disclose the costs and fees charged in connection with the plan).

r. Copies of any codes of ethics adopted under Rule 17j-1 under the Investment Company Act and currently applicable to the Registrant (*i.e.,* the codes of the Registrant and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Registrant, state the reason (*e.g.,* the Registrant is a Money Market Fund).

Instructions.

1. Subject to the rules on incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as a part of the registration statement. Exhibits required by paragraphs 2.h, 2.*l,* 2.n, and 2.o above need to be filed only as part of a Securities Act registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits. The reference shall include the form, file number and date of the previous filing, and the exhibit number (*i.e.,* exhibit 2.a, 2.b, etc.) under which the exhibit was previously filed.

2. A Registrant need not file an exhibit as part of a post-effective amendment, if the exhibit has been filed in the Registrant's initial registration statement or in a previous post-effective amendment, unless there has been a change in the exhibit, or unless the exhibit is a copy of a consent required by Section 7 of the Securities Act or is a financial statement omitted from Items 8.6 or 24. The reference to this exhibit shall include the number of the previous filing (*e.g.,* pre-effective amendment No. 1) where such exhibit was filed.

3. If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed (1) only to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement or a prospectus filed pursuant to Rule 424(b) under the Securities Act or (2) to correct typographical errors, insert signatures or

make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the Registrant need not refile the exhibit as so amended. Any incomplete exhibit may not, however, be incorporated by reference into any subsequent filing under any Act administered by the Commission. If an exhibit required to be executed (*e.g.,* an underwriting agreement) is filed in final form, a copy of an executed copy shall be filed.

4. Schedules (or similar attachments) to the exhibits required by this Item are not required to be filed provided that they do not contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. Each exhibit filed must contain a list briefly identifying the contents of all omitted schedules. Registrants need not prepare a separate list of omitted information if such information is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. In addition, the registrant must provide a copy of any omitted schedule to the Commission or its staff upon request.

5. The registrant may redact information from exhibits required to be filed by this Item if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (*e.g.,* disclosure of bank account numbers, social security numbers, home addresses and similar information).

6. The registrant may redact provisions or terms of exhibits required to be filed by paragraph k. of this Item if those provisions or terms are both (1) not material and (2) would likely cause competitive harm to the registrant if publicly disclosed. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both (1) not material and (2) would likely cause competitive harm to the registrant if publicly disclosed. The registrant also must indicate by brackets where the information is omitted from the filed version of the exhibit.

If requested by the Commission or its staff, the registrant must promptly provide an unredacted copy of the exhibit on a supplemental basis. The Commission staff also may request the registrant to provide its materiality and competitive harm analyses on a supplemental basis. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may request the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's materiality and competitive harm analyses. The registrant may request confidential treatment of the supplemental material pursuant to Rule 83 [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rule 418 [17 CFR 230.418].

7. Each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business Reporting Language) must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

Item 26. Marketing Arrangements

Briefly describe any arrangements known to the Registrant or to any person named in response to Item 5, or to any person specified in Item 19.2, made for any of the following purposes:

1. to limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution;
2. to stabilize the market for any of the securities to be offered; or
3. to hold each underwriter or dealer responsible for the distribution of his or her participation.

Instruction. If the answer to this Item is contained in an exhibit, the Item may be answered by cross-reference to the relevant paragraph(s) of the exhibit.

Item 27. Other Expenses of Issuance and Distribution

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions. If any of the securities being registered are to be offered for the account of securityholders, indicate the portion of expenses to be borne by securityholders.

Instruction. Insofar as practicable, separately itemize registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, rating agency fees, and legal and accounting fees. The information may be given subject to future contingencies. Provide estimates if the amounts of any items are not known.

Item 28. Persons Controlled by or Under Common Control

Furnish a list or diagram of all persons directly or indirectly controlled by, or under common control with, the Registrant, and as to each of these persons indicate (1) if a company, the state or other jurisdiction under whose laws it is organized, and (2) the percentage of voting securities owned or other basis of control by the person, if any, immediately controlling it.

Instructions.

1. The list or diagram shall include the Registrant and shall show clearly the relationship of each company named to the Registrant and to other companies named. If the company is controlled by the direct ownership of its securities by two or more persons, so indicate by appropriate cross-reference.

2. Identify, by appropriate symbols: (1) Subsidiaries for which separate financial statements are filed; (2) subsidiaries included in the respective consolidated financial statements; (3) subsidiaries included in the respective group financial statements filed for unconsolidated subsidiaries; and (4) other subsidiaries, indicating briefly why statements of these subsidiaries are not filed.

Item 29. Number of Holders of Securities

State in substantially the tabular form indicated, as of a specified date within 90 days prior to the date of filing, the number of record holders of each class of securities of the Registrant.

Title of class	Number of record holders
(1)	(2)

Item 30. Indemnification

State the general effect of any contract, arrangement, or statute under which any director, officer, underwriter, or affiliated person of the Registrant is insured or indemnified in any manner against any liability that may be incurred in such capacity, other than insurance provided by any member of the board of directors, officer, underwriter, or affiliated person for his or her own protection.

Instruction. In responding to this Item, the Registrant should note the requirements of Rules 461(c) and 484 under the Securities Act [17 CFR 230.461 and 230.484] and Section 17 of the Investment Company Act. (*See* Investment Company Act Rel. No. 11330 (Sept. 4, 1980) [45 FR 62423 (Sept. 19,

1980)] and Investment Company Act Rel. No. 7221 (June 9, 1972) [37 FR 12790 (June 29, 1972)].)

Item 31. Business and Other Connections of Investment Adviser

Describe briefly any other business, profession, vocation, or employment of a substantial nature in which each investment adviser of the Registrant, and each director, executive officer, or partner of any such investment adviser, is or has been, at any time during the past two fiscal years, engaged for his or her own account or in the capacity of director, officer, employee, partner, or trustee.

Instructions.

1. State the name and principal business address of any company with which any person specified above is connected in the capacity of director, officer, employee, partner, or trustee and the nature of the connection.

2. The names of investment advisory clients need not be provided.

3. For purposes of this Item, the term ''executive officer'' means the investment adviser's president, any other officer who performs a policy-making function for the investment adviser in connection with its management of the closed-end fund, or any other person who performs a similar policy-making function for the investment adviser. Executive officers of subsidiaries of the investment adviser may be deemed executive officers of the investment adviser, if they perform such policy-making functions for the investment adviser.

Item 32. Location of Accounts and Records

Furnish the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by Section 31(a) of the Investment Company Act and the rules thereunder.

Instruction. The Registrant may omit this information to the extent it is provided in its most recent report on Form N–CEN [17 CFR 249.330].

Item 33. Management Services

Furnish a summary of the substantive provisions of any management-related service contract not discussed in Part A or B of the registration statement (because the contract was not believed to be of interest to a purchaser of the Registrant's securities), indicating the parties to the contract, the total dollars paid, and by whom, for the last three fiscal years.

Instructions.

1. The instructions to Item 20.4 of this Form shall also apply to this Item.

2. Information need not be provided for any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

Item 34. Undertakings

Furnish the following undertakings in substantially the following form in all registration statements filed under the Securities Act, as applicable:

1. An undertaking to suspend the offering of shares until the prospectus is amended if (1) subsequent to the effective date of its registration statement, the net asset value declines more than ten percent from its net asset value as of the effective date of the registration statement or (2) the net asset value increases to an amount greater than its net proceeds as stated in the prospectus.

Provided, however, that this paragraph does not apply if the registration statement is filed pursuant to General Instruction A.2 of this Form to register an offering in reliance on Rule 415 under the Securities Act.

2. An undertaking to file a post-effective amendment with certified financial statements showing the initial capital received before accepting subscriptions from more than 25 persons, if the Registrant proposes to raise its initial capital under Section 14(a)(3) of the Investment Company Act.

3. If the securities are being registered in reliance on Rule 415 under the Securities Act, an undertaking:

a. to file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement:

(1) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(2) to reflect in the prospectus any facts or events after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the ''Calculation of Registration Fee'' table in the effective registration statement.

(3) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

Provided, however, that paragraphs a(1), a(2), and a(3) of this section do not apply if the registration statement is filed pursuant to General Instruction A.2 of this Form and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference into the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

b. that, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of those securities at that time shall be deemed to be the initial bona fide offering thereof;

c. to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;

d. that, for the purpose of determining liability under the Securities Act to any purchaser:

(1) if the Registrant is relying on Rule 430B [17 CFR 230.430B]:

(A) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (x), or (xi) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in

the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(2) if the Registrant is subject to Rule 430C [17 CFR 230.430C]: each prospectus filed pursuant to Rule 424(b) under the Securities Act as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

e. that for the purpose of determining liability of the Registrant under the Securities Act to any purchaser in the initial distribution of securities:

The undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to the purchaser:

(1) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424 under the Securities Act;

(2) free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrants;

(3) the portion of any other free writing prospectus or advertisement pursuant to Rule 482 under the Securities Act [17 CFR 230.482] relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

(4) any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

4. If the Registrant is filing a registration statement permitted by Rule 430A under the Securities Act, an undertaking that:

a. for the purpose of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant under Rule 424(b)(1) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

b. for the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.

5. Filings Incorporating Subsequent Exchange Act Documents by Reference. Include the following if the registration statement incorporates by reference any Exchange Act document filed subsequent to the effective date of the registration statement:

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference into the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

6. Request for acceleration of effective date or filing of registration statement becoming effective upon filing. Include the following if acceleration is requested of the effective date of the registration statement pursuant to Rule 461 under the Securities Act, or if a registration statement filed pursuant to General Instruction A.2 of this Form will become effective upon filing with the Commission pursuant to Rule 462(e) or (f) under the Securities Act, and:

a. Any provision or arrangement exists whereby the Registrant may indemnify a director, officer or controlling person of the Registrant against liabilities arising under the Securities Act, or

b. The underwriting agreement contains a provision whereby the Registrant indemnifies the underwriter or controlling persons of the underwriter against such liabilities and a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter, and

c. The benefits of such indemnification are not waived by such persons:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

7. An undertaking to send by first class mail or other means designed to ensure equally prompt delivery, within two business days of receipt of a written or oral request, any prospectus or Statement of Additional Information.

Signatures

Pursuant to the requirements of the Securities Act of 1933 and/or the Investment Company Act of 1940, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto

duly authorized, in the City of_____, and State of _____, on the ____d day of _____, _____.

_____
Registrant
By _____
_____
Signature
_____
Title

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following person in the capacities and on the dates indicated.

_____
Signature
_____
Title
_____
Date

■ 45. Effective August 1, 2021, amend Form 24F–2 (referenced in § 274.24) by:
■ a. Amending Item 2 to add ''and EDGAR identifier'' after the word ''name'';
■ b. Amending Item 5 to add ''(if calculating on a class-by-class or series-by-series basis, provide the EDGAR identifier for each such class or series):'';
■ c. Adding Item 10;
■ d. Revising paragraph A.1. of the ''INSTRUCTIONS'' section; and
■ e. Revising paragraph A.3. of the ''INSTRUCTIONS'' section.

The addition and revisions read as follows:

Note: The text of Form 24F–2 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

United States

Securities and Exchange Commission

Washington, DC 20549

Form 24F–2

Annual Filing Under Rule 24f–2 of the Investment Company Act of 1940

* * * * *

2. The name and EDGAR identifier of each series or class of securities for which this Form is filed (If the Form is being filed for all series and classes of securities of the issuer, check the box but do not list series of classes):

* * * * *

5. Calculation of registration fee (if calculating on a class-by-class or series-by-series basis, provide the EDGAR identifier for each such class or series):

* * * * *

10. Explanatory Notes (if any): The issuer may provide any information it believes would be helpful in understanding the information reported in response to any item of this Form. To the extent responses relate to a particular item, provide the item number(s), as applicable.

* * * * *

Instructions

A. * * *

1. This Form should be used by an open-end management investment company, closed-end management company that makes periodic repurchase offers pursuant to § 270.23c–3(b) of this chapter, face amount certificate company, or unit investment trust (''issuer'') for annual filings required by rule 24f–2 under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act''). If the issuer has registered more than one class or series of securities on the same registration statement under the Securities Act of 1933 [15 U.S.C. 77a–aa] (''Securities Act''), the issuer may file a single Form 24F–2 for those classes or series that have the same fiscal year end. Such an issuer may calculate its fees based on aggregate net sales of the series having the same fiscal year end. An issuer choosing to calculate registration fees on a class-by-class or series-by-series basis should make a single filing consisting of a separate Form 24F–2 for each class or series in a single EDGAR document and provide the EDGAR identifier for each such class or series.

* * * * *

3. Pursuant to rule 101(a)(1)(iv) of Regulation S–T [17 CFR 232.101(a)(1)(iv)] this Form must be submitted in electronic format using the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. Consult the EDGAR Filer Manual and Appendices for EDGAR filing instructions.

* * * * *

■ 46. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by adding new paragraph 4 to General Instruction C to read as follows:

Note: The text of Form N–CSR does not, and these amendments will not, appear in the Code of Federal Regulations.

United States

Securities and Exchange Commission

Washington, DC 20549

Form N–CSR

Certified Shareholder Report of Registered Management Investment Companies

* * * * *

General Instructions

C. * * *

4. *Interactive Data File.* An Interactive Data File as defined in Rule 11 of Regulation S–T [17 CFR 232.11] is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T [17 CFR 232.405] by a closed-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) to the extent required by Rule 405 of Regulation S–T.

By the Commission.

Dated: April 8, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–07790 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 85 Monday,

No. 105 June 1, 2020

Part III

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 395

Hours of Service of Drivers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 395

[Docket No. FMCSA–2018–0248]

RIN 2126–AC19

Hours of Service of Drivers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA revises the hours of service (HOS) regulations to provide greater flexibility for drivers subject to those rules without adversely affecting safety. The Agency expands the short-haul exception to 150 air-miles and allows a 14-hour work shift to take place as part of the exception; expands the driving window during adverse driving conditions by up to an additional 2 hours; requires a 30-minute break after 8 hours of driving time (instead of on-duty time) and allows an on-duty/not driving period to qualify as the required break; and modifies the sleeper berth exception to allow a driver to meet the 10-hour minimum off-duty requirement by spending at least 7, rather than at least 8 hours of that period in the berth and a minimum off-duty period of at least 2 hours spent inside or outside of the berth, provided the two periods total at least 10 hours, and that neither qualifying period counts against the 14-hour driving window.

DATES: This final rule is effective September 29, 2020. Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4325, *MCPSD@dot.gov.* If you have questions about viewing material in the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

This final rule is organized as follows:

I. Availability of Rulemaking Documents
II. Executive Summary
A. Purpose and Summary of the Regulatory Action
B. Summary of Major Provisions of the Final Rule
C. Costs and Benefits
III. Abbreviations and Acronyms
IV. Legal Basis for the Rulemaking
V. Background
A. OOIDA Petition for Rulemaking
B. TruckerNation Petition for Rulemaking
C. Additional Petitions for Rulemaking
D. 2018 ANPRM
E. ANPRM Public Listening Sessions
F. 2019 NPRM
VI. Stakeholder Engagement Following Publication of the NPRM
A. Summary of the Motor Carrier Safety Advisory Committee Meeting
B. Summary of Comments Presented at the NPRM Public Listening Sessions
C. Summary of the Written Comments to the NPRM; FMCSA Responses to the Written Comments
VII. Discussion of the Rule
A. Short-Haul Operations
B. Adverse Driving Conditions
C. 30-Minute Break
D. Sleeper Berth
E. Split-Duty Provision
F. TruckerNation Petition
G. Petitions for Rulemaking Submitted After the NPRM
H. Compliance Date for the Rulemaking
VIII. International Impacts
IX. Section-by-Section Analysis
A. Section 395.1 Scope of Rules in This Part
B. Section 395.3 Maximum Driving Time for Property-Carrying Vehicles
X. Regulatory Analyses
A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)
C. Congressional Review Act
D. Regulatory Flexibility Act
E. Assistance for Small Entities
F. Unfunded Mandates Reform Act of 1995
G. Paperwork Reduction Act
H. E.O. 13132 (Federalism)
I. Privacy
K. E.O. 13783 (Promoting Energy Independence and Economic Growth)
L. E.O. 13175 (Indian Tribal Governments)
M. National Technology Transfer and Advancement Act (Technical Standards)
N. Environment (Clean Air Act, NEPA)

I. Availability of Rulemaking Documents

For access to docket FMCSA–2018–0248 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Operations at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting the Docket Operations

II. Executive Summary

A. Purpose and Summary of the Regulatory Action

The implementation of the Electronic Logging Device (ELD) rule (80 FR 78292, December 16, 2015) and ELDs' ability to increase compliance with HOS regulations for drivers of commercial motor vehicles (CMVs) prompted numerous requests for FMCSA to consider revising certain HOS provisions to provide greater flexibility. The Agency received requests from members of Congress and multiple stakeholders seeking relief from certain provisions. In response, FMCSA published an advance notice of proposed rulemaking (ANPRM) on August 23, 2018 (83 FR 42631) and held five public listening sessions. The Agency published a notice of proposed rulemaking (NPRM) on August 22, 2019 (84 FR 44190) and held two additional public listening sessions. This final rule revises the HOS regulations to provide greater flexibility for drivers subject to those rules without adversely affecting safety.

B. Summary of Major Provisions of the Final Rule

This final rule will improve efficiency without compromising safety by providing flexibility for drivers in four areas without changing the maximum allowable driving time. The rule extends the maximum duty period allowed under the short-haul exception in 49 CFR 395.1(e)(1) from 12 hours to 14 hours. It also extends the maximum radius in which the short-haul exception applies from 100 to 150 air-miles. FMCSA modifies the definition of adverse driving conditions so that the adverse driving conditions exception may be applied based on the driver's (in addition to the dispatcher's) knowledge of the conditions after being dispatched, and extends the driving window during which the current exception for extended driving time may be used by up to 2 hours for truck and bus operations under §§ 395.3(a)(2) and 395.5(a)(2), respectively. The Agency makes the 30-minute break requirement for drivers of property-carrying CMVs in § 395.3(a)(3)(ii) applicable only when a driver has driven (instead of having been on-duty) for a period of 8 hours without at least a 30-minute non-driving interruption. The break may be satisfied by any non-driving period of 30 minutes, *i.e.,* on-duty, off-duty, or sleeper berth time. FMCSA also modifies the sleeper berth requirements to (1) allow drivers to take their required 10 hours off-duty in two periods, provided one off-duty period (whether in or out of the sleeper berth) is at least 2 hours long and the other involves at least 7 consecutive hours spent in the sleeper berth, and (2) add that neither period counts against the maximum 14-hour driving window in § 395.3(a)(2).

The Agency excludes from the final rule its proposal to allow a single off-duty period of up to 3 hours to be

excluded from the 14-hour driving window, for reasons explained later in the document.

C. Costs and Benefits

This final rule will result in increased flexibility for drivers and a quantified reduction in costs for motor carriers. Federal and State governments will incur one-time training costs of approximately $8.6 million for training inspectors on the new requirements. The Federal Government also will incur a one-time electronic Record of Duty Status (eRODS) software update cost of approximately $20,000. The change to the 30-minute break requirement will result in a reduction in opportunity cost, or a cost savings, for motor carriers. FMCSA estimates the 10-year motor carrier cost attributable to the changes to the 30-minute break provision at −$2,814.3 million (or a cost savings of $2,814.3 million). As shown in Table 1, FMCSA estimates the total costs of this final rule at −$2,366.2 million (or $2,366.2 million in cost savings) discounted at 3 percent, and −$1,917.5 million (or $1,917.5 million in cost savings) discounted at 7 percent. Expressed on an annualized basis, this equates to −$277.4 million in costs (or $277.4 million in cost savings) at a 3 percent discount rate, and −$273.0 million in costs (or $273.0 million in cost savings) at a 7 percent discount rate. All values are in 2018 dollars.

There are a number of other potential cost savings of this final rule that FMCSA considered but, due to uncertainty about driver behavior, could not quantify on an industry level. These non-quantified cost savings include increased flexibility resulting from the extension of the duty day and the air-mile radius for those operating under the short-haul exception; the increased options for drivers to respond to adverse driving conditions during the course of their duty period; reduced need to apply for exceptions from the 30-minute break requirement and for special eligibility for the short-haul exception; and increased flexibility afforded to drivers, such as increased options with regard to on-duty and off-duty time resulting from changes to the 30-minute break requirement and the sleeper berth provisions.

None of the provisions in this final rule will increase the maximum allowable driving time, but may result in changes to the number of hours driven, or hours worked during a given work shift.[1] The flexibilities in this final rule are intended to allow drivers to shift their drive and work time to mitigate the impacts of certain variables (*e.g.,* weather, traffic, detention times, etc.) and to take breaks without penalty when they need rest. FMCSA does not anticipate that any of these time shifts will negatively impact drivers' health.

FMCSA notes that drivers of property-carrying CMVs are still prohibited from driving more than 11 hours during a work shift (13 hours under the adverse driving conditions exception) and driving is prohibited after an individual accumulates 14 hours of on-duty time (16 hours under the adverse driving conditions exception). Because the rule provides greater flexibility for drivers to take breaks from the driving tasks and greater flexibility to obtain recuperative sleep, the rule will not have an adverse impact on drivers' health.

As discussed later in this document and in the RIA for this final rule, FMCSA anticipates that individual drivers may see a change in their work hours (both driving and non-driving) or vehicle miles traveled (VMT), but this final rule will not result in an increase in freight movement or aggregate VMT. Aggregate VMT is determined by many factors, including market demand for transportation services. FMCSA does not anticipate that the changes in this final rule, which produce an annual cost savings to carriers of 0.03 percent of total trucking revenues of nearly $800 billion in 2018, are sufficient to stimulate demand in the freight market, but acknowledges that freight loads may shift from one carrier or driver to another. After consideration of the potential impacts, FMCSA has determined that this final rule will not adversely affect driver fatigue levels or safety. Table 2 summarizes the changes in this rule.

TABLE 1—TOTAL 10-YEAR AND ANNUALIZED COSTS OF THE FINAL RULE

[In millions of 2018$]

Year	Federal and state government cost A	Cost due to changes in 30-min break provision B	Total costs—undiscounted C = A + B	Total costs—(7 percent discount rate)	Total costs—(3 percent discount rate)
2020	$8.6	($98.3)	($89.7)	($83.8)	($87.1)
2021	0.0	(296.1)	(296.1)	(258.6)	(279.1)
2022	0.0	(297.5)	(297.5)	(242.9)	(272.3)
2023	0.0	(298.9)	(298.9)	(228.0)	(265.6)
2024	0.0	(300.3)	(300.3)	(214.1)	(259.1)
2025	0.0	(301.8)	(301.8)	(201.1)	(252.7)
2026	0.0	(303.2)	(303.2)	(188.8)	(246.5)
2027	0.0	(304.6)	(304.6)	(177.3)	(240.5)
2028	0.0	(306.1)	(306.1)	(166.5)	(234.6)
2029	0.0	(307.5)	(307.5)	(156.3)	(228.8)
Total 10-Year Costs				(1,917.5)	(2,366.2)
Total Annualized Costs				(273.0)	(277.4)

(a) Values shown in parentheses are negative values (*i.e.,* less than zero) and represent a decrease in cost or a cost savings.

[1] For example, with the newly revised short-haul provisions in this final rule, a driver can drive for up to 11 hours maximum in the shift, and be on-duty (not driving) for a maximum of at least 3 more hours, and remain in compliance with the rule's short-haul exception provisions, assuming the driver returned to the normal work reporting location within 14 hours, and within a 150-air mile radius. By comparison, in the prior HOS short-haul exception regulations, a driver utilizing this exception was allowed to drive for up to 11 hours maximum in the shift, but had to return to the normal work reporting location within 12 (not 14) hours and 100 air miles—allowing only 1 other hour of on-duty (not driving) time.

TABLE 2—REVISED REQUIREMENTS

HOS provision	Existing requirement	Revised requirement	Impacts
Short-Haul	Drivers using the short-haul (100 air-mile radius) exception may not be on-duty more than 12 hours.	Extends the maximum duty period allowed under the short-haul exception from 12 hours to 14 hours.	Increases the number of drivers able to take advantage of the short-haul (150 air-mile) exception.
	Drivers using the short-haul (150 air-mile radius) exception applicable to drivers not requiring a CDL may not drive beyond the 14th or 16th hour on-duty, depending upon the number of days on duty.	Extends the maximum radius of the short-haul exception from 100 to 150 air-miles.	Potentially shifts work and drive time from long-haul to short-haul exception, or from driver to driver. Minimum or no change to hours driven or aggregate VMT.
Adverse Driving Conditions.	A driver may drive and be permitted or required to drive a CMV for not more than 2 additional hours beyond the maximum time allowed. However, this does not currently extend the maximum ''driving windows.''.	Allows a driver to extend the maximum ''driving window'' by up to 2 hours during adverse driving conditions. This change applies both to drivers of property-carrying CMVs (14-hour ''driving window'') and passenger-carrying CMVs (15-hour ''driving window'').	Increases the use of the adverse driving condition provision. Allows driving later in the workday, potentially shifting forward the hours driven and VMT travelled. Allows drivers time to park and wait out the adverse driving condition or to drive slowly through it. This has the potential to decrease crash risk relative to current requirements, assuming drivers now drive through adverse driving conditions. No increase in freight volume or aggregate VMT.
30-minute break	If more than 8 consecutive hours have passed since the last off-duty (or sleeper berth) period of at least half an hour, a driver must take an off-duty break of at least 30 minutes before driving.	Requires a 30-minute break only when a driver has driven for a period of 8 hours without at least a 30-minute interruption. If required, the break may be satisfied by any non-driving period of 30 minutes, *i.e.* on-duty, off-duty, or sleeper berth time.	Increases the on-duty/non-driving time by up-to 30 minutes, or allow drivers to reach their destination earlier. No anticipated fatigue effect because drivers continue to be constrained by the 11-hour driving limit and would continue to receive on-duty/non-driving breaks from the driving task. Minimal or no change to hours driven or VMT, as the current off-duty break only impacts these factors if the schedule required driving late within the 14-hour driving window.
Split-Sleeper berth.	A driver can use the sleeper berth to get the ''equivalent of at least 10 consecutive hours off-duty.'' To do this, the driver must spend at least 8 consecutive hours (but less than 10 consecutive hours) in the sleeper berth. This rest period does not count as part of the 14-hour limit. A second, separate rest period must be at least 2 (but less than 10) consecutive hours long. This period may be spent in the sleeper berth, off-duty, or sleeper berth and off-duty combined. It does count as part of the maximum 14-hour driving window.	Modifies the sleeper berth requirements to allow drivers to take their required 10 hours off-duty in two periods, provided one off-duty period (whether in or out of the sleeper berth) is at least 2 hours long and the other involves at least 7 consecutive hours spent in the sleeper berth. Neither period counts against the maximum 14-hour driving window.	Allow one hour to be shifted from the longer rest period to the shorter rest period. Potentially increase the use of sleeper berths because drivers using a berth have additional hours to complete 11 hours of driving (by virtue of excluding the shorter rest period from the calculation of the 14-hour driving window). No anticipated negative effect on fatigue because aggregate drive limits and off-duty time remains unchanged. Hours driven or VMT may change for an individual driver on a given work shift (by increased use of the sleeper berth). Total hours driven or aggregate VMT would remain the same.

III. Abbreviations and Acronyms

1935 Act The Motor Carrier Act of 1935
1984 Act The Motor Carrier Safety Act of 1984
AASM The American Academy of Sleep Medicine
ABA American Bus Association
ACPA American Concrete Pumping Association
Advocates Advocates for Highway and Auto Safety
ANPRM Advance notice of proposed rulemaking
ATA American Trucking Associations, Inc.
BLS Bureau of Labor Statistics
CAA Clean Air Act
CFR Code of Federal Regulations
CMV Commercial motor vehicle
CRA Congressional Review Act
CVSA Commercial Vehicle Safety Alliance
DOT Department of Transportation
ELD Electronic logging device
E.O. Executive Order
eRODS Electronic record of duty status
FAA Federal Aviation Administration
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
FRA Federal Railroad Administration
HOS Hours of service
IIHS Insurance Institute for Highway Safety
IBT International Brotherhood of Teamsters
IRFA Initial Regulatory Flexibility Analysis
LTL less-than-truckload
MCSAC Motor Carrier Safety Advisory Committee
MCMIS Motor Carrier Management Information System

NAPA The National Asphalt Pavement Association
National Academies National Academies of Sciences, Engineering, and Medicine
ND Naturalistic Driving
NEPA National Environmental Policy Act
NPPC National Pork Producers Council
NPRM Notice of proposed rulemaking
NSC The National Safety Council
NTSB National Transportation Safety Board
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Drivers Association
RODS Record of duty status
RFA Regulatory Flexibility Act
SBA The Small Business Administration
SCE Safety critical event
§ Section
Secretary Secretary of Transportation
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
TIA Transportation Intermediaries Association
The Coalition National Coalition on Truck Parking
TL truckload
TRB Transportation Research Board
TruckerNation TruckerNation.org
TSC Truck Safety Coalition
UDA United Drivers Association
USDOT The U.S. Department of Transportation
U.S.C. United States Code
USTA United States Transportation Alliance
VMT vehicle miles traveled
VTTI Virginia Tech Transportation Institute

IV. Legal Basis for the Rulemaking

This final rule is based on the authority derived from the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (1984 Act). The 1935 Act, as amended, provides that ''The Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.'' (49 U.S.C. 31502(b)(1), (2)).

The HOS regulations below concern the ''maximum hours of service of employees'' of both motor carriers and motor private carriers, as authorized by the 1935 Act.

This rule also is based on the authority of the 1984 Act, as amended, which provides broad concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation (Secretary) to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles.'' The 1984 Act also requires that: ''At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely . . .; (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section . . .''. (49 U.S.C. 31136(a)(1)–(5)).

This rule is based specifically on section 31136(a)(2) and, less directly, sections 31136(a)(3) and (4). To the extent section 31136(a)(1) focuses on the mechanical condition of CMVs, that subject is not included in this rulemaking. However, as the phrase ''operated safely'' in paragraph (a)(1) encompasses safe driving practices, this final rule also addresses that mandate. To the extent section 31136(a)(4) focuses on the health of the driver, the Agency addresses that issue below. As for section 31136(a)(5), FMCSA anticipates that because the rule makes the HOS regulations more flexible, the rule will not increase the risk that drivers will be coerced to operate a commercial motor vehicle in violation of the regulations.

Before prescribing regulations under these authorities, FMCSA must consider their ''costs and benefits'' (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are addressed below.

V. Background

For an extended discussion of the history of the HOS regulations, please see the NPRM (84 FR 44190, at 44193–44196, August 22, 2019). Following implementation of the ELD rule and increased accuracy in HOS tracking, FMCSA received feedback from members of Congress and other interested parties expressing the need for additional flexibility for drivers under the HOS rules.

A. OOIDA Petition for Rulemaking

On February 13, 2018, the Owner-Operator Independent Drivers Association (OOIDA) petitioned FMCSA to amend the HOS rules to allow drivers to take an off-duty rest break for up to 3 consecutive hours once per 14-hour driving window. OOIDA requested that the rest break stop the 14-hour clock and extend the latest time a driver could drive after coming on-duty.[2] However, drivers would still be limited to 11 hours of driving time and required to have at least 10 consecutive hours off-duty before the start of the next work shift.

OOIDA's petition also included a request that the Agency eliminate the 30-minute break requirement. The organization explained that there are many operational situations where the 30-minute break requires drivers to stop when they do not feel tired.

B. TruckerNation Petition for Rulemaking

On May 10, 2018, TruckerNation petitioned the Agency to revise the prohibition against driving after the 14th hour following the beginning of the work shift.[3] As an alternative, the organization requested that the Agency prohibit driving after the driver has accumulated 14-hours of on-duty time.

In addition, TruckerNation requested that FMCSA allow drivers to use multiple off-duty periods of 3 hours or longer in lieu of having 10 consecutive hours off-duty and eliminate the 30-minute break requirement.

C. Additional Petitions for Rulemaking

Two additional petitions for rulemaking were received: One from the United States Transportation Alliance (USTA) and one from the United Drivers Association (UDA).[4] The petitions were not discussed in the ANPRM due to the timing of receipt; however, they were reviewed and considered in the development of the NPRM.

The USTA petition proposed an HOS rule that would prohibit driving after 80 hours on-duty in a work week (instead of the current limits in §§ 395.3(b) and 395.5(b)), and allow a 14-hour day for driving or other work duties. Drivers' remaining 10 hours would include 2 hours of off-duty time, and 8 hours of sleeper berth time that could be split into two segments, with a minimum of 2 hours per segment. The 80-hour clock would be reset by 24 hours off-duty. The petition is included in the docket referenced at the beginning of this notice.

The UDA proposal maintained the 14/10 HOS rule; however, the 10 hours off-duty could be split into two 5-hour sleeper berth periods. The weekly on-

[2] Available at *https://www.regulations.gov/document?D=FMCSA-2018-0248-1210.*

[3] Available at *https://www.regulations.gov/document?D=FMCSA-2018-0248-0003.*

[4] Available at *https://www.regulations.gov/document?D=FMCSA-2018-0248-2550* and *https://www.regulations.gov/document?D=FMCSA-2018-0248-0342.*

duty time, after which driving would be prohibited, would be 80 hours in an 8-day period, with a 24-hour restart, similar to that proposed by USTA. The petition is included in the docket referenced at the beginning of this notice.

D. 2018 ANPRM

The August 23, 2018, ANPRM (83 FR 42631) requested public comment on four areas pertaining to the HOS rules: Short-haul operations, the adverse driving conditions exception, the 30-minute break requirement, and the sleeper berth provision. The ANPRM also sought public comment on two petitions for rulemaking relating to the HOS rules, one from OOIDA and one from TruckerNation.

E. ANPRM Public Listening Sessions

FMCSA held a series of public listening sessions following the release of the ANPRM. These were held in Dallas, Texas, on August 24, 2018; Reno, Nevada, on September 24, 2018; Joplin, Missouri, on September 28, 2018; Orlando, Florida, on October 2, 2018; and Washington, DC, on October 10, 2018.[5] Transcripts of those listening sessions are available in the public docket for the rulemaking, and are available to stream at *https://www.fmcsa.dot.gov/mission/policy/public-listening-sessions-hours-service.*

F. 2019 NPRM

FMCSA published an NPRM on August 22, 2019 (84 FR 44190). This NPRM requested comment on five topics: (1) Altering the short-haul exception to the record of duty status (RODS) requirement available to certain CMV drivers, (2) modifying the adverse driving conditions exception, (3) increasing flexibility for the 30-minute break rule by requiring a break after 8 hours of driving time (instead of on-duty time) and allowing on-duty/not driving periods to qualify as breaks, (4) modifying the sleeper berth exception to allow a driver to spend a minimum of 7 hours in the berth combined with a minimum 2-hour off-duty period, provided the combined periods total 10 hours and allowing neither period to count against the maximum 14-hour driving window, and (5) allowing one off-duty break that would pause a truck driver's 14-hour driving window.

The Agency held two public listening sessions with the first being conducted at the Great American Truck Show on August 23, 2019, in Dallas, Texas. The second listening session was held at the United States Department of Transportation (DOT) in Washington, DC on September 17, 2019.[6] Transcripts of those listening sessions are available in the public docket for the rulemaking.

VI. Stakeholder Engagement Following Publication of the NPRM

A. Summary of the Motor Carrier Safety Advisory Committee Meeting

On August 28, 2019, FMCSA announced that a public meeting of the Motor Carrier Safety Advisory Committee (MCSAC) would be held on September 30, 2019, and October 1, 2019 (84 FR 45201). As part of the Agency's efforts to engage its stakeholders and State partners in a conversational setting rather than waiting until the end of the public comment period and relying solely on submissions to the rulemaking docket, the MCSAC was asked to review the NPRM and provide feedback to the Agency. The process involved deliberations among the MCSAC members with Agency representatives present to answer questions about the contents of the NPRM and regulatory impact analysis.

In its report issued on October 15, 2019, *https://www.fmcsa.dot.gov/advisory-committees/mcsac/task-19-1-hos-report,* the MCSAC stated that it would need more information to understand the potential impacts of the proposed changes. Additionally, the MCSAC expressed concern that the rulemaking may not provide quantitative improvements to safety, although the NPRM's preamble indicated the rulemaking would increase flexibility without reducing safety. The MCSAC discussed the history of certain hours-of-service (HOS) provisions to understand the Agency's rationale for the current requirements and the reasons for proposing changes, highlighting the need to consider data and information presented by commenters to the rulemaking docket before making any final decisions about changes to the HOS rules. The MCSAC considered potential enforcement challenges associated with the proposed changes, including discussions that the use of the increased flexibility should be at the driver's discretion. The MCSAC also stated that drivers may be pressured by shippers/receivers to use the flexibility to go into an off-duty status rather than addressing detention time issues. Finally, there was concern that the Agency should not provide additional HOS flexibility to high-risk carriers with demonstrated safety performance problems and difficulty achieving compliance with the current HOS rules.

In keeping with the intent of its task to the MCSAC, the Agency did not attempt to influence the committee's deliberations or express views concerning the MCSAC's report as it was being drafted by the committee during the public meeting. The Agency used the opportunity to hear the initial reactions of a cross section of stakeholders and State partners to the HOS proposals in anticipation of the formal written comments that would be submitted to the rulemaking docket.

B. Summary of Comments Presented at the NPRM Public Listening Sessions

FMCSA held two public listening sessions during the comment period for the NPRM as part of the Agency's efforts to engage the public in a conversational setting to get a sense of their initial reactions rather than waiting until the end of the public comment period and relying solely on submissions to the rulemaking docket. During the listening sessions, a panel of Agency officials took in-person public comments and solicited online comments. The panel also answered questions and clarified parts of the NPRM when requested. Both sessions are available online, and transcripts have been placed in the docket.[7] Because the same substantive comments were also submitted in writing to the docket, FMCSA responds to these comments in the responses to written comments below.

In keeping with the intent of the public meetings, the Agency did not attempt to influence the participants' beliefs or opinions. The Agency used the opportunity to hear the initial reactions of interested parties to the HOS rule in anticipation of the formal written comments that would be submitted to the rulemaking docket. Throughout the public listening session participants were encouraged to submit written comments to the rulemaking docket and to include any information (*e.g.,* research reports or studies, etc.) and data they would like the Agency to consider.

[5] Listening sessions were announced in the **Federal Register** at 83 FR 42631, August 23, 2018; 83 FR 45204, September 6, 2018; 83 FR 47589, September 20, 2018; 83 FR 48787, September 27, 2018, and 83 FR 50055, October 4, 2018. The listening session scheduled for September 14, 2018 in Washington, DC was canceled and rescheduled.

[6] Listening sessions were announced in the **Federal Register** at 84 FR 43097, August 20, 2019, and 84 FR 45940, September 3, 2019.

[7] Available at *https://www.fmcsa.dot.gov/mission/policy/public-listening-session-live-stream-hours-service-drivers https://youtu.be/MHo6OjoBAfk, https://www.regulations.gov/document?D=FMCSA-2018-0248-8166,* and *https://www.regulations.gov/document?D=FMCSA-2018-0248-8167,* last accessed February 2, 2020.

Short-haul. Many commenters agreed with the proposed extension of the workday to 14 hours. Several commenters requested clarification of how the proposed changes would interact with each other, and about ELD use. Questions about the question of returning to their normal work reporting location were asked.

Adverse Driving Conditions. Most commenters spoke positively of the proposed changes to the adverse driving conditions rule. Several requested that the Agency clarify the criteria for acceptable use of this exception. Many commenters asked for expansion of the definition of ''adverse driving conditions''. Commenters also wanted information regarding the impact on total driving-day and cumulative hours.

30-Minute Break. Most commenters requested that the 30-minute break requirement be eliminated, arguing that it has a negative impact on safety by forcing drivers to stop when they did not need a break and to skip breaks when they need to stop because they cannot afford to lose the drive time. Other commenters provided many suggestions for additional flexibility concerning the 30-minute break.

Split-Sleeper Berth. Many commenters asked for clarification of the proposed sleeper berth provisions. Some expressed concern about how to calculate sleeper berth time under the proposed revisions, especially in relation to the 3 hour pause. Others asked for other splits.

Split-Duty Pause. Commenters primarily requested clarification regarding which operations would be able to use the proposed 3-hour pause, and expressed concern about abuse of the provision.

C. Summary of the Written Comments to the NPRM; FMCSA Responses

The NPRM comment period closed on October 21, 2019. The Agency considered late filed comments to the extent practicable and, as of November 27, 2019, had received a total of 2,874 submissions to the docket.

1. Agency Approach To Reviewing Research Cited in the Written Comments

Methodology of Comment Evaluation. Because of the level of Congressional and public interest in this HOS rulemaking, FMCSA shares with interested parties its methodology for analyzing almost 3,000 submissions to the rulemaking docket. Approximately 200 studies were cited in written comments to the NPRM. To ensure that FMCSA did not overlook any relevant research, the Agency created a list of those studies for systematic review.

FMCSA notes that while conducting HOS rulemakings over the past 25 years, the Agency has examined many studies on the effects of time on task on fatigue, and of fatigue on safety. Some of the studies are based on laboratory experiments with closely controlled inputs, while others are derived from technical data generated by drivers operating instrumented trucks. Still others involve extensive surveys of CMV drivers. The number of subjects or survey respondents varies enormously, from a few dozen to many thousands. None of these studies were considered as representative of every aspect of the enormously varied motor carrier industry.

The FMCSA acknowledges that no single study that it previously reviewed or referenced in responses to the 2019 NPRM addresses all of the proposed changes. The results of the various studies are not uniform, rarely converging in a straightforward conclusion about specific work-rest schedules. FMCSA therefore considered the wide range of studies, including those provided or cited by commenters, to draw conclusions about the overarching HOS principles based on its own experience and expertise and the extensive, but inconclusive, body of evidence currently available.

Procedural Matters. A few commenters addressed procedural matters regarding the proposed rule. Three requests for an extension of the public comment period were received. FMCSA extended the public comment period from October 7 to October 21, 2019.[8]

2. General Comments on the Rulemaking

Agreement with Proposed Revisions. Approximately 530 submissions expressed general agreement with the proposed changes. Many of these included individuals and drivers who stated their general agreement with the proposal without providing substantive rationale. Numerous commenters stated that the proposed changes:

- Increase flexibility;
- Improve highway safety;
- Provide drivers with greater control when and where to take rest breaks;
- Increase efficiency and productivity; and,
- Reduce driver stress and fatigue.

Safety for the Long Haul, Inc. and OOIDA stated that the proposed revisions would increase driver flexibility and efficiency without adversely affecting driver alertness. However, Safety for the Long Haul also argued that the ''ND [Naturalistic Driving] Mixed Safety-Critical Event'' (SCE) method for assessing fatigue, as referenced in the Agency's NPRM, is flawed. OOIDA commented that the proposed rule would improve trucker safety, as drivers know best when they need to take a break or whether driving conditions are unsafe.

A few industry associations commented that current HOS rules have contributed to increases in crashes involving trucks. One association commented that current HOS rules may pressure drivers to rush or continue driving despite being fatigued. They believe the proposed changes would provide greater flexibility for drivers to take breaks from the driving task.

Several industry associations and companies from the agricultural, beverage, construction, concrete, forest products, packaging and recycling, and livestock sectors of the motor carrier industry stated that the proposed rule would benefit their members.

The National Motor Freight Traffic Association, Inc. commented that the proposed rule would help ''less-than-truckload'' drivers, who have relatively regular schedules but who are susceptible to poor traffic conditions; they can usually obtain adequate rest and complete their work safely. Another industry association generally supported the proposed rule for its different treatment of long-haul, regional, and short-haul trucking.

Several construction industry associations supported the proposed rule but requested that the construction industry be exempted from HOS regulations.

FMCSA Response: FMCSA agrees that the relief provided through this rulemaking will benefit some of the industries or distinct operations (*e.g.,* propane delivery) currently seeking relief through exception or other means.

As for industry-specific exceptions or regulatory relief, it should be noted that FMCSA has already granted exemptions from specific HOS requirements to various industry segments and motor carriers, including some related to the regulations addressed in the NPRM. The exemptions were granted through a public notice-and-comment process authorized by 49 U.S.C. 31315, with implementing regulations provided in 49 CFR part 381.

Three exemption applications concerning an extension of the short-haul duty day from 12 to 14 hours have already been granted to the following: (1) Waste Management, Inc.; (2) the American Concrete Pumping

[8] 84 FR 49212, September 19, 2019.

Association (ACPA); and (3) the National Asphalt Pavement Association (NAPA). In addition, NAPA requested and received an exception from the 30-minute rest break provision, allowing its members to use 30 minutes of ''waiting time'' or ''attendance time'' to satisfy the break requirement.

Others who have requested and received similar exemptions from the 30-minute rest break include the National Pork Producers Council (NPPC) for drivers transporting livestock, ACPA, the American Trucking Associations, Inc. (ATA) for placarded hazardous materials loads, the Department of Energy for special category (often nuclear) shipments, the National Tank Truck Carriers, the Oregon Trucking Associations, the Specialized Carriers and Rigging Association, and the U.S. Department of Defense's Military Surface Deployment and Distribution Command.

This final rule does not include industry-specific relief (*i.e.,* regulatory exceptions). However, FMCSA notes certain industries may find their concerns about HOS addressed by this rule. As noted above, the requirements concerning applications for exemptions or requests for waivers are described in 49 CFR part 381, and interested parties that continue to believe that additional flexibility is needed should review part 381 to determine whether an exemption application may be warranted. The Agency notes that such requests should consider the statutory requirement that the exemption must be likely to achieve a level of safety equivalent to or greater than the level of safety provided absent the exemption.

Disagreement with the Proposed Changes to the HOS Requirements. Approximately 215 commenters expressed general disagreement with the proposed rule. Numerous commenters, mostly individuals, opposed the rule without further explanation. Many of these commenters, including individuals and drivers, stated that the proposed rule:

- Enables companies to abuse drivers;
- Fails to promote safety;
- Does not provide enough flexibility;
- Adds confusion when looking at the provisions overall;
- Decreases efficiency and productivity; and,
- Does not address the lack of parking and problems associated with ''pay to park'' schemes.

Many of the commenters who opposed the rule argued that the proposed rule would contribute to the prevalence of driver fatigue and threaten public safety through an increase in fatigue-related crashes. Among the commenters articulating variations on this theme were the National Transportation Safety Board (NTSB), the National Safety Council (NSC), the American Academy of Sleep Medicine (AASM), Advocates, Road Safe America, Senator Patty Murray, the International Brotherhood of Teamsters (IBT), and the Truck Safety Coalition (TSC). Representative Greg Steube argued that the current proposal does not do enough to fully address safety and logistics issues. The NSC, Advocates, IBT, and TSC cited data about the importance of healthy sleep patterns and the safety risks of fatigued driving. Road Safe America and Senator Murray argued that the proposed rule would increase the likelihood that motor carriers would coerce drivers into working while fatigued, creating unsafe road conditions for drivers and other motorists. The Institute for Policy Integrity argued that the proposed rule is too focused on flexibility for drivers and that FMCSA should consider the effects of the proposed rule on drivers' health.

Representative Peter DeFazio warned that the proposed rule significantly expands on-duty time for truck drivers, deprives drivers of true rest, and passes more of the inefficiencies and uncertainties of goods movement on to drivers who have little economic leverage. Congressman DeFazio also argued that the changes may seem modest, but instead represent a ''substantial backslide'' in a 24-year process to update on-duty rules and reduce fatigue among commercial drivers—which has been ''painstakingly'' debated by FMCSA, Congress, and the courts. However, many other commenters felt strongly that the additional flexibility would minimize the stress on a driver that results under the current rules.

The Small Business in Transportation Coalition expressed concern that the proposed rule would be difficult to enforce and that drivers needed greater flexibility. Another commenter argued that free market forces will correct the challenge of long detention times at shippers' and receivers' facilities, and that the proposed rule would be counterproductive in resolving this issue.

Senator Murray claimed the proposed rule contravened FMCSA's mandate by unreasonably extending drivers' work hours, eliminating drivers' right to sufficient rest, and threatening the safety of drivers and the public. Advocates asserted that FMCSA's reasoning for each of the proposals in the NPRM is baseless, misrepresentative, or based on incorrect reinterpretation of research and often in direct contradiction of earlier Agency findings and statements.

The Institute for Policy Integrity urged FMCSA to analyze each proposed provision's effect on driver health, including driver morbidity, chronic health conditions, obesity, and exposure to diesel exhaust. Another commenter recommended that FMCSA consider amending the proposed changes to include screening for sleep problems, such as Obstructive Sleep Apnea, and then prescribing practical solutions if the driver is diagnosed with a sleep problem.

ATA expressed conditional support for some provisions of the rule. IIHS, ATA, and a few industry associations argued that more research would be needed before the rule or individual provisions could be adequately evaluated. Trucking Solutions Group provided conditional approval if FMCSA would wait for the full effects of the ELD mandate on the industry to occur before undertaking a new rulemaking.

FMCSA Response: FMCSA acknowledges commenters concerns. However, the Agency concludes that the changes adopted today will not result in the adverse safety consequences they described. None of the revisions in this rule allow truck drivers additional driving time beyond the 11-hour limit provided in the current regulations (or the 13-hour limit provided with the current adverse driving conditions exceptions). Except for the adverse driving conditions provision, none of the revisions allow drivers to operate a CMV after accumulating 14 hours of on-duty time during a work shift. Consistent with the Agency's rationale for adopting the 14-hour rule, none of the revisions allow the use of multiple or intermittent off-duty breaks to extend the work-shift. Also, the weekly limitations under the 60/70-hour rules concerning the maximum number of on-duty hours that may be accumulated before driving is prohibited remain unchanged. Furthermore, none of the revisions relieve motor carriers and drivers of the explicit prohibitions against: (1) Operating commercial motor vehicles while ill or fatigued, or (2) coercing drivers to violate Federal safety rules. Therefore, the basic parameters of the HOS rule that are essential to safety remain unchanged.

Regarding the extension of the driving window to 16 hours during ''adverse driving conditions,'' drivers will no longer need to stay on the road during such conditions to avoid the impending closure of the previous 14-hour driving window. Therefore, the added flexibility

will not decrease safety during adverse driving conditions.

Regarding the proposal to allow drivers to pause the 14-hour driving window by taking up to 3 hours off-duty, the Agency intended to give drivers the ability to adjust their operations such that they could defer work, especially driving time, until the conditions were conducive to greater efficiency. The NPRM considered that the pause could have been as short as 30 minutes or as long as 3 hours, provided the driver was relieved of all responsibility for performing work, with the assumption being that pauses up to 3 hours would allow drivers to obtain rest during the extended window. Drivers would have the opportunity to take a meaningful rest break during the work shift but still be required to have 10 consecutive hours off duty at the end of the work shift.

As explained elsewhere in the preamble, FMCSA has decided that further information is needed concerning the potential for unintended consequences associated with the pause and therefore has not included that provision in this final rule.

As to driver health, the Agency acknowledges that the effect of specific regulatory changes on driver health is difficult to evaluate. First, most health conditions have multiple contributing factors and are discernible only over extended periods. Second, a cause-and-effect relationship between a rule and a given health outcome is difficult to establish. Driver health issues were addressed extensively in the 2005 final rule [70 FR 49978, 49982–49992, August 25, 2005]. The preamble noted that ''FMCSA has reviewed and evaluated the available and pertinent information concerning driver health, with emphasis on chronic conditions potentially associated with changes from the pre-2003 and 2003 rules, to this final rule. The research on CMV driver health falls into several broad categories: (1) Sleep loss/restriction, (2) exposure to exhaust, (3) exposure to noise, (4) exposure to vibration, (5) cardiovascular disease, (6) long work hours, and (7) shift work and gastrointestinal disorders'' (70 FR 49978, 49982).

The Agency concluded that the 2005 rule would not have any effect on those potential health issues. That discussion remains applicable today with only a few changes. For example, FMCSA noted in 2005 that attempts to create a dose-response curve for the effects of exposure to diesel exhaust had not produced clear-cut results (70 FR 49983). Such an attempt would be even less useful today because exposure to diesel exhaust has declined significantly in the last 15 years as a result of the tightened EPA standards discussed in the 2005 rule. The incremental changes adopted in this final rule, though useful to motor carriers and drivers, do not change the conclusions explained in the 2005 final rule. As pointed out in the 2005 HOS final rule (70 FR 49978, 4983, August 25, 2005), attempts to create a dose-response curve for the effects of exposure to diesel exhaust, for example, have not produced clear-cut results. Such an attempt would be even more difficult for the incremental HOS changes promulgated today.

However, based on the current scientific information and its own experience with Hours of Service regulation, FMCSA concludes that the changes made by this final rule are safety- and health-neutral. For example, the expansion of the short-haul workday from 12 to 14 hours simply gives short-haul carriers the same driving window that other carriers have used for many years. The 14-hour HOS limit now applicable to both short- and long-haul carriers is consistent with the statutory obligation to protect driver safety and health (49 U.S.C. 31136(a)(2), (4)), as shown by the extensive discussion in the 2005 final rule (70 FR 49978, 49982 *et seq.*). Moreover, FMCSA requires that interstate drivers subject to the physical qualifications standards under 49 CFR part 391 obtain proof of their physical qualifications from a licensed healthcare professional listed on the Agency's National Registry of Certified Medical Examiners. These healthcare professionals must be licensed by the State, complete a training program concerning FMCSA's physical qualification standards, and pass a test concerning the Federal requirements. These Medical Examiners are likely to provide some level of education at the time of the exam if drivers exhibit specific health issues.

As to obstructive sleep apnea, the Federal Motor Carrier Safety Regulations (FMCSRs) do not require medical examiners to screen CMV drivers for sleep disorders, and the Agency does not provide criteria for determining whether an individual should be referred for a sleep study evaluation. FMCSA relies on Certified Medical Examiners who have proper licensure, training, and medical knowledge to apply independent medical judgment based on the individual's complete medical history, including risk factors, and clinical findings from the physical examination when making medical determinations concerning screening, testing, and treatment, for obstructive sleep apnea. FMCSA notes that obstructive sleep apnea is a condition for which there are effective treatments available, and drivers who follow the prescribed treatment regime after being diagnosed may be medically certified.

Problems caused by detention time and parking shortages have been apparent for many years. However, these issues are beyond the scope of this rulemaking.

The purpose of this rule is to enhance the operational flexibility of drivers and carriers, without compromising the Agency's statutory safety mission. Many commenters stated that the current HOS requirements are too restrictive and that their removal would not adversely affect safety; but those assertions are supported only with personal anecdotes. While stakeholders' personal experiences inform the Agency's decision-making process, further evidence is generally required to support changes to the FMCSRs.

Neutral Comments and Comments on HOS-Related Issues Beyond the Scope of the NPRM. Approximately 1,460 comments, mostly from individuals and drivers, provided mixed, neutral feedback on the proposal. In addition, some drivers and individuals addressed certain provisions of the NPRM while remaining silent on other provisions. Some individual commenters and drivers provided conditional support while others neither provided an opinion nor suggested alternatives to the NPRM.

Approximately 630 submissions concerned aspects of the HOS rules that were not covered in the NPRM. Numerous individuals and drivers made the following types of suggestions:

- Eliminate the 14-hour window;
- Eliminate or revise the 34-hour restart provision;
- Eliminate the 70-hour rule prohibiting driving after the driver has accumulated 70 hours of on-duty time in 8 consecutive days;
- Eliminate the use of ELDs;
- Allow drivers to develop their own drive/rest schedules;
- Exempt small businesses from the HOS rules or create separate rules applicable to small fleets;
- Extend driving time from 11 to 12 or 13 hours;
- Address the amount of time drivers are held up at shippers or receivers;
- Address the lack of parking and ''pay to park'' schemes; and,
- Drivers should be paid hourly instead of by the mile.

Multiple individual commenters and drivers briefly summarized alternative or ''simplified'' HOS requirements that they would prefer (*e.g.,* maximum 9-hour drive time in a 12-hour workday;

12 on-duty/12 off-duty; 13 hours of drive time in a 24-hour workday; 14- or 16-hour total workday; 77 hours in 8 days, etc.).

FMCSA Response: FMCSA acknowledges the concerns of commenters that opted not to take a position on certain aspects of the proposal. Each aspect of the NPRM addresses a piece of a complex puzzle concerning the flexibility needs for different segments of the transportation industry. For certain segments of the industry, a single element of the NPRM would provide all the flexibility necessary while other segments may benefit from two or more elements. This final rule is intended to provide reasonable adjustments to the HOS requirements to allow for increased flexibility without decreasing safety.

FMCSA also acknowledges commenters' interest in changing major provisions of the HOS requirements. However, these issues are beyond the scope of this rulemaking. In some of these cases such as an extension of the driving time limits or the elimination of the 70-hour rule, additional research would be needed to support changing the basic parameters of the HOS rules that have been previously determined to be important in minimizing the risk of fatigue. And several of the issues raised by commenters are beyond FMCSA's statutory authority (*e.g.,* driver compensation, elimination of ELDs).

In response to commenters' concerns about third parties such as shippers and receivers forcing drivers to violate HOS rules or creating an environment where drivers are unable to take advantage of the work time allowed, the Agency issued a final rule in 2015 prohibiting motor carriers, shippers, receivers, and transportation intermediaries from coercing drivers to operate CMVs in violation of certain FMCSA regulations, including the HOS regulations in 49 CFR part 395 (See 49 CFR 390.6). In addition, the Occupational Safety and Health Administration in the Department of Labor has authority under 49 U.S.C. 31105 to take remedial action against employers who have discharged or discriminated against employees who refuse to violate the FMCSRs.

Comments on Issues and Industry Concerns Separate from the HOS Rules. Approximately 30 submissions addressed topics that involved safety but were separate from the HOS requirements. The topics included:

- Education for the public on safe driving procedures around trucks;
- Inspection of trucks crossing the U.S. border;
- Public respect for truck drivers;
- Improvements to rest areas;
- CMV driving speeds;
- The impact of certain States' laws on interstate commerce; and,
- The ability of drivers to participate in public listening sessions.

FMCSA Response: While the topics raised by these commenters are important, they do not relate to the specific revisions proposed at the NPRM stage of the rulemaking or adopted through this final rule.

The Agency nevertheless acknowledges commenters' concerns about these issues and has acted in several of these areas. For example, the Agency launched ''Our Roads, Our Safety,'' a national safety campaign shaped to raise public awareness about sharing the road safely with large trucks and buses.

On the topic of truck parking, FMCSA is an active participant in the National Coalition on Truck Parking (the Coalition). The U.S. Department of Transportation (USDOT) and several stakeholder organizations established the Coalition in August 2015 as a response to a documented need for truck parking solutions. Stakeholders engaged in the Coalition represent the trucking industry, commercial vehicle safety officials, State departments of transportation (DOTs), and commercial truck stop owners and operators.

Finally, about the inspection of trucks crossing the U.S.-Mexico border, in each of the past 4 years FMCSA and its State partners conducted more than 250,000 inspections of commercial motor vehicles operated by Mexico-owned or Mexico-domiciled motor carriers.[9]

3. Short-Haul Operations

NPRM. The NPRM proposed extending the maximum allowable workday for property-and passenger-carrying CMV drivers under the § 395.1(e)(1) short-haul exception from 12 to 14 hours to correspond with the 14-hour limit for property-carrying drivers in § 395.3(a)(2). The Agency proposed extending the existing distance restriction under this provision from 100 air-miles to 150 air-miles to be consistent with the radius requirement for the short-haul exception applicable to drivers of CMVs not requiring a CDL (§ 395.1(e)(2)). Under the proposal, truck drivers would continue to be limited to 11 hours of driving time, and passenger carrier drivers to 10 hours of driving time. FMCSA proposed requiring all CMV drivers using the § 395.1(e)(1) exception to complete their workday within 14 hours of the beginning of the work shift.

The NPRM also sought additional information and data on the impacts of expanding the short-haul exception provision, in part to assess its potential costs and benefits. Specifically:

- How would this change impact the motor carriers' ability to enforce the HOS rules? What enforcement difficulties may arise from expanding both the time and distance requirements?
- Would drivers drive farther or longer in the driving window under the short-haul exception? Would this be different than these loads being hauled by drivers complying with the ELD requirements?
- Would the elimination of the 30-minute break requirement for drivers that are potentially driving later in their duty period impact safety?
- What cost savings are expected from not having to comply with the ELD requirements?

In addition, some commenters to the ANPRM requested that drivers using the short-haul exception be allowed to end their work shift at a different location than the one from which they were dispatched. FMCSA therefore included a request for public comment about this suggestion, including which segments of the motor carrier industry would be impacted by it and whether it would have an adverse effect on safety, or lead to operational changes such as increased driving time per trip or driving in the 12th and 13th hour after coming on-duty.

Commenters Supporting an Increase to the 12-Hour Limit for Short-Haul Operations. Approximately 240 submissions supported the proposal to extend the maximum allowable workday under the short-haul exception from 12 to 14 hours. Many of the commenters, including drivers and individuals, stated that the additional flexibility would be helpful or would positively impact them or their company. Some of the specific benefits commenters mentioned included:

- Extending the short-haul provision to 14 hours would reduce the burden of switching to logbooks and installing ELDs;
- The provision would allow dispatchers to schedule loads and routes more efficiently;
- Short-haul drivers should be allowed to work as many hours as over the road drivers;
- The added flexibility will increase safety because short-haul drivers will be under less pressure to ''beat the clock;''

[9] Available at *https://ai.fmcsa.dot.gov/SafetyProgram/MexicanCarriers.aspx,* last accessed February 5, 2020.

• The proposed changes to the exception would reduce compliance burdens;

• The extra time will help improve transportation productivity efficiency, such as truck utilization and driver optimization, thereby reducing costs; and,

• Extending the short-haul provision from 12 to 14 hours would not negatively impact safety.

Many commenters, including OOIDA, the American Bus Association (ABA), the U.S. Chamber of Commerce, trucking industry associations and motor carriers expressed support for extending the 12-hour short-haul exception to 14 hours. These commenters believed the change would afford drivers greater flexibility by allowing them more time to complete trips during peak periods, more non-consecutive driving hours, and a larger window to return home if drivers encounter unexpected delays during their shift. Several associations representing specific segments of the trucking industry and motor carriers reiterated that the increased flexibility would positively impact them, their members, or their segment, including agricultural operations supporting aerial crop dusting, motorcoach businesses, towing and recovery companies, retailers, beverage producers and distributors, construction and manufacturing businesses, and propane gas delivery businesses. A few commenters remarked that the proposed change would provide small businesses partial relief from the chronic shortage of CDL drivers nationwide because the additional 2 hours of on-duty time per shift would increase the productivity of drivers already on the payroll.

Multiple commenters, including OOIDA, the Commercial Vehicle Safety Alliance (CVSA), and some motor carriers and drivers, stated that extending the limit for the short-haul exception from 12 to 14 hours would align the exception with existing requirements for long-haul, regional, and over the road drivers and thereby simplify enforcement and improve compliance. A few commenters, including the U.S. Chamber of Commerce and industry associations, remarked that for companies that manage a variety of trucking operations, the proposed change would facilitate compliance because more operations would follow the same set of rules making fleet management easier, and reducing the possibility of inadvertently violating the rules. Some commenters, including several motor carriers, said that the proposal would remove the need for multiple exemptions from the HOS rules and make the standards more consistent for all drivers.

Many commenters, including individuals, drivers, motor carriers, and industry associations, stated that this proposed change would allow many more drivers to qualify for the short-haul exception. A few commenters, including Transco, Inc. and the National Limousine Association, stated that the provision would allow more frequent use of the exception and include the benefit of not having to complete a driver's daily graph grid log or use an ELD. Others stated that the proposal would enable more drivers to go home at night rather than sleeping in hotels, improving not only rest, safety, and productivity, but also saving the company on costs.

FMCSA Response: The Agency agrees with those commenters who believe the proposed changes to the current short-haul provisions would provide increased flexibility for both motor carriers and drivers who utilize the exception. FMCSA continues to believe the extension of both the 12-hour limit to 14 hours, and the 100 air-mile radius to 150 air miles will provide the increased flexibility for drivers without compromising overall safety.

The Agency emphasizes, however, that the changes to the short-haul exception finalized in this final rule allow neither additional drive time during the workday, nor driving after the 14th hour from the beginning of the workday. Because the extension of the air-mile radius and the workday does not extend the maximum allowable driving time or the 14-hour window, FMCSA does not anticipate adverse impacts on safety.

FMCSA also agrees with commenters who stated that the proposed changes to the short-haul exception this final rule would allow more drivers to be consistently eligible for the short-haul exception. Thus, they will be excluded from the requirement to take a 30-minute break or prepare daily RODS, potentially with an ELD if the carrier exceeded the short-haul limits more than 8 days within a 30-day period. Carriers now have the flexibility to meet existing and future market demands for services within a larger area that could be covered within a 14-hour duty day. Services may now be provided more efficiently (*i.e.,* not incurring the costs of preparing RODS and retaining supporting documents for the days drivers did not satisfy the short-haul limits) without compromising safety.

FMCSA notes that short-haul carriers must maintain accurate records concerning drivers' schedules. These time records must document when drivers report to work and are released from work. The Agency may review carriers' records to determine whether drivers have traveled to locations beyond the distance limits.

Regarding the issue of more uniform enforcement of the short-haul provisions based on the changes in this final rule, FMCSA anticipates that the number of associations, organizations and companies seeking exceptions via 49 CFR part 381 provisions will considerably decrease and enforcement agencies will not have to monitor the list of active exemptions to avoid errors in citing carriers operating under an exemption. Because most of the exemptions are granted to groups or associations on behalf of their motor carrier members, enforcement officials need to understand the scope of the exemption so that when commercial vehicle inspections are performed, the enforcement official can make the determination whether the exemption covers the specific driver or carrier being inspected, and how the remaining HOS requirements are to be applied to that driver.[10] Several of these applications for exemption have been granted by the Agency in the past, including some that extended the 12-hour short-haul limit to 14 hours.

Commenters Seeking Flexibility Beyond the Proposed Revisions to the Short-Haul Time Limits. An individual said the provision is ''90% good'' but would not help the sub-class of short-haul drivers that primarily do ''drop and hook.''[11] Another commenter said short-haul drivers should be allowed a 16-hour day. Another individual familiar with oilfield operations said that the short-haul exception should allow up to 15 hours of driving time, since oilfield workers must often be on-site for 12 hours. TruckerNation reasoned that, while expanding the short-haul exception to 14-hours would create a uniform duty day for all CMV drivers and decrease unnecessary complexity, reducing the complexity for drivers may increase the probability of inconsistent enforcement actions.

FMCSA Response: The Agency believes this final rule provides an appropriate amount of flexibility while ensuring that safety is not compromised. As noted above, none of proposals included in the NPRM and adopted today allow truck drivers additional

[10] In the calendar year 2018, FMCSA received 6 exemption requests regarding the short-haul provision. The majority concerned an extension from 12 hours to 14 hours.

[11] This is a term that refers to when a driver drops the trailer and simply picks up a new trailer; in other words, a delivery where no loading or unloading is required.

driving time beyond the 11-hour limit provided in the current regulations (or the 13-hour limit provided with the current adverse driving conditions exceptions). Except for the adverse driving conditions provision, none of the revisions allow drivers to operate a CMV after accumulating 14 hours of on-duty time during a work shift. Consistent with the Agency's rationale for adopting the 14-hour rule, none of the revisions allow the use of multiple or intermittent off-duty breaks to extend the work-day which would in turn increase the risk of driver fatigue.

Based upon the many research studies the Agency has reviewed over the past 25 years of conducting HOS-related rulemakings, the Agency believes it would be inappropriate to consider amending the rules to allow more than 11 hours of driving time, without taking the required 10 consecutive hours off-duty (property carriers). Aside from adverse driving conditions, it would also be inappropriate to allow a 16-hour driving window, during which drivers could operate a CMV after accumulating 14 hours of on-duty time during a work shift.

Finally, the Agency does not anticipate that enforcement difficulties will arise from the expansion of on-duty hours permitted under the exception. The employer must still maintain and retain accurate time records for a period of 6 months showing the time the duty period began and ended, and the total hours on-duty each day in place of RODS (§ 395.1(e)(1)(v)).

Commenters Opposed to Increasing the 12-Hour Limit for Short-haul Operations. Some individuals and drivers raised arguments against the proposal:

- The provision would allow companies to force drivers to extend their workdays.
- Short-haul drivers should be limited to a 12-hour workday; any more would increase driver fatigue and be a detriment to safety.
- Short-haul drivers can already run a 14-hour day, so the proposal would just make HOS regulations more difficult to enforce.

Advocates argued that the proposed changes to the short-haul exception would extend drivers' duty hours, extend driving hours later into the duty period, increase the number of carriers operating under the exception, and thereby increase the number of drivers not provided adequate rest breaks, and impair enforcement.

A number of commenters, including some individual commenters and drivers, asked questions about the increased driving window of the short-haul exception:

- How will FMCSA monitor and keep carriers from allowing abuse and driving over the 11-hour driving limit?
- How will FMCSA protect against ''stacking'' (allowing a 19-hour day by combining the 2-hour adverse driving condition exception and a 3-hour ''pause'' to the 14-hour window)?
- Why are trucks without sleeper berths not allowed to run 12 hours or stop the clock during pickup or delivery?
- Why did FMCSA not consider a straight 13/16-hour day for all CMV operators?

A few commenters, including the Trucking Alliance, industry associations, and motor carriers, indicated they would support the increase from 12 to 14 hours only if an ELD were required to track a driver's HOS. The Trucking Alliance argued that having ELDs on board all trucks would ensure compliance, improve highway safety, and reduce the risk of large truck crashes. ATA stated that, while they supported the proposed expansion of the short-haul exception, they were concerned that it would increase the number of drivers who would no longer be required to use an ELD, and even that ELDs would be removed from some vehicles. Schneider National Carriers, Inc. stated that while ''neutral'' with respect to the proposed 14-hour day, it favored an ELD requirement to deter abuse.

Citing results of a membership survey, ATA concluded that the number of motor carriers that would become exempt under the proposed short-haul exceptions would be ''small but not insignificant.''

An individual said FMCSA should be more specific regarding which drivers would qualify for the proposed short-haul exception changes.

The California Highway Patrol warned that an expansion of the short-haul exception to 14 hours would make impossible discovery of 11-hour violation(s) by enforcement personnel, foster noncompliance, and would not be prudent in large States.

FMCSA Response: The Agency acknowledges commenters' concerns about extending the driving window. However, the Agency emphasizes that the HOS requirements for drivers using RODS allow up to 11 hours of driving time within a 14-hour window, following 10 consecutive hours off-duty. Short-haul drivers who exceed the current 12-hour limit for returning to the normal work-reporting location can already operate using the 14-hour window for up to 8 days in any 30-consecutive-day period without an ELD, provided they keep paper RODS for those days. If they are willing to use an ELD, these drivers could simply operate under the same HOS limits as regional and long-haul drivers. Whether to do so is a business decision on the part of the motor carrier. The extension to 14 hours will relieve some short-haul drivers of the pressure to drive at a higher speed to finish their 11 hours of driving time and return to their duty reporting location within 12 hours.

FMCSA also acknowledges the comments about monitoring compliance and enforcement challenges under the short-haul provision. However, the techniques currently used to enforce the HOS requirements for short-haul drivers will be the same whether the maximum work shift is 12 or 14 hours. FMCSA does not agree that the changes to the short-haul provision would make discovery of violations impossible or foster noncompliance with the underlying HOS requirements.

As noted above, employers must maintain and retain accurate time records for a period of 6 months showing the time the duty period began and ended, and the total hours on-duty each day in place of RODS (§ 395.1(e)(1)(v)).

Expanding the duty period to 14 hours, without increasing the existing 11 hours of driving time, will allow short-haul drivers to spend time with customers, respond to changes in market demand, such as peak holiday delivery times, and reduce the administrative burden of determining how often a driver has gone beyond 12 hours or 100 air-miles in any 30-consecutive-day period. Because the changes to the short-haul exception will not extend the workday beyond the current 14-hour driving window, FMCSA has no reason to believe that the revised rule will adversely impact safety.

Neither of the changes to the short-haul exception increase the opportunities to falsify time records. If anything, the changes remove pressure from short-haul drivers to ''beat the clock.'' Furthermore, the Agency agrees with ATA and has retained the requirement for drivers to return to the normal work reporting location at the end their work shift, rather than having the option of ending the shift at a different location. This will help to ensure compliance with the short-haul exception to the RODS requirement.

The FMCSA acknowledges commenters' overall concerns that an expansion of the short-haul provision (both the extension of the time and distance limits) would result in fewer

motor carriers and drivers being required to use ELDs. However, this fact, in and of itself, does not mean that the carriers in question would experience increased levels of non-compliance with the applicable HOS rules or increases in crash involvement. Enforcement of the short-haul provision during vehicle inspections has always presented a challenge because officials do not have access to supporting documents, specifically records indicating when the driver began the work day. However, enforcement at a terminal or the principal place of business generally provides a better opportunity to investigate compliance with the hours-of-service requirements. At such time, enforcement personnel will continue to focus on (1) the time between the driver reporting to the normal work-reporting location and the time the driver is released from work, and (2) the maximum distance the driver traveled from the normal work-reporting location. The enforcement official could request certain records that would identify where the driver traveled and the time spent at those locations. Because of the inherent nature of short-haul operations (*e.g.,* several stops for pick-up and/or delivery during the shift, or a few trips with extended periods at the delivery/service site, etc.) and the distance limitation, the Agency does not believe short-haul CDL drivers will have more opportunities or incentives to exceed 11 hours of driving time within the 14-hour window than non-CDL short-haul drivers who already have these time and distance limits. Short-haul drivers do not have the opportunity to pause the 14-hour clock while drivers are loading and unloading at the various points at which services are being provided. Safety investigators will continue to sample and examine time cards and other HOS records during compliance investigations.

The Agency reviewed its December 16, 2015, final rule establishing the ELD mandate and the accompanying Regulatory Impact Analysis. Based on the 2015 analysis, the Agency estimated that the annualized safety (crash reduction) benefit for mandating ELDs for all CMV operations (including short haul) subject to the HOS requirements would be $687 million while the annualized safety benefit for mandating ELDs for all CMV operations where the driver is required to prepare RODS would be $572 million. The values were presented in 2013 dollars at a 7% discount rate. The Agency explained:

''Safety benefits of requiring ELDs are higher when all regulated CMV operations are included in the ELD mandate . . ., but the marginal costs (ELD costs plus compliance costs) of including these operations are more than 3½ times higher than the marginal benefits. . . . [Short-haul] drivers who do not use RODS, have better HOS compliance, and much lower crash risk from HOS noncompliance. For the [short-haul] non-RODS subgroup, FMCSA's analysis indicates that ELDs are not a cost-effective solution to improving the HOS compliance of [short-haul] non-RODS drivers. This result is consistent with that of past ELD analyses.''

In consideration of the above discussion, FMCSA believes the decrease in the number of carriers using ELDs will be limited because the change impacts only the CDL holders who currently travel between 100 and 150 air-miles from the normal work-reporting location, and return to that location within 12 to 14 hours each day. And, the Agency continues to believe ELDs are not a cost-effective solution to ensuring HOS compliance for these drivers because, as discussed below, short-haul operations are essentially self-limiting due to the nature of the operations and requirement to return to the reporting location.

Commenters Supporting the Expansion of the 100 Air-Mile radius to 150 Air-Miles, but not the 12-hour limit. Multiple commenters, mostly individual commenters and drivers, expressed brief, general support for extending the radius for the short-haul exception to 150 air-miles. Many individuals and drivers said that the additional flexibility was helpful or would positively impact them, their industry, or their company. Some commenters provided the following arguments for expanding the short-haul exception to 150 air-miles:

- The proposed change would allow carriers to classify drivers as short-haul more accurately;
- Extending the air-mile radius would reduce the burden of switching to logbooks and installing e-logs;
- Increasing the 100 air-mile to a 150 air-mile radius would increase new business opportunities;
- It is difficult to run a delivery business legally with the 100 air-mile restriction;
- The exception would reduce compliance burdens; and,
- Extending the air-mile radius would not increase safety risks.

Multiple industry associations and motor carriers stated that extending the 100 air-mile radius for the short-haul exception to 150 air-miles would increase flexibility and positively impact carriers, their members, or their segment, including crop dusting, commercial trucking, and motor coach businesses, retailers, beverage manufacturers and distributors, construction, manufacturing, and propane gas delivery. The U.S. Chamber of Commerce commented that extending the radius to 150 air-miles would provide flexibility for carriers to use the short-haul provision for runs that are farther from their work reporting location and may be currently managed as a long-haul run.

Many commenters said that the proposed extension would remove the need for several HOS exceptions that have already been issued and make standards more consistent for all drivers. Several commenters, including CVSA, and some motor carriers and drivers, stated that expanding the radius from 100 to 150 air-miles would align the short-haul exception with existing HOS requirements and thereby simplify enforcement and improve compliance. The U.S. Chamber of Commerce remarked that, for companies that manage a variety of trucking operations, the proposed change would facilitate compliance because more operations would follow the same set of rules, in turn making fleet management simpler and reducing the likelihood of inadvertent violations of the rules.

As stated above, many commenters said that the proposed changes would allow many more drivers to qualify for or utilize the short-haul exception.

Many commenters argued that a 150 air-mile radius did not go far enough, suggesting that it be increased to 200, 250, or 300 air-miles. A commenter asked what difference it makes how far drivers travel provided they return to their home terminal within the allotted time, noting that a short-haul driver can legally drive almost as many miles inside a 150 air-mile radius as a long-haul driver. Other individual commenters recommended removing the mileage radius as long as drivers return home at the end of a day.

FMCSA Response: The Agency agrees with commenters who stated that the proposed changes to the short-haul exception would provide increased flexibility to motor carriers and drivers without decreasing overall safety, irrespective of whether the 12-hour limit was increased. FMCSA also agrees with CVSA and other commenters that expanding the short-haul radius from 100 to 150 air-miles would align it with existing HOS requirements in § 395.1(e)(2) and § 395.1(k) and thereby simplify enforcement and improve compliance.

FMCSA believes that a 150 air-mile radius is the appropriate size for the short-haul exception applicable to CDL holders operating in interstate commerce. However, FMCSA disagrees

with commenters requesting that the mileage should be longer or even removed altogether, and with commenters seeking removal of the requirement for drivers to return to their normal work reporting location.

Short-haul drivers with occasional assignments that necessitate traveling long distances (*i.e.,* more than 300 air miles round trip) have always been allowed to take on such assignments provided they prepare RODS for those days. And under existing regulations and the rules adopted today they may continue to conduct these operations up to 8 days within a 30 consecutive day period without incurring the costs of installing and using ELDs. The Agency believes the flexibility provided in this final rule should be sufficient and that the increased distance suggested by some commenters is far beyond what should be considered short-haul operations.

Commenters Opposed to Extending the Distance to 150 Air-miles. A number of comments were opposed to the proposal to extend the allowable short-haul air-mile radius to 150 air miles, arguing that:

- Extending the air-mile radius to 150 air-miles would reduce safety;
- Short-haul is an often-abused rule and increasing the air-mile radius to 150 air-miles is a mistake; and,
- The extension to 150 air miles will drastically reduce the number of carriers and drivers required to use ELDs, which dilutes the intent of part 395, subpart B.

Advocates argued that the proposed changes would extend drivers' duty days, extend driving hours later into the duty period, increase the number of carriers operating under the exception—thereby increasing the number of drivers not provided adequate rest breaks, and impair enforcement.

Advocates also argued that FMCSA failed to provide evidence or analysis to support its conclusion that VMT and crash risk would not increase because of the extension of the air-mile radius to 150 air miles. A few commenters, including Advocates, IIHS, and Senator Murray, cited IIHS's 2017 crash risk study indicating that the short-haul exception was associated with a statistically significant 383 percent increase in crash risk. Senator Murray and an industry association warned that a 50 air-mile radius increase would not increase the driving area in a linear manner, but instead expand the total area that drivers may operate by more than double to over 31,000 square miles.[12] Citing many studies and statistics, IBT stated that short-haul drivers would experience increased fatigue and more fatigue-related occupational injuries and crashes.

Transportation Trades Department, AFL–CIO opposed the proposal to increase the air-mile radius because it would not provide enough time for adequate sleep and would encourage more driving time, increase driver fatigue, and decrease safety. Congressman DeFazio warned that the proposed rule significantly increases driving and on-duty time.

Several commenters took issue with the Agency's use of crash data on ready-mixed concrete trucks to argue that a 14-hour short-haul work shift would not decrease safety. Commenters also relied heavily on an IIHS study which concluded that carriers using the previous short-haul exception were significantly more likely to be involved in crashes than carriers not using the exception. These comments are discussed more fully in the RIA.

The IBT emphasized that a 14-hour short-haul work shift would increase the number of hours that drivers spend behind the wheel, the number of times they get in and out of the cab and trailer, and the amount of freight they manually handle. ''Therefore, it is reasonable to expect that the incidence and prevalence of occupational injuries and illnesses for these drives will also increase. In addition, motor carriers will likely experience higher worker compensation costs and costs associated with increased crash liability.''

FMCSA Response: The Agency concludes that extending the air-mile radius will not reduce safety. The motor carriers and drivers that would take advantage of this increased flexibility continue to be limited to 11 hours of driving time during the work shift and, like other drivers subject to the HOS requirements, continue to be prohibited from driving after 14 hours from the beginning of the work shift. These two factors are most critical for ensuring safe operations among short-haul operators.

With respect to not providing enough time for adequate sleep, the Agency reiterates that drivers must still comply with the requirement for 10 consecutive hours off duty at the end of the work shift. There is no research or data provided to suggest than an increase in the air-mile radius would result in increased crash risk, specifically when drivers are still restricted in the amount of time they can spend on-duty and driving.

Furthermore, drivers must still return to their normal work reporting location at the end of each work shift, which negates the notion that drivers would be able to cover a significant portion of the operational area (approximately 70,650 square miles) during a given work shift. The study cited by Advocates, IIHS, and Senator Murray (Teoh, 2017) was based on a small sample size which was not nationally representative and the analysts did not estimate a matched-pair odds ratio restricted to drivers operating under a short-haul exception. No data was provided to suggest that driving distance was directly related to injuries received by short-haul drivers; rather, several citations provided state that most injuries suffered by short-haul drivers are experienced during non-driving tasks, such as loading and unloading.

The continued absence of an ELD requirement for short-haul operations after expansion of the operating radius will not compromise safety. These short-haul operations are essentially self-limiting because of the nature of the operations and requirement to return to the reporting location. The frequent delivery stops generally made by short-haul drivers mean they rarely approach the 11-hour driving limit. Expanding the workday from 12 to 14 hours may result in more deliveries than were possible within a 100 air-mile radius, but total driving time will usually continue to fall short of the 11-hour limit. Conversely, carriers that choose to serve new customers near the outer limit of the expanded 150 air-mile radius will draw down more of the 11-hour driving limit and therefore be unable to make as many deliveries as they could have made within the previous 100 air-mile radius. Carriers may opt for either of these alternatives, or settle on an operational compromise that allows them to serve somewhat more customers, somewhat farther away. In any case, the nature of short-haul operations, with frequent delivery stops, means that an increase in violations of the 11-hour driving limit is highly unlikely.

Since the publication of the December 27, 2011 final rule concerning hours of service (76 FR 81134), non-CDL drivers have been allowed to use, and presumably have used, the 14-hour driving window in short-haul operations, within 150 air miles of the normal work reporting location. They also operate within a 16-hour window up to 2 days per week, within 150 air miles of the normal work reporting location. In other words, any carrier that found it operationally and financially advantageous to utilize a 14-hour

[12] ''Crash Risk Factors for Interstate Large Trucks in North Carolina.'' Insurance Institute for Highway Safety, Teoh, Eric, 2017. *https://www.ncbi.nlm.nih.gov/pubmed/28882260,* last accessed February 6, 2020.

driving window has probably been doing so, at least with its non-CDL holders. Some of these carriers may choose to utilize the revised short-haul exception for CDL holders who exceed the current short-haul time and distance restrictions more than 8 times in a 30-day period to spare themselves monthly ELD charges. However, it is possible that many will retain ELDs which enable them to operate beyond the 150 air-mile radius when longer-haul opportunities arise. These carriers should experience no changes in the rate of workplace injuries because the rule will not require operational changes.

As indicated above, the expanded 150 air-mile radius may induce some carriers to make longer runs with fewer deliveries than before, which may minimize, or even eliminate, an increase in the number of stops, where IBT claims workplace injuries typically occur. In any case, IBT has not reported, nor is FMCSA aware of, any study that purports to establish a dose-response curve showing workplace injuries as a function of each hour worked.

FMCSA reviewed the comments received and the previous short-haul exception requests to determine how the rule would affect the number of drivers operating under the short-haul exception. As discussed in the RIA for this final rule, FMCSA is not estimating a significant change in the number of drivers or motor carriers operating under the short-haul exception given that the revision would only benefit CDL holders who travel between 100 and 150 air miles of the normal work reporting location, and return to that location between 12 and 14 hours from the beginning of the work shift.

While some drivers' routine schedules that were considered non-short haul may now be eligible for the short-haul exception, it is unclear if motor carriers employing those drivers will choose to remove ELDs from their vehicles. Nevertheless, the Agency continues to believe ELDs are not a cost-effective solution to ensuring HOS compliance for these drivers, as stated earlier.

Ensuring Compliance with the Short-Haul Exception. The NPRM asked how the proposed changes to the short-haul exception would impact a motor carrier's ability to ensure its drivers comply with the HOS rules, and if enforcement difficulties would arise from expanding both the time and distance requirements.

A few commenters, including ABA and motor carriers, remarked that the proposed changes to the short-haul exception would not negatively impact a motor carrier's ability to comply with the HOS rules, and instead would simplify enforcement since the revised short-haul exception would more closely align with other sections of the other HOS provisions, thus increasing compliance and enforcement.

Some commenters, including Road Safe America, the Trucking Alliance, motor carriers, and drivers warned, however, that the proposed change would increase the likelihood that motor carriers would not comply with HOS rules because neither RODS nor ELDs would any longer be required. TruckerNation suggested that FMCSA consider a standardized way for a driver or motor carrier to make the distinction that they operate under the short-haul exception to ensure compliance with the exception. ATA stated that, while they understand that an ELD requirement is impractical for some drivers who are engaged in local, daily activities, motor carriers should be required to have some form of an electronic device that tracks on-duty and driving times.

The Customized Logistics and Delivery Association stated that timecards and run distances are recorded by all operational systems of a carrier ensuring compliance and enforcement.

A few commenters stated that the proposed changes to short-haul operations would not create any new enforcement difficulties. Some carriers said that no enforcement difficulties would arise because all their trucks have ELDs and all route locations and durations would be monitored. Motor Transport Association of Connecticut said that the short-haul exception would make enforcement easier for law enforcement officials because it would be uniform for CDL and non-CDL drivers.

Road Safe America, ATA, Advocates, and several motor carriers warned, however, that enforcement would be harder because there would be no legitimate way of tracking hours driven or worked without requiring RODS or ELDs. Road Safe America reasoned that enforcement difficulties would increase because the additional 50 air-miles could expand driving ranges into multiple States, which would require coordination between officers of different jurisdictions to determine if a driver is legally employing the short-haul exception.

ATA suggested that FMCSA examine additional ways to track and enforce short-haul drivers' on-duty and driving times during the duty day. TruckerNation suggested that FMCSA establish an ''operating policy'' for officers to determine the allowable radius to ensure consistent enforcement actions.

FMCSA Response: The Agency agrees with the commenters who remarked that the proposed changes to the short-haul regulations will simplify motor carriers' ability to comply with and enforce the HOS rules. The extension of the 100 air-miles radius to 150 air-miles makes the distance radius consistent with the distance limitation for short-haul CMV drivers of property-carriers who are not required to possess a CDL, which will simplify enforcing requirements of the short-haul exceptions for motor carriers that use both CDL and non-CDL drivers. Likewise, extending the short-haul duty period to 14 hours makes the duty period consistent with the rule for drivers of property-carriers who do not operate under the short-haul provision. For carriers that have both short-haul and long-haul property operations, this will simplify their enforcement of the 14-hour duty period.

FMCSA does not agree that these changes to the short-haul exception will increase the likelihood that motor carriers will not comply with HOS rules. Motor carriers must still ensure that short-haul drivers using the exception do not drive more than 11 hours for property carriers or 10 hours for passenger carriers and that they return to the same location they left from at the beginning of their work shift. Expanding the duty period to 14 hours without increasing the existing 11 hours of drive time will allow short-haul truck drivers more flexibility to spend time with customers, respond to changes in market demand such as peak holiday delivery times, and reduce the administrative burden of determining how often a driver has gone beyond 12 hours or 100 air-miles in any 30-consecutive day period. This change would also somewhat align with the 14-hour rule for drivers of property-carrying vehicles who do not operate under the short-haul provision.

FMCSA does not agree that motor carriers using the short-haul provision should be required to use ELDs. Because drivers would be returning to their original duty reporting location at the end of their shift, FMCSA will continue to allow motor carriers with short-haul operations the option to use duty reporting location time records rather than a record of duty status or ELD. Although motor carriers that conduct short-haul operations may use electronic tracking for payroll or other purposes, there is no requirement that the time records be electronic. In addition, motor carriers are not required to use the short-haul provision and can require their short-haul drivers to use an

ELD or other type of electronic device if they choose.

In addition to simplifying the motor carrier's ability to comply with and enforce HOS for their drivers, the Agency agrees with the commenters who stated that the changes to the short-haul operations provision would also simplify enforcement since the air-mile radius distance will be consistent for both CDL and non-CDL drivers.

As for comments that enforcement would be harder without required RODS or ELDs and that the 150 air-mile radius could expand driving into multiple States, changes do not increase the difficulty of enforcement of the FMCSRs. Enforcement personnel will be required to use the same investigative techniques as they currently do to verify radius of travel, driving time, and start time for the work shift. Generally, enforcement personnel use an online air-mile radius calculator to determine compliance with radius requirements and would not require assistance from officers of different jurisdictions when the radius extends into adjacent States. FMCSA will continue to work with the Commercial Vehicle Safety Alliance's (CVSA) committees assuring uniform training development and delivery, and enforcement tolerances. This on-going partnership will ensure smooth implementation of the modified short-haul provision. Many State officials already have experience dealing with non-CDL short-haul drivers who are currently provided a 14-hour driving window and 150 air miles within which to operate and this first-hand knowledge will be helpful in developing the training materials.

More Behind-the-Wheel Time During the Driving Window. The NPRM asked if drivers would drive farther or longer in the driving window (*i.e.,* spend more of the work shift behind the wheel) if the short-haul exception was revised. FMCSA also asked whether the time behind the wheel for these operations would differ from that of drivers complying with the ELD requirements.

Many commenters, including motor carriers and drivers, argued that drivers would not drive farther or longer for various reasons, including that drivers would be required to return to their original locations, that the 11-hour maximum driving rule would still apply, and that the current miles and radius are sufficient.

Citing studies, the U.S. Chamber of Commerce stated that, while shifts in driver schedules would occur, overall increase in driver schedule intensity would not. The commenter reasoned that, because most drivers never approach the maximum daily or weekly allowable driving limits, only the administration of driving shifts would change.

OOIDA and a few motor carriers argued that a short-haul driver may drive farther with the expanded air-mile radius, especially in more rural areas, but noted that the proposal still maintains the current 11-hour driving limit.

Some commenters said the exception has the potential to increase driving hours and miles. Road Safe America and IBT argued that short-haul drivers would now drive longer, especially since RODS would not be required and law enforcement would not be able to ensure that a driver did not drive for the entire 14-hour duty period. IBT added that surveys show that drivers are already being required to perform or will likely be assigned work that would increase miles traveled or entail more non-driving tasks that extend the workday to 14 hours, all of which will increase their fatigue and decrease safety. A few commenters stated that interstate and intrastate operations would likely use the additional 50 air-miles and additional time to service customers who would otherwise receive service through a separate operational schedule.

Commenters, including OOIDA and other industry associations, asserted that short-haul drivers would not drive any further or longer than those complying with ELD requirements. Some industry associations argued that many carriers would use ELDs regardless of whether they could operate under the short-haul exception.

The ABA remarked that ELD providers could serve as an invaluable resource to FMCSA for purposes of providing data on use of the short-haul exception (*i.e.,* frequency of use and distances traveled).

FMCSA Response: The Agency agrees that drivers will generally not spend significantly more time behind the wheel on a daily basis than they currently do, especially because they are limited to 11 hours of driving time. With respect to the notion that drivers will drive farther by falsifying time records due to the lack of an ELD, the Agency notes that the exception allowing short-haul drivers to use time cards as opposed to RODS has long existed in the HOS rules. Nothing in the changes to the short-haul exception creates additional opportunities for short-haul drivers to falsify time records. The normal work-reporting location requirement remains applicable to short-haul drivers.

As to ABA's comment regarding ELD data as a valuable resource, it must be noted that 49 U.S.C. 31137(e)(1) prohibits the Secretary from using data from ELDs except ''to enforce the Secretary's motor carrier safety and related regulations.'' Therefore, the ELD data cannot be used, outside the context of enforcing part 395, to analyze either the frequency of use of the short-haul exception or the distances traveled by drivers operating under the short-haul exception. Furthermore, given that carriers using ELDs for short-haul operations do so on a voluntary basis, such data would not be representative of the wide variety of short-haul operations.

Cost Savings from Not Using ELDs. FMCSA asked for comments on the cost savings that would be expected from not having to comply with the ELD requirements for operations out to a radius of 150 air-miles. Commenters noted that cost savings could range from $240 to $1,700 per truck, including the costs for purchase of the device, data maintenance, and technical support. Comments from industry associations stated that the cost savings would be at least $500 to $1,000 per truck, including costs for equipment, maintenance, repair, and back office administration. ABA stated that, due to the diverse nature of the motor coach industry, some segments of the driver population would continue to use ELDs. Road Safe America warned that the cost savings associated with the avoidance of ELDs would be negligible compared to the far greater costs of significantly increased risk of fatigue-related crashes associated with extending the short-haul exceptions. ATA suggested that FMCSA assess the motor carrier populations affected by the changes to the short-haul exception to better estimate the industrywide cost savings of the proposed rule.

FMCSA Response: FMCSA acknowledges commenters' views. FMCSA previously estimated a per-truck cost of $419 per ELD, and notes that this is within the range provided by commenters.[13] It is, however, unclear how many motor carriers and drivers will no longer be required to use ELDs. For instance, although some bus routes will no longer need ELDs, the motor carrier may choose to retain the device to use the bus on longer-haul routes, should the occasion arise. Further, some motor carriers use and will retain ELDs for business reasons, even if not required by regulation. Under the changes made to the short-haul exception today, these motor carriers will not necessarily see a reduction in the number of ELDs. FMCSA is not

[13] 80 FR 78292, December 16, 2015.

quantifying a cost savings in this rule due to the uncertainty surrounding the number of vehicles that will no longer use ELDs.

FMCSA reviewed the comments and tried to estimate the number of drivers who would be covered by the short-haul exception. This is discussed in detail in section 2.4 (Baseline for Analysis) of the RIA for the final rule. Inadequate data prevented FMCSA from estimating the number of additional drivers who will likely operate under the revised short-haul exception. The Agency has determined that the carrier-reported information on drivers operating within 100 air miles of their work reporting location is a good proxy for the count of drivers who are eligible for, and will operate under, the short-haul exception following the implementation of this final rule.

Return to the Normal Work Reporting Location. Some commenters to the ANPRM requested that drivers using the short-haul exception be allowed to end their work shift at a different location than the one from which they were dispatched. FMCSA requested public comment on this issue, including which segments of the motor carrier industry would be impacted by such a change and whether the change would have an adverse effect on safety, or lead to operational changes such as increased driving time per trip or driving in the 12th and 13th hour after coming on-duty.

Many commenters, including the U.S. Chamber of Commerce, Advocates, motor carriers, and drivers, argued that short-haul drivers should not be allowed to end the work shift at a different location. Road Safe America, CVSA, the Trucking Solutions Group, and Sysco Corporation said that removing this requirement would contravene the original intent of the short-haul exception. Trucking Solutions Group added that such a change would give short-haul companies a competitive advantage over companies that is ineligible to operate under the exception. ATA warned that the provision to return to the same location ensures compliance with the short-haul requirements; otherwise, enforcement would have no way to ensure drivers adhere to the air-mile radius and on-duty limits. The Trucking Alliance, Road Safe America, and CVSA said that short-haul drivers should be required to return to their work reporting location, because otherwise drivers would be able to ''leapfrog'' from one location to another across the country, extending the effective air-mile radius beyond 150 air miles. Advocates argued that allowing carriers to return to a different location would effectively turn them into traditional long-haul operations minus the required rest break and ELDs.

Many commenters, however, including TruckerNation, OOIDA, ABA, and industry associations, supported allowing drivers to end the shift at a different location, citing various benefits, including minimizing driving time and distance traveled, reducing wear on the fleet, aligning with the diverse nature of the trucking industry, maximizing the allowable on-duty period, leading to more productive and flexible schedules, and not negatively impacting safety. Many industry associations stated that returning to the same location does not necessarily promote safer driving habits and that modern technology allows businesses to monitor the start and stop locations of their drivers via tracking apps and electronic communications.

The Minnesota Trucking Association remarked that its members were split on this question, with some supporting allowing drivers to end at a different location.

FMCSA Response: The Agency has opted not to change the requirement that short-haul drivers return to their work reporting location at the end of their shift. The current requirement is consistent with operations that are generally considered short-haul. As commenters noted, the current requirement assists enforcement personnel in determining the applicability of the short-haul exception and prevents abuse. If the requirement were changed, enforcement personnel would not have a beginning reference point from which to calculate the 150 air-mile radius. The provision would be difficult to enforce and could lead to abuse as drivers could potentially ''leap-frog'' across the country without any way to verify their hours of service.

The 30-Minute Break in Relation to the Short-Haul Provision. The NPRM asked if eliminating the 30-minute break requirement for drivers who are potentially driving later in their duty period would impact safety.

A few commenters, including industry associations, said that the elimination of the 30-minute break requirement would not negatively impact safety for various reasons, including that short-haul drivers often make frequent stops throughout the on-duty period, are less likely to be affected by driving-related fatigue, and will have the flexibility to stop as needed to rest under the additional time provided in this rule. The Trucking Alliance said the 30-minute break is not necessary because short-haul drivers would be performing many non-driving activities each day. Citing research studies, the Petroleum Marketers Association of America argued that, while the studies did not specifically address the 30-minute break, they indicate short-haul drivers are less likely to experience reduced safety performance due to the nature of the job. TruckerNation stated that the proposed changes to the 30-minute break would mean ''short-haul operators will not reach the 8th consecutive hour of drive time without the opportunity to have an on-duty, not driving change in duty status'' and would eliminate regulatory complexity by making the short-haul exceptions the same as HOS regulations for all drivers.

IBT, citing research and studies, said that eliminating the 30-minute break requirement for short-haul drivers would have an adverse impact on safety as data demonstrates that crash risk significantly increases after the 7th consecutive hour of a driver's workday.[14] Another commenter, a driver, warned that the elimination of the 30-minute break for drivers who are potentially driving later in their duty period would impact safety because drivers would not obtain adequate rest and their performance could suffer. Advocates asserted that by asking this question, FMCSA is ''admitting'' that the proposed changes would result in drivers being scheduled to drive later in their duty period.

FMCSA Response: FMCSA concludes that the expansion of the criteria for short-haul operations and the associated elimination of the 30-minute break requirement for these drivers will not have an adverse impact on safety. As noted above, the primary factors influencing safety outcomes for short-haul drivers are the continued adherence to the 11-hour driving time limit and the continued prohibition against driving after the 14th hour of the beginning of the work shift. FMCSA acknowledges that in the 2011 final rule and during the subsequent litigation, the

[14] IBT cited: 65 FR 25539 (Apr. 2000); Saccomano, F., et al., ''Effect of Driver Fatigue On Truck Accident Rates,'' Urban Transport and the Environment for the Twenty-First Century (ed. L.J. Sucharov), Computational Mechanics Publications, Southampton, U.K., 439–446 (1995); Saccomano, F. and Shortread, J., ''Truck Safety: Perceptions and Reality,'' the Institute for Risk Reduction, Ontario, Canada, 157–174 (1996).; Lin, T. et al., ''Time of Day Models of Motor Carrier Accident Risk,'' Transportation Research Record 1467: 1–8, Transportation Research Board, National Research Council, (1994); Frith, W., ''A Case-Control Study of Heavy Vehicle Drivers' Working Time and Safety,'' Proceedings of the Australian Road Research Board Conference, 17(5): 17–30 (1994) and Jovanis, J.P., Wu, K.F., and Chen, C., ''Hours of Service and Driver Fatigue—Driver Characteristics Research,'' FMCSA (April 2011), DOT docket number FMCSA–2004–19608–27614.

Agency argued that, on their face, the safety benefits of an off-duty 30-minute break requirement applied to short-haul operations as well as long-haul. The D.C. Circuit Court of Appeals, however, found that applying the 30-minute break requirement to all drivers despite the clear distinctions between short-haul and long-haul operations was not justified in the record.[15] The Agency has received no new evidence to compel a different finding.

Moreover, there is no safety basis for expanding the definition of short-haul but continuing to require a 30-minute break for the subset of short-haul CDL drivers who operate between 100 and 150 air miles, or who drive between the 12th and 14th hour of coming on duty. To the extent that the debate and comments about the safety impact of relieving this group of drivers of the need to comply with the 30-minute break provision lingers, FMCSA believes it is best resolved below in the Agency's decision concerning changes to the 30-minute break.

The changes adopted in this final rule result in the break being required after 8 consecutive hours of driving time, rather than 8 hours after coming on-duty. That change alone would make the 30-minute break inapplicable in nearly all short-haul operations in that they would not drive 8 consecutive hours without having a break of at least 30 minutes from the driving task.

FMCSA reviewed the Blanco study and notes that it found that any type of break (both off-duty, and on-duty not driving) was beneficial to the driver.[16] Furthermore, it has been demonstrated in multiple research efforts that time on task is a leading contributor to driver fatigue. The requirement for a break after 8 hours of consecutive driving time addresses this concern more adequately than requiring a break after 8 hours of coming on-duty, and short-haul drivers have frequent breaks from driving throughout the day. Therefore, FMCSA disagrees with the commenters who stated that allowing short-haul to be excepted from the requirement would have an adverse impact on safety and continues to except short-haul drivers from the 30-minute break requirement despite the extension of the duty day to 14 hours.

Comments about the Relationship Between Changes to the Short-Haul Exception, Adverse Driving Conditions Exception and ELD Mandate. CVSA and Schneider National Carriers, Inc. stated that short-haul carriers using the proposed exception without using an ELD should not be eligible for workday extensions, like that granted for adverse driving conditions. The commenters reasoned that short-haul drivers would be familiar with the routes and weather in their operating territory and would be able to abuse the program if allowed to claim an extra 2 hours of driving time. A few commenters, including the Trucking Alliance, U.S. Chamber of Commerce, industry associations, and motor carriers, stated FMCSA should require ELDs regardless of the distance traveled.

TruckerNation suggested that FMCSA include clear regulatory language explaining that short-haul operators are exempt from the ELD mandate and are only required to prepare and maintain time cards. The Trucking Alliance suggested harmonization between the interstate CDL short-haul operations exception and the interstate non-CDL short-haul operations. An industry association developed a ''Daily Driver'' concept as an alternative to the short-haul exception and suggested specific language.

FMCSA Response: FMCSA believes that the revised short-haul exception adopted today maintains safety while providing motor carriers and drivers greater flexibility. The Agency is not persuaded that various alternatives suggested by commenters would achieve that goal. Requiring ELDs for any subgroup of the short-haul carriers would essentially negate the short-haul exception because the daily preparation of RODS would make the regulatory scheme for short-haul operations largely the same as other operations. The extension of the workday from 12 to 14 hours for returning to the original work reporting location without increasing the existing 11 hours of driving time will put short-haul operations on essentially the same footing as long-haul operations with the distinction being that they must return to the normal work reporting location. Increasing the 100 air-mile radius distance to 150 air-miles will allow short-haul drivers greater flexibility. Together, these provisions will reduce potential pressure on drivers for timely completion of their duty day.

Drivers who normally operate under the short-haul exception but occasionally find it necessary to exceed those limits can already drive within a 14-hour window for up to 8 days in any 30-consecutive day period without ELDs, provided they utilize paper RODS, or for more than 8 days in any 30-day consecutive period with an ELD. Whether to remain within or exceed the short-haul limits is strictly a business decision on the part of the carrier, and the Agency has not identified safety issues associated with the use of either of these options.

The NPRM did not propose to harmonize the short-haul rules for CDL and non-CDL drivers (§ 395.1(e)(1) and (2), respectively) concerning the allowance of a 16-hour window up to 2 days in a 7 consecutive day period for non-CDL holders. The Agency has not witnessed a demand for that level of flexibility since implementing the ELD mandate either in the form of requests for guidance or clarifications, or applications for exemptions. Therefore, the Agency did not propose such a change in the NPRM and considers the matter to be beyond the scope of this rulemaking.

Commenters Suggesting Industry-Specific Exceptions. A few trade groups requested that FMCSA allow industry-specific exceptions for certain short-haul operations, including for hazardous materials, concrete pumps, construction vehicles, and waste and recycling. The National Lumber and Building Material Dealers Association urged FMCSA to provide the lumber and building material industry a short-term ELD exception stating that many of their members use short-term rentals of 30 days or less to meet high demand periods or instances where vehicles have been taken out of operation for repairs or service. The American Farm Bureau Federation suggested allowing drivers hauling live animals and agriculture to rest ''at any point during their trip without counting this rest time against their HOS allotments and allowing drivers to complete their trip, regardless of HOS requirements, if they come within 150 air-miles of their delivery point.''

The National Private Truck Council, Inc. suggested requiring drivers to document their adherence to the 150 air-mile radius and 14-hour time requirements through GPS telematics, paper log, timecard notation, or some equivalent means. The American Fuel and Petrochemical Manufacturers asked for additional information from FMCSA on the potential impacts of the proposed short-haul exception on recordkeeping requirements, including the current 8-in-30 exception.

FMCSA Response: The motor carrier industry is diverse. As noted above the Agency has granted multiple exemptions for certain industry segments and there are various statutory and regulatory exceptions for several industry segments. Many of the

[15] *American Trucking Ass'n* v. *FMCSA,* 724 F.3d 243, 253 (D.C. Cir. 2013).

[16] ''The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations.'' Blanco, et al. (2011). Available in the docket for this rulemaking.

commenters cited the exemptions and exceptions. While the exemptions granted were for certain industry segments, the exemptions generally fall within the 150 air-mile distance and/or 14-hour time constraint, such that this final rule addresses the issue in general terms rather than specific industry segments. Also, given that the Agency did not propose specific industry carve-outs in the NPRM, considering such regulatory exemptions is outside of the scope of this rulemaking.

The requirements for applying for an exemption are provided in 49 CFR part 381 subpart C of the FMCSRs. After receiving an application for exception from the FMCSRs, the Agency will publish a notice in the **Federal Register** as required by § 381.315 and request public comment on whether the Agency should grant the request. FMCSA cannot grant an exemption unless it would likely achieve a level of safety equivalent to that achieved by complying with the rule from which an exception is sought.

In recent years, the Agency has received numerous requests for exemptions related to the short-haul provisions; several of these requests for exemptions have been granted (available at *www.fmcsa.dot.gov/exemptions*), while others have been denied.

FMCSA did not propose or consider new alternative means for motor carriers to document short-haul drivers' hours under the revised short-haul exception, and is not adding any new recordkeeping requirements at this time. Furthermore, the changes to the short-haul provisions in this final rule in no way relieve carriers and drivers of the responsibility for complying with the current recordkeeping requirements found in § 395.1(e)(1)(v), which are consistent with 6-month recordkeeping requirements for other records. See, *e.g.,* § 395.8(k)(1) (requiring retention of RODS and supporting documents for 6 months); § 395.22(i) (requiring motor carriers to retain for 6 months a backup copy of ELD records).

4. Adverse Driving Conditions

NPRM. The Agency proposed allowing drivers encountering adverse driving conditions a driving window of up to 16 hours (for property carriers) within which to complete up to 13 hours of driving, or a duty period of up to 17 hours (for passenger carriers) within which to complete up to 12 hours of driving.

FMCSA also sought additional information and data on the impacts of changing the adverse driving conditions provision, in part to assess its potential costs and benefits. Specifically:

- Would this change cause drivers to travel farther in adverse driving conditions?
- Would this change drivers' behavior when encountering adverse driving conditions? How so?
- Understanding adverse driving conditions cannot be predicted, would drivers utilize this provision more often after this change?

Additionally, FMCSA requested public comment about potential modifications to the definition of ''adverse driving conditions.'' Specifically, the Agency requested input on the suggestion that knowledge of the existence of adverse driving conditions should rest with the driver rather than the dispatcher. Alternatively, FMCSA asked whether the requirement for lack of advance knowledge at the time of dispatch should be eliminated, and whether the current definition of ''adverse driving conditions'' should be modified to address other circumstances.

Commenters Supporting an Extended Driving Window. The changes proposed in the NPRM would apply to drivers of both property-carrying CMVs, normally subject to a 14-hour driving window, and passenger-carrying CMVs, normally subject to a driving window of 15 non-consecutive hours.

Numerous commenters, including OOIDA, CVSA, the U.S. Chamber of Commerce, ABA, IBT, motor carriers, industry associations, and individuals expressed support for the proposed adverse driving conditions provision. Many individuals and drivers stated that the extension would relieve the pressure, stress, and fatigue on drivers. Most commenters reasoned that granting drivers more flexibility would improve road safety.

Some commenters argued that road conditions are not always accurately reflected in weather radar maps or other technologies, so drivers should have the flexibility and discretion to determine when it is safe to drive. The California Highway Patrol said the provision would allow driving at a reduced speed or delay operations while in adverse driving conditions, which may reduce the risk of crashes and improve road safety. Keep Truckin, Inc. based its support on anonymized and aggregated data of daily traffic patterns and speed fluctuations in Washington, DC and Atlanta, Georgia. An industry association said extending the driving window for adverse driving conditions would greatly benefit the delivery of farm supplies.

While supporting the proposal, OOIDA, ABA, and the United Motorcoach Association expressed concern that the current adverse driving condition rules are not enforced consistently. The U.S. Chamber of Commerce and several industry associations said their members rarely use the exception, although the expansion would be helpful in extreme conditions.

FMCSA Response: FMCSA agrees that by adding time to the duty day for this exception, drivers may reduce their speed or delay operations when they experience unanticipated adverse driving conditions.

FMCSA agrees that radar and technology may not be entirely accurate and thus leaves the driver/dispatcher discretion in this final rule. FMCSA is not aware of any issues with enforcement of or compliance with the adverse driving conditions exception.

Commenters Requesting Additional Flexibility for Adverse Driving Conditions. Many commenters stated that the proposal did not go far enough. Among their comments:

- The provision should include unforeseen traffic conditions, such as emergency road repairs, congestion, and traffic accidents to allow drivers to compensate for ever worsening traffic congestion and infrastructure problems.
- Drivers should be allowed to decide how to respond to road conditions.
- The proposed changes to the extended driving window were not sufficient.

A few industry associations, motor carriers, and individual commenters argued that drivers should have more discretion over the hours in which they drive in potentially adverse driving conditions and that this provision did not grant enough flexibility to drivers.

TruckerNation stated that increased clarity and supporting guidance is needed, asking how a driver would be required to document the use of this provision on RODS to enable its increased and proper use. Many industry associations and individuals also commented that the current definition of ''adverse driving conditions'' should be clarified. Several commenters asked that the definition be expanded to address detention time or concerns specific to various sectors of the industry.

FMCSA Response: This final rule modifies the adverse driving condition exception to allow extension of the driving window by up to 2 hours, consistent with the 2-hour extension of driving time permitted under the current regulations. Though some commenters argued for an expansion of the current definition of ''adverse driving conditions'' to include circumstances such as unforeseen

traffic-related conditions, a close look at the definition shows that these road conditions are already covered. The HOS rules currently define ''adverse driving conditions'' as ''snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent based on information known to the person dispatching the run at the time it was begun.'' The definition specifically refers to ''unusual road and traffic conditions'' which would cover most of the concerns mentioned by commenters. FMCSA does not believe it is necessary to further expound on the traffic conditions, as they are generally covered. However, the definition is modified for clarity and to recognize that the adverse driving conditions exception might apply based on knowledge of a driver (in addition to the dispatcher) under certain circumstances.

Commenters Opposed to Additional Flexibility for Adverse Driving Conditions. Some commenters opposed the extension of the driving window. They said that:

- The extension would encourage drivers to continue driving when conditions are poor.
- Dispatchers and drivers would extend the day without any adverse driving conditions or otherwise abuse the provision to get around a violation.
- This provision would cause an enforcement problem.

Several commenters, including IIHS, AASM, Senator Murray, and Transportation Trades Department, AFL–CIO, argued that the proposal would worsen driver fatigue. Advocates warned that extending the driving window enables driving later in the duty period, which research has associated with increases in crash risk, stating that FMCSA provided no analysis of that risk. IIHS cited studies on the safety and health consequences for drivers of disrupted circadian rhythms. Congressman DeFazio warned that the proposed rule would significantly increase on-duty time.

The Trucking Alliance opposed this provision, saying that the definition of ''adverse driving conditions'' is unclear, allowing drivers to exploit the exception and use it to extend their driving window every day. Conversely, the Kentucky Driver's Association commented that, because the proposed rule could be abused to pressure drivers to drive beyond the normal 14-hour cap, it should be limited to ''verifiable'' events.

Advocates stated that FMCSA's comparisons of this proposal with duty period extensions permitted by the Federal Aviation Administration (FAA) and the Federal Railroad Administration (FRA) ignore the regulatory and operational differences among these Administrations and do not include any of the FAA's or FRA's limitations or additional requirements, nor has FMCSA performed any analysis to indicate that such comparisons are correct and meaningful.

FMCSA Response: FMCSA acknowledges that the proposal could allow drivers who experience adverse driving conditions to operate later into the duty day. The Agency also acknowledges that parallels with the airline and railroad industries are not exact. However, this change would create an incentive for drivers to drive more slowly or take a break from driving during adverse driving conditions, given that, as a result of this change, they will have up to 2 additional hours to either complete their run or to reach a safe location without exceeding the maximum daily driving windows. Additionally, FMCSA notes that surveys by two major trade associations demonstrate that the adverse-driving-conditions exception is not frequently used. Although changes intended to clarify the definition and improve flexibility may result in an increase in the use of the exception, there is little reason to expect that either the increase in use (or its potential abuse) will be significant.

FMCSA also disagrees that this change would increase enforcement problems. Drivers relying on the adverse driving conditions exception would routinely annotate their RODS to avoid an HOS violation; consistent with current practice, a law enforcement officer could investigate the merits of the claimed exception.

Commenters Discussing the Impact on VMT. Several commenters, including OOIDA and many other industry associations, argued that this provision would cause drivers to drive more safely, not greater distances, in adverse driving conditions. Currently drivers may drive up to 2 additional hours but they may be pressured to complete driving within the 14-hour window. The expansion of the driving window would enable them to drive more cautiously.

Conversely, AASM argued that the provision would cause drivers to drive longer distances. They argued that the assumption that drivers would reduce speed or delay operations during adverse driving conditions is not supported by scientific study. An individual argued that this provision will cause drivers to travel farther distances. ABA and an industry association said that predicting the effect of the provision on travel distance is impossible.

FMCSA Response: This rule would not allow an increase in driving time, but it would increase the driving window from 14 to 16 hours when an adverse driving condition is encountered. FMCSA asked whether the extension of the driving window in the event of adverse conditions will result in an increase VMT. No commenter provided responsive data, and none may exist. Ultimately, each adverse driving condition will create a unique set of unpredictable circumstances that drivers and motor carriers will react to—not plan for. Accordingly, motor carriers will not be able to plan for additional deliveries, trips, or VMT, and the final rule does not quantify the impact of these driving changes on VMT. The FMCSA believes that any increase in VMT will be negligible because the total amount of driving time remains unchanged by this rule.

Comments About the Impact of the Exception on Driver Behavior. The NPRM asked whether the proposed rule would change drivers' behavior upon encountering adverse driving conditions. Multiple commenters, including OOIDA, ABA, IBT, other industry associations, and motor carriers said the provision would improve safety by allowing drivers the flexibility to find a safe place to park and avoid adverse driving conditions. However, the NSC cited research and studies arguing that the longer an individual is awake, the higher the likelihood of safety-critical mistakes.

Advocates warned that abuse of the proposed exception would likely increase because carriers could coerce drivers to complete trips when conditions are adverse or because drivers could adjust their evaluation of the risk and continue to drive despite the opportunity to use the exception to stop. Either way, Advocates said FMCSA provided no analysis of these possibilities and their effect on safety.

Other commenters, including Western States Trucking Association and Sysco Corporation, said that the provision will not change driver behavior.

FMCSA Response: FMCSA agrees with commenters that it is hard to predict, on an aggregate level, what behaviors may change. However, trade association surveys suggest that this exception is not frequently used. FMCSA does not believe the level of use or abuse will change significantly because of this rulemaking.

Nevertheless, FMCSA agrees with commenters that the additional flexibility provided by the revised

exception will assist drivers in avoiding perilous conditions. FMCSA emphasizes that this change will not increase the driving time available during adverse driving conditions. By increasing duty time without increasing driving time, this change will provide the drivers with more non-driving options to safely respond to an adverse driving condition.

FMCSA does not believe that changes to the adverse driving conditions exception will mean that drivers are awake longer. The studies raised by commenters did not look at workdays with opportunities for rest or sleep in them. Additionally, as pointed out by OOIDA, ABA, IBT, other industry associations, and motor carriers, drivers may utilize the additional duty time provided by this change to take a break from driving that they may not have taken otherwise.

Comments About the Frequency of Adverse Conditions. The NPRM asked drivers whether they expected to use the proposed exception more often. Many commenters predicted that drivers would use the exception more often, especially if the definition were clarified.

The U.S. Chamber of Commerce, however, does not anticipate increased use because its motor carrier members do not regularly use it in the first place. Other commenters also stated that drivers will not use the provision more often. The National Association of Small Trucking Companies said that the only reason for a change in the frequency of use would be if a truck driver began working in a new region. A motor carrier argued that driver behavior, in terms of making the decision whether to use the exception or the frequency of use often to use the exception, will not change because the definition of ''adverse driving conditions'' remains unchanged.

FMCSA Response: FMCSA does not believe the changes adopted today are likely to increase significantly the use of the exception, but is unable to estimate changes in the frequency on an industry-wide level. The change provides drivers with a better opportunity to use the additional driving time already allowed under the current rule such that the adverse conditions that necessitate driving beyond the 14th-hour of the work shift may be addressed provided the driver can reach an appropriate stopping point without exceeding 13 hours of driving time.

Definition of Adverse Driving Conditions; Driver and Dispatcher Knowledge. The NPRM asked for public comment about potential modifications or additions to the definition of ''adverse driving conditions.'' Commenters asked for both a broader definition, as well as a more specific definition.

More Detailed Definition. OOIDA, TruckerNation, other industry associations, and motor carriers said the definition should be expanded to include all unpredictable conditions that a driver may face, such as traffic congestion, vehicle accidents, construction, or road closures. Multiple commenters and drivers said the proposal should specifically define adverse driving conditions to embrace non-weather conditions, including Federal and State safety inspections, unexpected loading or unloading issues at shippers and receivers, and truck breakdowns.

Schneider National Carrier, Inc. recommended that the adverse driving conditions exception be available to drivers only once per week. Schneider added that the exception should not be allowed to be combined with the use of the split sleeper berth option or the proposed split-duty provisions. The American Moving and Storage Association recommended also allowing carriers to use the adverse driving conditions exception for conditions known before dispatch.

TruckerNation suggested requiring an option on an ELD for a driver to upload evidence or a detailed annotation to establish and document adverse driving conditions.

Road Safe America, the Trucking Alliance, ATA, Advocates, a few industry associations and motor carriers said that the definition should be clarified, but not expanded. Advocates and Uline believe adverse driving conditions should be defined as accurately and narrowly as possible, and that the situations under which the exception may be used should be clarified to minimize abuse. ATA conducted a survey of its members, some of whom said that ''adverse'' should be narrowly defined to include only Federal or State declared emergencies, while others favored the inclusion of all unforeseen road conditions.

Broader Definition. OOIDA recommended replacing the term ''adverse'' with ''unforeseen'' to be more encompassing. The U.S. Chamber of Commerce proposed a definition in which ''adverse driving conditions'' would be any conditions which could not be predicted at the time of dispatch, thereby granting flexibility to both drivers and dispatchers. A few industry associations recommended that FMCSA expand the definition to include specific provisions for livestock haulers. CVSA recommended making the definition like the Canadian federal definition.

Under the current definition, adverse driving conditions must not have been known to the dispatcher when the run began. The Agency asked whether the driver's lack of knowledge should be used as a precondition for the exception. FMCSA also asked whether the requirement for lack of advance knowledge at the time of dispatch should be eliminated.

Multiple commenters, including OOIDA, ATA, and motor carriers, said the driver knows the status of road conditions better than a dispatcher could, so the driver should be responsible for making safety decisions. TruckerNation stated that advance knowledge should not be a requirement and that, as with all safety decisions, discretion should be left to the driver. ATA acknowledged that dispatchers may be aware of adverse driving conditions before drivers, so dispatchers should continue to notify drivers.

OOIDA and the Association of American Railroads and the American Short Line and Regional Railroad Association said the requirement for the lack of advance knowledge at the time of dispatch should be eliminated because it prevents drivers from using the provision if road conditions change after dispatch.

No Changes. Other commenters, including IBT, California Highway Patrol, and the Truckload Carriers Association, recommended that there be no changes to the current definition.

FMCSA Response: FMCSA declines to make the definition applicable to specific sectors of the industry or to cover situations not contemplated by the current definition. The Agency also declines to exclude situations currently covered. Many of the suggested expansions would be covered under a reasonable interpretation of the current definition; inconsistent interpretations might be addressed best by training and further outreach efforts. Although the Agency does not believe the current definition is vague, it nonetheless has revised the definition for enhanced clarity.

Agency guidance concerning the exception makes clear that it covers only situations that occur after a driver started her or his trip.[17] This final rule does not deviate from that principle. The exception does not cover detention time, breakdowns, or enforcement

[17] See Interpretations under the HOS rules, § 395.1, *https://www.fmcsa.dot.gov/regulations/title49/part/395.*

inspections—factors that are to be anticipated in the industry. Nor does it cover things such as road construction or detours except when they could not reasonably be known before the driver started driving, such as accidents that significantly interfere with traffic movement.

The exception is mainly meant to cover situations outside a driver or motor carrier's control, and the Agency does not expect it to be invoked frequently. Thus, the Agency declines to limit its use to a fixed frequency or in combination with unrelated provisions of the HOS regulations or to expand on the current industry practice of documenting use of the exception on a driver's RODS.

However, the Agency believes clarification is appropriate given the common availability and use of technology that can provide motor carriers and drivers notice of adverse weather (and sometimes road) conditions. The definition has been revised somewhat to recognize that drivers on the road can evaluate situations that could not be foreseen before dispatch or the start of a duty day (or after a sleeper berth period). As revised, the definition covers conditions that are unknown, or could not reasonably be known, to the driver immediately before the start of the duty day or before resuming driving after a sleeper berth break, or to the motor carrier immediately before dispatching the driver. FMCSA believes that this change to the definition will lessen the need for future regulatory guidance. Furthermore, this change will not increase available driving time beyond what is currently allowed by the exception.

5. 30-Minute Break

NPRM. FMCSA proposed to require a 30-minute break if more than 8 consecutive hours of driving (instead of 8 hours after coming on-duty) has passed without at least one 30-minute change in duty status. This would allow any 30 minutes of non-driving time to qualify as a break, *i.e.,* on-duty (not driving) time, off-duty time, or sleeper berth time. Many drivers have interruptions of their driving time during normal business operations, such as loading or unloading a truck, completing paperwork, or stopping for fuel.

Under the current rules, the break is: (1) Required to be off-duty time during which no work, including paperwork, may be performed, and (2) triggered after 8 hours on-duty time, regardless of the time spent driving. The flexibility provided by the NPRM would have allowed these normal breaks from driving to count as an interruption of the 8 hours of driving status (*i.e.,* ''time on task'' in the research literature), provided the break lasts at least 30 minutes. The proposed changes to the 30-minute break provision would not have allowed an increase in maximum driving time during the work shift or driving after the 14th hour from the beginning of the work shift.

The NPRM sought information and data on the impacts of changing the 30-minute break provision, in part to better assess its potential costs and benefits. Specifically, the Agency asked:

- Would you take fewer total breaks from driving with this change? How many and when would those breaks have occurred during your route?
- Do you expect to still take a 30-minute break if you have less than 8 hours of drive time? If so, would you take that break on-duty or off-duty?
- If you no longer need to take a 30-minute break, how would you expect to spend this additional time?
- How would this provision change your scheduling and planning?
- Do you expect to drive more miles or hours based on this change? Do you expect to be able to complete additional ''runs''?

Additionally, the Agency acknowledged that many commenters to the ANPRM specifically asked that the 30-minute break requirement be eliminated entirely and considered that as an alternative under E.O. 12866. However, the NPRM said that, without the benefit of further information, it would not be appropriate to eliminate the 30-minute break. Given that the flexibility allowed in the proposal would alleviate many of the concerns expressed by commenters, in the NPRM FMCSA sought further information on the effect of eliminating the break requirement altogether. Specifically:

(1) What would be the safety impact of eliminating the required break, potentially allowing up to 11 consecutive hours of driving?

(2) What has been the cost to your company of complying with the 30-minute break rule since the compliance date for that rule, July 1, 2013?

(3) How often do work shifts require an individual to drive more than 8 hours without at least a 30-minute change in duty status?

(4) Would eliminating the break requirement result in greater cost savings than the current proposal? If so, what would be the amount of these cost savings?

Commenters Supporting the Proposed Revision. Numerous commenters, including individual commenters, drivers, and some industry associations, supported the proposed changes for a variety of reasons, among them:

- Increased driver control and flexibility;
- Shortened on-duty hours, reducing fatigue;
- Increased control over break-time activities (*i.e.* using the break to load or fuel);
- Simplified implementation; and,
- Short-haul trip benefits.

Several commenters said, counterintuitively, that the 30-minute break made them more tired. The implication of such arguments seems to be that the focus on driving creates tension, which dissipates when drivers stop. Having relaxed against their will for 30 minutes, drivers may then find it difficult to recover their previous intensity, which feels to them like exhaustion—but does not have that effect. Virtually all commenters argued that the 30-minute break did not improve safety, and some even asserted that increases in CMV crashes and fatalities in recent years are attributable to counter-productive regulations like the 30-minute rule.

ATA described new research that the association believed suggested that there is additional benefit relative to an on-duty break. The Trucking Alliance and CVSA also said that a 30-minute on-duty break would not decrease safety for drivers needing a break.

The International Food Service Distributors Association stated that, in some cases, the proposal would allow food-service distributors to add additional stops to a route, maximizing efficiency and reducing traffic.

FMCSA Response: The Agency agrees with the commenters that the 30-minute off-duty break generates pressure as drivers attempt to keep on schedule. Under certain circumstances, it may even push them to drive more aggressively than they would otherwise have done in the latter half of the 14-hour driving window, despite the fact the total driving time up to that point may have been limited by a variety of factors.

Identifying causal connections between particular rules and safety outcomes is difficult, many factors play a role in most crashes, and separating their individual contribution is often impossible. The best evidence on the effect of breaks is provided by the 2011 Blanco study, discussed in the NPRM and elsewhere in this rule.[18] While

[18] ''The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations.'' Blanco, 2011. Available in the docket for this rulemaking.

FMCSA has concluded that both on-duty breaks and off-duty breaks provide safety benefits essentially equivalent to those produced by an off-duty break (as well as productivity benefits), the Blanco study demonstrates that breaks of at least 30 minutes—whether on or off-duty—reduce SCEs in the hour after driving resumes.

FMCSA notes that many of the commenters who opposed a break of any kind provided inconsistent arguments. For example, the National Association of Small Trucking Companies quoted with approval a long-time member who said that ''99.9 percent of all drivers will take a break of more than 30 minutes in any given 8-hour period'' and therefore ''the 30-minute mandatory break should disappear.'' But if drivers routinely take 30-minute breaks during the work shift, as others have also noted, neither the previous break nor the amended break requirement adopted today could be as disruptive as many commenters have claimed. Furthermore, a large number of commenters asserted that they should be allowed to take breaks when they feel tired, not when an inflexible rule requires a break. Leaving aside the fact that the FMCSRs never prevent drivers from taking breaks, many of these comments imply that the 30-minute break typically interrupts drivers' schedules at the 8th hour. In fact, both the previous regulations and this final rule allow drivers to take a break at any point during an 8-hour period, offering latitude to select a convenient time.

Exemptions from the 30-minute break previously granted by FMCSA do not imply that the rule is ineffectual, as some commenters claimed, but rather that certain operations already include significant break time; require driver attendance when transporting hazardous cargo without other work, similar to § 395.1(q); depend on oversize vehicles which, because of their unusual size, are difficult to park for a break; or involve the transport of live animals that could be endangered by a break.

Commenters Opposed to the Proposed Revision. Some individuals and drivers stated, without further explanation, that the 30-minute break should remain as off-duty time. Some individual commenters and drivers said they did not want to allow an on-duty 30-minute break because:

- Drivers would have to adjust schedules.
- Managers might abuse the on-duty break.
- Taking the break on-duty could fatigue drivers.

Some commenters, including a few industry organizations, cited research discussing fatigue, arguing that the 30-minute break must be off-duty to ensure that a driver will physically rest. The Truck Safety Coalition, et al. cited evidence saying that ''driving time that occurred later in the driver's workday, due to performing nondriving tasks earlier in the workday, had a negative safety effect.'' [19]

Advocates argued that many of FMCSA's claims, reasoning, and examples presented for the proposed changes to the 30-minute break are not valid, deeply flawed, inapplicable, and lack explanation and/or analysis.

FMCSA Response: After reviewing the comments, FMCSA has not changed its conclusion that it should allow the 30-minute break to be met either by on-duty, not-driving time or by off-duty time. Also, the Agency concludes it is appropriate to allow drivers the discretion to take the 30-minute break at any point in the 8 hours after they start driving. Blanco, et al. (2011) found that the 1-hour window after a break from driving is associated with a significant reduction in SCE rate compared to the 1-hour window before a break.[20] The study found that any type of break was beneficial to the driver, whether the break consisted of work activities or rest. To counter the effects of driving time that occurred later in the driver's workday, the Soccolich article stated ''breaks were found to be a successful countermeasure to address the negative effects of time-on-task.''

Estimating a Change in SCEs with the 30-Minute Break. The NPRM requested comments regarding how to estimate the change in SCEs from this temporal shift in the 30-minute break. Safety for the Long Haul Inc. provided research and data sources, arguing that SCEs are no longer a valid safety measurement and that FMCSA should choose another method of estimation. Safety for the Long Haul Inc. also commented on Naturalistic Driving (ND) Mixed-SCE Methodology studies, arguing that current SCE datasets are invalid, and that the SCE definition should be reconsidered. No other comments were received regarding the use of SCEs.

FMCSA Response: FMCSA disagrees with the comments criticizing the Agency's use of SCEs. SCEs are a commonly used crash surrogate in traffic safety and naturalistic driving research. Crash surrogates are safety-related events (*e.g.,* time to collision, lane deviations, near crashes, etc.) used to evaluate crash potential and probabilities. Crash surrogates have been extensively used in the traffic safety research domain. There is a long history of methodologically diverse transportation studies that used crash surrogates as dependent variables. Crash surrogates are regularly used by research organizations worldwide, including an active research community affiliated with the Transportation Research Board (TRB) of the National Academies of Sciences, Engineering, and Medicine (National Academies) on this topic. The Subcommittee on Surrogate Measures of Safety, sponsored by the TRB Committee on Safety Data Evaluation and Analysis, meets regularly to discuss issues pertaining to crash surrogates. The goal of the subcommittee is to examine the suitability and use of surrogate measures of safety to address the lack of available crash data. One output of this subcommittee is a document that provides an overview of how surrogate measures are defined and used in transportation research.[21]

Although the features of SCEs can vary based on the research question posed in a particular study, an SCE has been defined as a ''crash, near-crash, crash-relevant conflict, or unintentional lane deviation'' that often has a measurable kinematic signature, including longitudinal and lateral acceleration, yaw rate, and active safety system activations.[22] SCEs, such as near-crashes, are used in various transportation modes. In rail, SCEs are defined as ''risk to the health and safety of any individual or risk of damage or destruction to any property, or any incident which may reduce the safety or integrity levels of any item of Railway Infrastructure.'' [23] The FAA also relies

[19] Soccolich, S., Blanco, M., Hanowski, R., Olson, R., Morgan, J., Guo, F., & Wu, S.C. (2013) ''An analysis of driving and working hour on commercial motor vehicle driver safety using naturalistic data collection.'' Accident Analysis & Prevention, Volume 58, 2013, Pages 249–258.

[20] Blanco, M., Hanowski, R., Olson, R., Morgan, J., Soccolich, S., Wu, S.C., & Guo, F. (2011) ''The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations.'' Available in this rulemaking docket.

[21] ''Surrogate Measures of Safety'', Tarko, Davis, Saunier, Sayed, and Washington, 2009. Available at *https://www.semanticscholar.org/paper/Surrogate-Measures-of-Safety-Tarko-Davis/30801fa815159dad645eed6f1e3dbbbba2f30150,* last accessed January 21, 2020.

[22] ''The Risk of a Safety-critical Event Associated with Mobile Device Subtasks in Specific Driving Contexts'', Fitch, Hanowski, Guo, 2014. *https://vtechworks.lib.vt.edu/bitstream/handle/10919/49687/NSTSCE%20Final%20Report%20for%20Cognitive%20Distraction.pdf* and *https://www.annualreviews.org/doi/abs/10.1146/annurev-statistics-030718-105153,* last accessed January 21, 2020.

[23] *https://www.lawinsider.com/dictionary/safety-critical-event,* last accessed January 21, 2020.

on crash surrogates, including near midair collisions. As outlined in the Aeronautical Information Publication, crash surrogates identify unsafe conditions, allowing issues to be corrected before they lead to crashes and other incidents.[24]

SCEs and crashes have common characteristics (*e.g.,* kinematic signature), but SCEs occur with greater frequency than crashes. As crashes are rare events, studying SCEs allows researchers to gain insight into the factors that lead to crash genesis. The National Academies advocated several principles to determine the validity of using specific types of SCEs as crash surrogates.[25] Use of SCEs is warranted if: (1) It can be shown the SCEs have causal factors identical to those of crashes, and (2) there is a strong correlation in the frequency of SCEs over different driving scenarios. To illustrate these principles in practice, a study found that near crashes provided useful information for the risk of distraction while driving.[26] A different study found g-force thresholds were a good predictor of crash risk.[27]

Crash surrogate research has a long history in surface transportation safety that can be traced back to the 1960's. For example, ''Traffic Conflict'' has been used in many studies as a measure of crash potential, and the Federal Highway Administration developed ''guidelines to diagnose safety and operational problems and evaluate the effectiveness of safety countermeasures, 'Traffic Conflict Techniques for Safety and Operations.' '' [28] Many research organizations, both in the USA and internationally, use SCEs in their naturalistic driving studies. A sample of organizations involved in naturalistic driving research includes: University of Michigan Transportation Institute; the Pennsylvania State University; University of Iowa; University of California; the Virginia Tech Transportation Institute (VTTI); the Volpe National Transportation Systems Center; SAFER Vehicle and Traffic Center in Sweden; SWOV Institute for Read Safety Research in The Netherlands; and several European consortium projects including UDRIVE, INTERACTION, PROLOGUE, DaCoTA, and 2–BE–SAFE.[29]

Thus, the use of crash surrogates in understanding traffic crashes is nothing new, but rather a well-established and acceptable approach in understanding crash genesis across multiple transportation modalities. Furthermore, naturalistic driving research is widely used, by many research organizations in both the USA and internationally, and is an accepted, valid method for studying traffic safety.

Changes to Schedules due to the 30-Minute Break Changes. In the NPRM, FMCSA asked if drivers would take fewer breaks from driving under the proposed change and when those breaks would occur. Survey results from OOIDA indicate that its members did not anticipate taking fewer breaks as a result of the proposed changes. Other commenters said that they would not change their schedules. A commenter involved in local operations did not expect any impact on the frequency or timing of breaks. The National Propane Gas Association thought the changes would allow a rest break later in the driver's route, relieving some driving-related fatigue.

Some commenters said that additional flexibility would increase their ability to plan the required break times around deliveries, and thus increase their efficiency. For example, representatives from the propane industry noted that these changes would increase their ability to respond to short-term fluctuations in demand, such as holiday times, extreme cold spells, and the recent corn crisis in the Midwest. Some other commenters, however, believed that these changes would not have any impact on scheduling. ACPA noted that the current requirements for an off-duty break affect its members' ability to efficiently schedule concrete deliveries.

FMCSA Response: The comments received on this question show that the changes to the 30-minute rule are not likely to have an adverse impact on safety because the changes would not significantly decrease the number of breaks being taken by drivers. Based on the feedback provided during the public listening sessions and the written comments provided by individuals identifying themselves as drivers, the Agency believes drivers routinely take breaks during their work shifts. While those off-duty breaks may be less than 30 minutes in duration, and other breaks may be recorded as on duty/not-driving, they have and will continue to take place. FMCSA emphasizes that the only drivers who are no longer required to take a 30-minute break under this provision are drivers who drive for less than 8 hours in a day and who are therefore unlikely to accumulate the levels of fatigue necessitating a mandatory 30-minute break in addition to breaks that naturally occur during their workday.

FMCSA believes the increased scheduling flexibility afforded to drivers with these changes may increase their efficiency, but is unlikely to significantly affect driving hours or the amount of work completed in a shift. The changes will give drivers greater ability to plan their breaks, and allow for on-duty activities such as time spent at loading docks to fulfill the break

[24] *https://www.faa.gov/air_traffic/publications/atpubs/aip_html/part2_enr_section_1.16.html,* last accessed January 21, 2020.

[25] ''Commercial Motor Vehicle Driver Fatigue, Long-Term Health and Highway Safety; Research Needs.'' Rizzo et al., 2016. *https://books.google.com/books?hl=en&lr=&id=zEnnDAAAQBAJ&oi=fnd&pg=PR1&dq=The+National+Academies+Rizzo,+Matthew+2016&ots=U7c3zm0EN4&sig=lwF1gq6CttdIOtsIV0C8puIE-kI#v=onepage&q=The%20National%20Academies%20Rizzo%2C%20Matthew%202016&f=false,* last accessed January 21, 2020.

[26] ''*Near Crashes as Crash Surrogate for Naturalistic Driving Studies*'' Guo, F., Klauer, S.G., Hankey, J.M., Dingus, T.A. (2010) *https://doi.org/10.3141/2147-09,* last accessed February 7, 2020.

[27] ''Do Elevated Gravitational-Force Events While Driving Predict Crashes and Near Crashes? American Journal of Epidemiology. 2012;175(10):1075–1079.'' Simons-Morton et al., 2012. *https://doi.org/10.1093/aje/kwr440,* last accessed February 6, 2020.

[28] ''Traffic Conflict Characteristic-Accident Potential at Intersections.'' Perkins and Harris, 1968. *https://www.trid.trb.org/view/1310479,* last accessed February 6, 2020.

[29] ''Characteristics of turn signal use at intersections in baseline naturalistic driving.'' Sullivan, Bao, Goudy, and Konet, 2015. *https://dx.doi.org/10.1016/j.aap.2014.10.005, Last accessed February 6, 2020.* ''Screening Naturalistic Driving Study Data for Safety-Critical Events.'' Wu and Jovanis, 2013. *https://doi.org/10.3141/2386-16* Last accessed February 6, 2020. ''Prevalence and Distribution of Young Driver Distraction Errors in Naturalistic Driving.'' Carney, McGehee, and Reyes, 2014. *https://www.ppc.uiowa.edu/publications/prevalence-and-distribution-young-driver-distraction-errors-naturalistic-driving, Last accessed February 6, 2020.* Ohn-Bar, Martin, Trivedi, 2013. ''Driver hand activity analysis in naturalistic driving studies: challenges, algorithms, and experimental studies.'' *https://cvrr.ucsd.edu/publications/2013/hand_JEI13.pdf,* Last accessed February 6, 2020. ''Estimating Crash Risk. Ergonomics in Design: The Quarterly of Human Factors Applications.'' Dingus, Hanowski, and Klauer, 2011. ''Distracted Driving and Risk of Road Crashes among Novice and Experienced Drivers.'' Klauer et al., 2014. *https://www.nejm.org/doi/full/10.1056/NEJMsa1204142, last accessed February 6, 2020.* ''Exposure-risk analysis of large truck naturalistic driving data'' *https://trid.trb.org/view/1156430,* last accessed February 6, 2020. ''Naturalistic Study of Truck Following Behavior.'' Knipling, et al. (2005). *https://trid.trb.org/view/1156430.* ''Naturalistic Study of Truck Following Behavior.'' Nodine, Lam, Yanagisawa, and Najm, 2017. *https://doi.org/10.3141/2615-05,* last accessed February 6, 2020. ''Analysis of Naturalistic Driving Study Data: Safer Glances, Driver Inattention, and Crash Risk.'' Victor, et al., 2015. *https://www.researchgate.net/publication/281107412_Analysis_of_Naturalistic_Driving_Study_Data_Safer_Glances_Driver_Inattention_and_Crash_Risk,* last accessed February 6, 2020. ''Exploring application areas for naturalistic driving observation studies: potential for research on ITS.'' van Nes, N., Backer-Grondahl, A., and Eenink, R., 2010. *https://www.swov.nl/en/publication/exploring-application-areas-naturalistic-driving-observation-studies-potential-research,* last accessed on February 6, 2020. *http://www.udrive.eu/files/SWOV_Factsheet_Naturalistic.pdf,* last accessed on January 21, 2020.

requirement. This increased flexibility could increase VMT for an individual driver during a given shift, but would affect only the amount of work performed in shifts taking more than 13.5 hours to complete. This is because the 30-minute break during a shift that is less than 13.5 hours would not result in reaching the 14-hour limit, and thus would not limit the amount of work performed.

FMCSA analyzed recent data from VTTI and found that shifts that ran 13.5 hours or more comprise less than four percent of all shifts.[30] For these shifts that do require more than 13.5 hours of duty time to complete, the new break requirements may allow for a shift to be completed on time rather than carry over to the next duty period. However, FMCSA does not anticipate that increasing a given shift by 30 minutes of on-duty time would enable motor carriers to meaningfully increase aggregate VMT. FMCSA notes that ACPA members currently operate under an exception that allows for on-duty time (*i.e.,* the drivers are not necessarily free to leave the work site to pursue activities of their own choosing) to fulfill the 30-minute off-duty break as long as no work is being performed.[31] This final rule will allow for ACPA members to work under the same conditions as provided by this exception, and thus FMCSA does not expect any changes in the scheduling abilities of concrete pumping operations. Therefore, FMCSA did not estimate impacts resulting from changes to schedules or planning that may result from the final rule.

Impact on Individuals Driving Less than 8 Hours. The NPRM proposed that the break occur no later than after 8 hours of driving, and the Agency asked drivers who drive less than 8 hours if they anticipated taking breaks, even though it would not be required.

A few individuals and trade associations said drivers would still take a break with less than 8 hours of driving. Several commenters said they would take their break off-duty if driving less than 8 hours. Several others said they would take their break on-duty if driving less than 8 hours. IBT said more than half of its survey respondents would take their 30-minute break as off-duty time even if less than 8 hours of driving time had passed since their last change in duty status.

OOIDA provided survey statistics showing that over 50 percent of survey respondents anticipate that drivers would still take a break with less than 8 hours driving, and most of those drivers would continue to take an off-duty break.

A few trade associations said that the answer would change for each individual driver due to personal scheduling choices. TruckerNation stated that the opportunity to use on-duty, not driving time as a 30-minute break would encourage and incentivize drivers to use their break when they might otherwise be interrupting the driving task.

Conversely, a few drivers said they would not take a break if they were driving less than 8 hours.

FMCSA Response: Although the comment responses were almost equally split, the Agency believes most drivers who drive for fewer than 8 hours would take some sort of break during the work shift due to the naturally occurring breaks (such as when cargo is loaded or unloaded) that occur during the workday. FMCSA believes the on-duty breaks from the time on task would be beneficial and the Agency encourages drivers to take a break irrespective of whether they have been operating the vehicle for 8 consecutive hours.

Comments About the Impact of the 30-Minute Break on VMT. FMCSA asked whether the changes to the 30-minute break provision would result in drivers increasing their VMT or driving hours. Commenters responded that the proposed changes would increase the flexibility to plan their schedules. Commenters were divided, however, on how this increased flexibility would affect driving and work time. OOIDA believes that increased flexibility would improve driving efficiency, thus allowing drivers to increase VMT while not increasing driving hours. Some commenters, including industry associations, believe that this change would allow drivers to add additional deliveries to their shift. Still others, including drivers and an industry association, believe that this change would not have a significant impact on VMT, driving hours, or the number of deliveries completed by drivers in a shift.

FMCSA Response: FMCSA disagrees with commenters that the increased flexibility afforded to drivers by these changes will increase aggregate VMT. FMCSA does not expect the changes to increase significantly driving hours or the number of deliveries that drivers can complete in a shift. Due to the 14-hour window for an on-duty day, the only way that the proposed changes would affect the amount of work completed in a shift is if the shift would have required more than 13.5 hours. Under the previous rules, shifts of 13.5 hours or more would need to have been truncated for an off-duty break after 8 hours of on-duty time. As noted above, FMCSA analyzed data on work hours from VTTI and found that less than four percent of all shifts surpass the 13.5-hour limit where they would be impacted by the proposed changes.[32]

For truckload (TL) drivers, FMCSA does not expect that the proposed changes would allow drivers to complete additional deliveries. One way that the proposed changes may affect work hours is that, if a driver has a run that requires more than 13.5 hours of duty time to complete, the new break requirements may allow completion of the run in one day rather than having it carry over to the next duty period. In contrast to TL drivers, the proposed changes may enable less-than-truckload (LTL) drivers to add additional deliveries to their routes or shift deliveries from one driver to another. The Agency, however, does not have any data or information to suggest that the proposed changes would result in an increase in the aggregate number of deliveries or the amount of freight moved in the LTL sector. Therefore, FMCSA has not estimated a change in VMT or deliveries resulting from the final rule.

Total Elimination of the Break. The NPRM asked a series of questions about changes to the 30-minute break.

(1) What would be the safety impact of eliminating the required break, potentially allowing up to 11 consecutive hours of driving?

Some commenters argued that drivers rarely drive for the full 11 hours, and that there was thus no need for a 30-minute break rule. Drivers and carriers also noted that drivers take bathroom and food breaks within their 11-hour driving window, regardless of a mandated break.

Several commenters questioned the safety of eliminating the 30-minute break. The NSC cited research showing that the longer people are required to perform a task, the more their cognitive and physical functions (attention, speed, and accuracy) decline. Road Safe America argued that the break is important for safety, noting research included in the 2011 HOS rule which found that crash risk was elevated with fatigue. Citing numerous studies, Advocates argued that the body of research shows that longer driving hours are directly related to increased crash risks from at least the 7th through the 11th consecutive hour of driving. IBT, citing research, claimed that as pay

[30] See the RIA for more details.

[31] 83 FR 54975, November 1, 2018.

[32] See the RIA for more details.

per hour increases, but work hours decrease, and safety increases.

OOIDA, on the other hand, said eliminating the break would allow drivers to more safely identify and schedule opportunities to rest at truck stops and other locations for safe parking. CVSA said it does not believe there is evidence that the 30-minute break improves safety. A few motor carriers and individual drivers said that the 30-minute break forced them to pull over at inopportune or dangerous times.

(2) What has been the cost to your company of complying with the 30-minute break rule since the compliance date for that rule, July 1, 2013?

OOIDA said the cost of the rule is a mile per minute, costing drivers 30 miles per break, in addition to causing longer days, late deliveries, and emotional stress. The American Moving and Storage Association responded that eliminating the 30-minute break could provide a full extra workday for drivers each month and save $10,000 per month in labor costs.

(3) How often do work shifts require an individual to drive more than 8 hours without at least a 30-minute change in duty status?

OOIDA commented that § 395.3(a)(3)(ii) requires drivers to take a 30-minute off-duty break if more than 8 hours have passed since the end of their last off-duty or sleeper berth period.

(4) Would eliminating the break requirement result in greater cost savings than the current proposal? If so, what would be the amount of these cost savings?

OOIDA responded that eliminating the break requirement outright would result in greater cost savings and safety benefits than the current proposal at an estimated cost savings of one mile per minute. OOIDA supported the proposed 30-minute on-duty option, but would prefer elimination of the break.

The question about the value of a 30-minute break elicited sharp disagreement between safety groups and IBT on the one hand and industry representatives and CVSA on the other. The former cited studies showing that fatigue increases and cognitive abilities decline with time on task. They argued that eliminating the 30-minute break requirement would potentially allow up to 11 consecutive hours of driving, with significantly increased safety risks. The latter said the rule increases stress as drivers try to complete a run before the end of the 8th hour, with adverse effects on safety. Furthermore, they claim that the rule is unnecessary because most drivers take at least a 30-minute break during the workday, though some of these breaks combine on- and off-duty time. Drivers are compelled to take an additional break that has no added value. CVSA noted that the rule is hard to enforce and that evidence for its safety benefits is not clear.

FMCSA Response: The changes to the 30-minute break rule are adopted as proposed in the NPRM. FMCSA continues to believe that 11 consecutive hours of driving should not be allowed, even though relatively few drivers may undertake such runs. The Blanco study, discussed elsewhere in this final rule, shows that breaks reduce SCEs in the hour of driving after a break. However, because that study did not clearly demonstrate a significant difference between off-duty and on-duty breaks, the Agency is allowing drivers the discretion to take either type of 30-minute break at any point before the 8th consecutive hour of driving. Some of the commenters who oppose the break requirement admit that an on-duty break provides real-world advantages since it allows drivers to perform routine but necessary non-driving tasks, such as refueling, instead of sitting idle and frustrated, while the clock ticks off 30 minutes. Although many commenters implied—erroneously—that the previous rule required a break at a specific time, the rule adopted today will enable drivers who already take on-duty (or partially on-duty) 30-minute breaks earlier in their shift to use those breaks in fulfillment of the requirement. Finally, this final rule is easily enforceable, as ELD records show whether a vehicle is in motion or stopped.

While OOIDA argued that the cost of the 30-minute break is the driver's per-mile rate times the 30 minutes he or she is not allowed to drive (at an assumed 60 mph), this statement does not provide a basis for a macro-economic estimate, since there are no data on the number of drivers who drive beyond the 8th hour, the average per-mile rate for truck transportation, or the average speed of CMV operations. OOIDA's conclusion that eliminating the break requirement would generate net benefits is therefore speculative at best. In any case, FMCSA believes CMV operators should not drive more than 8 hours without a 30-minute time off-task break.

New Opportunities If the 30-Minute Break Were Eliminated. The NPRM asked drivers how they planned to spend additional time if the 30-minute break was totally eliminated. A few respondents said they would spend more time at home with the more flexible 30-minute break, while others said they would perform non-driving tasks, and have time for extra deliveries. Most respondents to the OOIDA survey said that more flexibility would allow them to complete their work for the day earlier and get home sooner. IBT commented that its survey respondents indicated that a 30-minute break is necessary to reduce fatigue and that carriers are likely to use the proposal to pressure drivers to use breaks to work. TruckerNation reasoned that, with or without the 30-minute break requirement, drivers are still going to stop for various reasons, including to refuel, eat, check load securement, and use rest areas.

FMCSA Response: FMCSA agrees that the increased flexibility that could have been afforded by the elimination of the 30-minute break may have had the potential for increasing the efficiency of drivers but would have been unlikely to affect significantly driving hours or the amount of work completed in a shift. This is, as noted above, because an increase in work is only likely for those shifts taking more than 13.5 hours of duty time to complete.

Alternatives to the Single 30-Minute Break. Many commenters, mostly individuals and drivers, argued that the 30-minute break should be split up into 10- or 15-minute periods to increase flexibility. Some drivers said only 15 minutes were needed to refuel, do a load check, or use the restroom, arguing that 30 consecutive minutes was an unnecessary regulation.

OOIDA, a few other industry associations, and motor carriers also said the 30-minute break should be split up into shorter periods of the drivers' choosing. OOIDA cited driver surveys, saying most drivers preferred splitting the break into smaller periods to increase driver performance and alertness. A driver and Truckers for a Cause both cited research that sedentary behavior is a health risk, and drivers should be encouraged to stop multiple times to increase circulation.

FMCSA Response: FMCSA acknowledges that multiple breaks may be desirable to commenters but notes that the structure of these breaks would add unnecessary complexity to compliance monitoring. The Agency also emphasizes that many drivers will no longer be obligated to take a break, and that, if a driver wishes to take more frequent, shorter, breaks in addition to the mandatory break, he or she is free to do so.

6. Split Sleeper Berth

NPRM. FMCSA proposed to modify the sleeper berth rule that allows drivers to satisfy the required 10 hours off-duty by taking two off-duty periods, provided that neither period is less than 2 consecutive hours and one period

consists of at least 7 consecutive hours in the berth, and to allow both periods to be excluded from the 14-hour driving window.[33] This sleeper berth exception would provide drivers greater operational flexibility, while affording them opportunity to obtain the necessary amount of restorative sleep.

Motor carriers and other stakeholders were encouraged to submit driver record data supporting their comments in a manner that would not reveal the identity of an individual driver. Given research showing that many drivers typically sleep a little more than 6 consecutive hours, FMCSA also requested comments and any supporting data on the possibility of a 6- and 4-hour split break. Specifically, FMCSA asked:

- How often do you use the sleeper berth provision under the current regulations? Would you use the sleeper berth provision more or less if the proposed changes are finalized? How much more or less?
- How would this provision change your scheduling and planning?
- How often would you utilize the 7–3 hour split during an average week?
- Would you expect to get the same amount of sleep in the 7-hour period as in the current 8-hour period?
- Would you expect to drive more miles or hours based on this change? Do you expect to be able to complete additional ''runs''?

Specific Comments on Research. Advocates argued that the split sleeper berth proposal was inappropriate in view of research the Agency relied upon in previous HOS rulemakings. Advocates also disagreed with FMCSA's assertions concerning the relevance of certain studies cited in the NPRM preamble. The specific studies Advocates discussed are listed below:

- *Mollicone 2007.*[34]
- *Belenky 2012.*[35]
- *Short 2015.*[36]
- *Soccolich 2015.*[37]
- *Mitler 1997.*[38]
- *Hanowski 2007.*[39]
- *Van Dongen 2013.*[40]
- *Dinges 2017.*[41]
- *Sieber 2014.*[42]
- *Maislin 2001.*[43]
- *Wylie 1998.*[44]
- *Caldwell 1997.*[45]
- *Garbarino 2004.*[46]
- *Sallinen 1997.*[47]
- *Moore-Ede 1996.*[48]

There is no need to repeat the discussion of these studies included in the preamble to the NPRM. Since Advocates responded with extensive quotations from the same studies, we have also refrained from repeating their comments here. FMCSA's responses to Advocates' concerns are summarized below.

FMCSA Response: FMCSA acknowledges that the studies cited above do not focus on the specific parameters of the NPRM's sleeper berth proposal. Nonetheless, these studies provide valuable information that supports the safety rationale for retaining the basic framework of the current HOS requirements, with certain revisions. The basic framework, excluding recordkeeping requirements, consists of an 11-hour limit on driving time following 10 consecutive hours off-duty and a prohibition on driving after an individual has accumulated 14-hours of on-duty time during a work shift. That framework also prohibits drivers from driving after accumulating either 60 or 70 hours of on-duty time in 7 or 8 days respectively, but permits them to restart their 60- or 70-hour ''clock'' by taking at least 34 consecutive hours off duty. In addition, the HOS framework allows drivers who use sleeper berths to split the required 10 off-duty hours into two periods, with the longer (in the berth) of sufficient length to allow meaningful rest.

After reviewing the research reports referenced in the NPRM and the Advocates' comments about them, FMCSA reaffirms its assessment that the changes adopted in this final rule will not decrease safety. The rule provides additional flexibility that is neither contrary to the research cited nor inconsistent with the framework described above.

The most relevant research addresses interstate CMV drivers, followed by studies of other types of workers with safety-sensitive duties in settings where fatigue could have similarly adverse driving consequences. The Agency could not control, but always kept in mind, the demographics of the study subjects and the extent to which their schedules were comparable to segments of the motor carrier industry.

For example, the average age of the subjects in the Mollicone study was 29.3 years (ranging from 21 to 49), versus the average age of 46.9 among truck drivers, as estimated by the U.S. Bureau of Labor

[33] This rulemaking does not address sleeper berth provisions unique to the drivers of CMVs transporting passengers, 49 CFR 395.1(g)(3).

[34] Mollicone, D.J., Van Dongen, H.P.A., Dinges, D.F., 2007. ''Optimizing Sleep/Wake Schedules in Space: Sleep During Chronic Nocturnal Sleep Restriction With and Without Diurnal Naps,'' *Acta Astronautica,* 60, 2007. 354–361. Available in the docket for this rulemaking.

[35] Belenky, G., Jackson, M.L., Tompkins, L., Satterfield, B., & Bender, A., 2012. ''Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health,'' Washington, DC: FMCSA. Available in the docket for this rulemaking.

[36] Short, M. A., Agostini, A., Lushington, K., & Dorrian, J., 2015. ''A Systematic Review of the Sleep, Sleepiness, and Performance Implications of Limited Wake Shift Work Schedules,'' Scandinavian Journal of Work, Environment and Health, 41(5):425440. Available at *https://www.ncbi.nlm.nih.gov/pubmed/26103467.*

[37] Soccolich, S., Hanowski, R., & Blanco M., 2015. Evaluating the Sleeper-berth Provision: Investigating Usage Characteristics and Safety-Critical Event Involvement. (Report No. 17–UI–046). Available at *https://vtechworks.lib.vt.edu/handle/10919/73954* Last accessed June 20, 2019.

Soccolich, S., Hanowski, R., & Blanco M., 2015. Evaluating the Sleeper-berth Provision: Investigating Usage Characteristics and Safety-Critical Event Involvement. (Report No. 17–UI–046). Available at https:

[38] Mitler, M.M., Miller, J.C., Lipsitz, J.J., Walsh, J.K., Wylie, C.D, 1997. ''The Sleep of Long-Haul Truck Drivers,'' *New England Journal of Medicine,* 337, 755–761. Available in the docket for this rulemaking.

[39] Hanowski, R.J., Hickman, J., Fumero, M.C., Olson, R.L., Dingus, T.A., 2007. ''The Sleep of Commercial Vehicle Drivers Under the 2003 Hours-of-Service Regulations,'' *Accident; Analysis and Prevention,* 39(6), 1140–5. Available in the docket for this rulemaking.

[40] Van Dongen, H.P.A. & Mollicone, D.J., 2013. ''Field Study on the Efficacy of the New Restart Provision for Hours of Service,'' (FMCSA–RRR–13–058). Washington, DC: FMCSA. Available in the docket for this rulemaking.

[41] Dinges, D.F., Maislin, G., Hanowski, R.J., Mollicone, D.J., Hickman, J.S., Maislin, D., Kan, K., Hammond, R.L., Soccolich, S.A., Moeller, D.D., and Trentalange, M., 2017. ''Commercial Motor Vehicle (CMV) Driver Restart Study: Final Report,'' (FMCSA–RRR–15–011). Washington, DC: FMCSA. Available in the docket for this rulemaking.

[42] Sieber,W K.., Robinson, C.F., Birdsey, J., Chen, G.X., Hitchcock, E.M., Lincoln, J.E., Akinori, N., & Sweeney, M.H., 2014. ''Obesity and Other Risk Factors: The National Survey of U.S. Long-Haul Truck Driver Health and Injury,'' *American Journal of Industrial Medicine,* 57, 615–626. Available at *https://www.ncbi.nlm.nih.gov/pubmed/24390804.* (Accessed January 4, 2019).

[43] Maislin, G., Rogers, N.L., Price, N.J., Mullington, J.M., Szuba, M.P., Van Dongen, H.P.A., and Dinges, D., 2001. ''Response Surface Modeling of the Effects of Chronic Sleep Restriction With and Without Diurnal Naps,''—Report. Available in the docket for this rulemaking.

[44] Wylie, D., 1998. ''Commercial Motor Vehicle Driver Drowsiness, Length of Prior Principal Sleep Periods, and Naps,''—Report. Available in the docket for this rulemaking.

[45] Caldwell, J.S., et al., 1997 ''The Efficacy of Hypnotic-Induced Prophylactic Naps for the Maintenance of Alertness and Performance in Sustained Operations,''—Report. Available in the docket for this rulemaking.

[46] Garbarino, S., et al., 2004. ''Professional Shift-Work Drivers Who Adopt Prophylactic Naps Can Reduce the Risk of Car Accidents During Night Work,''—Report Abstract. Available in the docket for this rulemaking.

[47] Sallinen, Harma, M., Åkerstedt, T., Rosa, R., Lillqvist, O., 1997. ''Can a Short Napbreak Improve Alertness in a Night Shift?''—Report. Available in the docket for this rulemaking.

[48] Moore-Ede, M., Mitchell, R.E., Heitmann, A., Trutschel, U., Aguirre, A., Hajamavis, H., 1996. ''Canalert '95—Alertness Assurance in the Canadian Railways,''—Report. Available in the docket for this rulemaking.

Statistics;[49] the study reported that drivers sleep progressively less as they get older, but the researchers did not find that a 7-hour sleeper berth period is inadequate. They compared daytime neurobehavioral performance for individuals obtaining split sleep with that of individuals operating after a consolidated sleep period of the same total duration, albeit with study subjects younger than the general driver population. The results of the study indicated that sleep duration was largely unaffected by whether the sleep was consolidated into one period or split between anchor sleep periods and naps.

The Agency did not use the Mollicone study as evidence that split sleep is equivalent to consolidated nighttime sleep given that FMCSA's HOS regulations do not currently regulate based on time of day. The preference of drivers for nighttime sleep is well documented—among other things, by the rapid filling up of CMV parking spaces in the evening—but some degree of split sleep is essential in many operations. Split sleep is a viable option, provided the combined rest periods have the same duration as a single consolidated rest period. Mollicone and his colleagues did not opine on the length of the anchor period and the shorter period, but their work does provide a scientific basis for continuing to allow a split-sleep alternative.

FMCSA believes the Belenky study is relevant to the decision-making process because it provides evidence that split sleep is a viable, safe alternative to consolidated daytime sleep. The 5-hour/5-hour split examined by the study involved no extended rest period, unlike the 7-hour minimum sleeper berth period required by the final rule, yet even that split produced better results than consolidated daytime sleep. While split sleep is not preferable to consolidated nighttime rest in terms of sleep quantity and quality, this does not mean the Agency should prohibit a split sleeper berth option and eliminate the flexibility it provides drivers. As discussed by other commenters, consolidated nighttime sleep may not be possible under every circumstance, though drivers clearly prefer to take the longer rest period at night.

FMCSA considers the relative benefits of even an ultra-flexible 5-hour/5-hour split (which the Agency abandoned in its 2005 HOS rulemaking) to be important in evaluating options for regulatory flexibility. Considering many real-world constraints, this research proves that split sleep is an appropriate alternative when drivers' schedules cannot provide for consolidated nighttime sleep.

Advocates criticized the use of the Short literature review because the studies it examined involved maritime and rail personnel, but not CMV drivers, and the Soccolich naturalistic study because it compared the risks associated with 3 restart options, including the 8/2 sleeper berth split, but not the proposed 7/3 split. The design of all studies inevitably imposes limits on their applicability, but that does not vitiate their conclusions. FMCSA continues to believe that these studies add to the body of evidence that split work/rest cycles may be beneficial in certain circumstances. They are among the many reports that provide insights into the potential fatigue mitigation benefits for a split sleeper berth schedule.

The Mitler, Hanowski, Van Dongen/Mollicone, Dinges, and Sieber studies reported on the amount of sleep CMV drivers obtained at the time their research was performed. Mitler and his colleagues found that before 2003, when the FMCSRs required only 8 hours off duty between shifts and allowed sleeper berth splits as short as 5 hours, drivers got about 5.18 hours of sleep per night. Hanowski, Van Dongen/Mollicone, and Dinges reported that, under the subsequent rules, which required 10 hours off duty between shifts and required a minimum 8-hour period in the sleeper berth, CMV drivers got somewhere between 6 and 6.5 hours of sleep per day. Based on a survey of 1,670 long-haul CMV drivers, Sieber concluded in 2014 that ''drivers are likely getting more sleep than other working adults in the United States.'' The response of the Advocates is essentially that, whatever the recent improvements in drivers' total sleep time, they still are not getting enough sleep to combat fatigue, especially in a safety-critical occupation. FMCSA continues to believe its discussion of these reports was appropriate for the context in which they were mentioned. Taken in context, the Mitler report highlights the shortcomings of the pre-2003 HOS requirements. This final rule provides increased flexibility while continuing to require a sleeper berth period of sufficient length to accommodate the real-world needs of most drivers.

The Hanowski and Van Dongen/Mollicone, and Dinges studies highlight the hours of sleep that drivers obtain. The Agency has taken care not to adopt regulatory options which would deprive drivers of the opportunity to obtain the rest they need to perform safely.

Until this final rule, the anchor sleeper berth period was at least 8 hours in duration. Despite that requirement, the evidence shows that drivers obtained 6 to 6.5 hours of sleep per day. It is not clear why drivers do not sleep longer, and there are no clear solutions to this challenge. It is worth repeating, however, that the survey conducted by the National Institute of Occupational Safety and Health in 2010 (as cited in Sieber, 2014), and reported in the NPRM, found that 73.5 percent of long-haul truck drivers reported sleeping more than 6 hours per night, compared with 68.9 percent of the general working population.

Given the reality that many drivers are not prone to sleep more than 6.5 hours, as shown by the Dinges and Van Dongen studies, providing additional flexibility for sleeper berth usage is reasonable and appropriate. Under this final rule, any driver who wishes to end the sleeper berth rest period after 7 hours may do so. As shown by Dinges and Van Dongen, this allows the driver sufficient time to obtain the amount of sleep that the average driver receives in a single consolidated period. And, nothing in this rule prohibits a driver from spending more time in the sleeper berth.

As noted above, studies generally have limitations, and the Agency did not attempt to list all of them, including for the Sieber study published in 2014. However, the alleged limitations of the Sieber study attributable to ''self-reporting'' do not invalidate its findings when viewed in an appropriate context. Absent the use of very expensive and time consuming actigraphy and other scientific instruments to monitor drivers' activities, surveys are the only cost-effective means to gather such information. The resulting data is valuable when drivers have no reason or incentive to submit inaccurate responses.

Although the Sieber study did not report on sleep time in the sleeper berth or distinguish between total sleep on workdays versus non-workdays, the findings provide yet another piece to the complex puzzle concerning fatigue.

Maislin and colleagues showed in 2001 that subjects who slept for 6.2 hours at night, combined with a nap of 1.2 hours, had lower levels of sleepiness and higher levels of performance, compared to subjects who slept shorter periods without naps. The Agency cited this finding in its 2005 final rule, but concluded that an 8-hour sleeper berth period was needed. FMCSA adopted an 8-hour sleeper-berth requirement in

[49] *https://www.bls.gov/cps/cpsaat18b.htm,* last accessed February 6, 2020.

2005 essentially out of an abundance of caution. At that time, there was no consensus on the amount of sleep needed to maintain cognitive performance. The Agency therefore decided to take a conservative approach and adopt the recommendation of many researchers for a sleeper-berth period of at least 8 consecutive hours.

Advocates essentially charged FMCSA with contradicting its previous position. That is not true. While the Agency is concerned, as it was in 2005, to give drivers adequate opportunity to obtain restorative sleep, the 6.2 hours of sleep reported by Maislin is well within the 7-hour sleeper berth period allowed by this final rule. And the other 3 hours of off-duty time, paired with the 7 hours in the berth, give drivers more than adequate opportunity to take a nap of 1.2 hours, should they feel the need to do so.

Similarly, the Wylie study is one of several that the Agency cited to highlight the benefits of napping. Although Wylie's research found that napping reduced drowsiness, he cautioned that drowsiness (caused by sleep inertia) remained elevated for two hours after napping. That does not negate the value of naps; it merely emphasizes that they must be used along with a period of consolidated sleep. This final rule provides adequate opportunities for both.

The Caldwell, Gabarino, and Sallinen studies help make clear that fatigue mitigation requires education of employers and drivers to better understand the importance of properly using the sleeper berth anchor period and taking advantage of the shorter rest period for napping. While the effect of naps may vary, depending, in part, on the point in the driver's circadian cycle when they are taken, as the authors noted and Advocates reiterated, any nap has some restorative value. Taking advantage of the shorter period would require trip planning to optimize the time and location of the nap.

FMCSA is fully aware of the limitations of the individual studies cited in the NPRM. The Agency made every reasonable effort to present the references in an appropriate context so that the studies could be viewed as pieces in a complex but unavoidably incomplete puzzle. In fact, the lack of studies squarely applicable to the NPRM's sleeper berth proposal requires a nuanced and holistic evaluation of available research, combined with an understanding of motor carrier operations that FMCSA is uniquely qualified to provide.

Commenters Supporting the Sleeper Berth Proposal. Many commenters, mostly individuals and drivers, provided brief, general support for the changes to the split sleeper berth provisions because they would accomplish the following:

- Provide greater flexibility for the driver to rest.
- Encourage more drivers to take more rest breaks.
- Provide drivers the opportunity to sleep while waiting during the loading and unloading process.
- Enable drivers to stop in safe locations.
- Increase efficiency in the trucking industry.

OOIDA commented that the proposed changes would no longer require drivers to sit idle when they are capable of driving safely. ATA, OOIDA, and other industry associations also commented that the added flexibility would improve driver rest. ATA provided citations to research suggesting that increased flexibility would better accommodate split sleep schedules, and that this would improve driver health.

Keep Trucking, Inc., a technology company provided data on the impact of traffic congestion on driving, commented that the proposed sleeper berth provisions would allow drivers to better mitigate these impacts. Other commenters, including industry associations, also said the provision would enable drivers to avoid critical traffic periods in most major urban areas.

An individual commenter supported the proposed change but recommended that greater importance be placed on the 7-hour sleeper berth requirement and cited research in asserting the health and safety benefits of ensuring that drivers get 7 hours of sleep. On the other hand, the Kentucky Driver's Association commented that circadian rhythms differ among individuals, and that greater flexibility will result in better rest for drivers as a result. Other commenters said the NPRM accommodates the fact that drivers frequently can sleep only 7 hours at a time and do not need 8 consecutive hours of sleep.

TruckerNation supported the proposed changes, but also recommended that FMCSA perform outreach and training to educate drivers and enforcement authorities as to the operation of the split sleeper berth rules.

FMCSA Response: As FMCSA noted in the preamble of the NPRM, many motor carriers and industry associations believe the current sleeper berth provisions are too rigid and that drivers do not have enough opportunities to stop driving and take breaks when they are fatigued. Sieber et al. (2014) reported that approximately 26 percent of drivers sleep less than 6 consecutive hours per night and about 51 percent sleep between 6 and 8 consecutive hours per night.[50] Some drivers may find it difficult to sleep more than 7 consecutive hours. However, the current sleeper berth provision requires them to be in the berth for 8 consecutive hours, thus, confining them to the berth for more time than many of them need for sleeping.

Maislin, et al. (2001),[51] cited in the preamble to the NPRM, showed that it is possible for a person to avoid physiological sleepiness or performance deficits on less than 7 hours of sleep; the subjects in these studies were supplementing their sleep with longer naps later in the day. The study found that a shorter restricted anchor sleep (*i.e.,* the longer sleeper berth period) combined with longer naps can reduce sleepiness and performance deficits similar to longer duration anchor sleep alone.

The Agency does not believe there is sufficient data to support reducing the longer sleeper berth period to 6 consecutive hours, paired with another rest period of at least 4 hours, as some commenters requested. A 6-hour period could result in average sleep periods that would not allow drivers the opportunity to obtain 6.2 hours sleep, which the average driver receives as reported by Dinges and Van Dongen.

Commenters Seeking Flexibility for Sleeper Berth Use Beyond the NPRM. Numerous commenters, mostly individuals and drivers, argued that the proposed changes concerning split sleeper berth do not provide enough flexibility. Their comments generally emphasized the following:

- The proposed split is a confusing option that few understand, and even fewer would properly apply.
- More simplification, flexibility, and options are needed.
- Drivers have different sleep cycles, need different amounts of sleep, and face unique circumstances every time they drive.
- Drivers should be able to decide when to rest.

IBT cited the Belenky study in supporting its argument for sleeper

[50] Sieber, K.W., Robinson, C.F., Birdsey, J., Chen, G.X., Hitchcock, E.M., Lincoln, J.E., Akinori, N., and Sweeney, M.H., 2014. ''Obesity and Other Risk Factors: The National Survey of U.S. Long-Haul Truck Driver Health and Injury,'' American Journal of Industrial Medicine, 57, 615–626. Available at: *https://www.ncbi.nlm.nih.gov/pubmed/24390804,* last accessed January 4, 2019.

[51] ''Response Surface Modeling of the Effects of Chronic Sleep Restriction With and Without Diurnal Naps,'' Maislin, et al., 2001. Available in the docket for this rulemaking.

berth periods as short as 5 hours. An industry association asserted that more flexible sleeper berth rules would result in savings of $4 million and 60,000 hours of trucker driving time along a specific roadway.

The Specialized Carriers and Rigging Association commented that drivers transporting over-dimensional loads would especially benefit from a more flexible sleeper berth split, since they are often affected by city curfews and other local regulations.

FMCSA Response: FMCSA believes that this final rule provides sufficient flexibility without compromising safety. Because the alternative sleeper berth cycles commenters sought involved periods that were both shorter than the average time that drivers are currently sleeping, additional research and data are needed to understand the potential safety impacts.

Commenters Opposed to the Split-Sleeper Proposal. Some commenters, mostly individuals and drivers, disagreed with the proposal because:

- The current 8/2 split suffices.
- The 7/3 split is not in the best interest of the driver and would allow drivers to drive without being fully rested.

Senator Murray stated that the proposed change will in fact greatly compromise drivers' right to uninterrupted consecutive rest and asserted that the proposal would fragment driver sleep. AASM also opposed the change, asserting that the proposed rule fails to sufficiently consider the effect of reduced sleep quality associated with sleep disorders that are expected to occur when sleeping in a berth, and working longer hours. AASM also commented that the provision failed to consider the impacts of circadian misalignment that may accompany 24-hour team driver operations. Likewise, Road Safe America commented that FMCSA ignored its own studies indicating that sleep quality in sleeper berths is worse than that at home, and that FMCSA should further study the quality of sleep in sleeper berths. Advocates argued that the Agency failed to address various detailed implications of the Moore-Ede report, including the timing of the sleeper berth period.

One commenter stated that few drivers will sleep during the shorter break period and that drivers often cannot immediately fall asleep in sleeper berths. The commenter stated that, under the proposed rule, many truckers will be driving with less than 6 hours of sleep in a 24-hour period.

FMCSA Response: The Agency has reviewed comments that suggest the proposed changes to the split sleeper berth provision would decrease driver sleep. The NPRM cited several studies that highlight the benefits of split sleep schedules (Mollicone 2007, Belenky 2012, Short 2015, Soccolich 2015). These studies (discussed in detail above) found that:

- Split sleep schedules are feasible and can be used to enhance the flexibility of sleep/work schedules.
- Participants in the consolidated nighttime sleep and split sleep conditions obtained significantly more total sleep time than participants in the consolidated daytime sleep condition. This suggests that when consolidated nighttime sleep is not possible, split sleep is preferable to consolidated daytime sleep.
- Limited wake shift work schedules were associated with better sleep and lower sleepiness.
- The sleeper berth break was not associated with increased safety risk as compared to the 10+ hour break or the 34+ hour break.

The study results, taken together, support the use of the split sleeper berth provision.

The current sleeper berth rule excluded from the 14-hour driving window the required 8-hour period in the berth. The NPRM proposed a similar exclusion not only for the proposed 7-hour period in the berth, but also for the shorter qualifying off-duty period of at least 2 hours. Advocates argued that none of the studies cited by the Agency speak to the risks of allowing drivers to operate later into their duty period. It is true that no studies examine the specific parameters of the sleeper berth rule proposed in the NPRM, but the absence of academic research exactly on point does not prohibit the Agency from using its own expertise and judgment to promulgate regulations. In this case, FMCSA balanced the industry's desire for added operational flexibility against its overriding responsibility for motor carrier safety and concluded that the shorter of the two off-duty periods would afford drivers an opportunity for rest sufficient to counteract any fatigue effects associated with the extended duty day. In fact, we believe that exclusion of the shorter period will promote more effective rest since drivers need no longer worry that the 14-hour clock is ticking away potential revenue miles while they try to rest. And, unlike the ''pause'' proposed in the NPRM (which the Agency has not adopted in this final rule for reasons explained elsewhere in the preamble), this measure is available only to drivers who use sleeper berths and are thus experienced in obtaining rest in a variety of places.

Dinges found that team drivers were generally very successful in avoiding circumstances of extreme drowsiness.[52] Despite evidence pointing to the fact that they get a lower quality of sleep in a moving sleeper berth, team drivers appear to compensate by spending more time sleeping (or at least resting) relative to single drivers, and by using their backup drivers effectively. The results of this study support what the Agency proposed in the NPRM.

As to the objections raised by Advocates, none of those objections seriously challenges the Agency's conclusions that the sleeper berth provisions proposed in the NPRM will enhance driver and carrier flexibility without adversely impacting safety. As discussed elsewhere in this notice, many studies show that splitting sleep into shorter segments still allows people to maintain health and alertness, especially when coupled with a relatively short nap. And all surveys show that a large majority of Americans, including truck and bus drivers, get less than 8 hours of sleep per day. In fact, the average for drivers seems to be 6.2 to 6.5 hours. Advocates' position that 8 consecutive hours of sleep is necessary to maintain health and cognitive alertness is inconsistent with the studies that FMCSA examined as part of this rulemaking and practical experience and disregards the benefits from a more flexible schedule with a longer nap period (3 hours instead of 2 hours).

Comments on Employer Abuse of the Split Sleeper Berth Proposal. An individual commenter stated that because the rules against coercion do not have the proper consequences, under the proposed rule, employers would compel drivers to take breaks according to the employers' business interests, rather than drivers' rest needs.

Truckers for a Cause commented that the proposed rule should specify that either sleeper berth period may only be taken at times and locations of the driver's choice and may not be taken at a location where freight was picked up or delivered. TruckerNation supported the proposed provision, but argued that without language in the final regulatory text explicitly stating the use of the proposed split sleeper berth provisions are at the driver's discretion, the regulation would allow motor carriers to require drivers to use split sleeper berth

[52] ''Response Surface Modeling of the Effects of Chronic Sleep Restriction With and Without Diurnal Naps.'' Maislin, G., Rogers, N.L., Price, N.J., Mullington, J.M., Szuba, M.P., Van Dongen, H.P.A., and Dinges, D., 2001. Report. Available in the docket for this rulemaking.

provisions and enable ''rampant issues of driver coercion.'' Knight-Swift Transportation Holdings, Inc. also expressed concern that the proposed change could be exploited whereby a driver is impelled or compelled to cut short his or her break to resume driving.

FMCSA Response: The Agency believes adequate protections are already in place to protect drivers from coercion. Based on the definition in § 390.5T, coercion is essentially limited to situations where drivers are compelled to operate CMVs in violation of certain DOT regulations, including the FMCSRs. Accordingly, the situations described by commenters do not amount to coercion unless drivers are required to operate CMVs when they claim it would be unsafe to do so based on their level of fatigue, and are threatened with the adverse business or employment consequences specified in the definition for refusal to violate the FMCSRs. Motor carriers are already prohibited from requiring drivers to operate when fatigued under § 392.3. Specifically, motor carriers cannot require drivers to operate CMVs while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness or any other cause, as to make it unsafe for him or her to begin or continue operations.

Drivers are also protected under provisions of the Surface Transportation Assistance Act, 49 U.S.C. 31105, which authorizes the Occupational Safety and Health Administration in the Department of Labor to take action on complaints filed by drivers who allege they were fired, disciplined, or discriminated against for engaging in certain protected activities, including reporting a safety violation, refusing to operate a CMV due to a safety issue, or accurately reporting HOS violations.

In any event, given the limited changes to the sleeper berth exception, the Agency has no reason to believe that current practices in the industry in terms of pressure placed on drivers are likely to increase. Finally, nothing in this final rule is intended to negate the professional responsibility of drivers to communicate with their employer about their work schedules.

Comments About Alternatives to the 8/2 and 7/3 Splits. The NPRM requested comments and any supporting data on the possibility of a 6- and 4-hour split break.

Commenters, including the Truckload Carriers Association, briefly stated that the sleeper berth rules should allow a 6/4 split. On the other hand, the Retail Industry Association doubted whether many drivers would use either the 7/3 or 6/4 split. Citing a 1990 study showing that two separate 4-hour blocks of sleep is ''a natural process with a biological basis,'' TruckerNation argued that the use of the 6/4, 4/6, and 5/5 splits would be inherently safer than the current HOS split.[53]

Advocates argued that the Agency has confused the amount of sleep drivers are able to regularly obtain under the current rules with the amount of sleep that is sufficient to combat fatigue. They cited two studies and argued that, when not constrained by work schedules, drivers tend to obtain more sleep than 6 consecutive hours during longer periods of time off-duty, which they said is counter to the basis FMCSA used to justify the 7/3 and 6/4 split options.

In addition to commenters responding to the question about the 6/4 split some commenters suggested other alternatives to the split sleeper berth provisions, including the following:

- Drivers should be able to split their sleep time in other increments, including 5/5.
- The rule should allow drivers to split their sleep time any way they choose.
- The rule should allow a 5/5 split for team drivers.

OOIDA commented that the proposed rule should allow for 5/5 and 6/4 sleep splits, stating that 85% of its drivers supported either such split, with drivers saying they would use these splits 2.02 and 1.86 times per week, respectively. OOIDA said this would work better for drivers who cannot sleep more than 6 hours at a time and would alleviate truck parking congestion. OOIDA provided quotations from the Belenky study in its comment.

TruckerNation said that, to avoid confusion, the regulatory text should explicitly state that a driver can use a split in any order so long as the time equals 10 hours cumulatively and the second split resets the drive's 14-hour clock.

Truckers for a Cause suggested regulatory text that would provide more flexible driving schedules, stating that its proposal would eliminate confusion between sleeper berth and split-duty periods.

Knight-Swift Transportation Holdings, Inc. commented that FMCSA should consider replacing the sleeper berth rule with an off-duty requirement like that in effect prior to the 2004 rule change. Several industry associations supported a single, longer break and two ''nap'' periods (thus allowing three breaks totaling 10 hours).

FMCSA Response: Splitting the 10 off-duty hours required by the HOS rules into 6 hours in the sleeper berth and 4 hours off-duty would give drivers additional flexibility, as many drivers requested, but none of the supporters of a 6/4 split cited research demonstrating the safety of that option.

The results generated by decades of research on sleep and fatigue are strikingly variable. Although it would be an exaggeration to say that a sleep study can be found to justify almost any regulatory position, it is true, as many commenters have pointed out, that the design of a study often makes its findings difficult to apply in a broader context. In fact, it is doubtful that any study could adequately capture the enormous range of operational environments in the motor carrier industry.

The 1990 study TruckerNation cited to show that a 4/4 split is natural and unobjectionable, represents one end of the continuum on which fatigue studies fall. At the other end, some studies appear to show that 8 consecutive hours of sleep are necessary to maintain health and alertness. The average for drivers in the motor carrier industry appears to be around 6.2 hours, which is similar to the average for Americans generally.

FMCSA believes that the current requirement for 8 consecutive hours in the sleeper berth is unnecessarily restrictive and that a 7-hour period would achieve essentially the same benefits, enabling drivers to get about the 6.2 hours of sleep they currently obtain. But there is no clear evidence—to say nothing of a scientific consensus—that a 6-hour (or shorter) sleeper berth period is long enough to prevent cumulative fatigue. That is especially obvious since drivers cannot be expected to fall asleep immediately. The 7-hour period proposed in the NPRM and adopted in this final rule allows enough time for drivers to relax, de-compress, and obtain more than 6 hours of sleep. Having examined a wide range of sleep and fatigue studies, which fail to converge on a single result, the Agency has concluded that the proposed 7/3 split is both scientifically reasonable and responsive to the needs of the driver population for greater flexibility.

The fact that drivers sleep more on weekends or longer off-duty periods is not surprising. Most people who work demanding jobs follow this pattern. But it does not follow that a 7-hour sleeper berth period is therefore unsafe.

Although the comments discussing options beyond the 6/4 option presented

[53] Wehr, T.A., (2012) ''In Short Photoperiods, Human Sleep is Biphasic,'' Journal of Sleep Research, 1(2):103–107. Available at *https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1365-2869.1992.tb00019.x.* (Accessed March 30, 2020).

in the question varied substantially, most of the studies and science cited demonstrate that drivers need at least one primary sleep period of 7 consecutive hours. Many motor carriers and industry trade associations believe the current sleeper berth provisions are too rigid, and that drivers do not have enough opportunities to stop driving and take breaks when they are fatigued.

Based on Sieber et al., (2014) and cited in the NPRM, approximately 26 percent of drivers sleep less than 6 consecutive hours, and about 51 percent sleep between 6 and 8 consecutive hours per night.[54] Some drivers may find it difficult to sleep for more than 7 consecutive hours but the previous rule required them to be in the berth for a minimum of 8 consecutive hours.

The study by Maislin, et al. (2001),[55] cited in the NPRM showed that it is possible for a person to avoid physiological sleepiness or performance deficits on less than 7 hours of sleep; the subjects in this study were supplementing their sleep with longer naps later in the day. Maislin found that a shorter restricted anchor sleep period (*i.e.,* the longer sleeper berth period) combined with longer naps can reduce sleepiness and performance deficits similar to longer duration anchor sleep alone. Thus, this final rule allows for extended shorter rest periods (*i.e.,* a minimum 3-hour consecutive break either in the sleeper berth or off-duty to take a nap for example if ''paired'' with a 7-consecutive hour period in the sleeper berth, totaling a minimum of 10 hours.

FMCSA believes that drivers using the sleeper berth provision adopted in this rule will better accommodate a driver's sleep schedule. The Agency, however, does not believe there is sufficient data to support a single sleeper berth period of any less than 7 consecutive hours.

In response to the TruckerNation request to clarify the use of the provision, and calculation of available hours, the Agency has modified the proposed language to explain how the various sleeper berth provisions interact. FMCSA has also explained in further detail that neither of the two sleeper periods count in the calculation of either the 11- or 14-hour rules. FMCSA has not adopted the proposed ''pause'' in this final rule, which should help to eliminate any confusion in the calculation of compliance with the sleeper berth provisions. However, consistent with the previous rule, a driver's available driving or on-duty time under the sleeper berth provision is calculated from the end of the initial, rather than the second, rest period. FMCSA notes that, under this final rule, neither qualifying rest period required by the sleeper berth rule counts against the 14-hour driving window.

Frequency of use of the 7-3 Split. FMCSA requested comments on how often drivers use the split sleeper berth provision under the current regulations and how often they would use the new provision if the proposed changes were to take effect. Comments on this issue varied widely.

OOIDA provided data from its members which showed that they use the current sleeper berth provision an average of 2.18 times per week. In terms of how their usage might change, 40 percent of OOIDA survey respondents said that they would increase their usage if the proposed changes went into effect, and 54 percent of OOIDA survey respondents said that their usage would stay the same. In addition, the Minnesota Trucking Association noted that its members' drivers would use the sleeper berth provision with the proposed changes 1.5 times per driver per 70-hour week.

Other comments received, however, suggested that the current sleeper berth provision is not widely used and would not be widely used even if the proposed changes went into effect. TruckerNation said that the current provision allowing for an 8/2 split is not frequently used by drivers; however, it did note that drivers seem interested in using the provision if the proposed changes were adopted. Southeast Transportation Systems stated that less than 5 percent of its drivers use the current provision, and does not expect usage to change considerably if the proposed changes were adopted. One driver said that the sleeper berth provision is used relatively little because it is too complex for drivers to understand. Some commenters provided detail on how often they would use the proposed split during an average week. According to OOIDA, respondents to its survey stated that they would use the proposed split an average of 1.85 times per week. In addition, 42 percent of the survey respondents said that the additional flexibility afforded by the proposed split would allow them to complete additional runs.

Other commenters noted that their use of the sleeper berth provisions would increase if the use of sleeper berth time affected the driving clock. An individual driver and the National Propane Gas Association both commented that, if the new provision allowed them to stop the driving clock, they would use it more than the current provision. TruckerNation stated that it is difficult to predict how drivers would use the proposed split. They believe, however, that most drivers would choose to split their sleeper berth time as long as the provision allows them to stop the 14-hour clock and the time is cumulative rather than consecutive.

FMCSA Response: FMCSA cannot accurately predict how the proposed changes would affect the use of the provision. First, while FMCSA received some information regarding how often some drivers use the current provisions and how usage might change under the new provision, the Agency lacks the definitive information that would be needed to estimate usage among the entire population of drivers. Furthermore, FMCSA lacks data on the number of trucks that are equipped with sleeper berths and the impact that schedule changes might have on motor carrier operations. Therefore, FMCSA did not evaluate the impacts of schedule changes that may occur because of this final rule.

Schedule and Planning Changes. OOIDA and ATA both commented that the proposed sleeper berth provision would give drivers greater ability to avoid rush hour traffic. TruckerNation stated that this provision would allow drivers or motor carriers to plan and schedule drive time during non-peak hours to avoid conditions such as traffic, weather, and scheduled road closures. In addition, OOIDA stated that these changes would reduce wear on vehicles and improve fuel efficiency as drivers would feel less pressure to drive at times when they were tired and not driving as safely or efficiently. ATA also added that these changes will allow drivers to more effectively plan their sleep and other breaks around loading times, thus increasing the efficiency of their work hours.

FMCSA Response: FMCSA requested information on how changes to the sleeper berth provision would change the scheduling and planning of drivers to determine if the rule would have the intended effect of allowing drivers to operate more efficiently. For example, FMCSA believes that these changes will increase the ability of drivers to take rest periods when they can find a safe place to park, to schedule drive time during non-peak hours, and to avoid conditions

[54] Sieber, K.W., Robinson, C.F., Birdsey, J., Chen, G.X., Hitchcock, E.M., Lincoln, J.E., Akinori, N., & Sweeney, M.H., 2014. ''Obesity and Other Risk Factors: The National Survey of U.S. Long-Haul Truck Driver Health and Injury,'' American Journal of Industrial Medicine, 57, 615–626. Available at: *https://www.ncbi.nlm.nih.gov/pubmed/24390804.* Last accessed January 4, 2019.

[55] Maislin, G., Rogers, N.L., Price, N.J., Mullington, J.M., Szuba, M.P., Van Dongen, H.P.A., and Dinges, D., 2001. ''Response Surface Modeling of the Effects of Chronic Sleep Restriction With and Without Diurnal Naps,''—Report. Available in the docket for this rulemaking.

such as traffic, weather, and road closures. These changes ensure that drivers using the sleeper berth to obtain the minimum off-duty time have at least one consolidated rest period of a sufficient length to have restorative benefits. In addition, these changes afford drivers the flexibility needed to make decisions regarding their rest that best fits their individual needs.

FMCSA agrees with commenters who indicated that this final rule will lead to more efficient use of time. However, the comments also highlighted how the impact will vary for each motor carrier and type of operation.

Sleep Changes Between 7- and 8-hour Periods. FMCSA asked, if the proposal was adopted, would you expect to get the same amount of sleep in the 7-hour period as in the current 8-hour period?

OOIDA commented that increased flexibility would improve driver sleep quality. TruckerNation stated that research shows that drivers average little more than 6 consecutive hours of sleep, thus 6, 7, or 8 hours would ensure adequate and restorative sleep. Individual drivers differed as to whether they would get the same amount of sleep in a 7-hour period as an 8-hour period.

Advocates argued that research has proven that drivers, when given extended off-duty periods, tend to obtain additional sleep. Therefore, Advocates noted, shortening the allowable rest period will enable and encourage the use of the shortest time possible when it is advantageous for the carrier.

Truckers for a Cause argued that drivers will get less sleep in a 7-hour split, but also requested that a pilot study be conducted to examine this issue.

FMCSA Response: The Agency agrees that drivers average little more than 6 consecutive hours of sleep. The NPRM cites several studies (Hanowski 2007, Van Dongen 2013, Dinges 2017, Sieber 2014) which found that:

- Drivers were getting an average of 6.15 hours of sleep per 24-hour period.
- Drivers obtained between 6.0 and 6.2 hours of sleep (on average) per 24 hours during duty cycles.
- Drivers obtained, on average, approximately 6.5 hours of sleep per day during duty periods.
- 26.5 percent of long-haul truck drivers reported that they slept 6 hours or less per night, compared to 30.0 percent of the general working population.

Based on this research, the Agency agrees that drivers would likely get the same amount of sleep in a 7-hour period as an 8-hour period and rejects the conclusion that a shorter allowable rest period would enable and encourage less sleep.

Impact of the Sleeper Berth Proposal on VMT. FMCSA requested comment on whether the changes to the sleeper berth provision would result in increases in VMT and would enable drivers to complete additional runs.

Commenters were split on the likely impacts of these changes. A carrier and an industry association said that the proposed changes would not result in any increases in VMT or hours worked, and would not result in drivers completing additional runs. In contrast, some individual drivers noted that they would likely increase their VMT in response to these changes. Similarly, EROAD noted survey results showing that drivers would increase their VMT and complete more runs due to the increased flexibility of the sleeper berth requirements. Also, as noted by the National Propane Gas Association, the impacts of the rule on VMT could vary by region.

Other commenters noted that the benefits of the proposed changes do not necessarily take the form of increases in VMT or work hours, but in an increased ability of drivers to plan their work and off-duty periods. For example, TruckerNation stated that the primary benefit of these changes would be to allow a driver to better maximize the use of their full 24-hour day.

FMCSA Response: FMCSA agrees that driver mileage may vary in each shift or week. In terms of net impacts of the changes to VMT, driving hours, and work schedules, it is important to remember that the changes adopted in this final rule will not affect the volume of freight shipped or aggregate VMT. While these and other changes to the HOS rules may shift freight loads between drivers and carriers, those changes are not expected to affect the total economic demand for the movement of freight. Therefore, FMCSA did not estimate a change in VMT resulting under this final rule.

Comments Suggesting the Agency Conduct a Sleeper Berth Pilot Program. The U.S. Chamber of Commerce supported added flexibility but said that such changes should be made only after a pilot study had validated the proposals. Similarly, CVSA and Schneider National Carriers, Inc. commented that the proposed rule should not be implemented until a pilot study has been concluded.

ATA and other commenters also supported a pilot program to examine the efficacy of 5/5 and 6/4 sleep splits. The Truckload Carriers Association expressed regret that FMCSA requested information that probably does not exist after deciding against conducting a sleeper berth pilot study that could have produced the information.

FMCSA Response: As indicated in the NPRM, FMCSA had planned to conduct a pilot project to collect data on the safety of drivers who split their sleeper berth time in a variety of ways. However, given comments received by the Agency in response to the ANPRM as well as at public listening sessions, and the results of a literature search conducted in advance of the NPRM, the Agency determined there was sufficient data to support the modifications proposed in the NPRM and adopted in this final rule. Not counting the shorter break against the 14-hour driving window will allow drivers additional flexibility in obtaining rest. However, the Agency does not feel it currently has adequate data to support an extension of the sleeper berth split to 6/4 or 5/5.

No research or data has been provided that would counteract the position posed by FMCSA in the NPRM. Therefore, the Agency reaffirms its position that allowing an expanded split sleeper berth option would provide a sufficient period of consolidated sleep for drivers and would not be detrimental to driver safety.

Other Comments or Questions. Approximately 120 commenters, mostly individuals and drivers, provided statements regarding sleeper berth splits that were mixed, neutral, or unclear in their intent regarding the sleeper berth provision. These comments mostly discussed the split sleeper berth provisions as they related to out-of-scope topics, like parking or State preemption relating to breaks.

7. Split-Duty Period (3-Hour Pause)

NPRM. FMCSA proposed that a single off-duty break of between 30 minutes to no more than 3 consecutive hours, be excluded from the 14-hour driving window, provided the driver has at least 10 consecutive hours off-duty before the start of his or her next duty period. A single pause of up to 3 hours would provide significantly more flexibility than allowed under the current rules. It would have allowed drivers to take an off-duty break without fear of exhausting their available hours under the 14-hour clock, which would also have allowed them to get additional rest or avoid traffic congestion.

The Agency encouraged motor carriers and other stakeholders to submit driver record data supporting their comments in a manner that did not reveal the identity of an individual driver. FMCSA sought additional information and data on the impacts of

the split-duty period provision, in part to assess its potential costs and benefits. FMCSA also sought additional information on whether drivers should be allowed to divide the pause, up to a total of 3 hours. Responses to these questions are discussed in the comment summaries below.

Comments in Favor of a Split Duty Option. Approximately 280 commenters supported the proposed pause to the 14-hour driving window. Many of these commenters, mostly individuals and drivers, simply noted their support. Others gave the following reasons for supporting this provision:

- Provides flexibility for drivers to take a break when needed.
- Greatly improves performance, productivity, and safety by preventing drivers from feeling compelled to keep driving to complete a trip if they feel fatigued.
- Compensates for time lost, and provides an opportunity to rest, while waiting during loading and unloading, rather than placing stress on drivers to rush to make up for lost time.
- Enables drivers to avoid rush hour traffic periods in major urban areas.
- Enables drivers to stop and rest while still ensuring they will be able to make it home at night.
- Avoids congestion and other unsafe conditions.
- Mitigates driver stress and fatigue.

OOIDA supported the proposal and recommended several actions FMCSA could take to ensure that the split-duty provision does not exacerbate detention times currently experienced by drivers.

FMCSA Response: The Agency agrees with commenters and continues to believe the split duty proposal could provide significant flexibility for drivers and provide an incentive to take an extended rest break. The current 14-hour window disincentivizes drivers from voluntarily taking rest breaks because those breaks do not pause the 14-hour clock. Consequently, all the time a driver spends in an off-duty status reduces the amount of time available to complete up to 11 hours of driving time during the work shift.

Therefore, drivers who take additional breaks may feel compelled to speed in order to complete their driving within the 14-hour window.

With regard to safety impacts, the Agency notes the additional break of up to 3 consecutive hours would be off-duty. This means the extension of the driving window would not result in drivers working additional hours; the maximum amount of on-duty time that could be accumulated before a driver would be prohibited from driving during a work shift would remain at 14 hours. Furthermore, drivers would still be required to have 10 consecutive hours off-duty at the end of the work shift.

Although the Agency's analysis indicates the additional flexibility could be provided without adversely impacting safety, the analysis did not take into account the driver protection issues raised by commenters opposed to the 3-hour pause. These issues are of such concern that the Agency has not included the 3-hour pause in this final rule.

Commenters Opposed to the Split Duty Proposal. Approximately 150 commenters opposed the NPRM's split-duty period because it went too far. Drivers and other individual commenters argued that:

- The pause creates a 17-hour driving window, which is unwanted and unsafe.
- The pause could be abused, enabling companies to take advantage of drivers.
- The pause adds 3 unpaid hours to a truck driver's day.

Multiple opponents provided additional explanations based on research data. Several motor carriers and a law enforcement agency expressed concern about the negative safety impact of an extended driver workday, potentially up to 17 hours. An individual commenter said a carrier or third party should not be allowed to impact a driver's schedule based on this provision.

The Trucking Alliance, Advocates, and others also opposed this change, stating that FMCSA does not have data on the possible safety implications of an extended workday. Others, including the AASM and IBT, opposed the provision, stating that there are no data to support the assumption that drivers would rest or sleep during the pause; that the proposal increases the risk of drowsy driving and accidents; and that allowing up to a 3-hour pause in the driving window does not necessarily translate to a decrease in driver fatigue levels.

Advocates offered a detailed discussion of the Blanco (2011) study and the examples provided by the Agency, and cited additional studies not mentioned in the NPRM. Advocates argued that the research does not support the proposal and that FMCSA had provided no analysis of applicable data to justify the split-duty proposal. Advocates opposed a pause of any length that would extend the driving window and allow driving later in the duty period. IIHS also opposed the pause and questioned the logic that increasing a driver's workday with off-duty time would have less impact on fatigue than adding the same amount of driving time.

Several commenters, including Senator Murray and CVSA, said FMCSA should consider how this change would interact with other changes proposed in the NPRM (*e.g.,* adverse driving conditions) and should set a maximum workday. These commenters stated that these possible interactions (''stacking'') would raise serious safety, health, and welfare concerns.

ATA provided extensive comment and survey results regarding the potential impact of the pause on driver sleep schedules and the possible safety impact of the proposal, and concluded that FMCSA should clarify the safety benefits of the proposed pause. ATA said that FMCSA should provide some estimate on how often, and for how long, drivers would use a ''pause,'' and whether that period would impact sleep cycles and relative measures of roadway safety. ATA also stated that some motor carriers worry that modifications to the 14-hour clock could increase their risk exposure, which, in turn, could affect insurance rates and motor carrier liabilities.

CVSA stated that, before finalizing the proposed changes, FMCSA needs to evaluate how these changes will impact broader flexibility that has already been granted to certain segments of the motor carrier industry through exceptions and guidance, and to ensure that the combination of changes does not negatively impact safety.

CVSA, Trucking Alliance, Road Safe America, IBT, TruckerNation, industry associations, and individual commenters highlighted the potential for abuse of this provision by shippers, receivers, brokers, or motor carriers. They argued that it could be used to coerce drivers into extending their workday and obscure the problem of unpaid detention time. Some commenters stated that drivers alone should be allowed to decide when this provision is used. Others, including CVSA, stated that drivers might use the provision for work-related activities rather than rest. ATA generally supported the flexibilities offered by the proposed split-duty period but pointed to mixed results generated by a survey it conducted in response to the NPRM. Specifically, ATA said some motor carriers responded positively to the proposed split-duty day, but others expressed varying degrees of hesitation regarding lack of supporting data or potential for abuse by shippers and receivers. In addition, ATA said many motor carriers want FMCSA to clarify how a split-duty period would impact

driver detention or ''dwell'' times and affect sleep cycles. EROAD also provided the results of its survey of trucking industry professionals and associations. The responses varied between support, requests for additional flexibility, and opposition due to the impact on driver fatigue and potential for abuse. ATA asserted that FMCSA had not undertaken a RIA on whether a flexible split-duty period would impact detention times and whether those impacts would result in net costs or benefits. ATA concluded that FMCSA should provide that data before adopting the proposal. Trucking Solutions Group stated that the proposed pause would be nothing but a ''band-aid'' to mask a widespread detention problem.

Other commenters expressed concern about how drivers would file complaints if they were coerced to use this provision. Many commenters mentioned the ''forced dispatch'' policies in place at some companies, under which drivers can be and are told by the carrier when to take split or pause breaks to meet the needs of customers. Other commenters raised concerns about the interaction of the pause with other regulations, exceptions, and Canadian regulations.

Commenters requested that the industry and law enforcement be given clear regulatory language and guidance to help interpret the pause and how it would interact with other regulations.

FMCSA Response: The Agency acknowledges commenters' concerns about the potential for unintended consequences associated with actions by employers, shippers and receivers that might be contrary to drivers' interests. Given the uncertainties as to whether these potential consequences would actually happen, the Agency has not included the 3-hour pause in this final rule.

The Agency is not persuaded by commenters' assertions that the pause, in and of itself, would reduce safety, but does agree that the issue warrants further study.

The FMCSRs have always treated off-duty time as an opportunity for driver rest, but that opportunity is enhanced if the CMV is equipped with a sleeper berth. That factor, combined with significant uncertainty about the frequency and extent of detention time, makes the evaluation of the cost and safety impact of a general 3-hour pause difficult, since day-cab drivers who are delayed at shipper or receiver facilities at non-ideal points in their circadian cycle might obtain less effective rest than sleeper-berth drivers, who always have a bed ready for use. The Agency believes that limiting an extension of the 14-hour driving window to the shorter period under the sleeper-berth exception, rather than applying it to all CMVs, will give drivers greater peace of mind and the rest that will enable them to operate safely later in the work shift, even if that off-duty period may sometimes occur at less-than-ideal times.

Comments Responding to FMCSA's Request for Research and Data.

FMCSA requested comments, research, and data on the optimal length of a pause that would allow drivers reasonable flexibility to manage operational variables while ensuring that driving does not occur after too much time has elapsed since the last longer rest period. While Advocates opposed a pause of any length, most commenters did not provide feedback on an optimal length of the pause, and instead requested that the Agency obtain additional data.

Some commenters who opposed the provision, including IIHS, recommended a pilot program to gather needed data relating to its impact on driver health and safety and on possible interactions with other proposed changes. Road Safe America stated that, before moving forward with the proposal, FMCSA should study the safety risks of permitting a 17-hour workday and its effect on cumulative fatigue, given that the NPRM included no limits on the use of the pause throughout the week.

Many other commenters, including motor carriers, supported the proposal but wanted further study on efficiency, the ELD environment, nocturnal driving and breaks, sleep cycles, and driver detention. In addition, some commenters that supported the proposal, including the U.S. Chamber of Commerce, requested that the Agency conduct a pilot program to understand the safety impacts of the split-duty provision before considering it further.

The NPRM asked a series of questions about the proposed pause:

(1) How will this provision impact the number of driving hours during a single driving window? How will this provision impact your total driving hours during a given week or year? Although some commenters stated that the provision would not change driving hours, others, including OOIDA, industry associations, and motor carriers, responded that the pause could reduce total driving hours by enabling drivers to operate more efficiently and flexibly, *e.g.,* to move when necessary and stop when tired or to avoid driving in some potentially challenging conditions.

Advocates warned that the pause would likely permit the scheduling of more driving hours in a single driving window, probably later in the duty period when crash risk from fatigue is greatest. Knight-Swift Transportation Holdings, Inc. stated that industry data collected in response to the NPRM shows that, in up to 3.8 percent of all workdays, the day would be extended by up to 3 additional hours and allow for up to 2 additional driving hours on average between the 14th and 17th hour of duty. An individual commenter said this provision would allow drivers to complete more driving hours during the week, but would then force them to take 34-hour restarts more frequently.

(2) How would this provision impact your regular schedule? How often would you expect to take advantage of this provision in a given work week? Why? OOIDA said its survey respondents believe that their operations would be more productive and less stressful if the 14-hour on-duty period offered additional flexibility, not only to avoid adverse driving conditions, but also to address other issues outside of their control. OOIDA said its survey respondents indicated that they would use the split-duty period an average of 2.55 times per week. American Moving and Storage Association said that its drivers would use the proposed split-duty period up to three times per week, and that carriers operating primarily within non-metropolitan areas, or running single loads, would likely use this proposal less often.

Industry associations said the overall impact would be minimal but would allow drivers to safely and compliantly complete their deliveries. Other commenters said the pause would be used infrequently, mainly for flexibility in cases of inclement weather, traffic interruptions, unexpected delays, and seasonal demand.

(3) What are the expected benefits from utilizing the 3-hour pause? OOIDA and other commenters said the pause would allow drivers to be better rested, to stay off the road during unsafe conditions, and to use their on-duty time more efficiently, resulting in improved highway safety, more completed trips, and fewer wasted hours. Several industry associations echoed this, arguing that the pause would promote safe operation, improve efficiency, and allow drivers to schedule work better and avoid unexpected and stressful conditions. Other commenters linked these benefits to driver retention, increased safety and decreased road congestion, additional capacity within the trucking industry (by allowing time spent being loaded or unloaded to be

used as off-duty time), more loaded miles for drivers, increased compensation, and less wasted fuel. Similarly, several industry associations supported the flexibility of the provision to permit drivers to make decisions on road condition safety, as well as to promote fatigue recovery and napping.

After presenting data relating to daily traffic speed fluctuations, off-duty breaks, and impacts on braking events and speeding, a technology company concluded that the pause would allow drivers to reclaim the time spent off-duty and traverse congested metropolitan areas at more efficient times.

A motor carrier stated that its drivers would likely use this provision to offset extended detention times, effectively allowing them to use more of their HOS on-duty time on the road instead of at the loading dock. An individual commenter said that the pause may enable a driver to return home sooner instead of taking a 10-hour off-duty or sleeper berth period.

American Moving and Storage Association said carriers that compensate their drivers by the hour would not see a direct labor cost benefit from this proposal, but that operations that pay per load weight or per mile may recapture lost efficiency. However, the commenter said the flexibility provided by the proposal would be expected to minimize idling fuel costs and reduce contractual payback penalties for late deliveries.

An individual commenter stated that this provision would be beneficial if its use is restricted to the avoidance of traffic congestion. However, because companies, shippers, and receivers could abuse this provision, the commenter said it would result in more drivers driving fatigued when they do not want to be driving.

Advocates expressed concern that the question failed to ask for details from research or to try to account for the cost of crashes caused using the 3-hour pause.

(4) Do you expect to use this provision to account for uncertainty such that trips could be finished on their scheduled completion day? How often do uncertain factors impact your schedule such that you are unable to complete a trip during the expected driving window and must delay delivery until after a 10 hour off-duty period? OOIDA responded that the provision would give drivers more flexibility to account for uncertainty during their workdays, which in many cases would help them finish trips on their scheduled completion days. TruckerNation remarked that the ''supreme benefit'' of the proposed split-duty provision is the fact that it accounts for uncertainty and results in loads getting to their destination as scheduled, rather than having drivers exhaust their 14 hours with miles yet to drive. Minnesota Trucking Association responded that its drivers would consider using this provision to react to unforeseen circumstances encountered during the trip. A motor carrier servicing railroads stated that, since unplanned events that block lines (*e.g.,* weather event or derailment) often occur outside of normal business hours, railroad contractors require flexibility to send drivers to the site with the equipment necessary to remove railcars and debris and restore service. Regarding uncertain impacts, a commenter said that traffic congestion occurs at least a couple of times a week.

Another commenter responded that it uses driver teams to account for uncertainty in its operations.

(5) Do you expect to be able to complete more trips due to this provision (i.e., schedule additional freight movement)? How many additional trips would you expect to plan during a given week or year? OOIDA said 58 percent of its survey respondents replied that they would not complete more trips due to this provision, and 42 percent said that they would be able to complete an average of 1.6 more trips per week. Several commenters, including a trade association, reported that they would not complete more trips due to this provision, or expect fewer trips.

(6) Would you expect to be able to use more of the 11 hours of drive time currently available due to the 3-hour pause? OOIDA and other industry associations responded they expect drivers would be able to use the 11 hours of drive time more efficiently with the option of a 3-hour pause. Schneider National Carriers, Inc. also said drivers are likely to use more of their 11-hour maximum drive time than they are using under the current rule, but did not have an estimate as to how much more of the maximum drive time would be used. However, Boyle Transportation responded that they would not be able to use their drive time more effectively.

(7) Do you expect this provision to impact drivers' sleep schedule? How so? (8) Will this provision allow for drivers to shift off their circadian rhythm more easily than under current rules? OOIDA responded that the provision would not allow drivers to shift off their circadian rhythms more easily than the current rule; rather, it would provide drivers more opportunities to rest when they feel tired. OOIDA further stated that 74 percent of its survey participants indicated that the provision would not impact their sleep schedule. Of those who expected an impact, 72 percent said that the impact would be positive because it would provide additional opportunities to rest as needed. Similarly, the Minnesota Trucking Association stated that its members anticipate this proposal could enhance safety by allowing a driver to take a rest period as needed or avoid high stress situations and traffic. This commenter added that the proposed rule would allow drivers to better manage their own fatigue levels but suggested that FMCSA consider how often a driver could safely use this extension.

The National Tank Truck Carriers also discussed how often the pause could be used, stating that its members have expressed concern over whether this proposed change would disrupt driver sleep patterns, and that FMCSA should monitor how frequently this option is used by drivers to determine to what extent, if any, drivers' sleep patterns are disrupted in a manner that negatively impacts safety. Another commenter said this provision would adversely impact drivers' sleep schedules because companies, shippers, and receivers would force drivers to take the pause to compensate for detention times, thus forcing drivers to drive fatigued.

The NSC provided studies indicating that lack of rest is associated with a higher likelihood of safety-critical mistakes and that the effects of lack of sleep can be exacerbated if they occur during circadian lows. Boyle Transportation stated that no new science or study has altered previous findings about humans' sleep cycles and requirements for sleep, and that the split-duty provision will eliminate any safety advantage by disrupting and extending the regular on/off cycle beyond 24 hours. This commenter concluded that the pause would subject drivers to a rotating sleep schedule since the 3 hours added to the workday would offset their circadian rhythm. Another commenter responded that the rule would allow drivers to shift their circadian rhythm and would lead to more fatigued driving. Another commenter also stated that the rule would allow drivers to shift their circadian rhythm and would create a 27-hour day.

(9) In a full year, would this provision lead to additional driving miles or driving time? OOIDA said this provision could lead to additional driving miles but not additional driving time and, in many cases, would likely decrease total

driving time. Boyle Transportation responded that the proposal would not lead to additional driving miles or time. The Minnesota Trucking Association said the proposal could increase both miles and time.

(10) How often would you take advantage of the full 3-hour pause as compared to shorter amount of times? Why? OOIDA responded that frequency of use would vary depending on the conditions that necessitated the pause. Similarly, the Minnesota Trucking Association said that use of the pause is difficult to estimate, as decisions would be made on a case-by-case basis by a driver.

Another commenter, presumably a driver, stated that, if left solely to the commenter's discretion, the provision would only be used to avoid traffic congestion and adverse weather. However, the commenter said the decision would not be left to the driver's discretion unless FMCSA implements stronger coercion rules and enforcement.

(11) How would you plan to use the off-duty time spent during the 3-hour pause? Would you use the time sleeping in a truck cab more often or other leisure activities more often? OOIDA stated that 27 percent of its survey respondents said they would use time sleeping in the cab, 6 percent said personal time, 55 percent said both sleep and personal time, and 12 percent responded with ''other.'' The Minnesota Trucking Association said the answer would depend on professional drivers managing their trip plan and productivity to determine what is safe.

(12) Do you anticipate any fatigue impacts on driving up to the 17th hour of a duty day? How would the up to 3-hour break impact that fatigue level? OOIDA stated that 79 percent of its survey respondents said they did not anticipate any fatigue impacts on driving up to the 17th hour of a duty day; rather, the split-duty break would lessen fatigue by providing drivers more time to rest, thus reducing stress and increasing vigilance. A motor carrier also expected reduced fatigue because drivers would be allowed to adhere more to their personal ''body clock.'' The Pipeline Contractors Association said its members would not suffer additional fatigue if they extend the driving window by taking a break.

Several industry associations pointed to research indicating that that drivers can safely work a 16-hour shift without significant degradation in performance, noting the research failed to consider the restorative impact of taking one or more off-duty rest breaks of between 30 minutes and 3 hours.

Some commenters argued that driving up to the 17th hour of a duty day would have fatigue impacts. Truckers for a Cause cited research and studies on how hours awake relate to fatigue impairment and stated that detention time at shipper facilities does not result in an opportunity for rest. The commenter concluded that, unless regulatory language provides reasonable assurance that a nap will be possible during a split or pause, the proposal would not result in safety equal to or better than that found under the current FMCSRs. Similarly, AASM stated there is no guarantee that a driver can or will sleep during a pause of up to 3 hours and that this prolonged wakefulness can occur during circadian ''low'' periods when performance is lowest, thus resulting in a higher risk of drowsy driving and motor vehicle accidents. Knight-Swift Transportation Holdings, Inc. said the proposal would create significant additional risk, in terms of VMT at the most vulnerable times in the driver's daily work shift (after the 14th hour on-duty), to accommodate a rather small percentage of drivers affected by the current and more rigid 14-hour limit.

Truckers for a Cause disagreed with drivers who cite the rule on ill or fatigued operators (§ 392.3) as providing adequate protections from forced dispatch that might result in excessive fatigue. The commenter said a driver being told to take a split or pause break when and where a carrier, shipper, or receiver wants, rather than when and where a driver chooses, would not be violation of the coercion rule unless new regulatory language is included in the final rule.

Advocates asserted that evidence shows that fatigue and crash risk increase with increasing length of day and the ''question incorrectly assumes that carriers and drivers' expectations regarding fatigue are a comparable substitute to research and scientific fact.''

Some commenters foresaw a potential fatigue impact but said this could be mitigated by the off-duty rest periods. An industry association suggested that FMCSA further study whether stopping the clock could be done daily without an increase in driver fatigue.

IBT reported that half of all its survey respondents indicated that fatigue levels would be negatively impacted by driving up to the 17th hour of a duty day. However, survey respondents indicated that having a 3-hour pause in the driving window would not equate to a decrease in fatigue levels, as off-duty pauses can be more fatiguing than being active.

(13) What operations would benefit from multiple off-duty periods totaling 3 hours? Many commenters, including an industry association, indicated that long-haul operations would benefit from multiple off-duty periods totaling 3 hours, or just multiple pauses. Similarly, the Minnesota Trucking Association said short-haul and local operations would be affected less, as these operations use a standard schedule for pickup and delivery.

OOIDA, the Minnesota Trucking Association, and Schneider National Holdings, Inc., however, did not support multiple pauses. The industry association said FMCSA should provide clear guidance regarding the potential use of multiple extensions in one workday and address concerns regarding potential circumvention of the HOS rules through the combination of multiple extensions in a single workday.

(14) Would this flexibility cause drivers to alter their daily behavior or increase productivity? If so, how? The Minnesota Trucking Association said allowing a driver to take a pause as needed would effectively manage fatigue, as well as improve driver lifestyle and work life overall.

(15) What would be the impact on fatigue with several smaller breaks compared to a single period of up to 3 hours? The AASM said multiple off-duty periods are less restful than a single, long opportunity to sleep; restorative sleep progresses through specific, well-organized stages that cannot be generated when sleep opportunities are short or timed against the natural circadian rhythm. Therefore, shorter off-duty periods would be expected to decrease total sleep time per 24 hours, impacting driver safety. This commenter also said shorter rest breaks mean that drivers will likely end up operating their vehicle during circadian low periods, which is a major risk for sleepiness-related crashes. Lastly, the commenter said the proposal would lead to more episodes of sleep inertia, which has been tied to accidents and near-miss events in operational environments.

The Minnesota Trucking Association responded that taking a break when a driver needs to can positively impact fatigue reduction and improve driver lifestyle, but this becomes more challenging from a reporting standpoint.

(16) If the 3-hour break were divided up into smaller increments, what would be the impact on enforcement when determining compliance? The Minnesota Trucking Association said dividing up the break into smaller segments would cause confusion with no increase in safety. Schneider said

multiple pauses could encourage drivers to inaccurately record on-duty time as off-duty time, make verification and enforcement of the rule more difficult, and overly complicate the rule.

(17) Would the added complexity of multiple pauses substantially add to the time needed for ELD vendors to reprogram ELD software? If so, how much additional time would be needed? The Minnesota Trucking Association anticipated that technology vendors would need adequate time to adjust to any new rule.

FMCSA Response: The Agency has decided not to implement the proposed pause in the 14-hour driving window at this time. FMCSA continues to believe that an opportunity for a single off-duty pause in the 14-hour driving window could provide flexibility for drivers without compromising safety, as explained in the NPRM. However, many commenters believe that drivers would be pressured by carriers, shippers, or receivers to use the break to cover detention time, which would not necessarily provide the driver an optimal environment for restorative rest. This suggests that the proposal could have unintended consequences that were not adequately evaluated in the development of the NPRM.

An off-duty break of up to three consecutive hours during a work shift would have enabled drivers to avoid congestion. The subsequent driving time would then be more productive as drivers may have a greater opportunity to travel at the posted speed limits rather than at lower speeds through heavy traffic and congestion. It may also reduce the pressure to drive above the posted speed limits because of concerns raised by the 14-hour clock. In addition, drivers could take a rest break to reduce the likelihood of experiencing fatigue while driving. Because drivers would continue to take 10 consecutive hours off-duty at the end of the work shift, exercising the pause option during the work shift would increase the driver's off-duty time during the work week.

This increased productivity, resulting from an ability to avoid congestion, would be accomplished without altering the maximum amount of on-duty time that could be accumulated before driving is prohibited, or increasing the maximum driving time allowed during a work shift. The maximum amount of time accumulated before the designated single off-duty pause and immediately following the off-duty pause could not exceed 14 hours, irrespective of the duty status recorded before and after the designated break. The driver would be prohibited from operating a CMV until there was a break of at least 10 consecutive hours, thereby starting a new work shift. And the total amount of driving time accumulated before the designated off-duty pause and immediately following the pause could not exceed 11 hours before the driver takes a break of 10 consecutive hours, thereby retaining the 11-hour limit on driving time during the work shift.

FMCSA acknowledges that the potential benefits of increased flexibility could be undermined if the pause is used by carriers, shippers, or receivers for purposes other than the productivity and safety of drivers, especially to compensate for time wasted during the 14-hour driving window due to increased detention time. Under such a scenario, the Agency believes it is unlikely that the off-duty period would provide a meaningful opportunity for drivers to rest. Drivers may have limited choices where the off-duty period would take place, especially if the CMV is not equipped with a sleeper berth.

For drivers operating sleeper berth-equipped CMVs, the Agency believes it is more likely that the driver would elect to use the split-sleeper berth option adopted through this final rule rather than the pause of up to three consecutive hours. With the sleeper berth option the driver would be required to spend only seven consecutive hours in the sleeper berth to fulfill the HOS requirements rather than spending 10-consecutive hours off duty (or in the sleeper berth). The split sleeper berth option would allow the individual to resume CMV driving three hours sooner and thereby increase the likelihood of meeting scheduling demands. Therefore, there is an inherent incentive for drivers of sleeper berth-equipped CMVs to use the sleeper berth rule instead of the pause.

Because the drivers most likely to use the pause are individuals who do not have the option of using a sleeper berth, the Agency is particularly mindful of commenters' views about the potential for unintended consequences. The Agency is concerned about the need to ensure that drivers are not forced into situations where the break fails to provide meaningful rest. If an individual operating a CMV that is not equipped with a sleeper berth is pressured into using the pause at a time and location the driver finds inappropriate, the driver's options for a comfortable or suitable resting location are likely to be limited. If there is no lounge or similar location where the driver can relax in a comfortable seat or recliner, take a nap, read a book, or have access to multi-media entertainment, the value of the off-duty pause is diminished. This is especially the case if the driver's preferences about the timing and location of the break are not part of the equation.

Additionally, although this final rule makes modifications, the split sleeper berth provisions are already well-established, whereas the pause was a wholly new proposal. Due to its established use, FMCSA does not believe the sleeper berth changes are likely to affect current industry practices, as both breaks are required (so a driver's break is not a question of ''if'', but only ''when'') compared to the proposed new voluntary pause, when a driver could be pressured into a break that she is never ''required'' to take.

Given the uncertainty about the amount and quality of rest drivers could obtain under the circumstances described above, previous research about the safety risks of driving later in the work shift becomes more relevant because drivers would indeed be operating within a 17-hour window during which there may be minimal opportunity to get meaningful rest. For drivers of sleeper berth-equipped vehicles, concerns about where the driver could rest are not as significant, because these individuals already have experience using sleeper berths while the CMV is parked at various locations, including shipper and receiver facilities, and under various conditions (*e.g.,* noise levels and weather conditions). Given the uncertainty about the amount and quality of rest drivers could obtain under certain circumstances, previous research about the safety risks of driving later in the work shift become more relevant because drivers would indeed be operating with a 17-hour window during which there is minimal opportunity to get meaningful rest. For drivers of sleeper berth-equipped vehicles, concerns about where the driver could rest are not as significant because these individuals already have experience using sleeper berths while the CMV is parked at various locations, including shipper and receiver facilities, and under various conditions (*e.g.,* noise levels and weather conditions).

As stated above, some commenters suggested the pause would be helpful but only if the regulatory text included language giving drivers exclusive discretion over its use. While this approach might address some of the concerns expressed above, the Agency believes enforcement of drivers' rights in this matter would be difficult at best. Based on the commenters' concerns about the ways in which drivers may be compelled by their employers, shippers, and receivers to extend their days involuntarily, the Agency believes it is unclear whether the off-duty period

would provide a meaningful opportunity for drivers to rest. There would be challenges documenting the circumstances surrounding drivers' schedules. It would be complicated to demonstrate whether taking the break was a reasonable expectation that a supervisor would have, given a specific driver's schedule at that moment, or whether the break represented an employer's imposition on the driver through unplanned and abrupt changes to the schedule.

This final rule gives drivers with a sleeper berth additional flexibility when operating under the split sleeper berth cycle. Further, FMCSA anticipates that drivers of sleeper berth equipped trucks would likely have opted to use the sleeper berth exception rather than the pause in any case.

Based on the reasons discussed above, the Agency believes the split-duty option should be deferred until additional data can be collected on how it would be used and who would determine its use.

Comments About Petitions for Rulemaking Previously Submitted to FMCSA.

A few commenters, mostly individuals and drivers, endorsed the changes for increased flexibility proposed by OOIDA. However, the American Fuel and Petrochemical Manufacturers argued that FMCSA should delay the adoption of the OOIDA petition and not finalize the split-duty provision due to the lack of scientific data.

CVSA suggested that FMCSA grant its petition to set a maximum distance that the personal conveyance provision may be used under the final rule. CVSA argued that the current guidance for personal conveyance allows drivers to drive several hours, possibly increasing fatigue and risking safety.

Advocates agreed with FMCSA's denials of the TruckerNation, USTA, and UDA petitions, because they would allow drivers to operate for long periods without a sufficient sleep period.

FMCSA Response: The normal Agency process for handling petitions for rulemaking is set forth in 49 CFR part 389, subpart B—Procedures for Adoption of Rules. FMCSA declines to discuss CVSA's petition on personal conveyance, originally filed on December 17, 2018, as the Agency will issue a separate decision on this matter pursuant to part 389 rulemaking procedures. OOIDA petitioned FMCSA to allow property-carrying CMV drivers to take a single off-duty rest break for up to 3 consecutive hours once per 14-hour driving window. That rest break would pause the 14-hour clock for the duration for the break. As explained in greater detail above, the Agency has decided not to adopt that proposal.

Comments About the Compliance Date for the Final Rule.

OOIDA and the Intermodal Association of North America (IANA) recommended that the proposed rule go into effect as soon as possible, stating that it would improve highway safety.

The National Propane Gas Association and Keep Truckin, Inc. recommended a compliance date less than 6 months after the effective date, regardless of ELD concerns. Wright Knox Motor Carrier, Inc. commented that it could comply within 6 months. The Pipeline Contractors Association recommended a compliance period of 6 months, stating that such a timeframe would result in cost savings to it members and customers.

ATA recommended that FMCSA collaborate with CVSA and ELD vendors to arrive at a single compliance date (rather than phasing in the rule). CVSA likewise recommended a single compliance date rather than a phase-in and recommended that FMCSA consult with ELD manufacturers. Conversely, industry associations recommended that a 6-month phase-in be adopted.

EROAD said that a compliance date of at least 6 months would be necessary to accommodate ELD manufacturers, and provided a breakdown of the time and methodology needed for discrete tasks. The Trucker Alliance and Trimble Transportation Mobility recommended a compliance date of at least 9 months after adoption of the rule to accommodate ELD providers. The National Association of Manufacturers and Garmin International recommended a 12-month compliance date. TruckerNation argued that extensive ELD software updates by manufacturers would be necessary to ensure compliance with the final rule. Schneider National Holdings, Inc. recommended a compliance date 12 to 18 months after the proposed rule's implementation.

The USTA requested a ''soft'' enforcement period to accommodate affected parties' learning curves. One driver asked if the ''Big Road'' app would be uploaded with the pause button and if the proposed rule would go into effect immediately.

FMCSA Response: FMCSA believes that the proposed changes will be positive for the industry, and that an early compliance date would be ideal, as suggested by the OOIDA comments. However, there are other factors to consider.

Many commenters, particularly those from ELD manufacturers, believe a longer compliance period should be considered, allowing them time to program changes consistent with this final rule. Although some aspects of the final rule theoretically could have a shorter effective date, FMCSA agrees with the commenters suggesting that a single date is needed to minimize confusion. With the elimination of the pause provision and market pressure from motor carriers, FMCSA believes the timeline for reprogramming ELDs can be shorter than reflected in the comments.

Considering these facts, FMCSA believes that a 120-day effective date without a delayed compliance period is appropriate.

Comments About Economic Issues.

The Small Business Administration (SBA) recommended that FMCSA consider the impact of the proposed rule on small businesses, and especially those raised in Regional Regulatory Reform Roundtables. These included complaints about ELD requirements and requests for relief from HOS requirements that are impracticable because of the lack of sufficient safe stopping locations for drivers.

Advocates asserted that FMCSA failed to provide any relevant, meaningful analysis or evidence to support the conclusion that the proposed rule had potential cost benefits. Advocates said that FMCSA ''cites several benefits related to dealing with congestion and detention times which are factors not necessarily aligned with fatigue and rest needs of drivers.'' Advocates also stated that suggesting that the proposal will benefit drivers by increasing flexibility to rest when tired fails to acknowledge that breaks will likely be taken in response to logistical concerns and not in terms of fatigue. Advocates concluded that the proposed rule may very well lead to reduced consolidated sleep, schedule changes to fit carrier interests over driver fatigue and health, weakened public safety, and other detrimental costs of long working and driving hours.

Schneider National Holdings, Inc. commented that the proposed rule's cost analysis failed to consider compliance costs associated with training law enforcement and drivers, comparing this against the 2005 rule.

Institute for Policy Integrity commented that FMCSA failed to consider a sufficiently broad range of alternatives, faulting the overly-narrow goal of increasing flexibility.

FMCSA Response: The specific impacts mentioned by the SBA Office of Advocacy's Regional Regulatory Reform Roundtables include complaints about ELD requirements and inadequate

parking spaces. Measures to address concerns about ELD requirements or CMV parking are outside of the scope of this rulemaking.

As for the commenter that said FMCSA failed to consider carrier compliance and law enforcement training costs, it should be noted that training costs for new entrants are included in the costs estimated for the Entry-level Driver Training rule,[56] so it would be double-counting to include those costs in the analysis for this rule.

FMCSA added costs for law enforcement training in the RIA for this final rule. The Agency notes that existing funds allocated through the MCSAP are used for law enforcement training and can be used to cover State law enforcement training costs. Training costs for new inspectors would be covered by the costs allocated for existing training requirements, and would not be attributable to this final rule.

As for the suggestion that that the Agency failed to consider a sufficiently broad range of alternatives, FMCSA notes that its approach to regulatory alternatives was based on the guidance provided by the Office of Management and Budget (OMB) in Circular A–4 (''Regulatory Analysis: A Primer.'') Circular A–4 suggests that agencies consider the preferred option and at least one alternative that is less stringent and one alternative that is more stringent. Because the HOS rule is comprised of separate provisions that affect different aspects of HOS compliance, FMCSA considered alternatives to each individual provision and followed OMB's guidance to consider more and less stringent alternatives to the Agency's preferred option.

Comments About the HOS Exception for the Transportation of Agricultural Commodities.

An industry association emphasized the importance of the agricultural commodity exception noted in the ANPRM. However, the association asked the Agency to include additional livestock commodities, such as animal feed and feed ingredients, and other agricultural products sensitive to temperature. The National Ready Mixed Concrete Association compared the time sensitivity of concrete to the agricultural exceptions and definitions.

FMCSA Response: The HOS exception for the transportation of agricultural commodities and farm supplies in § 395.1(k) reads as follows:

''(k) Agricultural operations. The provisions of this part shall not apply during planting and harvesting periods, as determined by each State, to drivers transporting

(1) Agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;

(2) Farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or

(3) Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.''

This exception is statutory and was most recently amended in Section 32101(d) of the Moving Ahead for Progress in the 21st Century Act, which extended the radius of the HOS exception from 100 air-miles to 150 air-miles from the source (Pub. L. 112–141, 126 Stat. 405, 778, July 6, 2012). Section 12104 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334, 132 Stat. 4490, 4942, Dec. 20, 2018) also amended the definition of ''livestock.'' Those transporting agricultural commodities and livestock meeting the relevant definition can use this exception. This final rule does not address agricultural issues. On a separate rulemaking track, the Agency published an ANPRM seeking comment on the potential clarification of the definitions of ''agricultural commodities'' or ''livestock'' in section 395.1(k) (84 FR 36559, July 29, 2019). Any changes to the agricultural commodity definitions will be handled in that rulemaking, not in this final rule.

Comments on ELDs.

NTSB stated that a science-based safety evaluation of the current HOS regulations combined with the implementation of ELDs is needed before changes should be made to the rules. NTSB argued that this is necessary because FMCSA has failed to present any evidence that the proposed changes will improve highway safety or any evaluation of the potential combined effects of relaxing multiple aspects of the regulations simultaneously. NSC said FMCSA should support the use of ELDs and not make any changes to their required usage. The Transportation Intermediaries Association (TIA) asserted that the ELDs provide a large amount of real-time data which should be used to update the regulations to benefit the motor carrier industry.

FMCSA Response:

NTSB's comment emphasized the need for ''science-based evidence.'' Although ELDs could provide useful safety data, as TIA suggested, the Agency is required by statute to use such data ''only to enforce the Secretary's motor carrier safety and related regulations, including record-of-duty status regulations'' (49 U.S.C. 31137(e)(1)). In other words, FMCSA can use ELD data for enforcement purposes, but it may not use data collected directly from drivers' ELDs for broader statistical or research purposes. More broadly, as described throughout this document, the Agency believes that it is indeed using the best available ''science-based evidence'' in promulgating this final rule. To the extent a scientific result can be ascertained, fatigue science does not, by itself, dictate a policy outcome. Fatigue science simply provides information about the levels of fatigue that a person experiences under certain conditions. Congress recognized the need for balanced rulemaking by requiring the Agency to consider, among other things, the ''costs and benefits'' of proposed rules (49 U.S.C. 31136(c)(2)(A) and 31502(d)).

In the Agency's judgment, the elements of the NPRM that are adopted today make useful, but only incremental, changes to enhance operational flexibility. As discussed throughout the preamble, FMCSA believes that this final rule is safety-neutral.

With respect to ELDs, the revisions to the short-haul provision ensures that more deliveries within the expanded 14-hour workday will limit the amount of driving that can be done, and the maximum driving time remains limited to 11 hours; conversely, driving closer to the expanded 150 air-mile radius will limit the number of deliveries that can be made. Carriers and drivers will have more discretion in the number and geographic location of customers they can serve, while not exceeding the time limit.

Outreach and Training.

TruckerNation asserted that robust training, guidance documents, and operating policies should be developed to enable effective communication and collaboration with stakeholders and law enforcement officers at all levels.

FMCSA Response: As with all significant rulemakings, FMCSA has been working to develop a complete HOS implementation plan since the start of this rulemaking effort. This plan includes training and support tools for Federal and State enforcement personnel. As outreach and communication with the motor carrier

[56] 81 FR 88732, published December 8, 2016.

industry will be essential for an effective roll-out, the Agency has also developed a plan and corresponding materials that will be disseminated now that the final rule has been published.

Comments on Harmonization of U.S. and Canada, and Inconsistent State HOS Regulations.

A few commenters suggested reviewing and considering other HOS regulations, particularly those of Canada and Texas. An anonymous commenter noted that: ''In Canada, we are allowed 13 hours of total driving time and 14 hours of total on-duty time within a 16-hour daily clock. Additionally, to reset our daily 16-hour clock we only need 8 hours of continuous off-duty or sleeper berth time, however we are required to have 10 hours of total off-duty time within the daily 24-hour clock. The additional two hours of required off-duty time can consist of 30-minute increments of off-duty periods throughout the day.''

In responding to FMCSA's proposed 3-hour pause in the duty day, CVSA noted that ''the maximum work shift [in Canada] for a driver is 16 hours, rather than the U.S. 14-hour rule. Therefore, CVSA suggests that FMCSA consider 2 additional hours, as opposed to 3 hours, to align with the Canadian HOS requirements. The alignment would make it easier for the motor carrier industry to comply with the HOS regulations in both countries, streamlining operations for the entire transportation supply chain and would provide a uniform ELD solution for cross-border operations which would make it easier for roadside safety inspectors to enforce.''

An individual summarized the Texas HOS rules as ''No required 30-minute breaks. 12-hour drive time 15 hour on-duty time. 8-hour sleeper berth or off-duty. I believe this will help with fatigued drivers and allow drivers to drive when they feel comfortable and not when the log book says they have to go.'' One commenter who transports placardable quantities of hazardous materials complained that California allows only 10 hours of driving time for operations in intrastate commerce. He argued that all States should be required to adopt Federal HOS limits. ABA also commented in support of FMCSA rest break standards invalidating all State and local standards by field preemption, asserting the importance of uniformity in the transportation and shipping industries.

Other commenters, including drivers and industry associations, suggested adopting different HOS rules for major sectors of industry, such as team operations, oversized freight, and agricultural transportation, especially livestock.

Supporters of team operations generally favor splitting sleeper berth time into two 5-hour segments to allow drivers to trade places every few hours and keep the CMV moving. Oversized and overweight cargo is often transported on special vehicles that move slowly. The HOS limits can therefore create problems for these operations.

Agricultural interests that commented on the NPRM emphasized the perishability of livestock. The American Veterinary Medical Association stressed the need to avoid longer transit times, especially through mandatory stops when animals in crowded trailers can experience heat stress. The National Pork Producers Council (NPPC) generally supported the changes proposed in the NPRM, though it preferred a 6-hour, rather than a 7-hour, sleeper berth period. However, the NPPC also argued that the distinction between the 14-hour driving window and the 11-hour drive-time limit should be eliminated. ''Work is work, and if a driver can be on-duty then the driver should be free to continue driving if they feel comfortable.'' The NPPC argued that a 14-hour driving limit is consistent with rules in Canada and Australia, as well as the intrastate rules of California and Texas.

FMCSA Response: The commenters who suggested adopting Canadian HOS limits or the Texas rules applicable to intrastate commerce offered nothing beyond their opinion that these regulations are preferable to the Federal limits adopted today.

Motor carrier operations in Canada and the U.S. differ in important ways. While trip lengths may be comparable, traffic density in Canada is much less and weather conditions are more challenging. Longer Canadian driving limits and reduced off-duty times are geared to those operating conditions. In fact, Canada has special HOS regulations for its far northern regions that are not applicable to the rest of the country. (Similarly, the FMCSA has different HOS rules specific to Alaska, 49 CFR 395.1(h).) The Canadian rules appear to be every bit as complex as U.S. rules. Adopting some or part of them would entail a major re-training effort, not only for the clear majority of U.S. drivers unfamiliar with Canadian rules, but also for the State enforcement agencies that would have to revise their regulations and databases and then re-train all their officers. The CVSA suggestion to (partially) harmonize U.S. and Canadian rules by adopting a 16-hour driving window is not feasible, given FMCSA's decision not to go forward with a 3-hour pause in the driver's duty day. The NPRM did not propose to adopt any portion of the Canadian HOS rules, and the Agency therefore cannot do so as part of this rulemaking.

Both the Texas and California intrastate HOS rules cited by commenters are consistent with the variances from the FMCSRs allowed by § 350.341. In implementing the MCSAP in the late 1980s, the Federal Highway Administration, FMCSA's predecessor agency, allowed State regulations for intrastate operations to remain less than fully ''compatible'' with the FMCSRs, providing the States were making progress toward ''compatibility,'' *i.e.,* national uniformity. However, in 1991 Congress directed that these ''tolerance guidelines'' with their intrastate variances be made permanent.[57] Like most States, Texas has availed itself of the variances allowed by § 350.341 to adopt standards for intrastate commerce that are less stringent than the FMCSRs, but California's more stringent driving-time limit is also within its authority. The NPRM proposed no changes to the MCSAP variances and none are adopted today.

The Agency notes that industry representatives have occasionally stated that they believe the Agency follows a ''one-size-fits-all'' regulatory approach, even though the FMCSRs make special provision for a wide variety of motor carrier operations. Some of these provisions are based on statute, but many were adopted by the Agency to accommodate the needs of particular segments of the industry. The current rulemaking generated additional requests for segment-specific HOS rules. No such rules were proposed and none are adopted today. However, many of the requests have been addressed in other contexts or by other authorities.

Oversize and overweight cargo is often eligible for special State permits, some of which include time limits (*e.g.,* no nighttime operations). Although parking these combinations may be difficult, careful route planning can minimize, if not avoid, such problems. In any case, FMCSA has no authority to address parking shortages, and does not believe that extended driving hours are a reasonable solution to the problems inherent in moving unusual cargo.

Supporters of team operations often argue that drivers should be allowed to split their sleeper berth time into 5-hour segments, separated by 5-hour driving

[57] Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, 4002(l), 105 Stat. 1914, 2144, 1991.

stints. While such a rule would keep the vehicle on the road almost continuously, its implications for safety are far from ideal. Drivers' circadian rhythms would inevitably be scrambled as their 5-hour rest periods rotate around the clock. Even if 5-hour rest periods were theoretically as restorative as the sleeper berth option adopted today, obtaining quality rest in a moving vehicle is problematic. FMCSA is aware of no research demonstrating that splitting sleeper berth time into continually repeated 5-hour segments ensures adequate rest. This final rule therefore adopts the sleeper berth requirements proposed in the NPRM.

The transportation of livestock poses unique challenges, and consequently receives specialized treatment. Congress has exempted drivers hauling livestock from the required 30-minute break.[58] Drivers hauling livestock who qualify for the statutory ''covered farm vehicle'' exception in § 390.39 are completely exempt from the HOS rules and many other parts of the FMCSRs. The more limited statutory provision for the transportation of ''agricultural commodities'' in § 395.1(k)(1) exempts drivers from the HOS regulations while operating within a 150 air-mile radius of the ''source'' of livestock and other commodities. Even if animals are being transported a substantial distance, the exempt radius gives drivers about a 3-hour addition to the normal 11-hour driving limit. Finally, Congress has prohibited the use of Federal funds to enforce the ELD requirements against transporters of livestock.[59] The 14-hour driving limit proposed by the NPPC is far beyond the scope of this rulemaking and will not be addressed. In any case, longer hours are not the only solution to the transportation of animals. For example, livestock transporters seem to make little use of team drivers to address the problems they have identified.

VII. Discussion of the Final Rule

A. Short-Haul Operations

In this final rule, FMCSA adopts most of the changes proposed in the NPRM, including extending the maximum allowable workday for short-haul property- and passenger-carrying CMV drivers from 12 to 14 hours to correspond with the 14-hour period requirement for property drivers, and extending the existing distance restriction from 100 air-miles to 150 air-miles to be consistent with the distance limitation for short-haul drivers that are not required to possess a commercial driver's license.

Drivers and carriers using the short-haul exception are not required to use a RODS or ELD or take a 30-minute break. This extra time in the driving day has always been available to drivers, if they opted out of the short-haul exception. This change allows drivers to retain that status while receiving regulatory relief.

B. Adverse Driving Conditions

FMCSA adopts the proposed changes concerning the adverse driving exception. A driver who encounters adverse driving conditions is allowed up to a 16-hour driving window (for property carriers) within which to complete up to 13 hours of driving, or a 17-hour duty period (for passenger carriers) within which to complete up to 12 hours of driving.

In addition, FMCSA also modifies the definition of ''adverse driving conditions,'' to clarify the role of the driver in determining when such conditions are identified:

> Adverse driving conditions means snow, ice, sleet, fog, or other adverse weather conditions or unusual road or traffic conditions that were not known, or could not reasonably be known, to a driver immediately prior to beginning the duty day or immediately before beginning driving after a qualifying rest break or sleeper berth period, or to a motor carrier immediately prior to dispatching the driver.

This addition of the driver to the definition makes it clear that the driver should be involved in the decision-making, which should lessen the need for regulatory guidance to explain the role of the driver in determining when the conditions are identified. The changes to the other parts of the definition, including referring to the duty day, qualifying rest breaks, and sleeper berth period, simply update the definition and reflect the changes and updates to the HOS regulations, rather than using informal terminology (''the run''). The Agency declines to expand the circumstances covered by the definition.

C. 30-Minute Break

FMCSA adopts the proposed change linking the mandatory break to cumulative driving time rather than on-duty time, and allowing an on-duty-not-driving break of at least 30-minutes, to satisfy the requirement.

The Agency notes that many CMV drivers interrupt their driving time during normal business operations, such as loading or unloading a truck, completing paperwork, or stopping for fuel. Before this final rule, the break was required to be off-duty, during which no work, including paperwork, could be performed and was triggered after 8 hours, regardless of driving time. However, the changes to the 30-minute break provision do not increase the maximum driving time during the work shift or allow driving after the 14th hour from the beginning of the work shift.

The flexibility provided with this change will allow normal breaks from driving (*i.e.,* from ''time on task'' in the research literature) to satisfy the requirement, provided the break lasts at least 30 minutes.

D. Sleeper Berth

FMCSA adopts the proposal allowing a driver additional flexibility in taking two off-duty periods under the sleeper berth exception. One period must be at least 7 consecutive hours spent in the sleeper berth, paired with another period of at least 2 hours spent either in the berth or otherwise off-duty, if the two periods total at least 10 hours. When paired, neither qualifying period counts against the 14-hour driving window. (Prior to this final rule, the shorter period counted against the driving window.) Identical changes are made to a parallel provision applicable in the State of Alaska found in § 395.1(h).

E. Compliance Date for the Rulemaking

FMCSA believe that the flexibility provided by these changes will be beneficial to the motor carrier industry. A short effective date would therefore be ideal, however, there are other factors to consider. The Congressional Review Act (CRA) (5 U.S.C. chapter 8) requires a 60 day delay before a major rule, like this rule, can take effect. Additionally, the need for ELD manufacturers to update those systems that exceed the minimum requirements, and to train drivers and enforcement personnel must be considered.

FMCSA believes that an effective date 120 days after publication is appropriate, given the actions required for full implementation.

F. Appendix B to 49 CFR Part 385

Based upon this final rule, technical changes to the corresponding paragraphs listing acute and critical violations in *49 CFR part 385, Appendix B, VII. List of Acute and Critical Regulations* are made.

VIII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the

[58] Sec. 5206(b)(1)(B)–(C), Fixing America's Surface Transportation Act, Public Law 114–94, 129 Stat. 1312, 1537, Dec. 4, 2015.

[59] Sec. 131 of Title I of Division H of the Further Consolidated Appropriations Act, 2020, signed on December 20, 2019.

United States (and, in some cases, United States Territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations in which they operate. Canada- and Mexico-domiciled drivers must ensure compliance with U.S. HOS requirements while they are driving in the U.S.

A driver domiciled in the United States may comply with the Canadian hours of service regulations while driving in Canada. Upon re-entering the United States, however, the driver is subject to all the requirements of Part 395, including the 11- and 14-hour rules, and the 60- or 70-hour rules applicable to the previous 7 or 8 consecutive days. In other words, a driver who takes full advantage of Canadian requirements may have to stop driving for a time immediately after returning to the U.S. to restore compliance with Part 395. Despite its possible effect on decisions a U.S. driver must make while in Canada, this interpretation does not involve an exercise of extraterritorial jurisdiction (62 FR 16379, 16424; April 4, 1997).

IX. Section-by-Section Analysis

This rulemaking seeks to provide additional flexibility under the HOS rules in a manner that does not compromise safety. Specifically, it (1) modifies the definition of ''adverse driving conditions'' and extends a driver's driving window by up to two hours should adverse driving conditions be encountered; (2) expands the scope of the short-haul exception for drivers of property-carrying CMVs requiring a CDL and for passenger-carrying CMVs; (3) modifies the sleeper berth rule; and (4) amends the mandatory 30-minute break to give drivers subject to the rule less restrictive means of satisfying the requirement. Additional technical changes are made in this final rule. Changes to the regulatory text proposed in the NPRM are noted below.

A. Part 385—Safety Fitness Procedures

In Section VII of appendix B of part 385, the list of acute and critical violations, is modified to match changes made in part 395. Specifically, the references to § 395.1(h)(1)(i), (ii), (iii), and (iv) are modified to reflect the redesignations, and text addressing § 395.3(a)(3)(ii) is modified to reflect the substantive changes in the 30-minute rule. While the changes to this list were not included in the NPRM, their inclusion on the designation of acute and critical violations are distinctly technical in nature; they simply update the list for purposes of clarity and comprehension to reflect regulatory changes made elsewhere in the rule.

B. Part 395—Hours of Service of Drivers

1. Section 395.1 (Scope of Rules in This Part)

In subparagraph (b)(1), FMCSA modifies the exception for drivers of property- and passenger-carrying CMVs encountering adverse driving conditions, allowing them to extend their respective driving windows by a maximum of 2 hours, consistent with the long-standing provision governing the extension of driving time. Other changes in this subparagraph are merely technical or clarifying.

In subparagraph (e)(1), FMCSA modifies the short-haul exception for drivers operating either property-carrying or passenger-carrying CMVs, under which time records can be used in lieu of ELDs or RODS, and supporting documents need not be submitted to the motor carrier. This final rule extends the scope of this exception from a 100- to a 150-air-mile radius from the driver's normal work reporting location and extends the driver's maximum workday from 12 to 14 hours, a period consistent with the general rule governing the maximum driving window applicable to drivers operating property-carrying CMVs. All short-haul drivers remain subject to the existing limit on hours spent driving—11 hours for drivers of property-carrying CMVs requiring a CDL and 10 hours for drivers of passenger-carrying CMVs. Other changes in this subparagraph are merely technical or clarifying. For example, specific references to the 14-hour duty window for drivers of ''ready-mixed concrete delivery vehicles'' are eliminated, given the expansion of the duty day for all short-haul drivers to 14 hours. Provisions previously found in § 395.1(e)(1)(iv), duplicating provisions limiting drivers' hours under §§ 395.3 and 395.5, are eliminated as superfluous and to avoid redundancy.

In subparagraph (g)(1), FMCSA modifies the general sleeper berth exception for drivers of property-carrying CMVs who elect to use this exception. Specifically, the Agency replaces the requirement for 8 consecutive hours in the sleeper berth and 2 additional hours, either in the berth or off-duty, or some combination thereof, with a requirement for at least 7 (but less than 10) consecutive hours in the sleeper berth and at least 2 additional hours, either in the berth or off-duty or some combination thereof. However, the two periods must total at least 10 hours, equivalent to the 10 off-duty hours required of drivers who do not use sleeper berths. Neither period counts against the driver's 14-hour driving window. Other changes are clarifying or technical. For example, the provision authorizing a team driver to count time in the passenger seat while the CMV is moving toward his/her sleeper berth break is modified to allow up to 3 (rather than 2) hours in the passenger seat for consistency with the minimum hours required in the berth under this rule. Long-standing language omitted from the NPRM that required a driver using the sleeper berth exception to calculate available hours from the end of the initial break period, is restored in this final rule for clarity. Provisions previously found in paragraphs (g)(1)(i)(B) and (C) are eliminated as superfluous because these requirements are covered elsewhere in part 395. Finally, provisions in former § 395.1(g) specific to drivers of property-carrying CMVs operating in Alaska are removed and recodified in § 395.1(h)—addressing HOS requirements unique to that State.

In paragraph (h), FMCSA revises the HOS exception applicable to drivers of property-carrying CMVs in the State of Alaska. Provisions formerly found in § 395.1(g) specific to Alaska are recodified and consolidated in paragraphs (h), specifically in (h)(1)(ii) and (iii), including provisions addressing required off-duty periods and sleeper berth provisions. Provisions previously found in paragraph (g) that are eliminated because they are covered elsewhere are added here, given that CMV drivers in the State of Alaska are not covered by paragraphs § 395.3(a) and (b) (property-carrying CMVs) or § 395.5 (passenger-carrying CMVs). Although not proposed in the NPRM, language is also added to this paragraph to address how a driver using the sleeper berth exception calculates available hours from the end of the initial break period, consistent with provisions of paragraph (g). The changes are either technical or stylistic. For example, language proposed in the NPRM is modified to more closely track language in the current rules, and to make clear that, under § 395.1(h), neither rest period under the sleeper berth provision can exceed 10 hours. These changes are made for purposes of clarity; except as noted above, changes largely reflect language included in the NPRM.

2. Section 395.2 (Definitions)

FMCSA modifies the definition of ''adverse driving conditions,''

eliminating certain language addressing conditions already covered, and modifying the applicable standard to encompass conditions ''not known, or [that] could not reasonably be known'' to clarify when the definition applies. Furthermore, rather than focus solely on the knowledge of the dispatcher, the definition is modified to reflect knowledge of either the driver or the motor carrier at applicable points in time.[60] Additional clarifying changes were made. For example, the word ''immediately'' is added to clarify the point in time that the applicable conditions must be known and the reference to ''unusual road and traffic conditions'' is modified to read ''unusual road or traffic conditions'' to clarify either scenario would qualify.

FMCSA also modifies the definition of ''on-duty time'' by updating paragraph (4)(iii) of the definition to align with § 395.1(g)(1)(i)(D) in this final rule.

3. Section 395.3 (Maximum Driving Time for Property-Carrying Vehicles)

FMCSA revises paragraphs (a)(2) and (a)(3)(i) to remove superfluous language and make stylistic changes, respectively. No substantive change is intended. In paragraph (a)(3)(ii), the Agency modifies the 30-minute break requirement to focus on extended consecutive driving periods rather than a driver's time on-duty. Thus, a driver may not drive more than 8 hours without an interruption of at least 30 consecutive minutes. A driver may satisfy the 30-minute period by spending the time off-duty, on-duty (not driving), or in the sleeper berth, or any combination of these non-driving statuses. The specific reference to time in the sleeper berth is added for clarity. As before, drivers operating under the short-haul exception (§ 395.1(e)) are not subject to the 30-minute break requirement.

The Agency is not adopting the NPRM's proposal to extend the driver's 14-hour duty period by taking an off-duty break ranging from 30 minutes to 3 hours.

[60] In the NPRM, FMCSA posed a series of specific questions on the potential modification of the definition of ''adverse driving conditions,'' driven in large part by comments the Agency received to the ANPRM. Specifically, the Agency requested comment on whether the knowledge requirement ought to reside with the driver rather than dispatcher, whether the lack of knowledge at time of dispatch be eliminated, and whether the definition ought to encompass additional circumstances. *See* 84 FR at 44200, August 22, 2019.

X. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563), and DOT Regulatory Policies and Procedures

The Office of Information and Regulatory Affairs has determined that this rulemaking is an economically significant regulatory action under E.O. 12866 [61] Regulatory Planning and Review, as supplemented by E.O. 13563.[62] It also is significant under DOT regulations because the economic costs and benefits of the rule exceed the $100 million annual threshold and because of the substantial Congressional and public interest concerning the HOS requirements (84 FR 71714, Dec. 27, 2019).

An RIA is available in the docket. That document:

- Identifies the problem targeted by this rulemaking, including a statement of the need for the action;
- Defines the scope and parameters of the analysis;
- Defines the baseline; and,
- Defines and evaluates the costs and benefits of the action.

The RIA is the synthesis of research conducted specific to current HOS practices, stakeholder comments, and analysis of the impacts resulting from changes to the HOS provisions in this final rule.

Affected Entities

The changes in this final rule will affect CMV drivers, motor carriers, and, except as otherwise exempt under § 390.3T(f)(2). The HOS regulations apply to CMV drivers. FMCSA obtained driver count information, by carrier operation, from the Motor Carrier Management Information System (MCMIS), which includes information submitted to FMCSA by motor carriers the first time the carrier applies for a DOT number, and biennially thereafter. Table 3 displays the 2018 estimate of CMV drivers from MCMIS. With the current baseline annual number of 6,520,268 CMV drivers (478,184 passenger carrier CMV drivers and 6,042,084 property carrier CMV drivers), FMCSA then estimated the future baseline number of CMV drivers who will be affected by this final rule annually during the analysis period of 2020 to 2029. These future baseline projections were developed by increasing the current baseline 2018 values consistent with occupation-specific employment growth projections obtained from the Bureau of Labor Statistics (BLS) Employment Projections program.[63] The BLS employment projections for the following standard occupational classifications were used:

BLS SOC 53–3021 (Bus drivers, transit and intercity)
BLS SOC 53–3022 (Bus drivers, school or special client)
BLS SOC 53–3032 (Heavy and tractor-trailer truck drivers)
BLS SOC 53–3023 (Light truck or delivery service drivers)

The occupational categories noted above do not overlap exactly with the entire population of CMV drivers who will be subject to this rule, primarily because there are some CMV drivers who operate vehicles over 10,001 pounds but do not specifically declare their occupation as being a bus or truck driver. However, as noted above, this does not mean that those drivers are not reflected in the baseline 2018 estimates of CMV drivers produced above. All CMV drivers, regardless of their occupational category, are included in the estimates. The occupational categories above represent approximately 3.6 million employees in 2018, and combined are used to forecast the future growth from 2018 through 2029 based on the BLS estimates of employees in those industries from 2018 through 2028.

BLS provides baseline 2018 values for the total number of employees in all of the occupational categories noted, as well as estimates for 2028. An annual compound growth rate for net overall growth in the total population of CMV bus drivers and CMV truck drivers was calculated from the growth in the number of employees in these occupations from 2018 to 2028 as projected by BLS. The projected net growth in total employment for BLS SOC 53–3021 (Bus drivers, transit and intercity) from 2018 to 2028 is 6.1 percent, which equates to a 0.598 percent annual compound growth rate. The projected net growth in total employment for BLS SOC 53–3022 (Bus drivers, school or special client) from 2018 to 2028 is 4.3 percent, which equates to a 0.426 percent annual compound growth rate. FMCSA then computed a weighted average annual compound bus driver growth rate of 0.472 percent for these two occupational categories. The projected net growth in

[61] Executive Order 12866 of September 30, 1993. Regulatory Planning and Review. (58 FR 51735, October 4, 1993).

[62] Executive Order 13563 of January 18, 2011. Improving Regulation and Regulatory Review. (76 FR 3821, January 21, 2011).

[63] U.S. DOL, BLS. Employment Projections Program. *Table 1.2: Employment by detailed occupation, 2016 and projected 2026.* Available at: *http://www.bls.gov/emp/ind-occ-matrix/occupation.xlsx,* last accessed October 29, 2018.

total employment for BLS SOC 53–3032 (heavy and tractor-trailer truck drivers) from 2018 to 2028 is 5.1 percent, which equates to a 0.498 percent annual compound growth rate. The projected net growth in total employment for BLS SOC 53–3033 (light truck or delivery service drivers) from 2018 to 2028 is 4.4 percent, which equates to a 0.429 percent annual compound growth rate. FMCSA then computed a weighted average annual compound truck driver growth rate of 0.474 percent for these two occupational categories. Beyond 2028, these annual compound growth rates were assumed to be the same out to the final year of the analysis period of 2029. FMCSA applies the weighted average annual compound growth rate to the population of CMV bus and truck drivers to estimate the affected driver population throughout the period of analysis, as shown in Table 3.

Due to exceptions and exemptions from the HOS regulations, the total CMV driver population must be broken down based on specific criteria to isolate the population that will be affected by each provision of this final rule. HOS regulations are dependent on the vehicle operated; for example, drivers of passenger-carrying vehicles must operate under regulations specific to those vehicles and drivers of non-passenger (*i.e.,* property) carrying vehicles must operate under regulations specific to those vehicles. For this reason, Table 3 provides the CMV driver count based on the type of operation (passenger vs. property) in column (B) and column (C). Column (D) is the total CMV driver count. Column (E) is a subset of the property carrier CMV drivers in column (C).

The potential cost savings gained by motor carriers under this final rule are in part a function of the estimated number of CMV drivers subject to the 30-minute break requirement. This rule refers to drivers affected by the 30-minute break requirement as CMV truck drivers. Those drivers operating passenger carrying vehicles are not subject to the 30-minute break requirement. For this reason, the driver counts in Column (E) are from carriers that do not identify themselves as passenger carriers. Second, those drivers operating under the short-haul exception are not subject to the 30-minute break requirement.

Previously, drivers could qualify for the HOS short-haul exception in § 395.1(e)(1) if they return to their normal work reporting location and are released from work within 12 hours after coming on-duty, can submit their work schedule via time cards, and operate within a 100 air-mile radius of their work reporting location. Under this final rule, drivers can qualify for the HOS short-haul exception provided they return to the normal work reporting location and are released from work within 14 hours after coming on-duty, can submit their work schedule via time cards, and operate within a 150 air-mile radius of their work reporting location. In the RIA for the NPRM, FMCSA did not estimate an increase in the number of drivers that would be eligible for the short-haul exception based on the alternatives presented but asked for comments on how the rule would affect the number of drivers operating under the exception.

In the ELD rule, FMCSA anticipated that all drivers employed by passenger and private non-passenger (*i.e.,* property) carriers qualifying for the short-haul exception would be able to take advantage of the exception.[64] Carriers report their driver employees to FMCSA based on whether they operate beyond or within a 100 air-mile radius. The number of drivers reported to operate within a 100 air-mile radius was used as a proxy estimate of drivers operating under the short-haul exception. This is not an exact count of drivers who operate under the short-haul exception because it does not include drivers that sometimes operate within 100 air-miles and on these occasions, operate as short-haul, and because it includes drivers who operate within 100 air-miles but may not return to their work reporting location within 12 hours. In preparation for the final rule, FMCSA reviewed the comments received and the short-haul exception requests to determine how the rule would affect the number of drivers operating under the short-haul exception.

With respect to the extension of the workday from 12 to 14 hours, FMCSA did not receive specific information on the increase in drivers that would be eligible for the short-haul exception. However, the approximately 10 exception requests relating to an extension of the time required to return to the work reporting location claim to cover between 100,000 and 150,000 drivers. FMCSA assumes that these drivers operate within 100 air-miles, but do not routinely return to their work reporting location within 12 hours. These drivers were included in the estimate of drivers eligible for, and assumed to be operating under, the short-haul exception. As such, FMCSA does not include a cost savings estimate resulting from this rule.

FMCSA has not received an exemption request that references the air-mile radius within which a driver may operate and still maintain eligibility for the short-haul exception. FMCSA did not receive data or information on the number of drivers that routinely operate between 100 and 150 air-miles, and will thus be newly covered by the short-haul exception. However, some commenters stated that they have drivers that routinely operate within 100 air-miles, but on occasion their operations require them to drive up to 150 air-miles from their work reporting location. These drivers are generally eligible for the short-haul exception, but must keep track of how often they operate beyond 100 air-miles. If this occurs more than 8 times in a 30-day period the driver would no longer be eligible, and would be subject to ELDs. This rule will remove the confusion and administrative hassle of estimating the number of times each driver has driven between 100 and 150 air-miles. It will not, necessarily, increase the number of drivers that are covered by the short-haul exception or decrease the number of ELDs in use. Therefore, FMCSA is not estimating an increase in the number of drivers operating under the short-haul exception for this rule and has determined that the carrier-reported information is a good proxy for the count of drivers who are eligible for, and will operate under, the short-haul exception.

In 2018, there were 1.4 million interstate non-passenger drivers and 1.7 million intrastate non-passenger drivers reported to operate solely within 100 air-miles. Lastly, CMV drivers in Alaska are not subject to the 30-minute break requirement. In 2018, there were approximately 19,000 drivers operating in Alaska. FMCSA estimated the CMV truck drivers currently subject to the 30-minute break requirement by subtracting from the total 6.4 million CMV drivers, the passenger carrier CMV drivers (478,184), the inter- and intrastate CMV truck driver employees that operate within a 100 air-mile radius (3.1 million), and the 19,000 CMV drivers in Alaska. In 2018, that total is 2.9 million CMV truck drivers subject to the 30-minute break requirement (Column (E) below).

[64] U.S.DOT, FMCSA. ''Regulatory Evaluation of Electronic Logging Devices and Hours of Service Supporting Documents Final Rule.'' November 2015. Presented in Table 10 on page 34 and discussed on page 33. Available at: *https://www.regulations.gov/document?D=FMCSA-2010-0167-2281* last accessed on: December 6, 2018.

TABLE 3—CMV DRIVER COUNTS

Year (A)	Passenger carrier CMV drivers (B)	Property carrier CMV drivers (C)	Total CMV drivers (D) = (B) + (C)	CMV drivers currently subject to the 30-minute break requirement (E)
2018	478,184	6,042,084	6,520,268	2,944,705
2019	480,444	6,070,752	6,551,196	2,958,677
2020	482,714	6,099,556	6,582,270	2,972,715
2021	484,994	6,128,497	6,613,491	2,986,820
2022	487,286	6,157,575	6,644,860	3,000,991
2023	489,588	6,186,791	6,676,378	3,015,230
2024	491,901	6,216,145	6,708,046	3,029,536
2025	494,225	6,245,639	6,739,864	3,043,911
2026	496,560	6,275,273	6,771,833	3,058,353
2027	498,906	6,305,047	6,803,953	3,072,864
2028	501,263	6,334,963	6,836,226	3,087,444
2029	503,631	6,365,021	6,868,652	3,102,093

Summary of Costs

FMCSA evaluated the impacts expected to result from the changes in this final rule and anticipates that there will be no new regulatory costs or increases in existing regulatory costs for the regulated entities. The final rule will, however, improve efficiency by allowing drivers to shift their drive and work time to mitigate the effect of uncertain variables, resulting in a reduction in costs, or cost savings, to drivers and motor carriers. The Agency anticipates that the changes to each provision will result in cost savings, quantitatively estimates the motor carrier cost savings attributable to the 30-minute break provision, quantitatively estimates the training costs to the Federal Government attributable to the rule, and qualitatively assesses cost savings of the remaining impacts resulting from this final rule.

30-Minute Break

This final rule will allow on-duty, non-driving time to fulfill the 30-minute break requirement, as opposed to the current off-duty requirement. Also, the break will be required after 8 hours of driving rather than 8 hours of on-duty time. The final rule will thus reduce the number of drivers required to take a break (*i.e.,* those drivers whose schedules include on-duty breaks from driving will not be required to also take an off-duty break) and it also allows for flexibility in how drivers spend their time if they are not driving. The final rule will result in cost savings to carriers in the form of avoided losses in driver productivity.

FMCSA values the reduction in driver time spent in nonproductive activity as the opportunity cost to the motor carrier, which is represented by the now attainable profit, using three variables: driver hours available for labor (*i.e.,* those hours that are currently required to be off-duty, but could be on-duty but not-driving under the final rule), an estimate of a typical average motor carrier profit margin, and the marginal cost of operating a CMV. The estimation of driver hours stems from the populations of drivers who either (1) drive more than 8 hours in an average shift, (2) work more than 8 hours in an average shift but do not drive more than 8 hours, or (3) work less than 8 hours in an average shift. Drivers who fall into category (3) will be unaffected by the changes. Drivers who fall into category (2) will receive regulatory relief from the changes, estimated as regaining a full half hour per shift. Additionally, drivers who drive more than 8 hours (category 1), will also receive regulatory relief by the allowance of on-duty, non-driving time to meet the 30-minute break requirement, estimated as regaining half of the half hour break time (15 minutes) per shift. The Agency multiplied the time estimated to be regained by drivers per affected shift, the number of affected shifts, and the estimated driver population in each driver group to produce column (A) in Table 4.

As shown in Table 4, the estimate of cost savings is the product of the total hours saved by drivers (column A), and the estimated hourly profit for motor carriers (column B). FMCSA estimates the cost savings resulting from the changes to the 30-minute break provision to be $278.4 million (or a cost of −$278.4 million) on an annualized basis at a 3 percent discount rate, and $274.1 million (or a cost of −$274.1 million) on an annualized basis at a 7 percent discount rate.

TABLE 4—TOTAL AND ANNUALIZED MOTOR CARRIER COST SAVINGS DUE TO CHANGES IN BREAK PROVISION

[Millions of 2018$]

Year	CMV drivers currently subject to the 30-minute break requirement	Total hours saved (A)	Profit per hour (B)	Total cost savings—undiscounted (C = A × B)	Total cost savings—3 percent discount rate	Total cost savings—7 percent discount rate
2020	2,972,715	27,376,449	$3.59	($98.3)	($95.4)	($91.8)
2021	2,986,820	82,502,528	3.59	(296.1)	(279.1)	(258.6)
2022	3,000,991	82,893,979	3.59	(297.5)	(272.3)	(242.9)
2023	3,015,230	83,287,288	3.59	(298.9)	(265.6)	(228.0)
2024	3,029,536	83,682,462	3.59	(300.3)	(259.1)	(214.1)
2025	3,043,911	84,079,512	3.59	(301.8)	(252.7)	(201.1)

TABLE 4—TOTAL AND ANNUALIZED MOTOR CARRIER COST SAVINGS DUE TO CHANGES IN BREAK PROVISION—Continued

[Millions of 2018$]

Year	CMV drivers currently subject to the 30-minute break requirement	Total hours saved (A)	Profit per hour (B)	Total cost savings—undiscounted (C = A × B)	Total cost savings—3 percent discount rate	Total cost savings—7 percent discount rate
2026	3,058,353	84,478,446	3.59	(303.2)	(246.5)	(188.8)
2027	3,072,864	84,879,272	3.59	(304.6)	(240.5)	(177.3)
2028	3,087,444	85,282,000	3.59	(306.1)	(234.6)	(166.5)
2029	3,102,093	85,686,640	3.59	(307.5)	(228.8)	(156.3)
Total 10-Year Cost Savings	(2,375)	($1,925)				
Total Annualized Cost Savings	(278.4)	(274.1)				

Notes:
[a] Total cost values may not equal the sum of the components due to rounding. (The totals shown in this column are the rounded sum of unrounded components.)
[b] Values shown in parentheses are negative values (i.e., less than zero) and represent a decrease in cost or a cost savings.

Time is a scarce resource, and FMCSA recognizes that forced off-duty time is not always the drivers' best alternative. Some commenters claimed that the rigid off-duty requirement forces drivers to rest when they are not tired and penalizes them for resting. Though the Agency does not necessarily agree with these commenters' characterization of the off-duty requirement, it is reasonable to assume that the current HOS regulations are imposing an opportunity cost on drivers that could be alleviated by providing drivers greater flexibility. In recent RIAs for non-HOS regulations, FMCSA has valued the opportunity cost of drivers' time using their wage rate. In other words, the increased flexibility provided by the final rule will result in a reduction in costs, or a cost savings, to drivers equal to the number of hours saved multiplied by the driver wage rate. The Agency did not account for the opportunity cost of the driver's time in the 2011 RIA, or in the 2019 NPRM, and for consistency does not monetize this component of the final rule's savings.

FMCSA considered eliminating the break requirement entirely. Drivers would still use off-duty time when needed or break-up the driving task using on-duty/non-driving time. Drivers in group 1 would likely regain 15 minutes of on-duty time, and drivers in group 2 would likely regain 30 minutes of on-duty time. As in the preferred alternative, FMCSA assumes that drivers in group 1 would only regain 15 minutes because they need personal time to eat, drink, etc. That time would continue to be off-duty regardless of eliminating the requirement. Elimination of the break requirement would seem to provide additional flexibility beyond the preferred alternative; however, it would not impact driver behavior relative to the preferred alternative, and thus would result in an equivalent motor carrier cost savings.

Sleeper Berth

Drivers qualifying for the previous HOS sleeper berth provision in § 395.1(g)(1)(i)(A) and (ii)(A) must, before driving, accumulate the equivalent of at least 10 consecutive hours off-duty. The equivalent refers to two periods that need not be consecutive: at least 8 but less than 10 consecutive hours in a sleeper berth, and a separate period of at least 2 hours either in the sleeper berth or off-duty, or any combination thereof. This final rule will continue to allow drivers using the sleeper berth to obtain their required off-duty time by taking fewer hours in the sleeper berth. However, drivers using this option will be required to obtain one rest period of at least 7 consecutive hours in the sleeper berth, paired with another period of at least 2 hours, such that at least 10 hours of off-duty time is achieved. Neither period will count against the 14-hour driving window.

The sleeper berth provision in this final rule allows for additional flexibility in a driver's duty day by (1) providing for an optional 1-hour reduction in the amount of time that drivers are required to spend in the sleeper berth, and (2) excluding both rest periods when calculating the 14-hour driving window. The Agency expects that carriers and drivers could realize efficiency gains by the reduction in time required to be in the sleeper berth and the exclusion of the shorter off-duty period in the calculation of the 14-hour driving window. A driver who used the previous sleeper berth provision today was required to include the shorter rest period in the calculation of the 14-hour window, resulting in an available 12 hours to complete up to 11 hours of driving. Under this final rule, drivers will be provided the ability to choose between split-rest options that will not reduce their available work time because the shorter rest period will be excluded from the calculation of the 14-hour driving window. The Agency, however, lacks data on the use of the previous sleeper berth provision, and the number of drivers that will use it under the final rule.

FMCSA received some information from commenters regarding how often some drivers use the current sleeper berth provisions and how usage might change under the new provision, with some expecting drivers to increase their usage and others expecting that the new provision will not be widely used. Despite the comments received on this issue, FMCSA still lacks definitive information that would be needed to estimate usage among the entire population of drivers. In addition, FMCSA also lacks data on the number of trucks that are equipped with sleeper berths and the impact that schedule changes might have on motor carrier operations. Therefore, FMCSA did not evaluate the impacts of schedule changes that may occur because of this final rule.

FMCSA also considered retaining the current split option of 8/2 but excluding the shorter rest period from the calculation of the 14-hour driving window. Excluding the shorter rest period from the calculation of the 14-hour driving window would result in the same per-trip cost savings estimated

for the preferred alternative but would limit the driver's flexibility. The preferred alternative will allow drivers to use a 7/3 split option, which provides flexibility for drivers to shift an additional hour of their off-duty time in the most optimal way for their current situation.

FMCSA also considered expanding the sleeper berth options to allow a 7/3 split, while continuing to count the shorter rest period in the calculation of the 14-hour driving window. Drivers making use of this alternative would then have an 11-hour window within which to drive 11 hours. This alternative provides a false sense of flexibility due to its impracticality, and would limit the use of the option to those drivers that don't anticipate reaching the maximum driving or work time. Additionally, it would eliminate the cost savings resulting from increased productivity discussed in the preferred alternative. This alternative does not meet the Agency objective of providing drivers the ability to take needed rest breaks while ensuring opportunity for an adequate rest period.

Short-Haul Operations

Previously, under § 395.1(e)(1), drivers did not have to prepare RODS or use an ELD if they met certain conditions, including a return to their work reporting location and release from work within 12 consecutive hours. Drivers operating under this provision were permitted a 12-hour workday in which to drive up to 11 hours (for passenger carriers, up to 10 hours) and the motor carrier was required to maintain time records reflecting certain information. Specifically, the motor carrier that employed the driver and utilized this exception was required to maintain and retain for a period of 6 months accurate and true time records showing: the time the driver reported for duty each day; the total number of hours the driver was on-duty each day; the time the driver was released from duty each day; and the total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

Under § 395.3(a)(2) and (3), other property-carrying CMV drivers not utilizing the short-haul exception have a 14-hour driving window in which to drive up to 11 total hours. Under § 395.5(a)(1) and (2), CMV drivers operating passenger-carrying CMVs can operate for up to 15 hours after coming on-duty. However, unless otherwise excepted, these drivers must maintain RODS, generally with an ELD. The drivers qualifying for the § 395.1(e)(1) exception previously had the option to use the 14- or 15-hour duty day in § 395.3 or § 395.5, but could choose not to use the option to avoid keeping RODS.

Additionally, drivers currently qualifying for previous HOS short-haul exception had to stay within 100 air-miles of their work reporting location. In this final rule, FMCSA extends that radius from 100 air-miles to 150 air-miles, consistent with the radius requirement for the other short-haul exceptions in § 395.1(e)(2).

In the ELD rule, FMCSA anticipated that all drivers employed by passenger and private non-passenger (*i.e.,* property) carriers qualifying for the short-haul exception would be able to take advantage of the exception. However, FMCSA received comments on the HOS ANPRM from carriers discussing their business practices and normal operating conditions, and how the lack of flexibility in the 12-hour workday limited their ability to take advantage of the short-haul exception. On many shifts, drivers returned to their work reporting location within 12 hours, but there are some occasions when drivers needed an additional 2 hours in their workday. This extra time beyond 12 hours could result from detention time, longer-than-expected customer service stops, traffic, or other unforeseen events. When this occurred more than 8 days in a 30-day period, the driver had to prepare daily RODS using an ELD as required by § 395.8 (a)(1)(iii)(A)(*1*). Due to the uncertainty surrounding the driver's eligibility at the beginning of the workday, the carrier could choose to have their driver operate as though he or she was not eligible for the short-haul exception. This resulted in unnecessary ELD expenses. One commenter on the HOS ANPRM estimated that the proposal would reduce the required ELDs for its heavy-duty service vehicles by 84 percent, resulting in annual cost savings of $1.5 million. While this comment is informative and suggests that this final rule will result in cost savings, FMCSA cannot extrapolate from one carrier's cost savings to determine the cost savings to all carriers. Thus, while FMCSA expects the final rule to result in cost savings for the affected entities, those impacts are not quantified.

The extension of the air-mile radius by 50 air-miles will afford drivers additional flexibility and allow carriers to reach customers farther from the work reporting location while maintaining eligibility for the short-haul exception. Extending the air-mile radius will not extend the driving time. FMCSA does not anticipate that extending the air-mile radius will increase market demand or result in an increase to aggregate VMT. Rather, more carriers might use the short-haul exception. Carriers will have the flexibility to meet market demands more efficiently while maintaining eligibility for the short-haul exception. One commenter on the HOS ANPRM explained that the increased flexibility in the air-mile radius would reduce the number of vehicles necessary for their operation, and thus would result in cost savings of approximately $1.7 million per year. Again, motor carriers are very diverse in their operating structures, and FMCSA cannot extrapolate from one carrier's cost savings to determine the cost savings to all carriers.

FMCSA asked for comments from the public on the cost savings that would be expected to result from not having to comply with the ELD requirements. Commenters noted that cost savings could range from $240 to $1,700 per truck, including the costs for purchase of the device, data maintenance, and technical support. Comments from industry associations stated that the cost saving would be at least $500 to $1,000 per truck, including costs for equipment, maintenance, repair, and back office administration. Another commenter stated that due to the diverse nature of the motor coach industry, some segments of the driver population would continue to need ELDs, and FMCSA agrees with this comment. FMCSA is unable to estimate the population of drivers under the short-haul exception that would continue to require ELDs, and FMCSA is thus unable to quantify the expected cost savings for the short-haul driver population that will no longer need ELDs under this final rule.

The Agency agrees with other commenters who stated that the proposed changes to the current short-haul provisions would provide increased flexibility for both motor carriers and drivers who utilize the exception. FMCSA believes that the extension of the 12-hour limit to 14 hours, and the 100 air-mile radius to 150 air-miles will provide motor carriers the necessary flexibility to spend quality time with customers, respond to changes in market demand such as peak holiday delivery times, and reduce the administrative burden of determining how often a driver has gone beyond 12 hours or 100 air-miles in any 30-consecutive day period. The changes to the short-haul exception will not extend the workday beyond the current long-haul driving window, thus FMCSA has no reason to believe that the rule would negatively impact safety.

FMCSA also considered limiting the proposal to an extension of the time required for drivers to return to their work reporting location from 12 to 14 hours, without changing the air-mile radius requirements. This alternative would decrease the population eligible for the short-haul exception relative to the preferred alternative by removing eligibility for those drivers operating between 100 and 150 air-miles. Decreasing the population affected by this final rule would decrease any cost savings resulting from it.

Adverse Driving Conditions

Under the previous regulations, drivers qualifying for the HOS adverse driving conditions exception in § 395.1(b)(1) could drive for no more than 2 additional hours beyond the maximum driving time allowed under § 395.3(a) or § 395.5(a) if they encountered adverse driving conditions after dispatch. The previous provision did not allow for the extension of the 14-hour driving window (or 15 hours on-duty for drivers of passenger-carrying CMVs), and thus could not be used if the adverse driving condition was encountered towards the end of that period. In this final rule, FMCSA allows a 2-hour extension of the 14-hour driving window (or 15 hours on-duty for drivers of passenger-carrying CMVs). This change aligns the regulations with the intent of the adverse driving condition provision, which is to allow drivers flexibility when faced with unexpected conditions. This change will not increase the available driving time.

The adverse driving conditions provision is intended to provide flexibility for drivers who encounter such adverse driving conditions which were not apparent at the time of dispatch. However, it did not previously extend the driving window, limiting its use. This final rule will increase flexibility by allowing drivers encountering adverse driving conditions to extend their driving window by the same 2 hours that currently apply to driving time. This change will provide drivers with additional options to determine the best solution based on their situation.

The Agency anticipates that the increased options and flexibility will result in cost savings to drivers, but is unable to quantify them due to a lack of data regarding the use of the adverse driving exception. FMCSA appreciates the feedback and information received from commenters regarding specific motor carrier experience with the adverse driving condition provision. Commenters were split on the issue, with some stating that they expect an increase in its use and others not expecting to see an increase. FMCSA believes that a decrease in use is unlikely to result from the changes, but it is not clear if or how much of an increase may result on an industry-wide level. Given this uncertainty, FMCSA is unable to estimate the change in use of the adverse driving condition provision at this time.

Federal and State Government Costs

FMCSA will incur costs to update the existing eRODS software. The eRODS software is used by safety officials (Federal, State, and local safety partners) to locate, open, and review output files transferred from a compliant ELD. The eRODS software consists of two components: A database containing the HOS requirements and the software component that compares the compliant ELD output files to the HOS requirements. The changes to the 30-minute break requirement, sleeper berth requirements, and the split-duty period will necessitate updates to the eRODS database that stores the HOS requirements and some minor programming changes to the compliance algorithm aspects of the software.

The Department's Volpe National Transportation Systems Center developed the eRODS software and continues to maintain and update it when needed. Volpe estimates that the final rule will result in one-time eRODS software update costs of $20,000. This includes updating the HOS requirements database and minor programing changes to the software component which consist of five steps: Developing a requirements analysis, design, coding, testing, and deployment of the updates.

The Agency will incur one-time costs in the first year of the analysis period for the training of enforcement personnel. The Agency intends for all training costs related to this final rule to accrue in 2020. First, a contractor is developing training materials at an estimated cost of $90,000. The Agency intends to then utilize these materials and implement a ''train-the-trainer'' model to train inspectors in field locations. This process will involve the training of three master trainers over the course of 3, 8-hour training days (24 hours in total for each master trainer). Next, the 3 master trainers will train 100 trainers from across the country, again over the course of 3, 8-hour training days (24 hours in total for each trainer). The 100 trainers will then conduct approximately 50 training sessions for 500 Federal and 10,500 State trainees in pairs (with 2 trainers per class).

FMCSA then calculated training costs by multiplying the wage rate for each group by the total number of training hours. Next, FMCSA estimated the travel costs associated with the trainings. FMCSA assumed that the 3 master trainers are located near the training sites and thus will not incur travel costs. The 100 trainers, however, are from disparate locations across the country and will be required to travel to the training sites. Federal and State trainees are also expected to travel within their respective State to attend the trainings given at field locations.

Next, FMCSA combined the costs for time spent in trainings and travel costs for each group to estimate total costs for training that are incurred because of the final rule. As shown in Table 5, these calculations resulted in a total cost of $8.6 million associated with training.

TABLE 5—ESTIMATED TOTAL COSTS FOR TRAINING, 2020

Training group	Total costs
Training Materials	$90,000
Master Trainers	18,720
Trainers	382,400
Federal Trainees	435,000
State Trainees	7,638,750
Total Costs	8,564,870
Total 10-Year Cost Savings—7 percent Discount Rate	8,004,551
Total 10-Year Cost Savings—3 percent Discount Rate	8,315,408
Total Annualized Cost Savings—7 percent Discount Rate	1,139,668
Total Annualized Cost Savings—3 percent Discount Rate	974,819

Summary of Quantified Costs

This final rule will not result in any new costs for regulated entities. Instead, this rule will result in increased flexibility for drivers and a quantified reduction in costs for motor carriers. Federal and State governments will incur one-time training costs of $8.6 million for training inspectors on the new requirements. The Federal Government also will incur a one-time eRODS software update cost of approximately $20,000. The change to the 30-minute break requirement will result in a reduction in opportunity cost, or a cost savings, for motor carriers. FMCSA estimates the 10-year motor carrier costs attributable to the changes to the 30-minute break provision at −$2,814.3 million (or a total 10-year motor carrier cost savings of $2,814.3). As shown in Table 6, FMCSA estimates the total costs of this final rule at −$2,366.2 million (or $2,366.2 million in cost savings) discounted at 3 percent, and −$1,917.5 million (or $1,917.5 million in cost savings) discounted at 7 percent. Expressed on an annualized basis, this equates to −$277.4 million in costs (or $277.4 million in cost savings) at a 3 percent discount rate, and −$273.0 million in costs (or $273.0 million in cost savings) at a 7 percent discount rate. All values are in 2018 dollars.

TABLE 6—TOTAL 10-YEAR AND ANNUALIZED COSTS OF THE FINAL RULE

[In millions of 2018$]

Year	Federal and state government cost A	Cost due to changes in 30-min break provision B	Total costs—undiscounted C = A + B	Total costs—(7 percent discount rate)	Total costs—(3 percent discount rate)
2020	$8.6	($98.3)	($89.7)	($83.8)	($87.1)
2021	0.0	(296.1)	(296.1)	(258.6)	(279.1)
2022	0.0	(297.5)	(297.5)	(242.9)	(272.3)
2023	0.0	(298.9)	(298.9)	(228.0)	(265.6)
2024	0.0	(300.3)	(300.3)	(214.1)	(259.1)
2025	0.0	(301.8)	(301.8)	(201.1)	(252.7)
2026	0.0	(303.2)	(303.2)	(188.8)	(246.5)
2027	0.0	(304.6)	(304.6)	(177.3)	(240.5)
2028	0.0	(306.1)	(306.1)	(166.5)	(234.6)
2029	0.0	(307.5)	(307.5)	(156.3)	(228.8)
Total 10-Year Costs				(1,917.5)	(2,366.2)
Total Annualized Costs				(273.0)	(277.4)

[a] Values shown in parentheses are negative values (*i.e.*, less than zero) and represent a decrease in cost or a cost savings.

Non-Quantified Costs

There are a number of other potential cost savings of this final rule that FMCSA considered which, due to uncertainty around driver behavior, could not be quantified on an industry level.

FMCSA has granted 5-year exceptions from the requirement to return to the driver's normal work reporting location within 12 hours of coming on-duty (examples include: Waste Management Holdings, Inc.; American Concrete Pumping Association; and National Asphalt Paving Association).[65] During the period of the exception, all drivers utilizing it must carry a copy of the exception notice; after that period, entities seeking to maintain the exception must reapply. This final rule will result in cost savings to these (and potentially other) entities by alleviating the need to pursue the exception process and eliminating compliance with exception conditions such as carrying a copy of the exception document, as well as reallocating the time and resources that would have been spent on the exception reapplication. The Federal Government will experience a cost savings equal to the reduction in time and resources necessary to review, comment on, and make final determinations on the exceptions. Additional non-quantified cost savings include increased efficiency afforded to drivers through the changes to the various HOS provisions, such as, efficiency gains due to the short-haul exception; the ability of drivers to make informed decisions due to the changes to the adverse driving conditions and sleeper berth provisions; and the reduction in opportunity cost to drivers from the changes to the 30-minute break provision.

The Agency did not include the cost for ELD manufacturers to update ELD equipment or software. A compliant ELD and its software will not need to be updated because of this final rule. FMCSA is aware, however, that some ELD manufacturers have chosen to go beyond the minimum ELD requirements and provide additional features, such as alerts when a driver may be close to an HOS violation. FMCSA acknowledges that the additional features will need to be updated because of the rule, or risk being inaccurate. ELD manufacturers providing these features have staff that routinely provides updates and patches to their ELD software, and transmits those updates directly to the devices on-board vehicles. Many carriers have subscriptions with companies and will receive the updated software as soon as practicable. While updating ELD equipment is not a requirement or direct cost of the rule, it is an indirect cost attributable to this rule. FMCSA received comments from ELD manufacturers on the time required to make and distribute software updates, and discusses those comments in this preamble. FMCSA did not receive comments addressing the cost of software updates, and considers updates to be part of normal business practices. Therefore, FMCSA is not estimating the cost of updating the additional ELD features.

The Agency did not quantify impacts resulting from any potential decreases in congestion that may result from the final rule. Allowing drivers to take breaks at their convenience, such as during times of heavy traffic congestion, could allow the driver to operate at a

[65] Available at: *https://www.regulations.gov/docket?D=FMCSA-2017-0197. https://www.regulations.gov/document?D=FMCSA-2018–0181–0057,* and *https://www.regulations.gov/docket?D=FMCSA-2018-0175,* respectively.

more consistent speed without the starting and stopping that occurs in heavy traffic. American Transportation Research Institute technical memorandum demonstrated that avoiding congestion could result in moving freight the same number of miles in fewer work hours. This could reduce fuel and vehicle costs for the motor carriers, congestion for the public by removing large vehicles from the road during peak travel times, and the incidence of crashes related to congestion. While these impacts could result from any individual trip, FMCSA cannot estimate the magnitude or likelihood of these potential impacts for many reasons. Most notably, these impacts hinge on the availability of CMV parking. FMCSA is aware that parking is not always available, especially in urban areas or heavily travelled truck routes.

Additional non-quantified cost savings include increased flexibility and a reduction in back office administrative costs resulting from the extension of the duty day and the air-mile radius for those operating under the short-haul exception; the increased options for drivers to respond to adverse driving conditions during the course of their duty period; and increased flexibility afforded to drivers, such as increased options with regard to on-duty and off-duty time resulting from changes to the 30-minute break requirement, and the sleeper berth provisions.

Summary of Benefits

The Agency does not anticipate that this final rule will result in any new regulatory benefits. Additionally, the Agency does not believe that the rule will result in any reductions in safety benefits or other regulatory benefits.

30-Minute Break

The changes to the 30-minute break provision are estimated to be safety-neutral because both the current rule and the final rule will prevent CMV operators from driving for more than 8 hours without at least a 30-minute change in duty status. The distinction is that the final rule focuses on actual driving time rather than on-duty time, some of which may not be spent behind the wheel. The Agency discussed the value of off-duty breaks as compared to on-duty breaks in previous rulemakings, but did not quantify the safety benefits attributable to the off-duty break when the break provision was added to the HOS rules in 2011 (76 FR 81134, Dec. 27, 2011). Further, FMCSA has determined that the value of off-duty breaks relative to on-duty breaks should be reconsidered.

As discussed above and in the RIA, the Agency has carefully considered the views of numerous commenters requesting exceptions or removal of the 30-minute break requirement. As a result of the feedback, and after reviewing available research, FMCSA anticipates that an on-duty break from driving, will not adversely affect safety relative to the previous requirements. Based on comments to the ANPRM, the Agency took another look at the Blanco, et al. (2011), study to determine the applicability of the study findings to the 30-minute break requirement. This final rule focuses on achieving a break from driving as opposed to a break after a certain amount of time on-duty. For these reasons, the Agency believes that these changes will not have an impact on the safety benefits of the HOS rules and did not quantify changes in regulatory benefits for this final rule.

Alternative 1, which would eliminate the 30-minute break requirement, seems to be more flexible than the preferred alternative. However, eliminating the requirement would allow drivers the opportunity to operate a vehicle for 11 hours without stopping. In general, FMCSA does not anticipate that drivers would alter their schedules to such an extent, but would likely take breaks to eat, rest, etc. However rare of an occurrence 11 continuous hours of driving may be, FMCSA considers it to be detrimental to safety. As such, alternative 1 may be more flexible and would result in an equivalent level of motor carrier cost savings, but would lead to a reduction in safety benefits relative to the preferred alternative. Therefore, FMCSA is not finalizing alternative 1.

Sleeper Berth

As discussed in the RIA and elsewhere in this preamble, there is an extensive body of research suggesting that split-sleep schedules may improve safety and productivity, compared to consolidated daytime sleep.

This final rule will ensure that drivers using the sleeper berth to obtain the minimum off-duty time have at least one rest period of a sufficient length to have restorative benefits to counter fatigue. This final rule provides drivers with the flexibility to make decisions regarding their rest that best fits their individual needs, while continuing to prohibit potential overly-long periods of wakefulness and duty hours that could lead to fatigue-related crashes.

As discussed extensively in this preamble, the Agency reviewed the comments received and studies provided and has determined that the change will not result in adverse safety outcomes. The available studies on sleeper berth use highlight the fact that the split sleeper berth option is a viable and safe alternative to a minimally compliant, consolidated break of 10 consecutive hours. The current rulemaking retains a sleeper berth anchor period of sufficient length to give drivers an opportunity for rest and when combined with the shorter rest period, to ensure drivers will continue to have 10 hours of time during each day when they are relieved of all responsibility for performing work. As such, the Agency anticipates that the increased flexibility in this final rule will not affect the safety outcomes achieved by the current sleeper berth provision.

Alternative 1, which would maintain an 8/2 split option but exclude the shorter rest period from the calculation of the 14-hour driving window, would be more restrictive than the preferred alternative and allow fewer options for drivers to split their 10 hours of off-duty time. Based on the research discussed above, a 7/3 split option will allow for an adequate rest period and will not impact safety relative to an 8/2 split option. Alternative 1 would be more restrictive, would reduce cost savings associated with the changes, and would not provide any additional safety benefits relative to the preferred alternative. Therefore, FMCSA did not propose alternative 1.

Alternative 2, which would allow a 7/3 split option but include the shorter rest period in the calculation of the 14-hour driving window, is more restrictive than the preferred alternative. Under this alternative, a driver would be required to stop driving 14 hours after coming on-duty (excluding the 7 hours spent in the sleeper berth), regardless of the fact that another 3 off-duty hours were resting. Based on results in the Blanco study (2011), FMCSA believes that excluding the shorter rest period from the calculation of the 14-hour driving window would not reduce safety relative to the preferred alternative. The Blanco study showed that the SCE rate increased modestly with increasing work and driving hours. Blanco also found that breaks can be used to counteract the negative effects of time on task. The results from the break analyses indicated that significant safety benefits can be achieved when drivers take breaks from driving. This was a key finding in the Blanco study and clearly shows that breaks can ameliorate the negative impacts associated with fatigue and time on task. As such, alternative 2 would be more restrictive, reduce cost savings associated with the rule, and would not provide any additional safety

benefits relative to the preferred alternative. Therefore, FMCSA did not propose alternative 2.

Short-Haul Operations

The IIHS conducted a study in North Carolina in 2017 and found that interstate truck drivers operating under the short-haul exception had a crash risk 383 percent higher than those not using the exception. They recommended that, due to this finding, the Agency should not propose an extension of the short-haul exception from 12 to 14 hours. FMCSA reviewed the study and noted that while the finding was statistically significant, it was based on a very small sample size, which prevented the author from estimating a matched-pair odds ratio restricted to drivers operating under a short-haul exception, and was not nationally representative. Further, the authors noted that other related factors unobserved in the study may have led to this result. For example, it is possible that older or more poorly maintained trucks are used in local operations. Regardless, because FMCSA's number one priority is safety, the Agency investigated the safety implications of the rule using available data.

Congress passed the Fixing America's Surface Transportation (FAST) Act on December 4, 2015. Among other things, it requires that drivers of ready-mixed concrete delivery trucks be exempted from the requirement to return to their normal work-reporting location after 12 hours of coming on-duty. Beginning on December 5, 2015, operators of concrete mixer trucks met the requirements for the short-haul exception if they returned to their normal work reporting location within 14 hours after coming on-duty. MCMIS contains data on crashes based on vehicle type, allowing the Agency to isolate crashes involving concrete mixer trucks both before and after the congressionally mandated changes to the short-haul exception that mirror this change to extend the 12-hour limit for all short-haul operators.

The Agency first focused on the time of day when crashes occurred. Assuming most concrete mixer trucks are operated on a schedule with a workday that begins in the morning hours and ends in the evening hours, those crashes that occur in the later part of the day would occur towards the end of the 12- or 14-hour workday for the concrete mixer driver. FMCSA found that the percentage of concrete mixers in crashes at later hours of the day (5:00 p.m. to 11:59 p.m.—when drivers are more likely to be close to their maximum hours for the day) has been declining in recent years, falling from 7.6 percent in 2013 to 5.8 percent in 2017.

FMCSA also examined the total number of crashes that involved concrete mixer trucks for the 2 years before and after the congressionally mandated change went into effect. From December 4, 2013, through December 3, 2015, there were 2,723 concrete mixers involved in crashes, or 0.907 percent of the total large trucks involved in crashes (2,723 concrete mixers involved in crashes/300,324 large trucks, including concrete mixers, involved in crashes). From December 4, 2015, through December 2, 2017, there were 2,955 concrete mixers involved in crashes, or 0.919 percent of the total large trucks involved in crashes (2,955 concrete mixers involved in crashes/321,471 large trucks, including concrete mixers, involved in crashes). A Chi-square test suggests that this very minor increase in the concrete mixer share of the total is not statistically significant at the $p < 0.05$ level. Both analyses suggest that the implementation of the Fixing America's Surface Transportation Act on December 4, 2015, did not increase the share of concrete mixers involved in crashes when extending the short-haul exception requirement from 12 to 14 hours.

Some commenters to the NPRM did not agree with the Agency's use of the concrete mixer analysis discussed above based on its lack of direct correlation to the short-haul population. FMCSA did not claim that the analysis is definitive, or that the population of concrete mixers is representative of all short-haul operations. Instead, the analysis was offered as the best available data with a before and after comparison of changes like the changes proposed in the NPRM. FMCSA did not receive comments with additional data on the impact that the proposal rule would have on crash rates.

FMCSA does not anticipate that extending the air-mile radius will result in an increase in aggregate VMT. While more drivers or more trips would now be eligible for the short-haul exception, and thus excluded from the requirement to take a 30-minute break or prepare daily RODS, the total costs of freight transportation would likely not change to such an extent that the quantity of trucking services demanded would increase. Aggregate CMV VMT is determined by many factors, including market demand for transportation. FMCSA does not anticipate that the changes in this final rule would lower costs or prices to such an extent that it would stimulate demand in the freight market, but acknowledges that freight loads may shift from one carrier or driver to another. Because total VMT is not expected to increase, and the changes to the short-haul exception will not extend the workday beyond the current long-haul driving window, the Agency does not anticipate changes in exposure or crash risk.

Additionally, the Agency emphasizes the changes to the short-haul exception in this final rule will not allow any additional drive time, or allow driving after the 14th hour from the beginning of the duty day. Drivers also will still be subject to the ''weekly'' limits of 60 and 70 hours, and the employer must maintain accurate time records showing when the driver reports for work and is released from duty each day. FMCSA therefore anticipates that this final rule will not affect the crash risk of drivers operating under the short-haul exception.

Alternative 1, which would extend the time required for drivers to return to their work reporting location from 12 to 14 hours but continue to maintain a 100 air-mile radius requirement, would reduce the population of drivers eligible for the short-haul exception, compared to the preferred alternative. As discussed above, FMCSA does not anticipate that changing the air-mile radius from 100 to 150 air-miles will impact safety. Alternative 1 would therefore be more restrictive, reduce any cost savings associated with the rule, and would not provide any additional safety benefits relative to the preferred alternative. Thus, FMCSA did not finalize alternative 1.

Adverse Driving Conditions

The Agency defines ''adverse driving conditions'' in § 395.2 as ''snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent based on information known to the person dispatching the run at the time it was begun.'' The previous adverse driving condition rule gave drivers 2 additional hours of driving time to help them avoid rushing to either stay ahead of adverse driving conditions, make up for lost time due to poor conditions, or allow drivers time to locate a safe place to stop and wait out the adverse driving conditions. The Agency anticipates that this final rule and the extension of the driving window by 2 hours will enhance this goal by giving drivers greater flexibility to use their extended driving time without worrying about the closing driving window. While the Agency is not aware of any research that is specific to the impact of adverse driving conditions on crash risk, the flexibility provided in the final rule will allow drivers to make decisions based

on current conditions without penalizing them by ''shortening'' their driving window. Further, the Agency stresses that this change will not increase maximum available driving time beyond that allowed by the current rule, but may increase driving hours by allowing some drivers to use more of their available driving time.

The NPRM asked whether drivers would use the longer driving window to increase their VMT. Several commenters provided responses depicting the range of potential outcomes, but clear data detailing the impact those outcomes might have on VMT was not provided. Ultimately, each adverse condition presents a unique set of circumstances that drivers and motor carriers will react to—not plan for. By their very nature, adverse driving conditions are unpredictable, and thus motor carriers would not be able to plan in advance for additional deliveries, trips, or VMT. FMCSA did not estimate an increase in VMT resulting from the changes to this provision. The Agency is unable to quantitatively assess the impacts on safety from this final rule due to a lack of data regarding the use of the adverse driving provision. The Agency also lacks data on the relationship between crash risk and adverse driving conditions, and potential reductions in crash risk that result from the avoidance of these conditions.

Health Impacts

The RIA for the 2011 HOS final rule estimated health benefits in the form of decreased mortality risk based on decreases in daily driving time, and possible increases in sleep. The changes were largely based on limiting the use of the 34-hour restart provision. That provision, however, was removed by operation of law when the study required by the 2015 DOT Appropriations Act failed to find statistically significant benefits of the 2011 limitations on the 34-hour restart.[66] This final rule does not affect the reinstated original 34-hour restart provision, and thus the health benefits estimated in the 2011 RIA will not be affected by this final rule.

As concerns this final rule, FMCSA anticipates that some drivers will experience a decrease in stress, which could lead to increases in health benefits. As discussed in the RIA, drivers have repeatedly provided comments relating to stress resulting from the 14-hour limit. The sleeper berth proposal could alter drivers' schedules relative to the current requirements, by allowing drivers the flexibility to rest, without penalty, when they are tired or in times of heavy traffic. However, this final rule continues to allow for an adequate rest period. This final rule retains the current driving time and work time, but could allow for changes in the number of hours driven or worked on any given day. The flexibilities in this final rule are intended to allow drivers to shift their drive and work time under the HOS rules to mitigate the impacts of uncertain factors (*e.g.,* traffic, weather, and detention times). Total hours driven or worked could increase or decrease on a given day, but FMCSA does not anticipate that these time shifts will negatively impact drivers' health. Instead, this final rule will empower drivers to make informed decisions based on the current situation, and thus the rule could lead to a decrease in stress and subsequent health benefits.

FMCSA also notes that the effect of specific regulatory changes on driver health is difficult to evaluate, first, because most health effects have multiple causes and are discernible only over extended time periods, and, second, because a cause-and-effect relationship between a rule and a given health outcome may be difficult to establish. As pointed out in the 2005 HOS final rule, attempts to create a dose-response curve for the effects of exposure to diesel exhaust have not produced clear-cut results (70 FR 49978, 4983, August 25, 2005). Such an attempt would be even more difficult for the incremental HOS changes promulgated today.

FMCSA believes that the changes made by this final rule are safety- and health-neutral. For example, the expansion of the short-haul radius from 100 to 150 air-miles and of the workday from 12 to 14 hours simply gives short-haul carriers the same driving limit and driving window that other carriers have utilized for many years (without a distance limit). The 11- and 14-hour HOS limits now applicable to both short- and long-haul carriers are consistent with the statutory obligation to protect driver safety and health (49 U.S.C. 31136(a)(2), (4)), as shown by the extensive discussion in the 2005 final rule (70 FR 49978, 49982 *et seq.*).

Section 12.f of DOT Order 2100.6 dated December 27, 2019 provides additional requirements for retrospective reviews, specifically each economically significant rule or high-impact rule, the responsible Office of the Administrator or Office of the Secretary of Transportation component shall publish a regulatory impact report in the **Federal Register** every 5 years after the effective date of the rule while the rule remains in effect.

In accordance with the DOT order, FMCSA will assess the impact of these changes to the HOS requirements within 5 years of the effective date of the final rule.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 (82 FR 9339, Feb. 3, 2017). E.O. 13771 requires that, for every one new regulation issued by an Agency, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. Final implementation guidance addressing the requirements of E.O. 13771 was issued by the OMB on April 5, 2017.[67] The OMB guidance defines what constitutes an E.O. 13771 regulatory action and an E.O. 13771 deregulatory action, provides procedures for how agencies should account for the costs and cost savings of such actions, and outlines various other details regarding implementation of E.O. 13771.

This final rule will have total costs less than zero, and therefore qualifies as an E.O. 13771 deregulatory action. The present value of the cost savings of this final rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2020 (the year the final rule will go into effect and cost savings will first be realized), is $4,105 million. On an annualized basis, these cost savings are $287 million.

[66] Sec.133 of the 2015 DOT Appropriations Act (Pub. L. 113–235, Dec. 16, 2014, 128 Stat. 2130, 2711) suspended the 2011 restart provisions, temporarily reinstated the pre-2011 restart rule, and required a study of the effectiveness of the new rule. Sec. 133 of the 2016 DOT Appropriations Act (Pub. L. 114–113, Dec. 18, 2015, 129 Stat. 2242, 2850) made it clear that the 2011 restart provisions would have no effect unless the study required by the 2015 DOT Appropriations Act showed that those provisions had statistically significant benefits compared to the pre-2011 restart rule. Sec. 180 of the Further Continuing and Security Assistance Appropriations Act, 2017 (Pub. L. 114–254, Dec. 10, 2016, 130 Stat. 1005, 1016) replaced Sec. 133 of the 2016 DOT Appropriations Act in its entirety to correct an error and ensure that the pre-2011 restart rule would be reinstated by operation of law unless the study required by the 2015 DOT Appropriations Act showed that the 2011 restart rule had statistically significant improvements related to safety and operator fatigue compared to the pre-2011 restart rule. DOT concluded that the study failed to find these statistically significant improvements, and the Office of Inspector General confirmed that conclusion in a report to Congress.

[67] Executive Office of the President. Office of Management and Budget. *Memorandum M–17–21. Guidance Implementing Executive Order 13771.* April 5, 2017.

For the purpose of E.O. 13771 accounting, the April 5, 2017, OMB guidance requires that agencies also calculate the costs and cost savings discounted to year 2016. In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2016, is $3,132 million. On an annualized basis, these cost savings are $219 million.

C. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).[68]

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the impact of their regulatory actions on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term ''small entities'' means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.[69] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

FMCSA developed an Initial Regulatory Flexibility Analysis (IRFA) for the NPRM, and reviewed comments in response to the IRFA. A comment received on the NPRM by the SBA's Office of Advocacy noted the regulatory relief that this final rule would provide for drivers needing additional flexibility in their schedule due to unforeseeable driving conditions or for other reasons. The regulatory relief for small entities afforded by this final rule was also noted in a comment received on the NPRM from the Petroleum Marketers Association of America. However, one commenter to the NPRM noted that the IRFA narrowly focused on the certain industry segments, and did not consider other industries besides Truck Transportation (NAICS Subsector 484) that would be affected by the proposed changes to the HOS provisions. In response to this comment, FMCSA evaluated small entities potentially impacted by the rule in an expanded set of industries conducted at the level of two-digit NAICS sectors.

This rule affects drivers, motor carriers, and Federal and State governments. Drivers are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, drivers are considered neither a small business under Section 601(3) of the RFA, nor are they considered a small organization under Section 601(4) of the RFA. Federal and State governments do not meet the definition of a small entity because they are governmental jurisdictions with populations greater than 50,000.

The SBA defines the size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS). In the NPRM, FMCSA estimated that the motor carriers that would experience regulatory relief under the proposed rule would be in industries within Subsector 484 (Truck Transportation). These industries include General Freight Trucking (4841) and Specialized Freight Trucking (4842). Subsector 484 has an SBA size standard based on annual revenue of $27.5 million.

The SBA defines the size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the NAICS.[70] This rule could affect many different industry sectors in addition to the Transportation and Warehousing sector (NAICS sectors 48 and 49); for example, the Construction sector (NAICS sector 23), the Manufacturing sector (NAICS sectors 31, 32, and 33), and the Retail Trade sector (NAICS sectors 44 and 45). Industry groups within these sectors have size standards for qualifying as small based on the number of employees (*e.g.,* 500 employees), or on the amount of annual revenue (*e.g.,* $27.5 million in revenue). To determine the NAICS industries potentially affected by this rule, FMCSA cross-referenced occupational employment statistics from the BLS with NAICS industry codes.

FMCSA examined data from the U.S. Census Bureau to determine the number of small entities within the identified NAICS industry groups. The Census Bureau collects and publishes data on the number of firms, establishments, employment, annual payroll, and estimated receipts by enterprise[71] employment size. The most recent data available are from the 2012 County Business Patterns and the 2012 Economic Census.[72] The firms and establishments are grouped by the employment size of the enterprise, all within 4-digit NAICS industry groups. The largest employment size group is 500+ employees per enterprise. The table also provides the employment and receipts at establishments within each enterprise employment size category. Because there are no data available on the revenue per enterprise or the number of employees per enterprise (although these data are available at the establishment level), FMCSA identifies the number of establishments that would be considered small based on SBA size standards.

For industries with an employee-based size standard, the number of small establishments was identified based on the employment groupings of the enterprise. The enterprises employment size groups are as follows: 0–4, 5–9, 10–19, 20–99, 100–499, and 500+. When a size standard fell within a defined enterprise employment size group, the entire group was considered small. For example, if the size standard was 250 employees, all establishments within the 100–499 employment size

[68] A ''major rule'' means any rule that the Administrator of the Office of Information and Regulatory Affairs at OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

[69] Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (codified at 5 U.S.C. 601, *et seq.*).

[70] Executive Office of the President, Office of Management and Budget (OMB). ''North American Industry Classification System.'' 2017. Available at: *https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf,* last accessed January 15, 2020.

[71] An enterprise (or ''company'') is a business organization consisting of one or more domestic establishments that were specified under common ownership or control. The enterprise and the establishment are the same for single-establishment firms. Each multi-establishment company forms one enterprise—the enterprise employment and annual payroll are summed from the associated establishments. An establishment is a single physical location where business is conducted or where services or industrial operations are performed.

[72] U.S. Department of Commerce, U.S. Census Bureau. Enterprise Statistics. *Table 2: Selected Enterprise Statistics by Employment Size by Sector in the U.S.: 2012. Release date June 15, 2016.* Available at: *http://www2.census.gov/econ/esp/2012/esp2012_table2.xlsx* last accessed January 17, 2020.

group, as well as smaller employment size groups, were counted as small. This results in an overestimation in the number of establishments that are considered small, as some establishments within the employment size group would not be small.

For industries with a revenue-based size standard, the number of establishments within each enterprise employment size group was divided by the estimated receipts for those establishments. This provided the estimated average revenue per establishment within each enterprise employment size group. If this value was below the revenue size standard, then all establishments within that enterprise employment size group, and all smaller enterprise employment size groups, were considered to be small for purposes of the analysis.

Table 7 presents the NAICS sectors determined by FMCSA to be affected by this final rule along with information on the number of firms in the industry, the percent of firms determined to be small entities based on the industry-specific size standards, and the estimated number of small entities.

TABLE 7—PERCENT AND NUMBER OF SMALL FIRMS IN AFFECTED NAICS SECTORS

NAICS sector	Meaning of NAICS sector	Number of firms	Percent of small entities	Number of small entities
11	Agriculture, Forestry, Fishing and Hunting	12,486	100	12,454
21	Mining, Quarrying, and Oil and Gas Extraction	22,306	97	21,627
23	Construction	641,808	100	641,808
31	Manufacturing	33,952	97	32,999
32	Manufacturing	54,120	93	50,121
33	Manufacturing	87,153	98	85,300
42	Wholesale Trade	145,904	79	114,828
44	Retail Trade	333,358	98	327,856
45	Retail Trade	131,034	99	130,091
48	Transportation and Warehousing	53,098	99	52,697
49	Transportation and Warehousing	15,720	92	14,458
51	Information	39,642	96	38,229
53	Real Estate and Rental and Leasing	4,197	100	4,197
54	Professional, Scientific, and Technical Services	583,762	100	583,762
55	Management of Companies and Enterprises	26,819	100	26,819
56	Administrative and Support and Waste Management and Remediation Services.	326,379	100	326,379
61	Educational Services	34,654	100	34,654
62	Health Care and Social Assistance	402,594	100	402,576
71	Arts, Entertainment, and Related Industries	92,857	100	92,857
72	Arts, Entertainment, and Related Industries	446,097	100	446,097
81	Public Administration	366,008	100	366,008

[1] Values in the table are rounded to the nearest whole percent for display purposes. The ''Number of Small Entities'' in Column (C) is the product of unrounded values.

FMCSA does not have exact estimates on the per-motor carrier impact of this proposal. The RIA for this final rule estimates cost savings associated with the proposed changes to the 30-minute break requirement. For illustrative purposes, FMCSA developed a per-driver annual cost savings estimate. As shown below, a firm with one driver could expect a cost savings of approximately $127 in 2021, the first full year of the analysis.

TABLE 8—WEIGHTED ANNUAL PER-DRIVER COST SAVINGS OF THE PROPOSED CHANGES TO THE 30-MINUTE BREAK REQUIREMENT

Driver group	Hours saved per shift [(a)]	Shifts per year [(b)]	Annual hours saved per driver [(c)]	Annual per driver cost savings [(d)]	Percent of total hours [(e)]
Group 1	0.25	120	30	$99.98	19
Group 2	0.50	80	40	$133.30	81
Group 3	0.00	60	0	0	0
Weighted Annual Per-Driver Cost Savings					$127.04

[(a)] See Table 4 in the RIA
[(b)] See Table 5 in the RIA
[(c)] Hours Saved per Shift × Annual Hours Saved per Driver
[(d)] Annual Hours Saved per Driver × $3.33 Motor Carrier Profit Margin
[(e)] See Table 6 in the RIA, Total Hours Saved per Year, by Group ÷ Total Hours Saved per Year for All Groups

The RFA does not define a threshold for determining whether a specific regulation results in a significant impact. However, the SBA, in guidance to government agencies, provides some objective measures of significance that the agencies can consider using.[73] One measure that could be used to illustrate a significant impact is labor costs, specifically, if the cost of the regulation exceeds 1 percent of the average annual revenues of small entities in the sector. Given the average annual per-entity impact of $127.04, a small entity would

[73] U.S. Small Business Administration, Office of Advocacy. ''A Guide for Government Agencies. How to Comply with the Regulatory Flexibility Act.'' 2017. Available at: *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf,* last accessed on January 16, 2020.

need to have average annual revenues of less than $12,704 to experience an impact greater than 1 percent of average annual revenue, which is an average annual revenue that is smaller than would be required for a firm to support one employee. Therefore, this rule does not have a significant impact on the entities affected.

Accordingly, I hereby certify that the action does not have a significant economic impact on a substantial number of small entities.

E. Assistance for Small Entities

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Mr. Richard Clemente, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $165 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2018 levels) or more in any 1 year. Because this rule will not result in such an expenditure, a written statement is not required. However, the Agency does discuss the costs and benefits of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule will not modify the existing approved collection of information (OMB Control Number 2126–0001, HOS of Drivers Regulations, approved July 29, 2019/, through July 31, 2022).

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA determined that this proposal will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a), requires the Agency to conduct a Privacy Impact Assessment of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters. The FMCSA Privacy Officer has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information and has evaluated protections and alternative information handling processes in developing the rule to mitigate potential privacy risks. FMCSA determined that this rule does not require the collection of individual personally identifiable information.

Additionally, the Agency submitted a Privacy Threshold Assessment analyzing the rulemaking and the specific process for collection of personal information to the DOT, Office of the Secretary's Privacy Office. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

The E-Government Act of 2002, Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a Privacy Impact Assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information because of this rule.

J. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

K. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

L. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (note following 15 U.S.C. 272) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

M. Environment (Clean Air Act, NEPA)

FMCSA completed an environmental assessment (EA) pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), 40 CFR parts 1500–1508, Council on Environmental Quality Regulations for Implementing NEPA, as amended, FMCSA Order 5610.1, *National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts,* March 1, 2004, and DOT Order 5610.1C, *Procedures for Considering Environmental Impacts,* as amended on July 13, 1982 and July 30, 1985. The EA is in the docket for this rulemaking. As discussed in the EA, FMCSA also analyzed this rule under the Clean Air Act, as amended, section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. FMCSA concludes that the issuance of the rule would not significantly affect the quality of the human environment. Therefore, an environmental impact statement process is unnecessary.

List of Subjects

49 CFR Part 385

Administrative practice and procedures, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

Accordingly, FMCSA amends 49 CFR parts 385 and 395.

PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151 and 31502; Sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; and 49 CFR 1.87.

■ 2. Amend appendix B to part 385, section VII as follows:

■ a. Redesignate existing references to §§ 395.1(h)(1)(i), 395.1(h)(1)(ii), 395.1(h)(1)(iii), and 395.1(h)(1)(iv) as §§ 395.1(h)(1)(i)(A), 395.1(h)(1)(i)(B), 395.1(h)(1)(i)(C), and 395.1(h)(1)(i)(D), respectively; and

■ b. Revise the text for § 395.3(a)(3)(ii).

The revision reads as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

VII. List of Acute and Critical Regulations

* * * * *

§ 395.3(a)(3)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive if more than 8 hours of driving time have passed without a consecutive interruption in driving status of at least 30 minutes, either off-duty, sleeper berth or on-duty not driving (critical).

PART 395—HOURS OF SERVICE OF DRIVERS

■ 3. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, 31502; sec. 113, Public Law 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Public Law 109–59, 119 Stat. 1144, 1744; sec. 108, Public Law 110–432, 122 Stat. 4860–4866; sec. 32934, Public Law 112–141, 126 Stat. 405, 830; sec. 5206(b), Public Law 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 4. Amend § 395.1 by revising paragraphs (b)(1), (e)(1), (g)(1), and (h) to read as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(b) * * *

(1) *Adverse driving conditions.* Except as provided in paragraph (h)(3) of this section, a driver who encounters adverse driving conditions, as defined in § 395.2, and cannot, because of those conditions, safely complete the run within the maximum driving time or duty time during which driving is permitted under § 395.3(a) or § 395.5(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than two additional hours beyond the maximum allowable hours permitted under § 395.3(a) or § 395.5(a) to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo.

* * * * *

(e) * * *

(1) *150 air-mile radius driver.* A driver is exempt from the requirements of §§ 395.8 and 395.11 if:

(i) The driver operates within a 150 air-mile radius (172.6 statute miles) of the normal work reporting location;

(ii) The driver, except a driver-salesperson, returns to the work reporting location and is released from work within 14 consecutive hours;

(iii)(A) A property-carrying commercial motor vehicle driver has at least 10 consecutive hours off-duty separating each 14 hours on-duty;

(B) A passenger-carrying commercial motor vehicle driver has at least 8 consecutive hours off-duty separating each 14 hours on-duty; and

(iv) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(A) The time the driver reports for duty each day;

(B) The total number of hours the driver is on-duty each day;

(C) The time the driver is released from duty each day; and

(D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

* * * * *

(g) * * *

(1) *Property-carrying commercial motor vehicle*—(i) *General.* A driver who operates a property-carrying commercial motor vehicle equipped with a sleeper berth, as defined in § 395.2, and uses the sleeper berth to obtain the off-duty time required by § 395.3(a)(1) must accumulate:

(A) At least 10 consecutive hours off-duty;

(B) At least 10 consecutive hours of sleeper berth time;

(C) A combination of consecutive sleeper berth and off-duty time amounting to at least 10 hours;

(D) A combination of sleeper berth time of at least 7 consecutive hours and up to 3 hours riding in the passenger seat of the vehicle while the vehicle is moving on the highway, either immediately before or after the sleeper berth time, amounting to at least 10 consecutive hours; or

(E) The equivalent of at least 10 consecutive hours off-duty calculated under paragraphs (g)(1)(ii) and (iii) of this section.

(ii) *Sleeper berth.* A driver may accumulate the equivalent of at least 10 consecutive hours off-duty by taking not more than two periods of either sleeper berth time or a combination of off-duty time and sleeper berth time if:

(A) Neither rest period is shorter than 2 consecutive hours;

(B) One rest period is at least 7 consecutive hours in the sleeper berth;

(C) The total of the two periods is at least 10 hours; and

(D) Driving time in the period immediately before and after each rest period, when added together:

(*1*) Does not exceed 11 hours under § 395.3(a)(3); and

(*2*) Does not violate the 14-hour duty-period limit under § 395.3(a)(2).

(iii) *Calculation*—(A) *In general.* The driving time limit and the 14-hour duty-period limit must be re-calculated from the end of the first of the two periods

used to comply with paragraph (g)(1)(i)(E) of this section.

(B) *14-hour period.* The 14-hour driving window for purposes of § 395.3(a)(2) does not include qualifying rest periods under paragraph (g)(1)(ii) of this section.

* * * * *

(h) *State of Alaska*—(1) *Property-carrying commercial motor vehicle*—(i) *In general.* The provisions of § 395.3(a) and (b) do not apply to any driver who is driving a commercial motor vehicle in the State of Alaska. A driver who is driving a property-carrying commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive:

(A) More than 15 hours following 10 consecutive hours off-duty;

(B) After being on-duty for 20 hours or more following 10 consecutive hours off-duty;

(C) After having been on-duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(D) After having been on-duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

(ii) *Off-duty periods.* Before driving, a driver who operates a property-carrying commercial motor vehicle equipped with a sleeper berth, as defined in § 395.2, and uses the sleeper berth to obtain the required off-duty time in the State of Alaska, must accumulate:

(A) At least 10 consecutive hours off-duty;

(B) At least 10 consecutive hours of sleeper berth time;

(C) A combination of consecutive sleeper berth and off-duty time amounting to at least 10 hours;

(D) A combination of consecutive sleeper berth time and up to 3 hours riding in the passenger seat of the vehicle while the vehicle is moving on a highway, either immediately before or after a period of at least 7, but less than 10, consecutive hours in the sleeper berth; or

(E) The equivalent of at least 10 consecutive hours off-duty calculated under paragraph (h)(1)(iii) of this section.

(iii) *Sleeper berth.* A driver who uses a sleeper berth to comply with the hours of service regulations may accumulate the equivalent of at least 10 consecutive hours off-duty by taking not more than two periods of either sleeper berth time or a combination of off-duty time and sleeper berth time if:

(A) Neither rest period is shorter than 2 consecutive hours;

(B) One rest period is at least 7 consecutive hours in the sleeper berth;

(C) The total of the two periods is at least 10 hours; and

(D) Driving time in the period immediately before and after each rest period, when added together:

(*1*) Does not exceed 15 hours; and

(*2*) Does not violate the 20-hour duty period under paragraph (h)(1)(i)(B) of this section.

(iv) *Calculation*—(A) *In general.* The driving time limit and the 20-hour duty-period limit must be re-calculated from the end of the first of the two periods used to comply with paragraph (h)(1)(ii)(E) of this section.

(B) *20-hour period.* The 20-hour duty period under paragraph (h)(1)(i)(B) does not include off-duty or sleeper berth time.

(2) *Passenger-carrying commercial motor vehicle.* The provisions of § 395.5 do not apply to any driver who is driving a passenger-carrying commercial motor vehicle in the State of Alaska. A driver who is driving a passenger-carrying commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive—

(i) More than 15 hours following 8 consecutive hours off-duty;

(ii) After being on-duty for 20 hours or more following 8 consecutive hours off-duty;

(iii) After having been on-duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(iv) After having been on-duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

(3) *Adverse driving conditions.* (i) A driver who is driving a commercial motor vehicle in the State of Alaska and who encounters adverse driving conditions (as defined in § 395.2) may drive and be permitted or required to drive a commercial motor vehicle for the period of time needed to complete the run.

(ii) After a property-carrying commercial motor vehicle driver completes the run, that driver must be off-duty for at least 10 consecutive hours before he/she drives again; and

(iii) After a passenger-carrying commercial motor vehicle driver completes the run, that driver must be off-duty for at least 8 consecutive hours before he/she drives again.

* * * * *

■ 5. Amend § 395.2 by revising the definition of ''Adverse driving conditions'' and paragraph (4)(iii) in the definition of ''On-duty time'' to read as follows:

§ 395.2 Definitions.

* * * * *

Adverse driving conditions means snow, ice, sleet, fog, or other adverse weather conditions or unusual road or traffic conditions that were not known, or could not reasonably be known, to a driver immediately prior to beginning the duty day or immediately before beginning driving after a qualifying rest break or sleeper berth period, or to a motor carrier immediately prior to dispatching the driver.

* * * * *

On-duty time * * *

(4) * * *

(iii) Up to 3 hours riding in the passenger seat of a property-carrying vehicle moving on the highway immediately before or after a period of at least 7 consecutive hours in the sleeper berth;

* * * * *

■ 6. Amend § 395.3 by revising paragraphs (a)(2) and (3) to read as follows:

§ 395.3 Maximum driving time for property-carrying vehicles.

(a) * * *

(2) *14-hour period.* A driver may not drive after a period of 14 consecutive hours after coming on-duty following 10 consecutive hours off-duty.

(3) *Driving time and interruptions of driving periods*—(i) *Driving time.* A driver may drive a total of 11 hours during the period specified in paragraph (a)(2) of this section.

(ii) *Interruption of driving time.* Except for drivers who qualify for either of the short-haul exceptions in § 395.1(e)(1) or (2), driving is not permitted if more than 8 hours of driving time have passed without at least a consecutive 30-minute interruption in driving status. A consecutive 30-minute interruption of driving status may be satisfied either by off-duty, sleeper berth or on-duty not driving time or by a combination of off-duty, sleeper berth and on-duty not driving time.

* * * * *

Issued under authority delegated in 49 CFR 1.87.

James A. Mullen,

Deputy Administrator.

[FR Doc. 2020–11469 Filed 5–26–20; 8:45 am]

BILLING CODE 4910–EX–P

FEDERAL REGISTER

Vol. 85 Monday,

No. 105 June 1, 2020

Part IV

Securities and Exchange Commission

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88946; File No. SR–BOX–2020–14]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC

May 26, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2020, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 as amended (''Exchange Act''),[3] BOX Exchange LLC (''BOX or the ''Exchange'') is filing with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change to adopt rules to govern the trading of equity securities on the Exchange through a facility of the Exchange known as Boston Security Token Exchange LLC (''BSTX''). As described more fully below, BSTX would operate a fully automated, price/time priority execution system for the trading of ''security tokens,'' which would be equity securities that meet BSTX listing standards and for which ancillary records of ownership would be able to be created and maintained using distributed ledger (or ''blockchain'') technology. The proposed additions to the Exchange's Rules setting forth new Rule Series 17000–28000 are included as Exhibit 5A [sic]. All text set forth in Exhibit 5A [sic] would be added to the Exchange's rules and therefore underlining of the text is omitted to improve readability. Forms proposed to be used in connection with the proposed rule change, such as the application to become a BSTX Participant, are included as Exhibits 3A through 3N [sic].

In addition, the Exchange proposes to make certain amendments to several existing BOX Rules to facilitate trading on BSTX. The proposed changes to the existing BOX Rules would not change the core purpose of the subject Rules or the functionality of other BOX trading systems and facilities. Specifically, the Exchange is seeking to amend BOX Rules 100, 2020, 2060, 3180, 7130, 7150, 7230, 7245, IM–8050–3, 11010, 11030, 12030, and 12140. These proposed changes are set forth in Exhibit 5B [sic]. Material proposed to be added to the Rule as currently in effect is underlined and material proposed to be deleted is bracketed.

All capitalized terms not defined herein have the same meaning as set forth in the Exchange's Rules.[4]

The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt a series of rules to govern the trading of equity securities through a facility of the Exchange known as BSTX and make certain amendments to the existing BOX rules to facilitate trading on BSTX. As described more fully below, BSTX would operate a fully automated, price/time priority execution system (''BSTX System'') for the trading of securities that will be considered ''security tokens'' under the proposed rules. The ''security tokens'' under the proposed rules would be equity securities that meet BSTX listing standards, and that trade on the BSTX System, and for which ancillary records of ownership would be able to be created and maintained using distributed ledger technology. These ancillary records of ownership that would be maintained using distributed ledger technology would not be official records of security token ownership. Instead, as described further herein, such records would be ancillary records that would reflect certain end-of-day security token position balance information as reported by market participants. All BOX Participants would be eligible to participate in BSTX provided that they become a BSTX Participant pursuant to the proposed rules. Under the proposed rules, BSTX would serve as the listing market for eligible companies that wish to issue their registered securities as security tokens. Security tokens would trade as NMS stock.[5] The Exchange is not proposing rules that would support its extension of unlisted trading privileges to other NMS stock, and accordingly the Exchange does not intend to extend any such unlisted trading privileges in connection with this proposal. The Exchange would therefore only trade security tokens listed on BSTX unless and until it proposes and receives Commission approval for rules that would support trading in other types of securities, including through any extension of unlisted trading privileges to other NMS stock. A guide to the structure of the proposed rule change is described immediately below.

I. Guide to the Scope of the Proposed Rule Change

The proposal for trading of securities that will be ''security tokens'' (under the BSTX Rules, as defined below) through BSTX generally involves changes to existing BOX Rules and new BOX Rules pertaining specifically to BSTX (''BSTX Rules''). In addition, BSTX corporate governance documents as well as certain discrete changes to existing BOX corporate governance documents are necessary, which the Exchange has submitted to the Commission through separate proposed rule changes. To support the trading of security tokens through BSTX, certain conforming changes are proposed to existing BOX Rules and entirely new BSTX Rules are also proposed as Rule Series 17000 through 28000.[6] Each of those new Rule Series and the provisions thereunder are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] The Exchange's Rules can be found on the Exchange's public website: *https://boxoptions.com/regulatory/rulebook-filings/.*

[5] 17 CFR 242.600(b)(48).

[6] The proposed changes to BOX Rules and the proposed BSTX Rules are attached as Exhibits 5B and 5A [sic], respectively.

described in greater detail below. Where the BSTX Rules are based on existing rules of another national securities exchange, the source rule from the relevant exchange is noted along with a discussion of notable differences between the source rule and the proposed BSTX Rule. The proposed BSTX Rules are addressed in Part III below and they generally cover the following areas:

- Section 17000—General Provisions of BSTX;
- Section 18000—Participation on BSTX;
- Section 19000—Business Conduct for BSTX Participants;
- Section 20000—Financial and Operational Rules for BSTX Participants;
- Section 21000—Supervision;
- Section 22000—Miscellaneous Provisions;
- Section 23000—Trading Practice Rules;
- Section 24000—Discipline and Summary Suspension;
- Section 25000—Trading Rules;
- Section 25200—Market Making on BSTX;
- Section 26000—BSTX Listing Rules;
- Section 27000—Suspension and Delisting;
- Section 27100—Guide to Filing Requirements;
- Section 27200—Procedures for Review of Exchange Listing Determinations; and
- Section 28000—Dues, Fees, Assessments and Other Charges.

II. Overview of BSTX and Considerations Related to the Listing, Trading and Clearance and Settlement of Security Tokens

A. The Joint Venture and Ownership of BSTX

On June 19, 2018, *t0.com* Inc. (''tZERO'') and BOX Digital Markets LLC (''BOX Digital'') announced a joint venture to facilitate the trading of security tokens on the Exchange.[7] As part of the joint venture, BOX Digital, which is a subsidiary of BOX Holdings Group LLC, and tZERO each own 50% of the voting class of equity and over 45% economic interest of BSTX LLC. Pursuant to the BSTX LLC Agreement, BOX Digital and tZERO will perform certain specified functions with respect to the operation of BSTX. As noted, these details, as well as the proposed governance structure of the joint venture and accompanying changes to the Exchange's current governance documents and bylaws, will be the subject of a separate proposed rule change that the Exchange plans to submit to the Commission.

B. BSTX Is a Facility of BOX That Would Support Trading in the New Asset Class of Security Tokens

BSTX would operate as a facility[8] of BOX, which is a national securities exchange registered with the SEC. As a facility of BOX, BSTX's operations would be subject to applicable requirements in Sections 6 and 19 of the Exchange Act, among other applicable rules and regulations.[9] Currently, BOX functions as an exchange only for standardized options. While BSTX may eventually support a wider variety of securities, subject to Commission approval, at the time that BSTX commences operations it would only support trading in security tokens that are equity securities. Accordingly, this represents a new asset class for BOX, and this proposal sets forth the changes and additions to the Exchange's rules to support the trading of equity securities as security tokens on BSTX.

The Exchange proposes to use the term ''security token''[10] to describe the BSTX-listed securities that would use blockchain technology as an ancillary recordkeeping mechanism, as described in further detail below. However, ownership of securities that are security tokens under the BSTX rules would still be able to be transferred without regard to the blockchain-based ancillary recordkeeping functionality (as also described further below). Notwithstanding this, the Exchange believes that it is appropriate to describe these securities as ''security tokens'' to distinguish them from other securities for which there is no related legal and regulatory structure that is designed to use blockchain technology as an ancillary recordkeeping mechanism and as a way of indicating the additional proposed obligations of BSTX Participants trading security tokens to obtain a wallet address and report end-of-day security token balances to BSTX.[11] The legal significance, therefore, of a security token is that a ''security token'' will be an equity security that is approved for listing on BSTX, and that trades on the BSTX System, and for which BSTX Participants are therefore required under BSTX Rule 17020 to obtain a whitelisted wallet address and report certain end-of-day security token position balance information to BSTX. A security that is offered by an issuer with the intent of it becoming listed on BSTX would therefore not become a ''security token'' under the proposed BSTX Rules unless and until it actually does become listed on BSTX and trades on the BSTX System. The Exchange believes that the obligations on a BSTX Participant under the proposal to obtain a wallet address and to report certain end-of-day security token position balance information to BSTX are the only legal rights or obligations associated with security tokens that would differ from how NMS stock is generally traded by market participants today.[12]

C. Security Tokens Would Be NMS Stocks

The security tokens would qualify as NMS stocks pursuant to Regulation NMS,[13] which defines the term ''NMS security'' in relevant part to mean ''any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan . . . .''[14] The Exchange plans to join existing transaction reporting plans, as discussed in Part VIII below, for the purposes of security token quotation and transaction reporting.[15] The term ''NMS stock'' means ''any NMS security other than an option''[16] and therefore security tokens traded on BSTX that

[7] *See* tZERO and BOX Digital Markets Sign Deal to Create Joint Venture, Business Wire (June 19, 2018), *available at https://www.businesswire.com/news/home/20180619005897/en/tZERO-BOX-Digital-Markets-Sign-Deal-Create.*

[8] 15 U.S.C. 78c(a)(2). Section 3(a)(2) of the Exchange Act, provides that ''the term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' Because BSTX will share certain systems of the Exchange, BSTX is a facility of the Exchange.

[9] 15 U.S.C. 78f; 15 U.S.C. 78s.

[10] The Exchange proposes to define the term ''security token'' to mean a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. References to a ''security'' or ''securities'' in the Rules include security tokens. *See* proposed Rule 17000(a)(30).

[11] *See* Part II, Sections G and J for further description of these obligations.

[12] The Exchange notes that its proposed Rule 17000(a)(30) defines ''security token'' to mean an ''NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System.''

[13] 17 CFR 242.600 through 613.

[14] 17 CFR 242.600(b)(47).

[15] 17 CFR 242.601(a)(1). The Rule states in relevant part that ''every national securities exchange shall file [with the SEC] a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed through its facilities . . . .''

[16] 17 CFR 242.600(b)(47).

represent equity securities will be classified as NMS stock.

D. BSTX Would Support Trading of Registered Securities

All security tokens traded on BSTX would generally be required to be registered with the Commission under both Section 12 of the Exchange Act [17] and Section 6 of the Securities Act of 1933 (''Securities Act'').[18] BSTX would not support trading of security tokens offered under an exemption from registration for public offerings, with the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards.

E. Clearance and Settlement of Security Tokens

BSTX would maintain certain rules, as described below, to address custody, clearance and settlement in connection with security tokens. All transactions in security tokens would clear and settle in accordance with the rules, policies and procedures of registered clearing agencies. Specifically, BSTX anticipates that at the time it commences operations, security tokens that are listed and traded on BSTX would be securities that have been made eligible for services by The Depository Trust Company (''DTC'') and that DTC would serve as the securities depository [19] for such security tokens. It is also expected that confirmed trades in security tokens on BSTX would be transmitted to National Securities Clearing Corporation (''NSCC'') for clearing such that NSCC would clear the trades through its systems to produce settlement obligations that would be due for settlement between participants at DTC. BSTX believes that this custody, clearance and settlement structure is the same general structure that exists today for other exchange traded equity securities. Importantly, for purposes of NSCC's clearing activities and DTC's settlement activities in respect of the security tokens, the relevant securities will be cleared and settled by NSCC and DTC in exactly the same manner as those activities are performed by NSCC and DTC currently regarding a class of NMS Stock. This is because the tokenized ancillary recordkeeping process that will be implemented through the operation of the proposed BSTX Rules will occur separate and apart from the clearance and settlement process and the security itself will not exist in tokenized form. Rather, the security will be an ordinary equity security for NSCC's and DTC's purposes. The tokenized feature in connection with the security that will be implemented through the operation of BSTX's Rules is that there will also be a separate, ancillary recordkeeping process that will use distributed ledger technology to record BSTX Participant end-of-day position balance information for the relevant security.

1. Issuance of Equity Securities Eligible to Become a Security Token

With the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards, all security tokens traded on BSTX will have been offered and sold in registered offerings under the Securities Act, which means that purchasers of the security tokens will benefit from all of the protections of registration. The Division of Corporation Finance will need to make a public interest finding in order to accelerate the effectiveness of the registration statements for these offerings. Because BSTX is a facility of a national securities exchange, all security tokens will be registered under Section 12(b) of the Exchange Act, thereby subjecting all of these issuers to the reporting regime in Section 13(a) of the Exchange Act.

All offerings of securities that are intended to be listed as security tokens on BSTX will be conducted in the same general manner in which offerings of exchange-listed equity securities are conducted today under the federal securities laws. An issuer will enter into a firm commitment or best efforts underwriting agreement with a sole underwriter or underwriting syndicate; the underwriter(s) will market the securities and distribute them to purchasers; and secondary trading in the securities (that are intended to trade on BSTX as security tokens) will thereafter commence on BSTX. The ancillary recordkeeping function associated with the security token will not commence until the conclusion of the first day of the security token's secondary trading on BSTX pursuant to proposed BSTX Rule 17020.[20]

Issuers on BSTX could include both (1) new issuers who do not currently have any class of securities registered on a national securities exchange, and (2) issuers who currently have securities registered on a national securities exchange and who are seeking registration of a separate class of equity securities for listing on BSTX. BSTX does not intend for security tokens listed, or intended to be listed, on BSTX to be fungible with any other class of securities from the same issuer. If an issuer sought to list securities on BSTX that are not a separate class of an issuer's securities, BSTX does not intend to approve such a class of security for listing on BSTX, pursuant to BSTX's authority under BSTX Rule 26101. At the commencement of BSTX's operations, only equity securities would be eligible for listing as security tokens. This would be addressed by BSTX Rules 26102 (Equity Issues), 26103 (Preferred Security Tokens) and 26105 (Warrant Security Tokens), which would be part of BSTX's listing rules and would contemplate that only those specified types of equity securities would be eligible for listing.

2. Securities Depository Eligibility

BSTX would maintain rules that would promote a structure in which security tokens would be held in ''street name'' with DTC.[21] BSTX Rule 26136 would require that for an equity security to be eligible to be a security token BSTX must have received a representation from the issuer that a CUSIP number that identifies the security is included in a file of eligible issues maintained by a securities depository that is registered with the SEC as a clearing agency. This is based on rules that are currently maintained by other equities exchanges.[22] In practice, BSTX Rule 26136 requires the

[17] 15 U.S.C. 78l.

[18] 15 U.S.C. 77f.

[19] 15 U.S.C. 78c(a)(23)(A). Section 3(a)(23)(A) of the Exchange Act defines the term ''clearing agency'' to include ''any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.''

[20] Although the smart contract that would be used to carry out the ancillary recordkeeping function related to the security would need to be built by or at the direction of the issuer prior to the commencement of the security's trading on BSTX, the corresponding smart contract would effectively remain dormant until the ancillary recordkeeping process contemplated under the proposed BSTX Rules is activated due to trading on the BSTX System in that security token.

[21] The term ''street name'' refers to a securities holding structure in which DTC, through its nominee Cede & Co., would be the registered holder of the securities and, in turn, DTC would grant security entitlements in such securities to relevant accounts of its participants. Proposed BSTX Rule 26135 would also provide, with certain exceptions, that securities listed on BSTX must be eligible for a direct registration program operated by a clearing agency registered under Section 17A of the Exchange Act. DTC operates the only such program today, known as the Direct Registration System, which permits an investor to hold a security as the registered owner in electronic form on the books of the issuer.

[22] Proposed BSTX Rule 26136 is based on current NYSE Rule 777.

security token to have a CUSIP number that is included in a file of eligible securities that is maintained by DTC because the Exchange believes that DTC currently is the only clearing agency registered with the SEC that provides securities depository services.[23]

3. Book-Entry Settlement at a Securities Depository

BSTX would also maintain Proposed BSTX Rule 26137 regarding uniform book-entry settlement. The rule would require each BSTX Participant to use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another BSTX Participant or a member of a national securities exchange that is not BSTX or a member of a national securities association.[24] Proposed BSTX Rule 26137 is based on the depository eligibility rules of other equities exchanges and Financial Industry Regulatory Authority (''FINRA'').[25] Those rules were first adopted as part of a coordinated industry effort in 1995 to promote book-entry settlement for the vast majority of initial public offerings and ''thereby reduce settlement risk'' in the U.S. national market system.[26]

4. Participation in a Registered Clearing Agency That Uses a Continuous Net Settlement System

Under proposed BSTX Rule 25140, each BSTX Participant would be required to either (i) be a member of a registered clearing agency that uses a continuous net settlement (''CNS'') system, or (ii) clear transactions executed on BSTX through a member of such a registered clearing agency. The Exchange believes that today NSCC is the only registered clearing agency that uses a CNS system to clear equity securities, and proposed BSTX Rule 25140 further specifies that BSTX will maintain connectivity and access to the Universal Trade Capture system of NSCC to transmit confirmed trade details to NSCC regarding trades executed on BSTX. The proposed rule would also address the following: (i) A requirement that each security token transaction executed through BSTX must be executed on a locked-in basis for automatic clearance and settlement processing; (ii) the circumstances under which the identity of contra parties to a security token transaction that is executed through BSTX would be required to remain anonymous or may be revealed; and (iii) certain circumstances under which a security token transaction may be cleared through arrangements with a member of a foreign clearing agency. Proposed BSTX Rule 25140 is based on a substantially identical rule of the Investor's Exchange, LLC (''IEX''), which, in turn, is consistent with the rules of other equities exchanges.[27]

BSTX believes that the operation of its depository eligibility rule and its book-entry services rule would promote a framework in which security tokens that would be eligible to be listed and traded on BSTX would be equity securities that have been made eligible for services by a registered clearing agency that operates as a securities depository and that are settled through the facilities of the securities depository by book-entry. The Exchange believes that because DTC currently is the only clearing agency registered with the SEC that provides securities depository services, at the commencement of BSTX's operations, security tokens would be securities that have been made eligible for services by DTC, including book-entry settlement services.

5. Settlement Cycle

Proposed BSTX Rule 25100(d) would address settlement cycle considerations regarding trades in security tokens. Security token trades that result from orders matched against the electronic order book of BSTX would be required to clear and settle pursuant to the rules, policies and procedures of a registered clearing agency. Additionally, Rule 25100(d) would provide that such security token transactions occurring through BSTX would settle one business day after the trade date (*i.e.,* T+1) where that settlement cycle timing is permitted under the rules, policies and procedures of the relevant registered clearing agency. This creates a presumption of T+1 settlement for security token trades because, as described below, NSCC already processes trades for T+1 settlement pursuant to the authority in its approved rules, policies and procedures. However, market participants, including BSTX Participants, that are parties to a security token trade that occurs away from BTSX would have the ability to agree to a shorter or longer settlement cycle for the settlement of the security token trade as is permitted by applicable law, including under the rules, policies and procedures of a relevant registered clearing agency.

As noted above in connection with the description of proposed BSTX Rule 25140, BSTX expects at the commencement of its operations that it would transmit confirmed trade details to NSCC regarding security token trades that occur on BSTX and that NSCC would be the registered clearing agency that clears security token trades. BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6–1 for a security trade that involves a broker-dealer.[28] Furthermore, BSTX understands that NSCC does already clear trades in accordance with this authority. For example, based on information provided by a representative of DTCC to outside counsel for BSTX, BSTX understands that on average for each business day for the months of November and December 2019, NSCC cleared over 19,000 trades designated for T+1 settlement and over 2,000 trades designated for T+0 settlement.[29] As described above regarding BSTX Rules 26136 and 26137, all security token trades occurring on BSTX that are cleared by NSCC, including those for which the T+1 settlement presumption would apply, would be settled through book-entry settlement at DTC pursuant to its rules, policies and procedures.

[23] *See* Exchange Act Release No. 78963 (September 28, 2016), 81 FR 70744, 70748 (October 13, 2016) (footnote 46 and the accompanying text acknowledge that DTC is the only registered clearing agency that provides securities depository services for the U.S. securities markets).

[24] FINRA is currently the only national securities association registered with the SEC.

[25] *See e.g.,* FINRA Rule 11310. Book-Entry Settlement and NYSE Rule 776. Book-Entry Settlement of Transactions.

[26] These coordinated depository eligibility rules resulted from proposed listing rules amendments developed by the Legal and Regulatory Subgroup of the U.S. Working Committee, Group of Thirty Clearance and Settlement Project. *See* Securities Exchange Act Release Nos 35774 (May 26, 1995) (SR–NASD–95–24), 60 FR 28813 (June 2, 1995); 35773 (May 26, 1995), 60 FR 28817 (June 2, 1995) (SR–NYSE–95–19).

[27] *See* IEX Rule 11.250 (Clearance and Settlement; Anonymity), which was approved by the Commission in 2016 as part of its approval of IEX's application for registration as a national securities exchange. Exchange Act Release No. 78101 (June 17, 2016); 81 FR 41142 (June 23, 2016); *see also* Cboe BZX Rule 11.14 (Clearance and Settlement; Anonymity).

[28] 17 CFR 240.15c6–1. Under SEC Rule 15c6–1, with certain exceptions, a broker-dealer is not permitted to enter a contract for the purchase or sale of security that provides for payment of funds and delivery of securities later than the second business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

[29] Mike McClain, Managing Director and General Manager of Equity Clearing and DTC Settlement Services at DTCC provided this information to BSTX's outside counsel, Andrew Blake, Partner, Sidley Austin LLP during a telephone conference on February 13, 2020.

In adopting amendments to SEC Rule 15c6–1 in 2017 to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs central counterparty [30] (''CCP'') services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting ''reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP's risk management process . . .'' and that ''[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.'' [31] The Commission went on to state its belief that shortening the settlement cycle ''would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors'' such as ''quicker access to funds and securities following trade execution'' and ''reduced margin charges and other fees that clearing broker-dealers may pass down to other market participants[.]'' [32] The Commission also ''noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]'' [33] BSTX agrees with these statements by the Commission and has therefore proposed BSTX Rule 25100(d) in a form that would promote the benefits of a T+1 settlement cycle regarding security token trades where T+1 settlement is already permitted pursuant to the rules, policies and procedures of NSCC and DTC today.

F. Compatibility With the BSTX Security Token Protocol for BSTX-Listed Security Tokens to Facilitate Ancillary Recordkeeping

BSTX would maintain listing standards that would enable security tokens to have an ancillary record of ownership recorded on the Ethereum blockchain using a protocol standard determined by BSTX (the ''BSTX Security Token Protocol'' or the ''Protocol'').[34] In this way, the Ethereum blockchain would serve as a complementary recordkeeping mechanism to official records of security token ownership maintained by market participants.

1. Background on Blockchain Technology

In general, a blockchain is an open, decentralized ledger that can maintain digital records of assets and transactions that are accessible to anyone running the same protocol.[35] The blockchain's central function is to encode transitions or changes to the ledger, such as the movement of an asset from one person to another person. Whenever one change to the blockchain ledger occurs to record a state transition, the entire blockchain is immutably changed to reflect the state transition. The purpose of requiring security tokens to adopt the BSTX Security Token Protocol is to enable security token ownership to be recorded on the public Ethereum blockchain as an ancillary recordkeeping mechanism and to ensure uniformity among security tokens rather than permitting each security token to have its own unique specifications that might complicate updates to the blockchain and add unnecessary complexity.

2. Background on the Ethereum Blockchain

The Ethereum blockchain is an open-source, public blockchain that operates as a computing platform and operating system that supports smart contract functionality.[36] Smart contracts are computer protocols designed to digitally facilitate, verify, and enforce the performance of a contract. Ethereum-based smart contracts are executed on the Ethereum Virtual Machine, which can be thought of as a global computer network upon which the smart contracts run. Ether is the digital currency used to pay fees associated with operating smart contracts (known as ''gas'') on the Ethereum networks. This is because there are costs involved in performing the computations necessary to execute a smart contract and to record any state transitions onto the Ethereum blockchain.[37] Thus, moving tokens from one address to another address (*i.e.,* a state transition) requires some amount of Ether to pay the fee (*i.e.,* ''gas'') associated with recording the movement of tokens to the Ethereum blockchain. Parties to a transaction in Ethereum-based smart contracts can determine what those gas costs are depending on how quickly they would like the transaction to be reflected on the Ethereum blockchain.

3. Background on Smart Contracts

The term ''smart contract'' is commonly used to describe computer-coded functions in connection with the Ethereum blockchain. An Ethereum smart contract is neither ''smart'' nor a legal contract in the traditional sense. Smart contracts in this context refer to immutable [38] computer programs that run deterministically [39] in the context of the Ethereum Virtual Machine. Smart contracts operate within a very limited execution context. They can access their own state, the context of the transaction that called them, and some information about the most recent blocks (*i.e.,* the most recent recording of transactions and other events recorded to the Ethereum blockchain).

In the context of security tokens, smart contracts generally may have three components: (i) Functions, (ii) configurations; (iii) and events.[40] Functions describe the basic operations of a smart contract, such as the ability to query a particular address to determine how many tokens belong to that address.[41] Configurations are

[30] *See* 17 CFR 240.17Ad–22(a)(2) (defining the term ''central counterparty'' to mean ''a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer'').

[31] Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564, 15570–71 (March 29, 2017).

[32] *Id.* at 15571.

[33] *Id.* at 15582.

[34] While BSTX initially intends to support only the trading of eligible security tokens that are compatible with the Ethereum public blockchain, BSTX may support tokens compatible with other blockchains that support smart contract functionality in the future.

[35] A ''protocol'' for this purpose is a set of rules governing the format of messages that are exchanged between the participants.

[36] *See* Ethereum White Paper (last updated Aug. 1, 2018) *available at https://github.com/ethereum/wiki/wiki/White-Paper.*

[37] *See What Is Gas,* MyEtherWallet (2018) *available at https://kb.myetherwallet.com/posts/transactions/what-is-gas/.*

[38] Smart contracts are immutable in that, once deployed, the code of a smart contract cannot change. Unlike with traditional software, the only way to modify a smart contract is to deploy a new instance.

[39] Deterministic in this context means that the outcome of the execution of a smart contract is the same for everyone who runs it, given the context of the transaction that initiated its execution.

[40] However, a smart contract need not necessarily have each of these components. Some smart contracts may simply be used to support the functioning of other smart contracts and may not itself result in events being recorded to the Ethereum blockchain.

[41] An ''address'' in this context refers to a number that is associated with a particular market

attributes of a smart contract that are typically set at the launch of a smart contract, such as designating the name of the smart contract (*e.g.,* as XYZ security token). Events describe the functions of a smart contract that, when executed, result in a log or record being recorded to the Ethereum blockchain, such as the transfer of tokens from one address to another. Not all functions of a smart contract result in a log or record being recorded to the Ethereum blockchain. Smart contracts only run if they are called by a transaction.[42]

Smart contracts can call another smart contract, which can call another contract, and so on. Smart contracts never run ''on their own'' or ''in the background,'' but rather lie dormant until a transaction triggers them to carry out a specified operation pursuant to the protocol on which they operate. All transactions execute in their entirety or not at all, regardless of how many smart contracts they call or what those smart contracts do. Only if a transaction successfully executes in its entirety is there an ''event'' representing a change to the state of the blockchain with respect that transaction. If an execution of a smart contract's operation fails due to an error, all of its effects (*e.g.,* events) are rolled back as if the transaction never ran.

4. Background on Tokens

Tokens historically referred to privately issued, special-purpose coin-like items (*e.g.,* laundry tokens or arcade game tokens). In the context of blockchain technology, tokens generally mean blockchain-based abstractions that can be owned and that represent assets, currency, or access rights. A security token on the blockchain used for ancillary recordkeeping of ownership can be thought of as a digital representation of shareholder equity in a legal entity organized under the authority of state or federal law and that meet BSTX's listing standards. Having a security token attributed to a particular address, however, would not convey ownership of shareholder equity in the issuer because the official records of ownership would be maintained by participants at DTC.[43]

To create a new token on Ethereum, including for purposes of facilitating ancillary recordkeeping of security token ownership, one must create a new smart contract. The smart contract would be configured to detail, among other things, the name of the issuer and the total supply of the tokens. Smart contracts can be designed to carry out any event that one wants, but using a set standard or protocol allows for participants transacting in those smart contracts to have uniform expectations and functionality with respect to the tokens.

5. Background on Protocols

A protocol (also sometimes referred to as a ''standard'' or ''protocol standard'') defines the functions, events, configurations, and other features of a given smart contract. The most common protocol used with Ethereum is the ERC–20 protocol, which describes the minimum functions that are necessary to be considered an ERC–20 token.[44] The ERC–20 protocol offers basic functionalities to transfer tokens, obtain account balances, and query the total supply of tokens, among other features. The BSTX Security Token Protocol is compliant with the ERC–20 protocol but adds additional requirements and functionality, as described below.

As noted above, Ether is the digital currency used to pay fees associated with operating smart contracts (known as ''gas'') on the Ethereum network. Payment of gas is required to operate smart contracts because there are costs involved in performing the computations necessary to execute a smart contract and to record any state transitions onto the Ethereum blockchain.

There is an important conceptual distinction between ERC–20 tokens, including security tokens, and Ether itself. Where Ether is transferred by a transaction that has a recipient address as its destination, token transfers occur within the specific token contract state and have the token smart contract as their destination, not the recipient's address. The token smart contract tracks balances and issues events to the Ethereum blockchain. In a token transfer,[45] no transaction is actually sent to the recipient of the token. Instead, the recipient's address is added to a map within the token smart contract itself. In contrast, a transaction sending Ether to an address changes the state of an address. A transaction transferring a token to an address only changes the state of the token contract, not the state of the recipient address. Thus, an address is not really full of tokens; rather it is the token smart contract that has the addresses and balances associated with each address in it.

6. BSTX Security Token Protocol

BSTX Rule 26138 requires that a BSTX listed company's security tokens must comply with the Protocol to trade on BSTX. The purpose of this requirement is to ensure that all security tokens are governed by the same set of specifications and controls that allow for ownership of security tokens to be recorded to the Ethereum blockchain as an ancillary recordkeeping mechanism.

The Protocol involves three smart contracts. The Asset Smart Contract is the primary smart contract that contains the balances of security tokens associated with each address and carries out the functions necessary to reflect changes in ownership. There are two ancillary smart contracts that are called by the Asset Smart Contract in executing transactions. The first of these is the Registry Smart Contract (''Registry''), which contains the list of permissioned (or ''whitelisted'') addresses, and the second is the Compliance Smart Contract, which includes a variable list of additional compliance related rules that the Asset Smart Contract must comply with in executing a transaction. Each of these three smart contracts are described in greater detail below:

(1) *Asset Smart Contract*—The Asset Smart Contract defines and establishes the security tokens (*e.g.,* the maximum number of security tokens available for a particular issuance) for purposes of the Ethereum blockchain ancillary recordkeeping function and records a list of market participant addresses and the security tokens associated with each address.

(2) *Registry Smart Contract*—The Registry Smart Contract (or ''Registry'') defines the permissions available to different types of market participants to perform certain functions. Under the

participant within the smart contract that can be updated to reflect changes in ownership of tokens.

[42] The term ''transaction'' in this context refer not to an actual execution or transaction occurring on BSTX or in the marketplace, but rather to an operation triggering a smart contract to carry out its specified function, which must ultimately originate from a human source.

[43] Rather, a digital representation of a security token associated with a particular address reflects an ancillary record of security token ownership based on data provided to BSTX by BSTX Participants. The records reflected on the Ethereum blockchain regarding security tokens may not be current to reflect the most recent transactions in the marketplace and may not reflect ownership by all market participants.

[44] *See e.g.,* Jesus Najera, Understanding ERC20, Coin Central (Jan. 8, 2018), *available at https://coincentral.com/understanding-erc20/;* Alfonso de la Rocha, *Anatomy of an ERC: An Exhaustive Survey,* Medium (May 7, 2018), *available at https://medium.com/coinmonks/anatomy-of-an-erc-an-exhaustive-survey-8bc1a323b541.*

[45] A ''transfer'' in the context of the BSTX Security Token Protocol regarding a security token refers to a reallocation of the digital representation of a security token on the Ethereum blockchain as an ancillary recordkeeping mechanism to reflect corresponding changes in ownership of the security token.

Protocol, there are five different types of market participants connected with the Registry, each with different abilities and permissions (as detailed below):[46] (1) Contract Owner, (2) Custodian, (3) Broker Dealer, (4) Custodial-Account, and (5) Investor. The Registry also contains the list of whitelisted addresses to which security tokens may be sent and additional information associated with each address (*e.g.,* whether an address has been suspended).

(3) *Compliance Smart Contract*—The Compliance Smart Contract is the set of rules held in a separate smart contract that a security token can be configured to abide by to ensure compliance with applicable laws and regulations (*e.g.,* by restricting a movement of security tokens to an address that has not been added to the Registry for purposes of the Ethereum blockchain ancillary recordkeeping mechanism). The Compliance Smart Contract can be modified to add or remove applicable rules in light of changes to applicable regulatory requirements.

Each of these three smart contracts work together to facilitate the ancillary recordkeeping mechanism for Security Tokens using the Ethereum blockchain. The details of the specific functions, configurations, and events under the Protocol are set forth in greater detail in Exhibit 3N [sic].

The Exchange selected the Ethereum blockchain among other possible blockchains that support smart contracts as the blockchain upon which security tokens would be built in accordance with the BSTX Security Token Protocol for ancillary recordkeeping purposes because of, among other reasons, its widespread use, the public's familiarity with Ethereum, and its smart contract functionality. Ethereum has maintained the second largest market capitalization behind Bitcoin among blockchain-based digital assets for at least two years and is widely recognized by the public.[47] Over 200,000 different ERC–20 tokens have been built on the Ethereum blockchain, demonstrating its widespread use and functionality. The Exchange believes that the Ethereum blockchain is able to support all of the necessary functions of the BSTX Security Token Protocol to carry out the security token ancillary recordkeeping function. The Exchange also believes that using a widely-known smart contract platform as opposed to a lesser-known smart contract platform may help issuers become more comfortable with the ancillary recordkeeping process as well as allow them to more-readily locate service providers as necessary to assist them in building their security tokens in accordance with the BSTX Security Token Protocol. As noted, the Exchange may consider the use of other blockchains supporting smart contract functionality in the future, subject to applicable rule filing requirements with the Commission pursuant to Section 19 of the Exchange Act.[48]

G. Obtaining a Whitelisted Wallet Address

Pursuant to proposed Rule 17020(a), a BSTX Participant must, either directly or through its carrying firm, establish a wallet address to which its end-of-day security token balances may be recorded by contacting BSTX.[49] A BSTX Participant that is a carrying broker-dealer for other BSTX Participants would be assigned the wallet address with the status of a Custodian, which would allow that BSTX Participant to request wallet addresses on behalf of other BSTX Participants (for which it serves as the carrying broker-dealer) as either a Custodial Account or Broker-Dealer wallet address, as described above. A BSTX Participant that is not a carrying broker-dealer could request a Broker-Dealer wallet address, a Custodial Account wallet address in coordination with its carrying firm, and an Investor wallet address on behalf of a customer that would like its ownership of security tokens to be reflected at its own address for purposes of the Ethereum blockchain as an ancillary recordkeeping mechanism.[50]

Contact information for BSTX for the purpose of establishing a wallet address will be published on the BSTX website. Proposed BSTX Rule 17020(a) requires a BSTX Participant to establish a wallet address by contacting BSTX directly or through its carrying firm acting on its behalf. BSTX expects that this process (*i.e.,* contacting the Exchange and establishing a wallet address) would occur contemporaneously with the application by a market participant to become a BSTX Participant. However, under proposed BSTX Rule 17020(a), a BSTX Participant would have up until five business days from the date that the Exchange approves the application of the BSTX Participant to satisfy the obligation to obtain a wallet address. In the event that a BSTX Participant has not obtained a wallet address prior to the Exchange's approval of its application, the BSTX Participant would become subject to the end-of-day security token balance reporting requirements in proposed BSTX Rules 17020(b) and (c). However, because the BSTX Participant would not yet have a wallet address to which the position balance information could be attributed by a Wallet Manager, any security token position balances of such BSTX Participant would be attributed to the omnibus wallet address for the security token (as described below) until the time the BSTX Participant obtains a wallet address. For the avoidance of doubt, having end-of-day position balance information related to a security token attributed to a particular wallet address would not convey ownership of shareholder equity in the issuer to the person or entity with whom such wallet address is associated. BSTX-listed security tokens will be cleared and settled in the same manner as other NMS stocks through the facilities of a registered clearing agency, and the official records of ownership would be maintained as discussed above in Part II.E. Therefore, any lack of a wallet address would not affect the official records of ownership of the BSTX-listed security token.

Once a BSTX Participant has been assigned a particular wallet address, the only further obligation of that BSTX Participant is to report its end-of-day security token position balances to BSTX, as described below. Non-BSTX Participants that may trade security tokens are not subject to the requirement that they obtain a wallet address prior to trading a security token or to the end-of-day security token balance position reporting requirements. The Exchange will not accept voluntary reports of end-of-day security token balances from non-BSTX Participants, but may consider doing so in the future, subject to any applicable or necessary rule filing requirements with the Commission. The Exchange believes that the proposed requirement in Rule

[46] There are additional roles that are not technically part of the Registry and are instead specific to certain smart contracts. For example, an ''Issuer'' is an Asset Smart Contract-specific role. Also, an ''Administrator'' is a Compliance Smart Contract-specific role that allows such a user to, for example, freeze the transfer of tokens for purposes of the ancillary recordkeeping function under certain circumstances and modify or add compliance rules to govern a security token.

[47] The Commission has also publicly recognized Ethereum and its native currency Ether. *See* William Hinman, Director, Division of Corporation Finance, Digital Asset Transactions: When Howey Met Gary (Plastic) (June 14, 2018) *available at https://www.sec.gov/news/speech/speech-hinman-061418.*

[48] 15 U.S.C. 78s.

[49] Multiple security token issuances can be attributed to a BSTX Participant's wallet address. A BSTX Participant would not need a separate wallet address for each security token issuance that it trades.

[50] A BSTX Participant that is a carrying broker-dealer, and which therefore has a Custodial Account address, could also request Investor wallet addresses on behalf of customers.

17020(a) to obtain a wallet address is consistent with the Exchange Act and Section 6(b)(5) [51] in particular because it would help foster cooperation and coordination with persons engaged in regulating and facilitating transactions in security tokens by setting forth a process through which BSTX Participants may obtain a wallet address to which their end-of-day security token balances may be recorded to the Ethereum blockchain as an ancillary recordkeeping mechanism. The Exchange believes that the proposed requirement is similar to obtaining a market participant identifier (''MPID'') in that it establishes an identifier that can be attributed to a particular BSTX Participant for reporting purposes. The proposed requirement to obtain a wallet address is the same for all BSTX Participants, and is therefore not unfairly discriminatory, and the Exchange does not propose to charge a fee for obtaining a wallet address.

H. Wallet Manager [52]

As described further below, following the end of a trading day, BSTX Participants (or their carrying firms) will be required to send security token position balance information to BSTX. Based on the information that BSTX receives, BSTX will deliver that information to one or more Wallet Managers who will be responsible for updates to the security token position balances on the Ethereum blockchain by allocating balances among the wallet addresses of BSTX Participants and the omnibus wallet address.

The Exchange would enter into a contractual arrangement with a Wallet Manager as a service provider to the Exchange performing the function described above. The Exchange does not believe that performing the ancillary recordkeeping process would make a Wallet Manager a facility of the Exchange because the Wallet Manager's functions do not meet the definition of ''facility'' under the Exchange Act. Section 3(a)(2) of the Exchange Act provides that ''the term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' [53] A Wallet Manager is neither property of the Exchange nor does a Wallet Manager provide services for effecting or reporting a transaction taking place on the Exchange. Rather, a Wallet Manager performs the function of updating end-of-day security token position balance information provided by the Exchange as part of an ancillary recordkeeping mechanism. The Ethereum blockchain would not reflect any particular transaction(s) that occurred in the marketplace but would instead record allocations of end-of-day security token position balances—which may result from a variety of activities in the marketplace for the relevant security tokens such as trading activity, lending activity, and free-of-payment transfers between DTC accounts. The definition of ''facility'' in Section 3(a) of the Exchange Act is instead focused on ''effecting or reporting a transaction'' as part of the operations of an exchange, namely the bringing together of orders for securities of multiple buyers and sellers using non-discretionary methods under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.[54] Thus, systems of communication to the Exchange used to effect trades or to receive market data would likely be considered facilities of the Exchange, but an end-of-day ancillary recordkeeping reporting process that does not provide any real or near-time information regarding transactions in the market should not.[55] The Commission ''long has recognized that there must be some practical limitations on entities encompassed within the broad definition of the term 'exchange.' '' [56] The ancillary recordkeeping process would have no impact on, or perform a function related to, the bringing together of buyers and sellers' orders, clearance, settlement, market data or routing functions of the exchange (*i.e.,* all of these functions can continue upon any suspension of the ancillary recordkeeping process), and therefore cannot reasonably be considered a ''facility'' of the exchange. The Exchange intends to enter into a contractual arrangement with at least one Wallet Manager.[57] The Exchange intends to evaluate each potential Wallet Manager's capability to receive information from BSTX related to BSTX Participants' end-of-day security token balances along with its ability to update the Ethereum blockchain upon receipt of such information. Further, the Exchange intends to perform due diligence on potential Wallet Managers, including but not limited to checking the list produced by the U.S. Treasury Department of persons with whom U.S. citizens are prohibited from doing business (''OFAC List''). Finally, the Exchange intends to require each Wallet Manager in its service agreement with the Wallet Manager to agree to comply with all applicable securities laws. The Exchange believes that using the criteria listed above for evaluating potential Wallet Managers may prevent fraudulent and manipulative acts and practices, consistent with Section 6(b)(5) of the Exchange Act.[58] The Exchange believes that requiring every Wallet Manager to act in a manner consistent with applicable securities laws and not be on the OFAC List would help ensure that persons reputed to have committed illegal acts and who violate securities laws, including any such laws meant to prevent fraud and market manipulation, will not operate as Wallet Managers.

[51] 15 U.S.C. 78f(b)(5).

[52] A ''Wallet Manager'' is defined as a party approved by BSTX to operate software compatible with the BSTX Protocol. *See* proposed Rule 17000(a)(31). A Wallet Manager would be a third-party service provider for the Exchange that will help facilitate establishing wallet addresses for BSTX Participants and facilitate updates to the Ethereum blockchain as an ancillary recordkeeping mechanism regarding changes in ownership resulting from trading. Approved Wallet Managers will be listed on the Exchange's website.

[53] 15 U.S.C. 78c(a)(2).

[54] 17 CFR 240.3b–16.

[55] The Commission has not defined the term ''facility.'' *See* Exchange Act Release No. 26708 (Apr. 11, 1989), 54 FR 15429 (Apr. 18, 1989) (noting that the term ''facility'' has not changed since it was originally adopted and that no hearing testimony referred to it because ''the Committee felt that the definition was 'self-explanatory' '').

[56] *Id.*

[57] The Exchange expects that it will initially operate with one Wallet Manager, but there is nothing to preclude the use of another Wallet Manager provided the prospective Wallet Manager is capable of operating software compatible with the BSTX Security Token Protocol. The Exchange expects that tZERO would operate as the initial Wallet Manager. BOX Exchange LLC, the self-regulatory organization of which BSTX is a facility, neither controls, directly or indirectly, nor is under common control with tZERO. The voting class of equity of the BSTX facility is 50% owned by tZERO and BOX Digital Markets, which is 100% owned by BOX Holdings Group LLC. BOX Exchange LLC does not have direct or indirect ownership interest in BOX Holdings LLC or its subsidiaries. As a result, because BOX Exchange LLC does not exercise control over tZERO or its affiliates, tZERO would not constitute ''property'' of the Exchange for purposes of determining whether it is a facility. In any case, it is the functions of the particular entity that should matter for purposes of determining whether an entity or function is a facility of an exchange rather than whether an entity is affiliated or not with an exchange. *See e.g.,* Exchange Act Release No. 54538 (Sept. 28, 2006), 71 FR 59184 (Oct. 6, 2006) (order approving PHLX's new equity trading system and operation of optional outbound router as a facility of PHLX, where PHLX had no ownership interest in the third party operator).

[58] 15 U.S.C. 78f(b)(5).

I. Coordination Between BSTX, Registered Clearing Agencies, and Wallet Managers

Upon the occurrence of a transaction on BSTX due to the completion of its order matching process,[59] BSTX would generate an execution report, and it would deliver drop copies to its own front-end systems to update the BSTX Participants and to NSCC.[60] Where a BSTX transaction creates a settlement obligation to transfer registered ownership of a security token, clearance and settlement would be performed in accordance with the rules, policies and procedures of a registered clearing agency as described in Part II.E. above. The Wallet Manager would be provided with end-of-day position balance information of BSTX Participants necessary to update the Ethereum blockchain through the end of day reporting mechanism discussed below.

J. Reporting End-of-Day Security Token Balances To Facilitate Ancillary Recordkeeping

To update the Ethereum blockchain to reflect ownership of security tokens as an ancillary recordkeeping mechanism, the Exchange proposes to require that each BSTX Participant, either directly or through its carrying firm, report each business day to BSTX certain end-of-day security token balances in a manner and form acceptable to BSTX.[61] A BSTX Participant that is a participant at DTC would be required to report to BSTX the total number of security tokens for each class of security token that is credited to each DTC account of the BSTX Participant.[62] For a BSTX Participant that is not a DTC participant, the BSTX Participant would be required to report the total number of security tokens for each class of security token that are credited to the BSTX Participant by its carrying firm.[63] Pursuant to proposed Rule 17020(d), upon receipt of the end-of-day security token balances from BSTX Participants, the Exchange would provide such information to the Wallet Manager(s) to update the Ethereum blockchain as an ancillary recordkeeping mechanism to reflect updates in security token balances.[64] Proposed Rule 17020(d) would also provide that unreported security token balances will be determined and allocated to an omnibus wallet address for each security token as described further below. The Exchange would determine the number of security tokens to be allocated to the omnibus wallet address by the Wallet Manager(s) by subtracting the sum of the security token position balances reported for a particular security token by BSTX Participants from the total outstanding number of that particular security token. BSTX expects that each security token would have a dedicated omnibus wallet address that the Wallet Manager(s) would use to allocate the resulting balance to that address.

The Exchange proposes that these end-of-day security token balance reports would be required each business day when DTC is also open for business, but after such time as DTC has completed its end-of-day settlement process.[65] The Exchange believes that once DTC has completed its end-of-day settlement process, DTC participants would be able to determine the number of security tokens credited to their DTC account(s) and to other market participants that settle through that DTC participant. Thereafter, BSTX Participants, or their carrying firms, would be able to obtain their security token balance information and report it to BSTX by the end of the day. The Exchange understands that DTC typically makes end-of-day security position reports available to DTC participants at approximately 7:30 p.m. Eastern time. Therefore, the Exchange will notify BSTX Participants via Regulatory Circular of the time after 7:30 p.m. Eastern time by which end-of-day security position balance reports will be required to be provided to BSTX pursuant to BSTX Rule 17020(c). The Exchange will also notify BSTX Participants via Regulatory Circular of the time by which it will provide security token position balance information to the Wallet Manager(s) so that the Wallet Manager(s) will have sufficient time to carry out their contractual obligation to update the Ethereum blockchain as an ancillary recordkeeping mechanism prior to the commencement of trading on BSTX on the next trading day.

The Exchange acknowledges that, in certain circumstances, a BSTX Participant subject to the requirements of proposed Rule 17020 could fail to report end-of-day security token balances to BSTX in a timely manner, inaccurately report such balances, or fail to obtain a wallet address prior to acquiring a position in a security token. Such failures would impair the ability of the Exchange to report complete end-of-day security token balance information regarding a security token to the Wallet Manager(s) who will be responsible for using that information, in turn, to update the security token balance information that is reflected on the Ethereum blockchain. The Exchange notes that BSTX Participants would be required to comply with applicable Exchange Rules, including the requirement to report their end-of-day security token balances, and may be subject to disciplinary action for failing to comply with applicable rules pursuant to proposed Rule Series 24000 (Discipline and Summary Suspension).

As noted above, to account for instances in which a BSTX Participant fails to report or to accurately report its end-of-day security token balance pursuant to proposed Rule 17020, as well as to account for the positions of security token holders who are not BSTX Participants and therefore not subject to the end-of-day security token balance reporting requirement, the Exchange proposes to use an omnibus wallet address to account for such security tokens in the ancillary records that would be published on the Ethereum blockchain. Specifically, the Exchange would know the total number of security tokens outstanding and would provide information to the Wallet Manager(s) to allow the Wallet Manager(s) to attribute the unreported security token balance for a given security token to an omnibus wallet address for each security token. For example, assume that on Day 1 there are 1,000 security tokens for company XYZ outstanding, 800 are held at DTC in accounts for the benefit of eight BSTX Participants and 200 are otherwise held at DTC. Assume further that BSTX receives timely and accurate end-of-day

[59] Order matching would occur through a price-time priority model, as discussed in greater detail below.

[60] The last sale transaction data would also be publicly disseminated pursuant to the transaction reporting plan, which would occur before delivery of drop copies to these parties.

[61] *See* Proposed Rule 17020(b).

[62] *See* Proposed Rule 17020(b)(1). As described above in Part II.E., BSTX would maintain rules that would promote a structure in which security tokens would be held in ''street name'' with DTC.

[63] *See* Proposed Rule 17020(b)(2).

[64] Notably, because the Ethereum blockchain is updated each day using the end-of-day security token balance reports, and is, in any case, only functioning at this time as an ancillary recordkeeping function, concerns regarding a loss of private keys or disruption to the Ethereum blockchain are fully mitigated. For example, assume a BSTX Participant owns 100 security tokens of XYZ at the end of Day 1 and, as a result of trading on Day 2, ends Day 2 with a balance of 200 security tokens of XYZ. If the BSTX Participant's wallet address were somehow compromised during the trading day on Day 2 and the 100 security tokens were moved to another address (which could only be moved to another whitelisted address), this would not substantively impact the functioning of the blockchain as an ancillary recordkeeping tool. At the end of trading on Day 2, the BSTX Participant would report its ownership of 200 security tokens of XYZ to BSTX, which would then update the Ethereum blockchain to reflect this end of day balance.

[65] *See* Proposed Rule 17020(c).

XYZ security token balance reports from all eight BSTX Participants in respect of 800 XYZ security tokens. At the end of Day 1 as part of the end-of-day reporting process, the Exchange would provide information to the Wallet Manager(s) allowing the Wallet Manager(s) to allocate the 800 XYZ security tokens among the BSTX Participants consistent with their end-of-day security token balance reports and to allocate the remaining balance of 200 security tokens to the omnibus wallet address. In this same example, assume a BSTX Participant who holds 100 XYZ security tokens failed to report its XYZ security token balance to BSTX. In this case, the Exchange would provide information to the Wallet Manager(s) allowing the Wallet Manager(s) to allocate 300 XYZ security tokens to the omnibus wallet address for XYZ security token. The omnibus wallet address in this example would thus reflect the sum of XYZ security tokens held by non-BSTX Participants who are not subject to the end-of-day security token balance reporting requirement as well as any missing end-of-day security token balance reports among BSTX Participants.[66] In all cases, the security token balances displayed on the Ethereum blockchain would reflect end-of-day security token balances reported to BSTX pursuant to Rule 17020 and an omnibus wallet address for any type of security token for which the sum of the reported positions is less than the number of security tokens known by the Exchange to be issued and outstanding. In this way, it is possible that the end-of-day balances published on the Ethereum blockchain may not reflect the precise distribution of a security token among holders of the security token, even among BSTX Participants.[67] The Ethereum blockchain could also reflect information that is not accurate to the extent that BSTX Participants inaccurately report end-of-day security token balances to BSTX. There could conceivably be situations where the number of reported security tokens exceeds the number of outstanding security tokens of a particular issuance (*e.g.,* if security token XYZ were held entirely by BSTX Participants and one BSTX Participant over-reports). There could also be situations in which the Exchange is unable to communicate end-of-day security token balances to the Wallet Manager(s) or the Wallet Manager(s) is/are unable to update the blockchain. Additionally, it is also possible that there could be a disruption to the website through which security token balances may be observed (*i.e.,* Etherscan.io, discussed below), to the Ethereum blockchain itself that prevents the updating of end-of-day security token balances as an ancillary recordkeeping mechanism, or potentially to the architecture or functioning of a particular security token.[68]

To account for these types of situations, proposed Rule 17020(e) provides that the Exchange may suspend the requirements in paragraphs 17020(a) through (d) regarding any BSTX Participant and/or regarding one or more security tokens, as applicable, in its discretion and in any such case the Exchange will provide prompt notice thereof and the reason(s) therefore to BSTX Participants.[69] The Exchange will notify the Commission within two hours of its determination to make any such suspension and the suspension may continue in effect for no more than thirty calendar days from the date the determination is made unless the Exchange has submitted a proposed rule change with the Commission seeking approval of such suspension, in which case the suspension may continue in effect until the Commission approves or disapproves the proposed rule change.[70]

In all such cases involving these types of disruptions relating to the end-of-day security token balance reporting process, there would be no impact on the ability to trade, clear, or settle security token transactions in the ordinary course.[71] This is because the end-of-day security token balance reporting is solely as an ancillary record-keeping mechanism and because the actual trading, clearance, and settlement of security tokens would occur in the same manner as other NMS stock.

The Exchange would set forth via Regulatory Circular the precise manner in which security tokens should be reported. In general, the report would simply require certain identifying information regarding the BSTX Participant (*e.g.,* name, carrying firm, MPID) and a list of the end-of-day security token position balances of the BSTX Participant.[72]

As a result of this process, the Ethereum blockchain would in the ordinary course reflect for each security token the end-of-day balance associated with each BSTX Participant's wallet address. Wallet addresses are essentially just a string of numbers and characters, and it would not be made public which

[66] The omnibus wallet address for each security token could also have greater or fewer security tokens as a result of a misreport by a BSTX Participant. In the case of an under-report by a BSTX Participant (*e.g.,* owns 100 of XYZ security tokens, but reports only 90), the omnibus address for XYZ would have an additional 10 XYZ security tokens allocated to it. In the case of an over-report (*e.g.,* owns 100 of XYZ security tokens, but reports 110), the omnibus address for XYZ may have 10 additional XYZ security tokens allocated to it.

[67] The Exchange notes, however, that even in such a case, the total number of shares of the security token outstanding should still be reflected on the blockchain due to unreported balances being attributed to the omnibus wallet address. It is also possible the omnibus wallet address could display the entire outstanding balance of a security token to the extent only non-BSTX Participants held the entire outstanding balance of a particular security token.

[68] This could potentially occur if, for example, the Ethereum Virtual Machine were to suffer a ''51% Attack'' whereby an individual or group acting together gain 51% or more of the computing power, essentially giving the attackers control over the Ethereum blockchain and the ability to disrupt or modify transactions on the Ethereum blockchain. The Exchange believes that this possibility is remote, but the Exchange will nonetheless monitor for such possibilities either directly or by using a vendor, which may include Wallet Managers that agree to perform this function and promptly alert the Exchange to any compromise of the Ethereum blockchain or other type of disruption that might impact the end-of-day security token balance reporting process as an ancillary recordkeeping mechanism (*e.g.,* inability to access Etherscan.io).

[69] The particular details included in such notice to BSTX Participants will vary based on the facts and circumstances giving rise to the suspension, but the Exchange expects that such notice would describe: (i) The impacted security token(s); (ii) the nature of the disruption; (iii) the anticipated length of the suspension; and (iv) any changes to BSTX Participants' obligations to report end-of-day security token balances.

[70] *See* proposed Rule 17020(e). The Exchange believes that proposed Rule 17020(e) may foster coordination with persons processing information with respect to securities and is not designed to permit unfair discrimination because such provision will allow the Exchange to suspend certain Rule requirements in events where there may be difficulty coordinating or sharing pertinent information with BSTX Participants and/or Wallet Manager(s). Further, Rule 17020(e) is designed to apply to all market participants equally and to provide notice to affected market participants and regulators of BSTX, in order to allow such individuals and entities to coordinate with the Exchange and react to potential issues as deemed necessary.

[71] The Exchange acknowledges, of course, that certain issues such as a widespread power outage that prevents the Exchange from being able to transmit information to the Wallet Manager(s) could also result in a disruption to trading on BSTX and potentially the declaration of a halt in trading of the security token by the Exchange.

[72] Pursuant to the BSTX Listing Rules, BSTX will allow listing of three types of security tokens: Equity security tokens, preferred security tokens, and warrant security tokens. These three types of security tokens will have similar end-of-day reporting processes; each BSTX Participant will be required to provide end-of-day security token position balance information to BSTX related to each security token issuance based on such BSTX Participant's DTC account balance. The BSTX Listing Rules also discuss paired security tokens, which are security tokens that may be transferred and traded only in combination with one another as a single economic unit. For paired security tokens, BSTX expects that BSTX Participants, when submitting position balance information to BSTX, will specify the end-of-day balances for each constituent security token that comprises a paired security token.

BSTX Participant is associated with which wallet address or which address is the omnibus wallet address.[73] An observer of security token balances associated with a particular address would not be able to determine whether a particular address represented, for example, a carrying firm reporting end-of-day balances on behalf of multiple BSTX Participants, an individual BSTX Participant, or the omnibus wallet address. Neither could an observer determine which underlying customer(s) of a BSTX Participant associated with a particular wallet address held the security tokens or whether the BSTX Participant owned the security tokens proprietarily. In addition, an observer of the security token balances would not be able to tell whether a particular wallet address was long or short the shares.[74] For these reasons, the Exchange believes that the security token balance information that would be publicly available on the Ethereum blockchain would be sufficiently anonymous to address privacy concerns related to such information. Security token balance information for the Ethereum blockchain is available at Etherscan.io (''Etherscan''). From Etherscan.io, an observer would be able to search for the name of the particular security token and see the holders of tokens and the associated quantity, as well as other information (*e.g.,* transfers made as a result of the Wallet Manager(s) reallocation process).[75]

The Exchange does not believe that the ancillary records of security token balance information published on the Ethereum blockchain would be likely to cause investor confusion because there is no similar source of information with which an observer of the blockchain data could be confused. That is, the resting position balances related to security token ownership of BSTX Participants and other market participants are not available through another medium (*e.g.,* such as by DTC making such information available) in a manner that could lead an investor to be confused as to whether the Ethereum blockchain or some other source of security token balance information is accurate. Moreover, security token position balance information as recorded on the Ethereum blockchain will not reflect legal ownership of security tokens and the identities of BSTX Participants corresponding to each wallet address (as well as the omnibus wallet address) would not be made public. The Exchange believes that the proposed end-of-day security token balance reporting requirement is consistent with the Exchange Act, and Section 6(b)(5)[76] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in security tokens and would not unfairly discriminate among BSTX Participants, all of whom are subject to the same reporting requirement. The purpose of the reporting obligation is to allow the Exchange to receive information from BSTX Participants regarding end-of-day balances in security tokens so that the Exchange can provide that information to the Wallet Manager(s) and the Wallet Manager(s) can, in turn, use the information to update the Ethereum blockchain as an ancillary recordkeeping mechanism reflecting changes in security token ownership (*i.e.,* the recording of end-of-day balance information). Without this information, all of the outstanding balances regarding a security token would be attributed by the Wallet Manager(s) to the omnibus wallet address rather than allocated to multiple wallet addresses belonging to corresponding BSTX Participants. Accordingly, to the extent that BTSX Participants have end-of-day balances in security tokens, the allocation of the security token balances to their respective wallet addresses by the Wallet Manager(s) will reflect a relatively more robust use of the functionality of the smart contracts than if the entire outstanding balance of a security token is attributed to the omnibus wallet address. Promoting this more robust use of the functionality of the smart contracts and their ability to allocate and re-allocate security token balances across multiple wallet addresses will enhance the ability of market participants, including the Exchange, to observe and evaluate the capabilities of blockchain technology as an ancillary recordkeeping mechanism. The Exchange notes that under the existing authority of other equity exchanges, the exchange is able to request that exchange members/participants furnish to the exchange records pertaining to transactions executed on or through the exchange in a time and manner required by such exchange.[77] Accordingly, BSTX believes that the proposed end-of-day security token balance reporting requirement would be consistent with authority that the Commission has already approved regarding furnishment of records by members of exchanges.

The Exchange recognizes that there are limitations in what the Ethereum blockchain will reflect with regard to end-of-day security token balances as an ancillary recordkeeping mechanism given that all non-BSTX Participants' balances will be aggregated and reflected in an omnibus wallet address for each security token.[78] In addition, the end-of-day security token balances may be inaccurate or unavailable such as when a BSTX Participant misreports its balance or under circumstances in which BSTX is unable to send the balances to the Wallet Manager or the Wallet Manager is unable to update the Ethereum blockchain, as discussed above. For these reasons, among others, the Exchange believes that initially using blockchain technology as an ancillary recordkeeping mechanism pursuant to which the security tokens represented on the blockchain would not convey legal ownership is the appropriate way to explore the potential benefits of blockchain technology consistent with the protection of investors and the public interest.[79] In

[73] The Wallet Manager(s) would have information regarding security token balance information associated with a particular BSTX Participant. However, as noted in Part II.H, a condition of serving as a Wallet Manager would include, among other things, a representation to comply with the federal securities laws, including trading on the basis of material non-public information.

[74] This is because the end-of-day ancillary recordkeeping process captures only end-of-day balances as reported by DTC to BSTX Participants or their carrying firms. Thus, if a BSTX Participant borrowed security tokens and the borrowed security tokens were moved to its DTC account (or the DTC account of its carrying firm on its behalf), the borrowed security tokens would appear to be a long position in the security token, when in fact the BSTX Participant was taking a short position.

[75] This process can be done presently with ERC–20 tokens or other digital assets built on Ethereum.

[76] 15 U.S.C. 78f(b)(5).

[77] *See e.g.,* BOX Rule 10000(a) and (b), Cboe BZX Rule 4.2, and IEX Rule 4.540. Broker-dealers are also subject to daily or real-time reporting obligations in a variety of other contexts. For example, pursuant to the FINRA Rule 7000 Series. *See e.g.,* FINRA Rule 7230A(b) (noting that ''Participants shall transmit trade reports to the System for transactions in Reportable Securities as soon as practicable but no later than 10 seconds after execution . . .''). Trades in municipal securities are generally required within 15 minutes of the time of trade. *See* MSRB Rule G–14(a)(ii).

[78] The Exchange does not believe that imposing the end-of-day security token reporting requirement on BSTX Participants is unfairly discriminatory or burdens competition because all market participants are free to choose whether to become a BSTX Participant or not and there is no limitation imposed by the Exchange on the ability to trade security tokens on other markets. Market participants that voluntarily choose to become BSTX Participants must comply with the rules of the Exchange, but they remain free to become a member of another exchange that supports trading of security tokens or to purchase the security tokens OTC. The Exchange further notes that it believes the end-of-day security token balance reporting process would not impose a substantial burden on BSTX Participants, because it would not require significant resources or time.

[79] 15 U.S.C. 78f(b)(5).

the event of any disruption to the blockchain, the architecture of the security token, or to the end-of-day security token balance reporting process, there would be no impact on the ability of market participants to trade security tokens or current balances of security tokens actually held by each market participant through the facilities of DTC, which the Exchange believes furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[80] Moreover, the Exchange believes that the public has an interest in exploring the use of new technology, such as blockchain technology, and that such technology may be able to help perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[81] Finally, the Exchange believes that use of anonymized wallet addresses to track end-of-day security token balances may prevent fraudulent and manipulative acts and practices, consistent with Section 6(b)(5) of the Exchange Act,[82] because obscuring the identities of the wallet address owners may make it difficult to misuse any private information associated with these wallet addresses. The Exchange believes that the proposal is reasonably designed to introduce blockchain technology in a gradual way and in coordination and cooperation with the industry, the Commission, and the existing regulatory framework.

K. Trading Security Tokens on Other National Securities Exchanges

Security tokens would be eligible for trading on other national securities exchanges that extend unlisted trading privileges (''UTP'') to them. As described above in Part II.E, security tokens would be held in ''street name'' at DTC, have a CUSIP number, and would clear and settle through the facilities of a clearing agency registered with the SEC (*i.e.,* NSCC and DTC respectively). As a result, security tokens would be able to trade on other exchanges and OTC in the same manner as other NMS stock. Accordingly, other exchanges would be able to extend unlisted trading privileges to security tokens in accordance with Commission rules. The end-of-day security token position balance reporting by BSTX Participants and the publication of such balance information on the blockchain does not impact the ability of security tokens to trade on other exchanges or OTC.

The Exchange proposes to include certain rules that contemplate the trading of security tokens that may be listed on other national securities exchanges.[83] Since there are currently no other national securities exchanges trading security tokens, these rules would be implemented in anticipation of other exchanges eventually listing and trading their own security tokens. BSTX recognizes that another exchange trading security tokens, or the equivalent thereof, may require BSTX to adopt certain rules specific to such other exchange in order to extend unlisted trading privileges to the other exchange's security tokens consistent with Rule 12f–5.[84]

L. Benefits of a Security Token

As described above, the proposed BSTX Rules contemplate the use of smart contract functionality to record end-of-day security token position balance information to the Ethereum blockchain as an ancillary recordkeeping mechanism. The Exchange's proposal thereby represents an ancillary pairing of blockchain technology with the existing equities market infrastructure, in a manner consistent with Section 6(b)(5) and other relevant provisions of the Exchange Act, as described herein. The Commission has stated that it is ''mindful of the benefits of increasing use of new technologies for investors and the markets, and has encouraged experimentation and innovation . . .'' [85] stating further that ''[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets.'' [86] Regarding the judgment of whether the benefits of certain technologies are meritorious, the Commission has explained its view that ''[t]he market will ultimately prove the worth of technology—whether the benefits to the industry and its investors of developing and using new services are greater than the associated costs.'' [87] Consistent with these statements, the Exchange believes that promoting use of the functionality of smart contracts and their ability to allocate and re-allocate security token balances across multiple addresses in connection with end-of-day security token position balance information of BSTX Participants will allow market participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that parallels current equity market infrastructure and thereby advance and protect the public's interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.[88] As noted, because the blockchain and security token balances recorded on the Ethereum blockchain do not reflect legal ownership of the actual securities of BSTX-listed issuers, any disruption to the Ethereum blockchain, the security token architecture, or the end-of-day reporting process would have no impact on the ability of security tokens to trade on BSTX or otherwise, which the Exchange believes furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[89]

III. Proposed BSTX Rules

The discussion in this Part III addresses the proposed BSTX Rules that would be adopted as Rule Series 17000 through 28000.

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] *See e.g.,* proposed Rule 25040(e).

[84] 17 CFR 240.12f–5.

[85] Securities and Exchange Commission, The Impact of Recent Technological Advances on the Securities Markets (Sep. 1997), available at: *https://www.sec.gov/news/studies/techrp97.htm.*

[86] *Id.*

[87] *Id.*

[88] Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–75, at 8 (1975) (expressing Congress' finding that new data processing and communications systems create the opportunity for more efficient and effective markets). While the Exchange believes that its proposal represents an introductory step in pairing the benefits of blockchain technology with the current equity market infrastructure, other market participants and FINRA have recognized additional potential benefits to blockchain technology in various applications related to the securities markets. FINRA has stated ''[o]ne of the proposed benefits of [blockchain technology] is the ability to offer a timestamped, sequential, audit trail of transaction records. This may provide regulators and other interested parties (*e.g.,* internal audit, public auditors) with the opportunity to leverage the technology to view the complete history of a transaction where it may not be available today and enhance existing records related to securities transactions.'' Financial Industry Regulatory Authority, *Distributed Ledger Technology: Implications of Blockchain for the Securities Industry* (January 2017), *available at: https://www.finra.org/sites/default/files/FINRA_Blockchain_Report.pdf.* Further, Paxos Trust Company echoed similar themes in connection with its receipt of no-action relief from the Commission staff, and explained in its request letter certain benefits of blockchain technology including ''greater data accuracy and transparency, advanced security, and increased levels of availability and operational efficiency[.]'' the Exchange believes such benefits may be generally relevant to future potential applications of blockchain technology. *See* Letter from Jeffrey S. Mooney, Division of Trading and Markets, Securities and Exchange Commission to Charles Cascarilla and Daniel Burstein, Paxos Trust Company, LLC re: Clearing Agency Registration Under Section 17A(b)(1) of the Securities Exchange Act of 1934 (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[89] 15 U.S.C. 78f(b)(5).

A. General Provisions of BSTX and Definitions (Rule 17000 Series)

The Exchange proposes to adopt as its Rule 17000 Series (General Provisions of BSTX) a set of general provisions relating to the trading of security tokens and other rules governing participation on BSTX. Proposed Rule 17000 sets forth the defined terms used throughout the BSTX Rules. The majority of the proposed definitions are substantially similar to defined terms used in other equities exchange rulebooks, such as with respect to the term ''customer.'' [90] The Exchange proposes to set forth new definitions for certain terms to specifically identify systems, agreements, or persons as they relate to BSTX and as distinct from other Exchange systems, agreements, or persons that may be used in connection with the trading of other options on the Exchange.[91] The Exchange also proposes to define certain unique terms relating to the trading of security tokens, including ''security token,'' [92] and ''Wallet Manager.'' [93] The term ''Wallet Manager'' is defined to provide context to the wallet address whitelisting and end-of-day security token balance reporting processes used to update the Ethereum blockchain as an ancillary recordkeeping mechanism.[94]

In addition to setting forth proposed definitions used throughout the proposed Rules, the Exchange proposes to specify in proposed Rule 17010 (Applicability) that the Rules set forth in the Rule 17000 Series to Rule 28000 Series apply to the trading, listing, and related matters pertaining to the trading of security tokens. Proposed Rule 17010(b) provides that, unless specific Rules relating to security tokens govern or unless the context otherwise requires, the provisions of any Exchange Rule (*i.e.,* including Exchange Rules in the Rule 100 through 16000 Series) shall be applicable to BSTX Participants.[95] This is intended to make clear that BSTX Participants are subject to all of the Exchange's Rules that may be applicable to them, notwithstanding that their trading activity may be limited solely to trading security tokens. The Exchange believes that the proposed definitions set forth in Rule 17000 are consistent with Section 6(b)(5) of the Exchange Act [96] because they protect investors and the public interest by setting forth clear definitions that help BSTX Participants understand and apply Exchange Rules. Without clearly defining terms used in the Exchanges Rules and providing clarity as to the Exchange Rules that may apply, market participants could be confused as to the application of certain rules, which could cause harm to investors.

Proposed Rule 17020 sets forth the requirements to obtain a whitelisted wallet address from BSTX, and the end-of-day security token balance reporting, which are discussed in greater detail above in Parts II.G through L.

B. Participation on BSTX (Rule 18000 Series)

The Exchange proposes to adopt as its Rule 18000 Series (Participation on BSTX), three rules setting forth certain requirements relating to participation on BSTX. Proposed Rule 18000 (BSTX Participation) establishes ''BSTX Participants'' as a new category of Exchange participation for effecting transactions on the BSTX System, provided they: (i) Complete the BSTX Participant Application, Participation Agreement, and User Agreement; [97] (ii) be an existing Options Participant or become a Participant of the Exchange pursuant to the Rule 2000 Series; and (iii) provide such other information as required by the Exchange.[98] Proposed Rule 18010 (Requirements for BSTX Participants) sets forth certain requirements for BSTX Participants including requirements that each BSTX Participant comply with Rule 15c3–1 under the Exchange Act, comply with applicable books and records requirements, and be a member of a registered clearing agency or clear security token transactions through another BSTX Participant that is a member/participant of a registered clearing agency.[99] Finally, proposed Rule 18020 (Associated Persons) provides that associated persons of a BSTX Participant are bound by the Rules of the Exchange to the same extent as each BSTX Participant.

The Exchange believes that the proposed Rule 18000 Series (Participation on BSTX) is consistent with Section 6(b)(5) of the Exchange Act [100] because these proposed rules are designed to promote just and equitable principles of trade, and protect investors and the public interest by setting forth the requirements to become a BSTX Participant and specifying that associated persons of a BSTX Participant are bound by Exchange Rules. Under proposed Rule 18000, a BSTX Participant must first become an Exchange Participant pursuant to the Exchange Rule 2000 Series which the Exchange believes would help assure that BSTX Participants meet the appropriate standards for trading on BSTX in furtherance of the protection of investors.[101]

C. Business Conduct for BSTX Participants (Rule 19000 Series)

The Exchange proposes to adopt as its Rule 19000 Series (Business Conduct for BSTX Participants), twenty two rules relating to business conduct requirements for BSTX Participants that are substantially similar to business

[90] Proposed Rule 17000(a)(16) defines the term ''customer'' to not include a broker or dealer, which parallels the same definition in other exchange rulebooks. *See e.g.,* IEX Rule 1.160(j). Similarly, the Exchange proposes to define the term ''Regular Trading Hours'' as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* proposed Rule 17000(a)(28) *cf.* IEX Rule 1.160(gg) (defining ''Regular Market Hours'' in the same manner).

[91] For example, the Exchange proposes to define the term ''BSTX'' to mean the facility of the Exchange for executing transaction in security tokens, the term ''BSTX Participant'' to mean a Participant or Options Participant (as those terms are defined in the Exchange's Rule 100 Series) that is authorized to trade security tokens, and the term ''BSTX System'' to mean the automated trading system used by BSTX for the trading of security tokens. *See* proposed Rule 17000(a)(8), (11), and (14).

[92] Proposed Rule 17000(a)(30) provides that the term ''security token'' means a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. The proposed definition further specifies that references to a ''security'' or ''securities'' in the Rules include security tokens.

[93] Proposed Rule 17000(a)(31) defines the term ''Wallet Manager'' as a party approved by BSTX to operate software compatible with the BSTX Protocol. *See also supra* Sections II.G and H. for a discussion of the role of a Wallet Manager.

[94] *See supra* note 49.

[95] Proposed Rule 17010 further specifies that to the extent the provisions of the Rules relating to the trading of security tokens contained in Rule 17000 Series to Rule 28000 Series are inconsistent with any other provisions of the Exchange Rules, the Rules relating to security token trading shall control.

[96] 15 U.S.C. 78f(b)(5).

[97] The BSTX Participant Application, Participation Agreement, and User Agreement are attached as Exhibits 3A, 3B, and 3C [sic] respectively.

[98] Proposed Rule 18000 also sets forth the Exchange's review process regarding BSTX Participation Agreements and certain limitations on the ability to transfer BSTX Participant status (*e.g.,* in the case of a change of control). In addition proposed Rule 18000(b)(2) provides that a BSTX Participant shall continue to abide by all applicable requirements of the Rule 2000 Series, which would include, for example, IM–2040–5, which specifies continuing education requirements of Exchange Participants and their associated persons.

[99] Proposed Rule 18010(b) is similar to the rules of existing exchanges. *See e.g.,* IEX Rule 2.160(c). Proposed Rule 18010(a) is also similar to the rules of existing exchanges. *See e.g.,* IEX Rule 1.160(s) and Cboe BZX Rule 17.2(a).

[100] 15 U.S.C. 78f(b)(5).

[101] The Exchange notes that the approach of requiring members of a facility of an exchange to first become members of the exchange is consistent with the approach used by another national securities exchange. *See* Cboe BZX Rule 17.1(b)(3) (requiring that a Cboe BZX options member be an existing member or become a member of the Cboe BZX equities exchange pursuant to the Cboe BZX Chapter II Series).

conduct rules of other exchanges.[102] The proposed Rule 19000 Series would specify business conduct requirements with respect to: (i) Just and equitable principles of trade; [103] (ii) adherence to law;[104] (iii) use of fraudulent devices; [105] (iv) false statements; [106] (v) know your customer; [107] (vi) fair dealing with customers; [108] (vii) suitability; [109] (viii) the prompt receipt and delivery of securities; [110] (ix) charges for services performed; [111] (x) use of information obtained in a fiduciary capacity; [112] (xi) publication of transactions and quotations; [113] (xii) offers at stated prices; [114] (xiii) payments involving publications that influence the market price of a security; [115] (xiv) customer confirmations; [116] (xv) disclosure of a control relationship with an issuer of security tokens; [117] (xvi) discretionary accounts; [118] (xvii) improper use of customers' securities or funds and a prohibition against guarantees and sharing in accounts; [119] (xviii) the extent to which sharing in accounts is permissible; [120] (xix) communications with customers and the public; [121] (xx) gratuities; [122] (xxi) telemarketing; [123] and (xxii) mandatory systems testing.[124] The Exchange notes that the proposed financial responsibility rules are virtually identical to those of other national securities exchanges other than changes to defined terms and certain other provisions that would not apply to the trading of security tokens on the BSTX System.[125]

The Exchange believes that the proposed Rule 19000 Series (Business Conduct) is consistent with Section 6(b)(5) of the Exchange Act [126] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by setting forth appropriate standards of conduct applicable to BSTX Participants in carrying out their business activities. For example, proposed Rule 19000 (Just and Equitable Principles of Trade) and 19010 (Adherence to Law) would prohibit BSTX Participants from engaging in acts or practices inconsistent with just and equitable principles of trade or that would violate applicable laws and regulations. Similarly, proposed Rule 19050 (Fair Dealing with Customers) would require that BSTX Participants deal fairly with their customers and proposed Rule 19030 (False Statements) would generally prohibit BSTX Participants, or their associated persons from making false statements or misrepresentations to the Exchange. The Exchange believes that requiring that BSTX Participants comply with the proposed business conduct rules in the Rule 19000 Series would further the protection of investors and the public interest by promoting high standards of commercial honor and integrity. In addition, each of the rules in the proposed Rule 19000 Series (Business Conduct) is substantially similar to supervisory rules of other exchanges.[127]

D. Financial and Operational Rules for BSTX Participants (Rule 20000 Series)

The Exchange proposes to adopt as its Rule 20000 Series (Financial and Operational Rules), ten rules relating to financial and operational requirements for BSTX Participants that are substantially similar to financial and operational rules of other exchanges.[128] The proposed Rule 20000 Series would specify financial and operational requirements with respect to: (i) Maintenance and furnishing of books

[102] *See* Cboe BZX Chapter 5 rules. *See also* IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

[103] Proposed Rule 19000 (Just and Equitable Principles of Trade) provides that no BSTX Participant, including its associated persons, shall engage in acts or practices inconsistent with just and equitable principles of trade.

[104] Proposed Rule 19010 (Adherence to Law) generally requires BSTX Participants to adhere to applicable laws and regulatory requirements.

[105] Proposed Rule 19020 (Use of Fraudulent Devices) generally prohibits BSTX Participants from effecting a transaction in any security by means of a manipulative, deceptive or other fraudulent device or contrivance.

[106] Proposed Rule 19030 (False Statements) generally prohibits BSTX Participants and their associated persons from making false statements or misrepresentations in communications with the Exchange.

[107] Proposed Rule 19040 (Know Your Customer) requires BSTX Participants to comply with FINRA Rule 2090 as if such rule were part of the Exchange Rules.

[108] Proposed Rule 19050 (Fair Dealing with Customers) generally requires BSTX Participants to deal fairly with customers and specifies certain activities that would violate the duty of fair dealing (*e.g.,* churning or overtrading in relation to the objectives and financial situation of a customer).

[109] Proposed Rule 19060 (Suitability) provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2111 as if such rule were part of the Exchange Rules.

[110] Proposed Rule 19070 (Prompt Receipt and Delivery of Securities) would generally prohibit a BSTX Participant from accepting a customer's purchase order for a security until it can determine that the customer agrees to receive the securities against payment.

[111] Proposed Rule 19080 (Charges for Services Performed) generally requires that charges imposed on customers by broker-dealers shall be reasonable and not unfairly discriminatory.

[112] Proposed Rule 19090 (Use of Information Obtained in a Fiduciary Capacity) generally restricts the use of information as to the ownership of securities when acting in certain capacities (*e.g.,* as a trustee).

[113] Proposed Rule 19100 (Publication of Transactions and Quotations) generally prohibits a BSTX Participant from disseminating a transaction or quotation information unless the BSTX Participant believes it to be bona fide.

[114] Proposed Rule 19110 (Offers at Stated Prices) generally prohibits a BSTX Participant from offering to transact in a security at a stated price unless it is in fact prepared to do so.

[115] Proposed Rule 19120 (Payments Involving Publications that Influence the Market Price of a Security) generally prohibits direct or indirect payments with the aim of disseminating information that is intended to effect the price of a security.

[116] Proposed Rule 19130 (Customer Confirmations) requires that BSTX Participants comply with Rule 10b–10 of the Exchange Act. 17 CFR 240.10b–10.

[117] Proposed Rule 19140 (Disclosure of Control Relationship with Issuer) generally requires BSTX Participants to disclose any control relationship with an issuer of a security before effecting a transaction in that security for the customer.

[118] Proposed Rule 19150 (Discretionary Accounts) generally provides certain restrictions on BSTX Participants handling of discretionary accounts, such as by effecting excessive transactions or obtained authorization to exercise discretionary powers.

[119] Proposed Rule 19160 (Improper Use of Customers' Securities or Funds and Prohibition against Guarantees and Sharing in Accounts) generally prohibits BSTX Participants from making improper use of customers securities or funds and prohibits guarantees to customers against losses.

[120] Proposed Rule 19170 (Sharing in Accounts; Extent Permissible) generally prohibits BSTX Participants and their associated persons from sharing directly or indirectly in the profit or losses of the account of a customer unless certain exceptions apply such as where an associated person receives prior written authorization from the BSTX Participant with which he or she is associated.

[121] Proposed Rule 19180 (Communications with Customers and the Public) generally provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2210 as if such rule were part of the Exchange Rules.

[122] Proposed Rule 19200 (Gratuities) requires BSTX Participants to comply with the requirements set forth in BOX Exchange Rule 3060 (Gratuities).

[123] Proposed Rule 19210 (Telemarketing) requires that BSTX Participants and their associated persons comply with FINRA Rule 3230 as if such rule were part of the Exchange's Rules.

[124] Proposed Rule 19220 (Mandatory Systems Testing) requires that BSTX Participants comply with Exchange Rule 3180 (Mandatory Systems Testing).

[125] For example, the Exchange is not proposing to adopt a rule contained in other exchanges' business conduct rules relating to disclosures that broker-dealers give to their customers regarding the risks of effecting securities transactions during times other than during regular trading hours (*e.g.,* higher volatility, possibly lower liquidity) because executions may only occur during regular trading hours on the BSTX System. *See e.g.,* IEX Rule 3.290, Cboe BZX Rule 3.21.

[126] 15 U.S.C. 78f(b)(5).

[127] *See supra* note 102.

[128] *See* Cboe BZX Chapter 6 rules and IEX Chapter 5 rules.

and records;[129] (ii) financial reports;[130] (iii) net capital compliance;[131] (iv) early warning notifications pursuant to Rule 17a–11 under the Exchange Act;[132] (v) authority of the Chief Regulatory Officer to impose certain restrictions;[133] (vi) margin;[134] (vii) day-trading margin;[135] (viii) customer account information;[136] (ix) maintaining records of customer complaints;[137] and (x) disclosure of financial condition.[138]

The Exchange believes that the proposed Rule 20000 (Financial and Operational Rules) Series is consistent with Section 6(b)(5) of the Exchange Act[139] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by subjecting BSTX Participants to certain recordkeeping, disclosure, and related requirements designed to ensure that BSTX Participants conduct themselves in a financially responsible manner. For example, proposed Rule 20000 would require BSTX Participants to comply with existing Exchange Rule 1000, which sets forth certain recordkeeping responsibilities and the obligation to furnish these to the Exchange upon request so that the Exchange can appropriately monitor the financial condition of a BSTX Participant and its compliance with applicable regulatory requirements. Similarly, proposed Rule 20050 would set forth the margin requirements that BSTX Participants must retain with respect to customers trading in a margin account to ensure that BSTX Participants are not extending credit to customers in a manner that might put the financial condition of the BSTX Participant in jeopardy. Each of the proposed rules in the Rule 20000 Series (Financial and Operational Rules) is substantially similar to existing rules of other exchanges or incorporates an existing rule of the Exchange or another self-regulatory organization (''SRO'') by reference.

E. Supervision (Rule 21000 Series)

The Exchange proposes to adopt as its Rule 21000 Series (Supervision), six rules relating to certain supervisory requirements for BSTX Participants that are substantially similar to supervisory rules of other exchanges.[140] The Proposed Rule 21000 Series would specify supervisory requirements with respect to: (i) Enforcing written procedures to appropriately supervise the BSTX Participant's conduct and compliance with applicable regulatory requirements;[141] (ii) designation of an individual to carry out written supervisory procedures;[142] (iii) maintenance and keeping of records carrying out the BSTX Participant's written supervisory procedures;[143] (iv) review of activities of each of a BSTX Participant's offices, including periodic examination of customer accounts to detect and prevent irregularities or abuses;[144] (v) the prevention of the misuse of material non-public information;[145] and (vi) implementation of an anti-money laundering (''AML'') compliance program.[146] These rules are designed to ensure that BSTX Participants are able to appropriately supervise their business activities, review and maintain records with respect to such supervision, and enforce specific procedures relating insider-trading and AML.

The Exchange believes that the proposed Rule 21000 (Supervision) Series is consistent with Section 6(b)(5) of the Exchange Act[147] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants have appropriate supervisory controls in place to carry out their business activities in compliance with applicable regulatory requirements. For example, proposed Rule 21000 (Written Procedures) would require BSTX Participants to enforce written procedures which enable them to supervise the activities of their associated persons and proposed Rule 21010 (Responsibility of BSTX Participants) would require a BSTX Participant to designate a person in each office to carry out written supervisory procedures. Requiring appropriate supervision of a BSTX Participant's business activities and associated persons would promote compliance with the federal securities laws and other applicable regulatory requirements in furtherance of the protection of investors and the public interest.[148] In addition, each of the rules in the proposed Rule 21000 Series (Supervision) is substantially similar to supervisory rules of other exchanges.[149]

F. Miscellaneous Provisions (Rule 22000 Series)

The Exchange proposes to adopt as its Rule 22000 Series (Miscellaneous Provisions), six rules relating to a variety of miscellaneous requirements applicable to BSTX Participants that are

[129] Proposed Rule 20000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) requires that BSTX Participants comply with current Exchange Rule 1000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) and that BSTX Participants shall submit to the Exchange order, market and transaction data as the Exchange may specify by Information Circular.

[130] Proposed Rule 20010 (Financial Reports) provides that BSTX Participants shall comply with the requirements of current Exchange Rule 10020 (Financial Reports).

[131] Proposed Rule 20020 (Capital Compliance) provides that each BSTX Participant subject to Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1) shall comply with such rule and other financial and operational rules contained in the proposed Rule 20000 series.

[132] 17 CFR 240.17a–11. Proposed Rule 20030 (''Early Warning'' Notification) provides that BSTX Participants subject to the reporting or notifications requirements of Rule 17a–11 under the Exchange Act (17 CFR 240.17a–11) or similar ''early warning'' requirements imposed by other regulators shall provide the Exchange with certain reports and financial statements.

[133] Proposed Rule 20040 (Power of CRO to Impose Restrictions) generally provides that the Exchange's Chief Regulatory Officer may impose restrictions and conditions on a BSTX Participant subject to the early warning notification requirements under certain circumstances.

[134] Proposed Rule 20050 (Margin) sets forth the required margin amounts for certain securities held in a customer's margin account.

[135] Proposed Rule 20060 (Day Trading Margin) sets forth additional requirements with respect to customers that engage in day trading.

[136] Proposed Rule 20070 (Customer Account Information) requires that BSTX Participants comply with FINRA Rule 4512 as if such rule were part of the Exchange Rules and further clarifies certain cross-references within FINRA Rule 4512.

[137] Proposed Rule 20080 (Record of Written Customer Complaints) requires that BSTX Participants comply with FINRA Rule 4513 as if such rule were part of the Exchange Rules.

[138] Proposed Rule 20090 (Disclosure of Financial Condition) generally requires that BSTX Participants make available certain information regarding the BSTX Participant's financial condition upon request of a customer.

[139] 15 U.S.C. 78f(b)(5).

[140] *See* Cboe BZX Chapter 5 rules. *See also* IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

[141] Proposed Rule 21000 (Written Procedures).

[142] Proposed Rule 21010 (Responsibility of BSTX Participants) would also require that a copy of a BSTX's written supervisory procedures be kept in each office and makes clear that final responsibility for proper supervision rests with the BSTX Participant.

[143] Proposed Rule 21020 (Records).

[144] Proposed Rule 21030 (Review of Activities).

[145] Proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information) generally requires BSTX Participants to enforce written procedures designed to prevent misuse of material non-public information and sets forth examples of conduct that would constitute a misuse of material, non-public information.

[146] Proposed Rule 21050 (Anti-Money Laundering Compliance Program). The Exchange already has rules with respect to Exchange Participants enforcing an AML compliance program set forth in Exchange Rule 10070 (Anti-Money Laundering Compliance Program), so proposed Rule 21050 specifies that BSTX Participants shall comply with the requirements of that pre-existing rule.

[147] 15 U.S.C. 78f(b)(5).

[148] *Id.*

[149] *See supra* note 140.

substantially similar to rules of other exchanges.[150] These miscellaneous provisions relate to: (i) Comparison and settlement requirements;[151] (ii) failures to deliver and failures to receive;[152] (iii) forwarding of proxy and other issuer-related materials;[153] (iv) commissions;[154] (v) regulatory services agreements;[155] and (vi) transactions involving Exchange employees.[156] These rules are designed to capture additional regulatory requirements applicable to BSTX Participants, such as setting forth their obligation to deliver proxy materials at the request of an issuer and to incorporate by reference Rule 200-203 of Regulation SHO.[157]

The Exchange believes that the proposed Rule 22000 (Miscellaneous Provisions) Series is consistent with Section 6(b)(5) of the Exchange Act[158] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants comply with additional regulatory requirements, such as Rule 203 of Regulation SHO[159] as provided in proposed Rule 22010 (Failure to Deliver and Failure to Receive), in connection with their participation on BSTX. For example, proposed Rule 22030 (Commissions) prohibits BSTX Participants from charging fixed rates of commissions for transactions on the Exchange consistent with Section 6(e)(1) of the Exchange Act.[160] Similarly, proposed Rule 22050 (Transactions involving Exchange Employees) sets forth certain requirements and prohibitions relating to a BSTX Participant providing certain financial services to an Exchange employee, which the Exchange believes helps prevent potentially fraudulent and manipulative acts and practices and furthers the protection of investors and the public interest.

G. Trading Practice Rules (Rule 23000 Series)

The Exchange proposes to adopt as its Rule 23000 Series (Trading Practice Rules), 14 rules relating to trading practice requirements for BSTX Participants that are substantially similar to trading practice rules of other exchanges.[161] The proposed Rule 23000 series would specify trading practice requirements related to: (i) Market manipulation; (ii) fictitious transactions; (iii) excessive sales by a BSTX Participant; (iv) manipulative transactions; (v) dissemination of false information; (vi) prohibition against trading ahead of customer orders; (vii) joint activity; (viii) influencing data feeds; (ix) trade shredding; (x) best execution; (xi) publication of transactions and changes; (xii) trading ahead of research reports; (xiii) front running of block transactions; and (xiv) a prohibition against disruptive quoting and trading activity. The purpose of the trading practice rules is to set forth standards and rules relating to the trading conduct of BSTX Participants, primarily with respect to prohibiting forms of market manipulation and specifying certain obligations broker-dealers have to their customers, such as the duty of best execution. For example, proposed Rule 23000 (Market Manipulation) sets forth a general prohibition against a BSTX Participant purchasing a security at successively higher prices or sales of a security at successively lower prices, or to otherwise engage in activity for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security.[162] Proposed Rule 23010 (Fictitious Transactions) similarly prohibits BSTX Participants from fictitious transaction activity, such as executing a transaction which involves no beneficial change in ownership, and proposed Rule 23020 (Excessive Sales by a BSTX Participant) prohibits a BSTX Participant from executing purchases or sales in any security trading on the Exchange for any account in which it has an interest, which are excessive in view of the BSTX Participant's financial resources or in view of the market for such security.[163] Proposed Rule 23060 (Joint Activity) prohibits a BSTX Participant from directly or indirectly holding any interest or participation in any joint account for buying or selling a security traded on the Exchange unless reported to the Exchange with certain information provided and proposed Rule 23090 (Best Execution) reaffirms BSTX Participants best execution obligations to their customers.[164]

Proposed Rule 23050 (Prohibition against Trading Ahead of Customer Orders) is substantially similar to FINRA 5320 and rules adopted by other

[150] *See* Cboe BZX Chapter 13 rules. *See also* IEX Rule 6.180 with respect to proposed Rule 22050 (Transactions Involving BOX Employees).

[151] Proposed Rule 22000 (Comparison and Settlement Requirements) provides that a BSTX Participant that is a member of a registered clearing agency shall implement comparison and settlement procedures as may be required under the rules of such entity. The proposed rule would further provide that, notwithstanding this general provision, the Board may extend or postpone the time of delivery of a BSTX transaction whenever the Board determines that it is called for by the public interest, just and equitable principles of trade or to address unusual conditions. In such a case, delivery will occur as directed by the Board.

[152] Proposed Rule 22010 (Failure to Deliver and Failure to Receive) provides that borrowing and deliveries must be effected in accordance with Rule 203 of Regulation SHO (17 CFR 242.203) and incorporates Rules 200–203 of Regulation SHO by reference into the rule (17 CFR 242.200–203).

[153] Proposed Rule 22020 (Forwarding of Proxy and Other Information; Proxy Voting) generally provides that BSTX Participants shall forward proxy materials when requested by an issuer and sets forth certain conditions and limitations for BSTX Participants to give a proxy to vote stock that is registered in its name.

[154] Proposed Rule 22030 (Commissions) provides that the Exchange Rules or practices shall not be construed to allow a BSTX Participant or its associated persons to agree or arrange for the charging of fixed rates commissions for transactions on the Exchange.

[155] Proposed Rule 22040 (Regulatory Service Agreement) provides that the Exchange may enter into regulatory services agreements with other SROs to assist in carrying out regulatory functions, but the Exchange shall retain ultimate legal responsibility for, and control of, its SRO responsibilities.

[156] Proposed Rule 22040 (Transactions Involving Exchange Employees) sets forth conditions and limitations on a BSTX Participant providing loans or supporting the account of an Exchange employee (*e.g.,* promptly obtaining and implementing an instruction from the employee to provide duplicate account statement to the Exchange) in order to mitigate any potential conflicts of interest that might arise from such a relationship.

[157] 17 CFR 242.200–203.

[158] 15 U.S.C. 78f(b)(5).

[159] 17 CFR 242.203.

[160] 15 U.S.C. 78f(e)(1).

[161] *See* Cboe BZX Chapter 12 rules.

[162] Proposed Rule 23030 (Manipulative Transactions) specifies further prohibitions relating to potential manipulation by prohibiting BSTX Participants from, among other things, participating or having any direct or indirect interest in the profits of a manipulative operation or knowingly managing or financing a manipulative operation.

[163] Other proposed rules relating to potential manipulation include: (i) Rule 23040 (Dissemination of False Information), which generally prohibits, consistent with Exchange Rule 3080, BSTX Participants from spreading information that is false or misleading; (ii) Rule 23070 (Influencing Data Feeds), which generally prohibits transactions to influence data feeds; (iii) Rule 23080 (Trade Shredding), which generally prohibits conduct that has the intent or effect of splitting any order into multiple smaller orders for the primary purpose of maximizing remuneration to the BSTX Participant; (iv) Rule 23110 (Trading Ahead of Research Reports), which generally prohibits BSTX Participants from trading based on non-public advance knowledge of a research report and requires BSTX Participants to enforce policies and procedures to limit information flow from research personnel to trading personnel that might trade on such information; (v) Rule 23120 (Front Running Block Transactions), which incorporates FINRA Rule 5270 as though it were part of the Exchange's Rules; and (vi) Rule 23130 (Disruptive Quoting and Trading Activity Prohibited), which incorporates Exchange Rule 3220 by reference.

[164] In addition, proposed Rule 23100 (Publication of Transactions and Changes) provides that the Exchange will disseminate transaction information to appropriate data feeds, BSTX participants must provide information necessary to facilitate the dissemination of such information, and that an Exchange official shall be responsible for approving corrections to any reports transmitted over data feeds.

exchanges,[165] and generally prohibits BSTX Participants from trading ahead of customer orders unless certain enumerated exceptions are available and requires BSTX Participants to have a written methodology in place governing execution priority to ensure compliance with the Rule. The Exchange proposes to adopt each of the exceptions to the prohibition against trading ahead of customer orders as provided in FINRA Rule 5320 other than the exception related to trading outside of normal market hours, since trading on the Exchange would be limited to regular trading hours.

The Exchange proposes to adopt the order handling procedures requirement in proposed Rule 23050(i) consistent with the rules of other exchanges.[166] Specifically, proposed Rule 23050(i) would provide that a BSTX Participant must make every effort to execute a marketable customer order that it receives fully and promptly and must cross customer orders when they are marketable against each other consistent with the proposed Rule.

The Exchange proposes to adopt a modified version of the exception set forth in FINRA Rule 5320.06 relating to minimum price improvement standards as proposed in Rule 23050(h). Under proposed Rule 23050(h), BSTX Participants would be permitted to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order provided that they give price improvement of $0.01 to the unexecuted held limit order. While FINRA Rule 5320.06 sets forth alternate, lower price improvement standards for securities priced below $1, the Exchange proposes to adopt a uniform price improvement requirement of $0.01 for securities traded on the BSTX System consistent with the Exchange's proposed uniform minimum price variant of $0.01 set forth in proposed Rule 25030.

In addition, the Exchange proposes to adopt an exception for bona fide error transactions as proposed in Rule 25030(g) which would allow a BSTX Participant to trade ahead of a customer order if the trade is to correct a bona fide error, as defined in the rule. This proposed exception is nearly identical to similar exceptions of other exchanges[167] except that other exchange rules also provide an exception whereby firms may submit a proprietary order ahead of a customer order to offset a customer order that is in an amount other than a round lot (*i.e.,* 100 shares). The Exchange is not adopting an exception for odd-lot orders under these circumstances because the minimum unit of trading for security tokens pursuant to proposed Rule 25020 is one security token. The Exchange believes that there may be a notable amount of trading in amounts of less than 100 security tokens (*i.e.,* trading in odd-lot amounts), and the Exchange accordingly does not believe that it is appropriate to allow BSTX Participants to trade ahead of customer orders just to offset an odd-lot customer order.

The Exchange believes that the proposed Rule 23000 Series relating to trading practice rules is consistent with Section 6(b)(5) of the Exchange Act[168] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices that could harm investors and to promote just and equitable principles of trade. The proposed rules in the Rule 23000 Series are substantially similar to the rules of other exchanges and generally include a variety of prohibitions against types of trading activity or other conduct that could potentially be manipulative, such as prohibitions against market manipulation, fictitious transactions, and the dissemination of false information. The Exchange has proposed to exclude certain provisions from, or make certain modifications to, comparable rules of other SROs, as detailed above, in order to account for certain unique aspects related to the proposed trading of security tokens. The Exchange believes that it is consistent with applicable requirements under the Exchange Act to exclude these provisions and exceptions because they set forth requirements that would not apply to BSTX Participants trading in security tokens and are not necessary for the Exchange to carry out its functions of facilitating security token transactions and regulating BSTX Participants.

H. Disciplinary Rules (Rule 24000 Series)

With respect to disciplinary matters, the Exchange proposes to adopt Rule 24000 (Discipline and Summary Suspension), which provides that the provisions of the Exchange Rule 11000 Series (Summary Suspension), 12000 Series (Discipline), 13000 Series (Review of Certain Exchange Actions), and 14000 Series (Arbitration) of the Exchange Rules shall be applicable to BSTX Participants and trading on the BSTX System. The Exchange already has Rules pertaining to discipline and suspension of Exchange Participants that it proposes to extend to BSTX Participants and trading on the BSTX System. The Exchange also proposes to adopt as Rule 24010 a minor rule violation plan with respect to transactions on BSTX.[169]

Proposed Rule 24000 incorporates by reference existing rules that have already been approved by the Commission.

I. Trading Rules and the BSTX System (Rule 25000 Series)

1. Rule 25000—Access to and Conduct on the BSTX Marketplace

The Exchange proposes to adopt Rule 25000 (Access to and Conduct on the BSTX Marketplace) to set forth rules relating to access to the BSTX System and certain conduct requirements applicable to BSTX Participants. Specifically, proposed Rule 25000 provides that only BSTX Participants, including their associated persons, that are approved for trading on the BSTX System shall effect any transaction on the BSTX System. Proposed Rule 25000(b) generally requires that a BSTX Participant maintain a list of authorized traders that may obtain access to the BSTX System on behalf of the BSTX Participant, have procedures in place reasonably designed to ensure that all authorized traders comply with Exchange Rules and to prevent unauthorized access to the BSTX System, and to provide the list of authorized traders to the Exchange upon request. Proposed Rule 25000(c) and (d) restate provisions that are already set forth in Exchange Rule 7000, generally providing that BSTX Participants shall not engage in conduct that is inconsistent with the maintenance of a fair and orderly market or the ordinary and efficient conduct of business, as well as conduct that is likely to impair public confidence in the operations of the Exchange. Examples of such prohibited conduct include failure to abide by a determination of the Exchange, refusal to provide information requested by the Exchange, and failure to adequately supervise employees. Proposed Rule 25000(f) provides the Exchange with authority to suspend or terminate access to the BSTX System under certain circumstances.

The Exchange believes that proposed Rule 25000 is consistent with Section 6(b)(5) of the Exchange Act[170] because it is designed to protect investors and

[165] *See e.g.,* Cboe BZX Rule 12.6.

[166] *See e.g.,* Cboe BZX Rule 12.6.07.

[167] *See e.g.,* Cboe BZX Rule 12.5.05.

[168] 15 U.S.C. 78f(b)(5).

[169] The proposed additions to the Exchange's minor rule violation plan pursuant to proposed Rule 25010 are discussed below in Part IV.

[170] 15 U.S.C. 78f(b)(5).

the public interest and promote just and equitable principles of trade by ensuring that BSTX Participants would not allow for unauthorized access to the BSTX System and would not engage in conduct detrimental to the maintenance of fair and orderly markets.

2. Rule 25010—Days/Hours

Proposed Rule 25010 sets forth the days and hours during which BSTX would be open for business and during which transactions may be effected on the BSTX System. Under the proposed rule, transactions may be executed on the BSTX System between 9:30 a.m. and 4:00 p.m. Eastern Time. The proposed rule also specifies certain holidays BSTX would be not be open (*e.g.,* New Year's Day) and provides that the Chief Executive Officer, President, or Chief Regulatory Officer of the Exchange, or such person's designee who is a senior officer of the Exchange, shall have the power to halt or suspend trading in any security tokens, close some or all of BSTX's facilities, and determine the duration of any such halt, suspension, or closing, when such person deems the action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest.

The Exchange believes that proposed Rule 25010 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,[171] by setting forth the days and hours that trades may be effected on the BSTX System and by providing officers of the Exchange with the authority to halt or suspend trading when such officers believe that such action is necessary or appropriate to maintain fair and orderly markets or to protect investors or in the public interest.

3. Rule 25020—Units of Trading

Proposed Rule 25020 sets forth the minimum unit of trading on the BSTX System, which shall be one security token. The Exchange believes that proposed Rule 25020 is consistent with Section 6(b)(5) of the Exchange Act[172] because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum unit of trading of security tokens on the BSTX System. In addition, other exchanges similarly provide that the minimum unit of trading is one share for their market and/or for certain securities.[173]

4. Rule 25030—Minimum Price Variant

Proposed Rule 25030 provides the minimum price variant for security tokens shall be $0.01. The Exchange believes that proposed Rule 25030 is consistent with Section 6(b)(5) of the Exchange Act because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum price variant for security tokens and promotes compliance with Rule 612 of Regulation NMS.[174] Under Rule 612 of Regulation NMS, the Exchange is, among other things, prohibited from displaying, ranking or accepting from any person a bid or offer or order in an NMS stock in an increment smaller than $0.01 if that bid or offer or order is priced equal to or greater than $1.00 per share. Where a bid or offer or order is priced less than or equal to $1.00 per share, the minimum acceptable increment is $0.0001. Proposed Rule 25030 sets a uniform minimum price variant for all security tokens of $0.01 irrespective of whether the security token is trading below $1.00.

5. Rule 25040—Opening the Marketplace

Proposed Rule 25040 sets forth the opening process for the BSTX System for BSTX-listed security tokens and non-BSTX-listed security tokens. For BSTX-listed security tokens, the Exchange proposes to allow for order entry to commence at 8:30 a.m. ET during the Pre-Opening Phase. Proposed Rule 25040(a) provides that orders will not execute during the Pre-Opening Phase, which lasts until regular trading hours begin at 9:30 a.m. ET.[175] Similar to how the Exchange's opening process works for options trading, BSTX would disseminate a theoretical opening price (''TOP'') to BSTX Participants, which is the price at which the opening match would occur at a given moment in time.[176] Under the proposed rule, the Exchange will also broadcast other information during the Pre-Opening Phase. Specifically, in addition to the TOP, the Exchange would disseminate pursuant to proposed Rule 25040(a)(3): (i) ''Paired Tokens,'' which is the quantity of security tokens that would execute at the TOP; (ii) the ''Imbalance Quantity,'' which is the number of security tokens that may not be matched with other orders at the TOP at the time of dissemination; and (iii) the ''Imbalance Side,'' which is the buy/sell direction of any imbalance at the time of dissemination (collectively, with the TOP, ''Broadcast Information'').[177] Broadcast Information will be recalculated and disseminated every time a new order is received or cancelled and where such event causes the TOP or Paired Tokens to change. With respect to priority during the opening match for all security tokens, consistent with proposed Rule 25080 (Execution and Price/Time Priority), among multiple orders at the same price, execution priority during the opening match is determined based on the time the order was received by the BSTX System.

Consistent with the manner in which the Exchange opens options trading, the BSTX System would determine a single price at which a BSTX-listed security token will be opened by calculating the optimum number of security tokens that could be matched at a price, taking into consideration all the orders on the BSTX Book.[178] Proposed Rule 25040(a)(5) provides that the opening match price is the price which results in the matching of the highest number of security tokens. If two or more prices would satisfy this maximum quantity criteria, the price leaving the fewest resting security tokens in the BSTX Book will be selected at the opening price and where two or more prices would satisfy the maximum quantity criteria and leave the fewest security tokens in the BSTX Book, the price closest to the previous day's closing price will be selected.[179] Unexecuted trading interest during the opening match will move to the BSTX Book and will preserve price time priority.[180] When the BSTX System cannot determine an opening price of a BSTX-listed security token at the start of regular trading hours, BSTX would nevertheless open the security token for trading and move all trading interest received during the Pre-Opening Phase to the BSTX Book.[181]

For initial public offerings of security tokens (''ISTOs''), the process will be generally the same as regular market

[171] 15 U.S.C. 78f(b)(5).

[172] 15 U.S.C. 78f(b)(5).

[173] *See e.g.,* IEX Rule 11.180.

[174] 17 CFR 242.611.

[175] As a result, orders marked IOC submitted during the Pre-Opening Phase will be rejected by the BSTX System. *See* proposed Rule 25040(a)(7).

[176] The TOP can only be calculated where the BSTX Book is crossed during the Pre-Opening Phase. *See* proposed Rule 25040(a)(2).

[177] Pursuant to proposed Rule 25040(a)(3), any orders which are at a better price (*i.e.,* bid higher or offer lower) than the TOP will be shown only as a total quantity on the BSTX Book at a price equal to the TOP.

[178] *See* proposed Rule 25040(a)(4)(ii).

[179] With respect to an initial public offering of a security token where there is no previous day's closing price, the opening price will be the price assigned to the security token by the underwriter for the offering, referred to as the ''ISTO Reference Price.'' *See* Proposed Rule 25040(a)(5)(ii)(3).

[180] *See* proposed Rule 25040(a)(6).

[181] *Id.*

openings. However, in advance of an ISTO auction (''ISTO Auction''), the Exchange shall announce a ''Quote-Only Period'' that shall be between fifteen (15) and thirty (30) minutes plus a short random period prior to the ISTO Auction.[182] The Quote-Only Period may be extended in certain cases.[183] As with regular market openings the Exchange would disseminate Broadcast Information at the commencement of the Quote Only Period, and Broadcast Information would be re-calculated and disseminated every time a new order is received or cancelled and where such event causes the TOP price or Paired Tokens to change.[184] In the event of any extension to the Quote-Only Period or a trading pause, the Exchange will notify market participants regarding the circumstances and length of the extension.[185] Orders will be matched and executed at the conclusion of the Quote-Only Period, rather than at 9:30 a.m. Eastern Time.[186] Following the initial cross at the end of the Quote-Only Period wherein orders will execute based on price/time priority consistent with proposed Rule 25080, the Exchange will transition to normal trading pursuant to proposed Rule 25040(a)(6).[187]

The Exchange also proposes a process for reopening trading following a Limit Up-Limit Down Halt or trading pause (''Halt Auctions''). For Halt Auctions, the Exchange proposes that in advance of reopening, the Exchange shall announce a Quote-Only Period that shall be five (5) minutes prior to the Halt Auction.[188] This Quote-Only Period may be extended in certain circumstances.[189] The Exchange proposes to disseminate the same Broadcast Information as it does for an ISTO Auction and would similarly provide notification of any extension to the quote-only period as with an ISTO Auction.[190] The transition to normal trading would also occur in the same manner as ISTO Auctions, as described above.[191]

The Exchange also proposes to adopt certain contingency procedures in proposed Rule 25040(d) that would provide that when a disruption occurs that prevents the execution of an ISTO Auction the Exchange will publicly announce the Quote-Only Period for the ISTO Auction, and the Exchange will then cancel all orders on the BSTX Book and disseminate a new scheduled time for the Quote-Only Period and opening match.[192] Similarly, when a disruption occurs that prevents the execution of a Halt Auction, the Exchange will publicly announce that no Halt Auction will occur, and all orders in the halted security token on the BSTX Book will be canceled after which the Exchange will open the security token for trading without an auction.[193]

The opening process with respect to non-BSTX-listed security tokens is set forth in proposed Rule 25040(e). Pursuant to that Rule, BSTX Participants who wish to participate in the opening process may submit orders and quotes for inclusion in the BSTX Book, but such orders and quotes cannot execute until the termination of the Pre-Opening Phase (''Opening Process''). Orders that are canceled before the Opening Process will not participate in the Opening Process. The Exchange will attempt to perform the Opening Process and will match buy and sell orders that are executable at the midpoint of the NBBO.[194] Generally, the price of the Opening Process will be at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time. Pursuant to proposed Rule 25040(e)(4), if the conditions to establish the price of the Opening Process set forth above do not occur by 9:45:00 a.m. Eastern Time, orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BSTX Book cancelled, or executed in accordance with the terms of the order. A similar process will occur for re-opening a non-BSTX-listed security token subject to a halt.[195] The proposed opening process for security tokens listed on another exchange serves as a placeholder in anticipation of other exchanges eventually listing and trading security tokens, or the equivalent thereof, given that there are no other exchanges currently trading security tokens. The proposed process for opening security tokens listed on another exchange is similar to existing exchange rules governing the opening of trading of a security listed on another exchange.[196]

Consistent with Section 6(b)(5) of the Exchange Act,[197] the Exchange believes that the proposed process for opening trading in BSTX-listed security tokens and security tokens listed on other exchanges will promote just and equitable principles of trade and will help perfect the mechanism of a free and open market by establishing a uniform process to determine the opening price of security tokens.[198] Proposed Rule 25040 provides a mechanism by which BSTX Participants may submit orders in advance of the start of regular trading hours, perform an opening cross, and commence regular hours trading in security tokens listed on BSTX or otherwise. Where an opening cross is not possible in a BSTX-

[182] *See* proposed Rule 25040(b)(1).

[183] Such cases are when: (i) There is no TOP; (ii) the underwriter requests an extension; (iii) the TOP moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the initial cross; or (iv) in the event of a technical or systems issue at the Exchange that may impair the ability of BSTX Participants to participate in the ISTO or of the Exchange to complete the ISTO. *See* proposed Rule 25040(b)(2).

[184] *See* proposed Rule 25040(b)(3).

[185] *See* proposed Rule 25040(b)(4). The Exchange also proposes that if a trading pause is triggered by the Exchange or if the Exchange is unable to reopen trading at the end of the trading pause due to a systems or technology issue, the Exchange will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. *Id.*

[186] *See* proposed Rule 25040(b)(5).

[187] As with the regular opening process, orders marked IOC submitted during the Pre-Opening Phase of an ISTO Auction would be rejected. *See* proposed Rule 25040(b)(6).

[188] *See* proposed Rule 25040(c)(1). Orders marked IOC submitted during the Quote-Only Period would be rejected.

[189] *See* proposed Rule 25040(c)(2). The Quote-Only Period shall be extended for an additional five (5) minutes should a Halt Auction be unable to be performed due to the absence of a TOP (''Initial Extension Period''). After the Initial Extension Period, the Exchange proposes that the Quote-Only Period shall be extended for additional five (5) minute periods should a Halt Auction be unable to be performed due to absence of a TOP (''Additional Extension Period'') until a Halt Auction occurs. Under the proposed Rule, the Exchange shall attempt to conduct a Halt Auction during the course of each Additional Extension Period. *Id.*

[190] *See* proposed Rule 25040(c)(3)–(5).

[191] *Id.*

[192] *See* proposed Rule 25040(d)(1).

[193] *See* proposed Rule 25040(d)(2). The Exchange notes that these contingency procedures are substantially similar to those of another exchange (*see e.g.,* IEX Rule 11.350(c)(4)) and are designed to ensure that the Exchange has appropriate mechanisms in place to address possible disruptions that may arise in an ISTO Auction or Halt Auction, consistent with the protection of investors and the public interest pursuant to Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

[194] *See* proposed Rule 25040(e)(2).

[195] *See* proposed Rule 25040(e)(5).

[196] *See e.g.,* Cboe BZX Rule 11.24.

[197] 15 U.S.C. 78f(b)(5).

[198] The Exchange has not proposed to operate a closing auction at this time. As a result, the closing price of a security token on BSTX would be the last regular way transaction occurring on BSTX, which the Exchange believes is a simple and fair way to establish the closing price of a security token that does not permit unfair discrimination among customers, issuers, or broker-dealers consistent with Section 6(b)(5) of the Exchange Act. *Id.* This proposed process is consistent with the overall proposed simplified market structure for BSTX, which does not include a variety of order types offered by other exchanges such as market-on-close and limit-on-close orders. The Exchange believes that a simplified market structure, including the proposed manner in which a closing price would be determined, promotes the public interest and the protection of investors consistent with Section 6(b)(5) of the Exchange Act through reduced complexity. *Id.*

listed security token, the Exchange will proceed by opening regular hours trading in the security token anyway, which is consistent with the manner in which other exchanges open trading in securities.[199] With respect to initial public offerings of security tokens and openings after a Limit Up-Limit Down halt or trading pause, BSTX proposes to use a process with features similar to its normal opening process. There are a variety of different ways in which an exchange can open trading in securities, including with respect to an initial public offering of a security token, and the Exchange believes that proposed Rule 25040 provides a simple and clear method for opening transactions that is consistent with the protection of investors and the public interest.[200] Additionally, proposed Rule 25040 applies to all BSTX Participants in the same manner and is therefore not designed to permit unfair discrimination among BSTX Participants.

6. Rule 25050—Trading Halts

BSTX proposes to adopt rules relating to trading halts [201] that are substantially similar to other exchange rules adopted in connection with the NMS Plan to Address Extraordinary Market Volatility (''LULD Plan''), with certain exceptions that reflect Exchange functionality. BSTX intends to join the LULD Plan prior to the commencement of trading security tokens. Below is an explanation of BSTX's approach to certain categories of orders during a trading halt:

- *Short Sales*—BSTX cancels all orders on the book during a halt and rejects any new orders, so rules relating to the repricing of short sale orders during a trading halt that certain other exchanges have adopted have been omitted.
- *Pegged Orders*—BSTX would not support pegged orders, at least initially, so rules relating to pegged orders during a trading halt have been omitted.
- *Routable Orders*—Pursuant to proposed Rule 25130, the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange (rather than routing such order or quotation), and therefore rules relating to handling of routable orders during a trading halt have been omitted.
- *Limit Orders*—Because BSTX would cancel resting order interest and reject incoming orders during a trading halt, specific rules relating to the repricing of limit-priced interest that certain other exchanges have adopted have been omitted.[202]
- *Auction Orders, Market Orders, and FOK Orders*—BSTX would not support these order types, at least initially, so rules relating to these order types during a trading halt have been omitted.[203]

Pursuant to proposed Rule 25050(d), the Exchange would cancel all resting orders in a non-BSTX listed security token subject to a trading halt, reject any incoming orders in that security token, and will only resume accepting orders following a broadcast message to BSTX Participants indicating a forthcoming re-opening of trading.[204]

BSTX believes that it is in the public interest and furthers the protection of investors, consistent with Section 6(b)(5) of the Exchange Act [205] to provide for a mechanism to halt trading in security tokens during periods of extraordinary market volatility consistent with the LULD Plan. However, the Exchange has excluded rules relating to order types and other aspects of the LULD Plan that would not be supported by the Exchange, such as market orders and auction orders. The Exchange has also reserved the right in proposed Rule 25050(f) to halt or suspend trading in other circumstances where the Exchange deems it necessary to do so for the protection of investors and in the furtherance of the public interest.

The Exchange believes that canceling resting order interest during a trading halt and rejecting incoming orders received during the trading halt is consistent with Section 6(b)(5) of the Exchange Act [206] because it is not designed to permit unfair discrimination among BSTX Participants. The orders and trading interest of all BSTX Participants would be canceled in the event of a trading halt and each BSTX Participant would be required to resubmit any orders they had resting on the order book.

7. Rule 25060—Order Entry

Proposed Rule 25060 sets forth the manner in which BSTX Participants may enter orders to the BSTX System. The BSTX System would initially only support limit orders.[207] Orders that do not designate a limit price would be rejected.[208] The BSTX System would also only support two time-in-force (''TIF'') designations initially: (i) DAY; and (ii) immediate or cancel (''IOC''). DAY orders will queue during the Pre-Opening Phase, may trade during regular market hours, and, if unexecuted at the close of the trading day (4:00 p.m. ET), are canceled by the BSTX System.[209] All orders are given a default TIF of DAY. BSTX Participants may also designate orders as IOC, which designation overrides the default TIF of DAY. IOC orders are not accepted by the BSTX System during the Pre-Opening Phase. During regular trading hours, IOC orders will execute in whole or in part immediately upon receipt by the BSTX System. The BSTX System will not support modification of resting orders. To change the price or quantity of an order resting on the BSTX Book, a BSTX Participant must cancel the resting order and submit a new order, which will result in a new time stamp for purposes of BSTX Book priority. In addition, all orders on BSTX will be displayed, and the BSTX System will not support hidden orders or undisplayed liquidity, as set forth in proposed Rule 25100.

Consistent with Section 6(b)(5) of the Exchange Act,[210] the Exchange believes that the proposed order entry rules will promote just and equitable principles of trade and help perfect the mechanism of a free and open market by establishing the types of orders and modifiers that all BSTX Participants may use in entering orders to the BSTX System. Because these order types and TIFs are available to all BSTX Participants, the proposed rule does not unfairly discriminate among market participants, consistent with Section 6(b)(5) of the Exchange Act. The proposed rule sets forth a very

[199] *See e.g.,* BOX Rule 7070.

[200] The Exchange notes that its proposed opening, ISTO Auction, and Halt Auction processes are substantially similar to those of another exchange. *See* Cboe BZX Rule 11.23. The key differences between the Exchange's proposed processes and those of the Cboe BZX exchange are that the Exchange has substantially fewer order types, which make its opening process less complex, and that the Exchange does not proposes to use order auction collars to limit the price at which a security token opens. The Exchange does not believe that auction collars are necessary at this time because there are a variety of other mechanisms in place to prevent erroneous orders and the execution of an opening cross at an erroneous price (*e.g.,* market access controls pursuant to Rule 15c3–5 and the ability of an underwriter to request an extension to the Quote-Only Period in an ISTO Auction).

[201] The Exchange notes that rules on opening trading for non-BSTX-listed security token are set forth in proposed Rule 25040(e).

[202] *See e.g.,* Cboe BZX 11.18(e)(5)(B).

[203] IOC orders will be handled pursuant to proposed Rule 25050(g)(5).

[204] Trading would resume pursuant to proposed Rule 25040(e)(5). *See* proposed Rule 25050(g)(7).

[205] 15 U.S.C. 78f(b)(5).

[206] *Id.*

[207] The BSTX System will also accept incoming Intermarket Sweep Orders (''ISO'') pursuant to proposed Rule 25060(c)(2). ISOs must be limit orders, are ineligible for routing, may be submitted with a limit price during Regular Trading Hours, and must have a time-in-force of IOC. Proposed Rule 25060(c)(2) is substantially similar to rules of other national securities exchanges. *See e.g.,* Cboe BZX Rule 11.9(d).

[208] Proposed Rule 25060(c)(1).

[209] Proposed Rule 25060(d)(1).

[210] 15 U.S.C. 78f(b)(5).

simple exchange model whereby there is only one order type—limit orders—and two TIFs. Upon the initial launch of BSTX, there will be no hidden orders, price sliding, pegged orders, or other order type features that add complexity. The Exchange believes that creating a simplified exchange model is designed to protect investors and is in the public interest because it reduces complexity, thereby helping market participants better understand how orders would operate on the BSTX System.

8. Rule 25070—Audit Trail

Proposed Rule 25070 (Audit Trail) is designed to ensure that BSTX Participants provide the Exchange with information to be able to identify the source of a particular order and other information necessary to carry out the Exchange's oversight functions. The proposed rule is substantially similar to existing BOX Rule 7120 but eliminates certain information unique to orders for options contracts (*e.g.,* exercise price) because security tokens are equity securities. The proposed rule also provides that BSTX Participants that employ an electronic order routing or order management system that complies with Exchange requirements will be deemed to comply with the Rule if the required information is recorded in an electronic format. The proposed rule also specifies that order information must be kept for no less than three years and that where specific customer or account number information is not provided to the Exchange, BSTX Participants must maintain such information on their books and records.

The Exchange believes that proposed Rule 25070 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,[211] because it will provide the Exchange with information necessary to carry out its oversight role. Without being able to identify the source and terms of a particular order, the Exchange's ability to adequately surveil its market, with or through another SRO, for trading inconsistent with applicable regulatory requirements would be impeded. In order to promote compliance with Rule 201 of Regulation SHO, proposed Rule 25080(b)(3) provides that when a short sale price test restriction is in effect, the execution price of the short sale order must be higher than (*i.e.,* above) the best bid, unless the sell order is marked ''short exempt'' pursuant to Regulation SHO.

9. Rule 25080—Execution and Price Time Priority

Proposed Rule 25080 governs the execution of orders on the BSTX System, providing a price-time priority model. The proposed rule provides that orders of BSTX Participants shall be ranked and maintained in the BSTX Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry. The proposed rule further provides that sell orders may not execute a price below the best bid in the marketplace and buy orders cannot execute at a price above the best offer in the marketplace. Further, the proposed rule ensures compliance with Regulation SHO, Regulation NMS, and the LULD Plan, in a manner consistent with the rulebooks of other national securities exchanges.[212]

The Exchange believes that proposed Rule 25080 is consistent with Section 6(b)(5) of the Exchange Act[213] because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by setting forth the order execution priority scheme for security token transactions. Numerous other exchanges similarly operate a price-time priority structure for effecting transactions. The proposed rule also does not permit unfair discrimination among BSTX Participants because all BSTX Participants are subject to the same price-time priority structure. In addition, the Exchange believes that specifying in proposed Rule 25080(b)(3) that execution of short sale orders when a short sale price test restriction is in effect must occur at a price above the best bid unless the order is market ''short exempt,'' is consistent with the Exchange Act because it is intended promote compliance with Regulation SHO in furtherance of the protection of investors and the public interest.

10. Rule 25090—BSTX Risk Controls

Proposed Rule 25090 sets forth certain risk controls applicable to orders submitted to the BSTX System. The proposed risk controls are designed to prevent the submission and execution of potentially erroneous orders. Under the proposed rule, the BSTX System will reject orders that exceed a maximum order size, as designated by each BSTX Participant. The Exchange, however may set default values for this control. The proposed rule also provides a means by which all of a BSTX Participant's orders will be canceled in the event that the BSTX Participant loses its connection to the BSTX System. Proposed Rule 25090(c) provides a risk control that prevents incoming limit orders from being accepted by the BSTX System if the order's price is more than a designated percentage away from the National Best Bid or Offer in the marketplace. Proposed Rule 25090(d) provides a maximum order rate control whereby the BSTX System will reject an incoming order if the rate of orders received by the BSTX System exceeds a designated threshold. With respect to both of these risk controls (price protection for limit orders and maximum order rate), BSTX Participants may designate the appropriate thresholds, but the Exchange may also provide default values and mandatory minimum levels.

The Exchange believes the proposed risk controls in Rule 25090 are consistent with Section 6(b)(5) of the Exchange Act[214] because they are designed to help prevent the execution of potentially erroneous orders, which furthers the protection of investors and the public interest. Among other things, erroneous orders can be disruptive to the operation of an exchange marketplace, can lead to temporary price dislocations, and can hinder price formation. The Exchange believes that offering configurable risk controls to BSTX Participants, along with default values where a BSTX Participant has not designated its desired controls, will protect investors by reducing the number of erroneous executions on the BSTX System and will remove impediments to and perfect the mechanism of a free and open market system. The proposed risk controls are also similar to existing risk controls provided by the Exchange to Options Participants.

11. Rule 25100—Trade Execution, Reporting, and Dissemination of Quotations

Proposed Rule 25100 provides that the Exchange shall collect and disseminate last sale information for transactions executed on the BSTX system. The proposed rule further provides that the aggregate of the best-ranked non-marketable Limit Order(s), pursuant to Rule 25080, to buy and the best-ranked non-marketable Limit Order(s) to sell in the BSTX Book shall be collected and made available to quotation vendors for dissemination. Proposed Rule 25100 further provides that the BSTX System will operate as an

[211] 15 U.S.C. 78f(b)(5).

[212] *See e.g.,* Cboe BZX Rule 11.13(a)(2)–(3) governing regular trading hours.

[213] 15 U.S.C. 78f(b)(5).

[214] 15 U.S.C. 78f(b)(5).

''automated market center'' within the meaning of Regulation NMS and will display ''automated quotations'' at all times except in the event of a system malfunction.[215] In addition, the proposed Rule specifies that the Exchange shall identify all trades executed pursuant to an exception or an exemption of Regulation NMS. The Exchange will disseminate last sale and quotation information pursuant to Rule 602 of Regulation NMS and will maintain connectivity to the securities information processors for dissemination of quotation information.[216] BSTX Participants may obtain access to this information through the securities information processors.

Proposed Rule 25100(d) provides that executions that occur as a result of orders matched against the BSTX Book, pursuant to Rule 25080, shall clear and settle pursuant to the rules, policies, and procedures of a registered clearing agency and shall settle on a T+1 basis (*i.e.,* trade date plus one additional business day) where permitted under the rules, policies, and procedures of the relevant registered clearing agency. Rule 25100(e) obliges BSTX Participants, or a clearing member/participant clearing on behalf of a BSTX Participant to honor trades effected on the BSTX System on the scheduled settlement date, and the Exchange shall not be liable for the failure of BSTX Participants to satisfy these obligations.[217]

The Exchange believes that proposed Rule 25100 is consistent with Section 6(b)(5) of the Exchange Act [218] because it will foster cooperation and coordination with persons processing information with respect to, and facilitating transactions in securities by requiring the Exchange to collect and disseminate quotation and last sale transaction information to market participants. BSTX Participants will need last sale and quotation information to effectively trade on the BSTX System, and proposed Rule 25100 sets forth the requirement for the Exchange to provide this information as well as the information to be provided. The proposed rule is similar to rules of other exchanges relating to the dissemination of last sale and quotation information. The Exchange believes that requiring BSTX Participants (or firms clearing trades on behalf of other BSTX Participants) to honor their trade obligations on the settlement date is consistent with the Exchange Act because it will foster cooperation with persons engaged in clearing and settling transactions in security tokens, consistent with Section 6(b)(5) of the Exchange Act.[219]

12. Rule 25110—Clearly Erroneous

Proposed Rule 25110 sets forth the manner in which BSTX will resolve clearly erroneous executions that might occur on the BSTX System and is substantially similar to comparable clearly erroneous rules on other exchanges. Under proposed Rule 25100, transactions that involve an obvious error such as price or quantity, may be canceled after review and a determination by an officer of BSTX or such other employee designee of BSTX (''Official'').[220] BSTX Participants that believe they submitted an order erroneously to the Exchange may request a review of the transaction, and must do so within thirty (30) minutes of execution and provide certain information, including the factual basis for believing that the trade is clearly erroneous, to the Official.[221] Under proposed Rule 25100(c), an Official may determine that a transaction is clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the ''Reference Price'' [222] by an amount that equals or exceeds specified ''Numerical Guidelines.'' [223] The Official may consider additional factors in determining whether a transaction is clearly erroneous, such as whether trading in the security had recently halted or overall market conditions.[224] Similar to other exchanges 'clearly erroneous rules, the Exchange may determine that trades are clearly erroneous in certain circumstances such as during a system disruption or malfunction, on a BSTX Officer's (or senior employee designee) own motion, during a trading halt, or with respect to a series of transactions over multiple days.[225] Under proposed Rule 25110(e)(2), BSTX Participants affected by a determination by an Official may appeal this decision to the Chief Regulatory Officer of BSTX, provided such appeal is made within thirty (30) minutes after the party making the appeal is given notice of the initial determination being appealed.[226] The Chief Regulatory Officer's determination shall constitute final action by the Exchange on the matter at issue pursuant to proposed Rule 25110(e)(2)(ii).

The Exchange believes that proposed Rule 25110 is consistent with Section 6(b)(5) of the Exchange Act,[227] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by setting forth the process by which clearly erroneous trades on the BSTX System may be identified and remedied. Proposed Rule 25110 would apply equally to all BSTX Participants and is therefore not designed to permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act.[228] The proposed rule is substantially similar to the clearly erroneous rules of other

[215] 17 CFR 242.600(b)(4) and (5). The general purpose of an exchange being deemed an ''automated trading center'' displaying ''automated quotations'' relates to whether or not an exchange's quotations may be considered protected under Regulation NMS. *See* Exchange Act Release No. 51808, 70 FR 37495, 37520 (June 29, 2005). Other trading centers may not effect transactions that would trade through a protected quotation of another trading center. The Exchange believes that it is useful to specify that it will operate as an automated trading center at this time to make clear to market participants that it is not operating a manual market with respect to security tokens.

[216] 17 CFR 242.602.

[217] These proposed provisions are substantially similar to those of exchanges. *See e.g.,* Nasdaq Rule 4627 and IEX Rule 10.250.

[218] 15 U.S.C. 78f(b)(5).

[219] *Id.*

[220] A transaction made in clearly erroneous error and canceled by both parties or determined by the Exchange to be clearly erroneous will be removed from the Consolidated Tape. Proposed Rule 25110(a).

[221] Proposed Rule 25110(b). The Official may also consider certain ''outlier'' transactions on a case by case basis where the request for review is submitted after 30 minutes but no longer than sixty (60) minutes after the transaction. Proposed Rule 2511(d).

[222] The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for in circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest. Proposed Rule 25110(c)(1).

[223] The proposed Numerical Guidelines are 10% where the Reference Price ranges from $0.00 to $25.00, 5% where the Reference Price is greater than $25.00 up to and including $50.00, and 3% where the Reference Price ranges is greater than $50. Proposed Rule 25110(c)(1).

[224] Proposed Rule 25110(c)(1).

[225] *See* proposed Rule 25110(f)–(j). These provisions are virtually identical to similar provisions of other exchanges' clearly erroneous rules other than by making certain administrative edits (*e.g.,* replacing the term ''security'' with ''security token'').

[226] Determinations by an Official pursuant to proposed Rule 25110(f) relating to system disruptions or malfunctions may not be appealed if the Official made a determination that the nullification of transactions was necessary for the maintenance of a fair and orderly market or the protection of invests and the public interest. Proposed Rule 25110(d)(2).

[227] 15 U.S.C. 78f(b)(5).

[228] *Id.*

exchanges.[229] For example, proposed Rule 25110 does not include provisions related to clearly erroneous transactions for routed orders because orders for security tokens will not route to other exchanges.[230] Security tokens would also only trade during regular trading hours (*i.e.,* 9:30 a.m. ET to 4:00 p.m. ET), so provisions from comparable exchange rules relating to clearly erroneous executions occurring outside of regular trading hours have been excluded. Proposed Rule 25110 also excludes provisions from comparable clearly erroneous rules of certain other exchanges relating to clearly erroneous executions in: (i) Leverage ETF/ETNs; and (ii) unlisted trading privileges securities that are subject to an initial public offering.[231]

The Exchange believes that its proposed process for BSTX Participants to appeal clearly erroneous execution determinations made by an Exchange Official pursuant to proposed Rule 25110 to the Chief Regulatory Officer of BSTX is consistent with Section 6(b)(5) of the Exchange Act [232] because it promotes just and equitable principles of trade and fosters cooperation and coordination with persons regulating, settling, and facilitating transactions in securities by providing a clear and expedient process to appeal determinations made by an Official. BSTX Participants benefit from having a quick resolution to potentially clearly erroneous executions and giving the Chief Regulatory Officer discretion to decide any appeals of an Official's determination provides an efficient means to resolve potential appeals that applies equally to all BSTX Participants and therefore does not permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. The Exchange notes that, with respect to options trading on the Exchange, the Exchange's Chief Regulatory Officer similarly has sole authority to overturn or modify obvious error determinations made by an Exchange Official and that such determination constitutes final Exchange action on the matter at issue.[233] In addition, proposed Rule 25110(e)(2)(iii) provides that any determination made by an Official or the Chief Regulatory Officer of BSTX under proposed Rule 25110 shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration. Accordingly, there is an additional safeguard in place for BSTX Participants to seek further review of the Exchange's clearly erroneous determination.

To the extent security tokens become tradeable on other national securities exchanges or other changes arise that may necessitate changes to proposed Rule 25110 to conform more closely with the clearly erroneous execution rules of other exchanges, the Exchange intends to implement changes as necessary through a proposed rule change filed with the Commission pursuant to Section 19 of the Exchange Act [234] at such future date.

13. Rule 25120—Short Sales

Proposed Rule 25120 sets forth certain requirements with respect to short sale orders submitted to the BSTX System that is virtually identical to similar rules on other exchanges.[235] Specifically, proposed Rule 25120 requires BSTX Participants to appropriately mark orders as long, short, or short exempt and provides that the BSTX System will not execute or display a short sale order not marked short exempt with respect to a ''covered security'' [236] at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the covered security, from the covered security's closing price on the listing market as of the end of Regular Trading Hours on the prior day (the ''Trigger Price''). The proposed rule further specifies the duration of the ''Short Sale Price Test'' and that the BSTX System shall determine whether a transaction in a covered security has occurred at a Trigger Price and shall immediately notify the responsible single plan processor.[237]

The Exchange believes that proposed Rule 25120 is consistent with Section 6(b)(5) of the Exchange Act,[238] because it would promote just and equitable principles of trade and further the protection of investors and the public interest by enforcing rules consistent with Regulation SHO. Pursuant to Regulation SHO, broker-dealers are required to appropriately mark orders as long, short, or short exempt,[239] and trading centers are required to establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from its closing price on the primary listing market on the prior day.[240] Proposed Rule 25120 is designed to promote compliance with Regulation SHO, is nearly identical to similar rules of other exchanges, and would apply equally to all BSTX Participants.

14. Rule 25130—Locking or Crossing Quotations in NMS Stocks

Proposed Rule 25130 sets forth provisions related to locking or crossing quotations. The proposed rule is substantially similar to the rules of other national securities exchanges.[241] Proposed Rule 25130 is designed to promote compliance with Regulation NMS and prohibits BSTX participants from engaging in a pattern or practice of displaying quotations that lock or cross a protected quotation unless an exception applies. The Exchange notes that there may be no other national securities exchanges trading security tokens upon the launch of BSTX that may be displaying protected quotations. Notwithstanding that there may be no other away markets displaying a protected quotation when trading on BSTX commences, the Exchange proposes in Rule 25130(d) that the BSTX System will reject any order or quotation that would lock or cross a

[229] *See e.g.,* Cboe BZX Rule 11.17. Similar to other exchanges' comparable rules, proposed Rule 25110 provides BSTX with the ability to determine clearly erroneous trades that result from a system disruption or malfunction, a BSTX Official acting on his or her own motion, trading halts, multi-day trading events, multi-stock events involving five or more (but less than twenty) securities whose executions occurred within a period of five minutes or less, multi-stock events involving twenty or more securities whose executions occurred within a period of five minutes or less, and securities subject to the LULD Plan.

[230] Other exchange clearly erroneous rules reference removing trades from the Consolidated Tape. Because security token transactions will be reported pursuant to a separate transaction reporting plan, proposed Rule 25110 eliminates references to the ''Consolidated Tape'' and provides that clearly erroneous security token transactions will be removed from ''all relevant data feeds disseminating last sale information for security token transactions.'' *See* proposed Rule 25110(a).

[231] The Exchange notes that not all equities exchanges have a provision with respect to trade nullification for UTP securities that are the subject of an initial public offering. *See* IEX Rule 11.270. With respect to leveraged ETFs/ETNs, the Exchange does not expect to support trading of such products at this time, so the Exchange does not believe it is necessary to include provisions related to them.

[232] 15 U.S.C. 78f(b)(5).

[233] *See* BOX Rule 7170(n).

[234] 15 U.S.C. 78s.

[235] *See e.g.,* IEX Rule 11.290.

[236] Proposed Rule 25120(b) provides that the terms ''covered security,'' ''listing market,'' and ''national best bid'' shall have the same meaning as in Rule 201 of Regulation SHO. 17 CFR 242.201(a).

[237] Proposed Rule 25120(d). The proposed rule further provides in paragraph (d)(1) that if a covered security did not trade on BSTX on the prior trading day, BSTX's determination of the Trigger Price shall be based on the last sale price on the BSTX System for that security token on the most recent day on which the security token traded.

[238] 15 U.S.C. 78f(b)(5).

[239] 17 CFR 242.200(g).

[240] 17 CFR 242.201(b)(1).

[241] *See* IEX Rule 25130.

protected quotation of another exchange at the time of entry.

The Exchange believes proposed Rule 25130 is consistent with Section 6(b)(5) of the Exchange Act [242] because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by ensuring that the Exchange prevents display of quotations that lock or cross any protected quotation in an NMS stock, in compliance with applicable provisions of Regulation NMS.

15. Rule 25140—Clearance and Settlement: Anonymity

Proposed Rule 25140 provides that each BSTX Participant must either (1) be a member of a registered clearing agency that uses a CNS system, or (2) clear transactions executed on the Exchange through another Participant that is a member of such a registered clearing agency. The Exchange would maintain connectivity and access to the UTC of NSCC for transmission of executed transactions. The proposed Rule requires a Participant that clears through another participant to obtain a written agreement, in a form acceptable to the Exchange, that sets out the terms of such arrangement. The proposed Rule also provides that BSTX transaction reports shall not reveal contra party identities and that transactions would be settled and cleared anonymously. In certain circumstances, such as for regulatory purposes, the Exchange may reveal the identity of a Participant or its clearing firm such as to comply with a court order.

The Exchange believes that proposed Rule 25140 is consistent with Section 6(b)(5) of the Exchange Act [243] because it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Proposed Rule 25140 is similar to rules of other exchanges relating to clearance and settlement.[244]

J. Market Making on BSTX (Rule 25200 Series)

The BSTX Market Making Rules (Rules 25200–25240) provide for registration and describe the obligations of Market Makers on the Exchange. The proposed Market Making Rules also provide for registration and obligations of Designated Market Makers (''DMMs'') in a given security token, allocation of a DMM to a particular security token, and parameters for business combinations of DMMs.

Proposed Rule 25200 sets forth the basic registration requirement for a BSTX Market Maker by noting that a Market Maker must enter a registration request to BSTX and that such registration shall become effective on the next trading day after the registration is entered, or, in the Exchange's discretion, the registration may become effective the day that it is entered (and the Exchange will provide notice to the Market Maker in such cases). The proposed Rule further provides that a BSTX Market Maker's registration shall be terminated by the Exchange if the Market Maker fails to enter quotations within five business days after the registration becomes effective.[245]

Proposed Rule 25210 sets forth the obligations of Market Makers, including DMMs. Under the proposed Rule, a BSTX Participant that is a Market Maker, including a DMM, is generally required to post two-sided quotes during the regular market session for each security token in which itis registered as a Market Maker.[246] The Exchange proposes that such quotes must be entered within a certain percentage, called the ''Designated Percentage,'' of the National Best Bid (Offer) price in such security token (or last sale price, in the event there is no National Best Bid (Offer)) on the Exchange.[247] The Exchange proposes that the Designated Percentage would be 30%.[248] The Exchange notes that the proposed Designated Percentage is substantially similar to the corresponding Designated Percentage for NYSE American market makers with respect to Tier 2 NMS stocks (as defined under the LULD plan).[249] The Exchange believes that the proposed Designated Percentage for quotation obligations of Market Makers would be sufficient to ensure that there is adequate liquidity sufficiently close to the National Best Bid or Offer (''NBBO'') in security tokens and to ensure fair and orderly markets. The Exchange notes that pursuant to proposed Rule 25210(a)(1)(iii), there is nothing to preclude a Market Maker from entering trading interest at price levels that are closer to the NBBO, so Market Makers have the ability to quote must closer to the NBBO than required by the Designated Percentage requirement if they so choose.

The Exchange proposes in Rule 25210(a)(4) that, in the event that price movements cause a Market Maker or DMM's quotations to fall outside of the National Best Bid (Offer) (or last sale price in the event there is no National Best Bid (Offer)) by a given percentage, with such percentage called the ''Defined Limit,'' in a security token for which they are a Market Maker, the Market Maker or DMM must enter a new bid or offer at not more than the Designated Percentage away from the National Best Bid (Offer) in that security token. The Exchange proposes that the Defined Limit shall be 31.5%.[250] Under the proposed Rules, a Market Maker's quotations must be firm and automatically executable for their size, and, to the extent the Exchange finds that a Market Maker has a substantial or continued failure to meet its quotation obligations, such Market Maker may face disciplinary action from the Exchange.[251] Under the proposed Market Maker and DMM Rules, Market Makers and DMMs' two-sided quotation obligations must be maintained for a quantity of a ''normal unit of trading'' which is defined as one security token.[252] The Exchange believes that security tokens may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (*i.e.,* 100 shares) to one security token will be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation.

The Exchange notes that proposed Rule 25210 is substantially similar to NYSE American Rule 7.23E, with the exceptions of: (i) The modified normal unit of trading, Designated Percentage, and Defined Limit (as discussed above); (ii) specifying that the minimum quotation increment shall be $0.01; and (iii) specifying that Market Maker quotations must be firm for their displayed size and automatically executable. The Exchange believes that

[242] 15 U.S.C. 78f(b)(5).

[243] 15 U.S.C. 78f(b)(5).

[244] *See e.g.* IEX Rule 11.250.

[245] Proposed Rule 25200 is substantially similar to IEX Rule 11.150.

[246] *See* proposed Rule 25210(a)(1).

[247] *See* proposed Rule 25210(a)(1)(ii)(A).

[248] *See* proposed Rule 25210(a)(1)(ii)(B).

[249] *See* NYSE American Rule 7.23E(a)(1)(B)(iii) (providing that, other than during certain time periods around the market open and close, the Designated Percentage for Tier 2 NMS stocks priced below $1.00 is 30% and for Tier 2 NMS stocks priced above $1.00 is 28%).

[250] *See* proposed Rule 25210(a)(1)(ii)(3).

[251] *See* proposed Rule 25210(b) and (c). Pursuant to proposed Rule 25310(d), a BSTX Market Maker, other than a DMM, may apply for a temporary withdrawal from its Market Maker status provided it meets certain conditions such a demonstrating legal or regulatory requirements that necessitate its temporary withdrawal.

[252] *See* proposed Rule 25210(a)(1).

the additional specifications with respect to the minimum quotation increment and firm quotation requirement will add additional clarity to the expectations of Market Makers on the Exchange.

Proposed Rule 25220 sets forth the registration requirements for a DMM. Under proposed Rule 25220, a DMM must be a registered Market Maker and be approved as a DMM in order to receive an allocation of security tokens pursuant to proposed Rule 25230, which is described below.[253] For security tokens in which a Participant serves as a DMM, it must meet the same obligations as if it were a Market Maker and must also maintain a bid or offer at the National Best Bid and Offer at least 25% of the day measured across all security tokens in which such Participant serves as DMM.[254] The proposed Rule provides, among other things, that a there will be no more than one DMM per security token and that a DMM must maintain information barriers between the trading unit operating as a DMM and the trading unit operating as a BSTX Market Maker in the same security token (to the extent applicable).[255] The Rule further provides a process by which a DMM may temporarily withdraw from its DMM status, which is similar to the same process for a BSTX Market Maker[256] and similar to the same process for DMMs on other exchanges.[257] The Exchange notes that proposed Rule 25220 is substantially similar to NYSE American Rule 7.24E with the exception that the Exchanges proposes to add a provision stating that the Exchange is not required to assign a DMM if the security token has an adequate number of BSTX Market Makers assigned to such security token. The purpose of this requirement is to acknowledge the possibility that a security token need not necessarily have a DMM provided that each security token has been assigned at least three active Market Makers at initial listing and two Market Makers for continued listing, consistent with proposed Rule 26106 (Market Maker Requirement), which is discussed further below.

In proposed Rule 25230, the Exchange proposes to set forth the process by which a DMMs are allocated and reallocated responsibility for a particular security token. Proposed Rule 25230(a) sets forth the basic eligibility criteria for a when a security token may be allocated to a DMM, providing that this may occur when the security token is initially listed on BSTX, when it is reassigned pursuant to Rule 25230, or when it is currently listed without a DMM assigned to the security token.[258] Proposed Rule 2530(a) also specifies that a DMM's eligibility to participate in the allocation process is determined at the time the interview is scheduled by the Exchange and specifies that a DMM must meet with the quotation requirements set forth in proposed Rule 25220(c) (DMM obligations). The proposed Rule further specifies how the Exchange will handle several situations in which the DMM does not meet its obligations, such as, for example, by issuing an initial warning advising of poor performance if the DMM fails to meet its obligations for a one-month period.[259]

Proposed Rule 25230(b) sets forth the manner in which a DMM may be selected and allocated a security token. Under proposed Rule 25230(b), an issuer may select its DMM directly, delegate the authority to the Exchange to selects its DMM, or may opt to proceed with listing without a DMM, in which case a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing must be assigned to its security token consistent with proposed Rule 26106. Proposed Rule 25230(b) further sets forth provisions relating to the interview between the issuer and DMMs, the Exchange selection by delegation, and a requirement that a DMM serve as a DMM for a security token for at least one year unless compelling circumstances exist for which the Exchange may consider a shorter time period. Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(1)-(3), with the exception that the Exchange may shorten the one year DMM commitment period in compelling circumstances.[260] Proposed Rule 25230(b) further sets forth specific provisions related to a variety of different issuances and types of securities, including spin-offs or related companies, warrants, rights, relistings, equity security token listing after preferred security token, listed company mergers, target security tokens, and closed-end management investment companies.[261] Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(4)–(11).

Proposed Rule 25230(c) sets forth the reallocation process for a DMM in a manner that is substantially similarly to corresponding provisions in NYSE American Rule 7.25E(c). Generally, under the proposed Rule, an issuer may request a reallocation to a new DMM and Exchange staff will review this request, along with any DMM response letter, and eventually make a determination.[262] Proposed Rule 25230(d), (e), and (f), set forth provisions governing an allocation freeze, allocation sunset, and criteria for applicants that are not currently DMMs to be eligible to be allocated a security token as a DMM respectively. Each of these provisions are likewise substantially similar to corresponding provisions in NYSE American Rule 7.25E(d)–(f).

Finally, proposed Rule 25240 sets forth the DMM combination review policy. The proposed Rule, among other things, defines a proposed combination among DMMs, requires that DMMs provide a written submission to the Office of the Corporate Secretary of the Exchange and specifies, among other things, the items to be disclosed in the written submission, the criteria that the Exchange will use to evaluate a proposed combination, and the timing for a decision by the Exchange, subject to the Exchange's right to extend such time period. The Exchange notes that proposed Rule 25240 is substantially similar to NYSE American Rule 7.26E.

The Exchange believes that the proposed Market Making Rules set forth in the Rule 25200 Series are consistent with Section 6(b)(5) of the Exchange Act[263] because they are designed to

[253] *See* proposed 25220(b). DMMs would be approved by the Exchange pursuant to an application process an

[254] *See* proposed Rule 25220(c).

[255] *See* proposed Rule 25220(b).

[256] *See* proposed Rule 25210(d).

[257] *See e.g.,* NYSE American Rule 7.24E(b)(4).

[258] As previously noted, pursuant to proposed Rule 26106, a security token may, in lieu of having a DMM assigned to it, have a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing to be eligible for listing on the Exchange. Consequently, a security token might not have a DMM when it initially begins trading on BSTX, but may acquire a DMM later.

[259] *See* proposed Rule 25230(a)(4). The proposed handling of these scenarios where a DMM does not meet its obligations is substantially similar to parallel requirements in NYSE American Rule 7.25E(a)(4).

[260] The Exchange believes that providing the Exchange with flexibility to shorten the one year commitment period is appropriate to accommodate unforeseen events or circumstances that might arise with respect to a DMM, such as a force majeure event, preventing a DMM from being able to carry out its functions.

[261] *See* proposed Rule 25230(b)(4)–(11).

[262] In addition, proposed Rule 25230(c)(2) sets forth provisions that allow for the Exchange's CEO to immediately initiate a reallocation proceeding upon written notice to the DMM and the issuer when the DMM's performance in a particular market situation was, in the judgment of the Exchange, so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market.

[263] 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange notes that the proposed Rules are substantially similar to the market making rules of other exchanges, as detailed above,[264] and that all BSTX Participants are eligible to become a Market Maker or DMM provided they comply with the proposed requirements.[265] The proposed Market Maker Rules set forth the quotation and related expectations of BSTX Market Makers which the Exchange believes will help ensure that there is sufficient liquidity in security tokens. Although the corresponding NYSE American rules upon which the proposed Rules are based provide for multiple tiers and classes of stocks that were each associated with a different Designated Percentage and Defined Limit, the Exchange has collapsed all such classes in to one category and provided a single Designated Percentage of 30% and Defined Limit of 31.5% for all security token trading on BSTX. The Exchange believes that simplifying the Rules in this manner can reduce the potential for confusion and allows for easier compliance and will still adequately serve the liquidity needs of investors of security token investors, which the Exchange believes promotes the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[266]

The Exchange has also proposed that the minimum quotation size of Market Makers will be one security token. As noted above, the Exchange believes that security tokens may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (*i.e.,* 100 shares) to one security token would be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation. The Exchange believes that adopting quotation requirements and parameters that are appropriate for the nature and types of securities that will trade on the Exchange will promote the protection of investors and the public interest by assuring that the Exchange Rules are appropriately tailored to its market.

K. BSTX Listing Rules (Rule 26000 and 27000 Series)

The BSTX Listing Rules, which include the Rule 26000 and 27000 Series, have been adapted from, and are substantially similar to, Parts 1–12 of the NYSE American LLC Company Guide.[267] Except as described below, each proposed Rule in the BSTX 26000 and 27000 series is substantially similar to a Section of the NYSE American Company Guide.[268] Below is further detail.

- The BSTX Listing Rules (26100 series) are based on the NYSE American Original Listing Requirements (Sections 101–146).[269]
- The BSTX Original Listing Procedures (26200 series) are based on the NYSE American Original Listing Procedures (Sections 201–222).
- The BSTX Additional Listings Rules (26300 series) are based on the NYSE American Additional Listings Sections (Sections 301–350).
- The BSTX Disclosure Policies (26400 series) are based on the NYSE American Disclosure Policies (Sections 401–404).
- The BSTX Dividends and Splits Rules (26500 series) are based on the NYSE American Dividends and Stock Splits Sections (Sections 501–522).
- The BSTX Accounting; Annual and Quarterly Reports Rules (26600 series) are based on the NYSE American Accounting; Annual and Quarterly Reports Sections (Sections 603–624).
- The BSTX Shareholders' Meetings, Approval and Voting of Proxies Rules (26700 series) are based on the NYSE American Shareholders' Meetings, Approval and Voting of Proxies Sections (Sections 701–726).[270]
- The BSTX Corporate Governance Rules (26800 series) are based on the NYSE American Corporate Governance Sections (Sections 801–809).
- The BSTX Additional Matters Rules (26900 series) are based on the NYSE American Additional Matters Sections (Sections 920–994).
- The BSTX Suspension and Delisting Rules (27000 series) are based on the NYSE American Suspension and Delisting Sections (Sections 1001–1011).
- The BSTX Guide to Filing Requirements (27100 series) are based on the NYSE American Guide to Filing Requirements (Section 1101).
- The BSTX Procedures for Review of Exchange Listing Determinations (27200 series) are based on the NYSE American Procedures for Review of Exchange Listing Determinations (Sections 1201–1211).

Notwithstanding that the proposed BSTX Listing Rules are substantially similar to those of other exchanges, BSTX proposes certain additions or modifications to these rules specific to its market. For example, BSTX proposes to add definitions that apply to the proposed BSTX Listing Rules. The definitions set forth in proposed Rule 26000 are designed to facilitate understanding of the BSTX Listing Rules by market participants. Increased clarity may serve to remove impediments to and perfect the mechanism of a free and open market and a national market system and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.[271]

With respect to initial listing standards, which begin at proposed Rule 26101, the Exchange proposes to adopt listing standards that are substantially similar to the NYSE American listing rules.[272] The Exchange

[264] *See* NYSE American Rule 7, Section 2.

[265] In this regard, the Exchange believes the proposed Market Making Rules are not designed to permit unfair discrimination between BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

[266] 15 U.S.C. 78f(b)(5).

[267] All references to various ''Sections'' in the discussion of these Listing Rules refer to the various Sections of the NYSE American Company Guide.

[268] The Exchange notes that while the numbering of BSTX's Listing Rules generally corresponds to a Section of the NYSE American LLC Company Guide, BSTX did not integrate certain Sections of the NYSE American Company Guide that the Exchange deemed inapplicable to its operations, such as with respect to types of securities which the Exchange is not proposing to make eligible for listing (*e.g.,* foreign issuers, other than those from Canada). Further, the Exchange formulated a small amount of new rules to reflect requirements relating to the use of blockchain technology as an ancillary recordkeeping mechanism, as described more fully herein. The Exchange also proposes to modify cross-references in the proposed Listing Rules to accord with its Rules.

[269] Pursuant to proposed Rule 26135, all securities initially listing on BSTX, except securities which are book-entry only, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. 15 U.S.C. 78q–1.

[270] The Exchange notes that the proposed fees for certain items in the proposed Listing Rules (*e.g.,* proxy follow-up mailings) are the same as those charged by NYSE American. *See e.g.,* proposed IM–26722–8 *cf.* NYSE American Section 722.80.

[271] 15 U.S.C. 78f(b)(5).

[272] *See* NYSE American Section 101. The Exchange understands that the Commission has extended relief to NYSE American with respect to certain quantitative listing standards that do not meet the thresholds of SEC Rule 3a51–1. 17 CFR 240.3a51–1. Initial listings of securities that do not meet such thresholds and are not subject to the relief provided to NYSE American would qualify as ''penny stocks'' and would be subject to additional regulation. BSTX notes that it is not seeking relief related to SEC Rule 3a51–1 and therefore has

Continued

believes that adopting listing rules similar to those in place on other national securities exchanges will facilitate more uniform standards across exchanges, which helps foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.[273] Market participants that are already familiar with NYSE American's listing standards will already be familiar with most of the substance of the proposed listing rules. The Exchange also believes that adopting proposed listing standards that closely resemble those of NYSE American may also foster competition among listing exchanges for companies seeking to publicly list their securities. The Exchange is proposing an addition (relative to the NYSE American listing rules) to the initial listing standards for preferred security tokens.[274] Specifically, the Exchange proposes an additional standard for preferred security tokens to list on the Exchange based on NASDAQ Rule 5510.[275] The Exchange believes a proposed rule providing an additional initial listing standard for preferred security tokens consistent with a similar provision of NASDAQ would expand the possible universe of issuances that would be eligible to list on the Exchange to include preferred security tokens. The Exchange believes that such a rule would help remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act by giving issuers an additional means by which it could list a different type of security (*i.e.,* a preferred security token) and investors the opportunity to trade in such preferred security tokens.[276] Further, consistent with the public interest, rules that provide more opportunity for listings may promote competition among listing exchanges and capital formation for issuers.

In certain instances, BSTX proposes to add additional provisions not currently provided for in the NYSE American LLC Company Guide that are specific to security tokens. For example, pursuant to proposed Rule 26230(a) (Security Token Architecture Responsibility and Audit), prior to approving a security token for trading on BSTX, the Exchange would conduct an audit of the security token's architecture to ensure compliance with the BSTX Protocol as outlined in Rule 26138.[277] The purpose of this requirement is to ensure that the design and structure of a prospective BSTX-listed company's security token is compatible with the BSTX Protocol for purposes of facilitating updates to the blockchain as an ancillary recordkeeping mechanism. The Exchange may use third party service providers that have demonstrated sufficient technical expertise in blockchain technology and an understanding of the BSTX Protocol to conduct this audit on behalf of the Exchange. To the extent an issuer looking to list its shares on BSTX as security tokens failed the audit by BSTX of its security token architecture, the issuer would not meet the requirements of BSTX's listing rules and would therefore not be permitted to list its shares on BSTX until it successfully passed the security token audit.[278]

Further, the Exchange proposes that Rule 26230(b) would provide that a listed company (*i.e.,* issuer) remains responsible for ensuring that its security token remains compatible with the BSTX Protocol and accurately reflects the number of shares outstanding. The Exchange recognizes that, in certain circumstances, it may be necessary for a listed company to modify certain aspects of the smart contract corresponding to a security token. For example, in the case of a stock split, a listed company may need to increase the total supply of security tokens as programmed into its security token smart contract. Proposed Rule 26230(b) would provide that notice of any such modification of the smart contract corresponding to a security token (*e.g.,* to increase the total supply) must be provided to the Exchange at least five calendar days in advance of implementation to allow the Exchange to audit the proposed modification.[279] While the Exchange believes that five calendar days will provide sufficient time for it to ensure that a security token is appropriately updated in advance of any implementation, the Exchange recognizes that there could conceivably be circumstances in which a change takes longer than expected to implement. Accordingly, the Exchange proposes that Rule 26230(b) would also provide that, to the extent additional time is needed to appropriately implement the modification, the Exchange may exercise its authority to suspend the ancillary recordkeeping process pursuant to Rule 17020(e). The Exchange notes that the primary circumstances under which a modification to a smart contract corresponding to a security token may be necessary is where there is a change to the total supply of the security token, which could occur in the case of a stock split, a reverse stock split, a buy-back, or a dividend in kind. The Exchange notes that any delay in the implementation of a change to a smart contract that corresponds to a security token shall in no way impact the record date or ex-dividend date for any dividend, distribution, or other action. The Exchange believes that proposed Rule 26230 would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act,[280] because it facilitates the ancillary recordkeeping mechanism for BSTX-listed security tokens which is a first step toward the potential integration of blockchain technology to securities transactions. Without ensuring that BSTX-listed companies' security tokens are compatible with the BSTX Protocol, the use of blockchain technology as an

clarified proposed Rule 26101(a)(2) to ensure that issuers have at least one year of operating history. BSTX will also require new listings pursuant to proposed Rule 26102 to have a public distribution of 1 million security tokens, 400 public security token holders, and a minimum market price of $4 per security token. These provisions meet the requirements in SEC Rule 3a51–1 and are consistent with the rules of other national securities exchanges. *See e.g.,* Nasdaq Rule 5510. The quantitative thresholds specified in Rule 26102 are also reflected in the Sample Underwriter's Letter that is Exhibit 3M [sic] to this proposal. In addition, the Exchange notes that proposed Rule 26140, which governs the additional listing requirements of a company that is affiliated with the Exchange, is based on similar provisions in NYSE American Rule 497 and IEX 14.205.

[273] 15 U.S.C. 78f(b)(5).

[274] *See* proposed Rule 26103.

[275] *See* proposed Rule 26103(b)(2). Preferred Security Token Distribution Standard 2 requires that a preferred security token listing satisfy the following conditions: Minimum bid price of at least $4 per security token; at least 10 Round Lot holders; at least 200,000 Publicly Held Security Tokens; and Market Value of Publicly Held Security Tokens of at least $3.5 million.

[276] 15 U.S.C. 78f(b)(5).

[277] Proposed Rule 26230 further provides that an applicant that is denied pursuant to this section may appeal the decision via the process outlined in the Rule 27200 Series.

[278] The Exchange expects that some issuers may choose to use an outside vendor to help build their security token in a manner that complies with the BSTX Security Token Protocol. The BSTX Security Token Protocol is open-source, so there is no need to use any particular vendor over another. The Exchange understands that there are numerous technology companies that offer these services, and issuers would be free to select one of their choosing.

[279] The Exchange expects that it will work with issuers to help ensure that their security tokens comply with the BSTX Protocol. However, as with all Exchange Rules, failure to comply could result in potential suspension and delisting in accordance with the Rule 27000 Series.

[280] 15 U.S.C. 78f(b)(5).

ancillary recordkeeping mechanism could be impaired.

With respect to the definitions in proposed Rule 26000, these are designed to facilitate understanding of the BSTX Listing Rules by market participants. The Exchange believes that allowing market participants to better understand and interpret the BSTX Listing Rules removes impediments to and perfects the mechanism of a free and open market and a national market system, and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.[281]

The Exchange also proposes certain enhancements to the notice requirements for listed companies to communicate to BSTX related to record dates and defaults.[282] The Exchange believes that these additional disclosure and communication obligations can help BSTX in monitoring for listed company compliance with applicable rules and regulations; such additional disclosure obligations are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[283]

The Exchange's proposed Rules provide additional flexibility for listed companies in choosing how liquidity would be provided in their listings by allowing listed companies to meet either the DMM Requirement or Active Market Maker Requirement for initial listing and continued trading.[284] Pursuant to proposed Rule 26205, a company may choose to be assigned a DMM by the Exchange or to select its own DMM.[285] Alternatively, a company may elect, or the Exchange may determine, that, in lieu of a DMM, a minimum of three (3) market makers would be assigned to the security token at initial listing; such requirement may be reduced to two (2) market makers following the initial listing, consistent with proposed Rule 26106. The Exchange believes that such additional flexibility would promote the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[286] The Commission has previously approved exchange rules providing for three market makers to be assigned to a particular security upon initial listing and only two for continued listing. [287] In accordance with these previously approved rules, the Exchange believes proposed Rule 26205 would ensure fair and orderly markets and would facilitate the provision of sufficient liquidity for security tokens.

The Exchange also proposes a number of other non-substantive changes from the baseline NYSE American listing rules, such as to eliminate references to the concept of a ''specialist,'' since BSTX will not have a specialist,[288] or references to certificated equities, since security tokens will be uncertificated equities.[289] As another example, NYSE American Section 623 requires that three copies of certain press releases be sent to the exchange, while the Exchange proposes only that a single copy of such press release be shared with the Exchange.[290] In addition, the Exchange proposes to adopt Rule 26720 in a manner that is substantially similar to NYSE American Section 720, but proposes to modify the internal citations to ensure consistency with its proposed Rulebook.[291] In its proposed Rules, the Exchange has not included certain form letters related to proxy rules that are included in the NYSE American rules;[292] instead, these forms will be included in the BSTX Listing Supplement.[293] The Exchange is not

[281] *Id.*

[282] *See* Proposed Rule 26502, which requires, among other things, a listing company to give the Exchange at least ten days' notice in advance of a record date established for any other purpose, including meetings of shareholders.

[283] 15 U.S.C. 78f(b)(5).

[284] *See* proposed Rule 26205. BSTX-listed security tokens must meet the criteria specified in proposed Rule 26106, which provides that unless otherwise provided, all security tokens listed pursuant to the BSTX Listing Standards must meet one of the following requirements: (1) The DMM Requirement whereby a DMM must be assigned to a given security token; or (2) the Active Market Maker Requirement which states that (i) for initial inclusion the security token must have at least three registered and active Market Makers, and (ii) for continued listing, a security token must have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

[285] Exchange personnel responsible for managing the listing and onboarding process will be responsible for determining to which DMM a security token will be assigned. As provided in proposed Rule 26205, the Exchange makes every effort to see that each security token is allocated in the best interests of the company and its shareholders, as well as that of the public and the Exchange. Similarly, the Exchange anticipates that these same personnel will be responsible for answering questions relating to the Exchange's listing rules pursuant to proposed Rule 26994 (New Policies). The Exchange notes that certain provisions in the NYSE American Listing Manual contemplate a ''Listing Qualifications Analyst'' that would perform a number of these functions. The Exchange is not proposing to adopt provisions that specifically contemplate a ''Listing Qualifications Analyst,'' but expects to have personnel that will perform the same basic functions, such as advising issuers and prospective issuers with respect to the BSTX Listing Rules.

[286] 15 U.S.C. 78f(b)(5).

[287] *See e.g.,* IEX Rule 14.206.

[288] *See e.g.,* NYSE American Section 513(f), noting that open orders to buy and open orders to sell on the books of a specialist on an ex rights date are reduced by the cash value of the rights. Proposed Rule 26340(f) deletes this provision because BSTX will not have specialists. Similarly, because BSTX will not have specialists, the Exchange is not proposing to adopt a parallel rule to NYSE American Section 516, which specifies that certain types of orders are to be reduced by a specialist when a security is quoted ex-dividend, ex-distribution or ex-rights are set forth in NYSE American Rule 132.

[289] *See e.g.,* NYSE American Section 117 including a clause relating to paired securities for which ''the stock certificates of which are printed back-to-back on a single certificate''). Similarly, the Exchange has proposed to replace certain references to the ''Office of General Counsel'' contained in certain NYSE American Listing Rule (*see e.g.,* Section 1205) with references to the Exchange's ''Legal Department'' to accommodate differences in BSTX's organizational structure. *See* proposed Rule 27204. As another example, proposed Rule 27205 refers to the Exchange's ''Hearing Committee'' as defined in Section 6.08 of the Exchange's By-Laws to similarly accommodate organizational differences between the Exchange and NYSE American.

[290] *See* proposed Rule 26623.

[291] Specifically, proposed Rule 26720 would provide that participants must comply with Rules 26720 through 26725 and BSTX's Rule 22020 (Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting). NYSE American Section 726, upon which proposed Rule 26720 is based, includes cross-references to NYSE American's corresponding rules to proposed Rules 26720 through 26725, and also includes cross-references to NYSE American Rules 578 through 585, for which the Exchange is not proposing corresponding rules. These NYSE American rules for which the Exchange is not proposing to adopt a parallel rule relate to certain requirements specific to proxy voting (*e.g.,* requiring that a member state the actual number of shares for which a proxy is given—NYSE American Rule 578) or, in some cases, relate to certificated securities (*e.g.,* NYSE American Rule 579), which would be inapplicable to the Exchange since it proposes to only list uncertificated securities. The Exchange believes that it does not need to propose to adopt parallel rules corresponding to NYSE American Rules 578–585 at this time and notes that other listing exchanges do not appear have corresponding versions of these NYSE American Rules. *See e.g.,* Cboe BZX Rules. The Exchange believes that proposed Rule 26720 and the Exchange's other proposed Rules governing proxies, including those referenced in proposed Rule 26720, are sufficient to govern BSTX Participants' obligations with respect to proxies.

[292] The forms found in NYSE American Section 722.20 and 722.40 will be included in the BSTX Listing Supplement.

[293] The BSTX Listing Supplement would contain samples of letters containing the information and instructions required pursuant to the proxy rules to be given to clients in the circumstances indicated in the appropriate heading. These are intended to serve as examples and not as prescribed forms.

Continued

proposing to adopt provisions relating to future priced securities at this time.[294] In addition, the Exchange is not proposing to allow for listing of foreign companies, other than Canadian companies,[295] or to allow for issuers to transfer their existing securities to BSTX.[296] Similarly, the Exchange is not proposing at this time to support security token debt securities, so the Exchange has not proposed to adopt certain provisions from the NYSE American Listing Manual related to bonds/debt securities [297] or the trading of units.[298] The Exchange believes that the departures from the NYSE American rules upon which the proposed Rules are based, as described above, are non-substantive (*e.g.,* by not including provisions relating to instruments that will not trade on the Exchange), would apply to all issuers in the same manner and are therefore not designed to permit unfair discrimination, consistent with Section 6(b)(5) of the Exchange Act.[299]

The Exchange proposes in Rule 26507 to prohibit the issuance of fractional security tokens and to provide that cash must be paid in lieu of any distribution or part of a distribution that might result in fractional interests in security tokens.[300] The Exchange believes that disallowing fractional shares reduces complexity. By extension, the requirement to provide cash in lieu of fractional shares simplifies the process related to share transfer and tracking of share ownership. The Exchange believes that this simplification promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[301]

Proposed BSTX Rule 26130 (Original Listing Applications) would require listing applicants to furnish a legal opinion that the applicant's security token is a security under applicable United States securities laws. Such a requirement provides assurance to the Exchange that security token trading relates to appropriate asset classes. The Exchange believes that this Rule promotes just and equitable principles of trade and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[302]

The Exchange proposes to adopt corporate governance listing standards as its Rule 26800 series that are substantially similar to the corporate governance listing standards set forth in Part 8 of the NYSE American Listing Manual. However, it includes certain clarifications, most notably that certain proposed provisions are not intended to restrict the number of terms that a director may serve [303] and that, if a limited partnership is managed by a general partner rather than a board of directors, the audit committee requirements applicable to the listed entity should be satisfied by the general partner.[304] The Exchange also notes that, unlike the current NYSE American rules upon which the proposed Rules are based, the proposed Rules on corporate governance do not include provisions on asset-asset backed securities and foreign issues (other than those from Canada), since the Exchange does not proposed to allow for such foreign issuers to list on BSTX at this time.

The Exchange proposes to adopt additional listing rules as its Rule 26900 series that are substantially similar to the corporate governance listing standards set forth in Part 9 of the NYSE American Listing Manual. The only significant difference from the baseline NYSE American rules is that the proposed BSTX Rules do not include provisions related to certificated securities, since security tokens listed on BSTX will be uncertificated.

The Exchange proposes to adopt suspension and delisting rules as its Rule 27000 series that are substantially similar to the corporate governance listing standards set forth in Parts 10, 11, and 12 of the NYSE American Listing Manual. The proposed rules do not include concepts from the baseline NYSE American rules regarding foreign, fixed income securities, or other non-equity securities because the Exchange is not proposing to allow for listing of such securities at this time.[305]

The Exchange believes that the proposals in the Rule 26800 to Rule 27000 Series, which are based on the rules of NYSE American with the differences explained above, are designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Further, the differences in the proposals compared to the analogous NYSE American provisions appropriately reflect the differences between the two exchanges. The Exchange believes that ensuring that its systems are appropriately described in the BSTX Rules facilitates market participants' review of such Rules, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. Therefore, the Exchange believes its proposals are

Participants would be permitted to adapt the form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients. Pursuant to proposed Rule 26212, the BSTX Listing Supplement would also include a sample application for original listing, which the Exchange has included as Exhibit 3G [sic]. In addition, proposed Rule 26350 states that the BSTX Listing Supplement will include a sample cancellation notice; the Exchange expects such notice to be substantially in the same form as NYSE American's sample notice in NYSE American Section 350. Other examples of items that would appear in the BSTX Listing Supplement include certain certifications to be completed by the CEO of listed companies pursuant to proposed Rule 26810(a) and (c), and forms of letters to be sent to clients requesting voting instructions and other letters relating to proxy votes pursuant to proposed IM–26722–2 and IM–26722–4. The Exchange expects that these proposed materials in the BSTX Listing Supplement will be substantially similar to the corresponding versions of such samples used by NYSE American. The purpose of putting these sample letters and other information into the BSTX Listing Supplement rather than directly in the rules is to improve the readability of the Rules.

[294] *See e.g.,* NYSE American Section 101, Commentary .02. The Exchange is also not proposing to adopt a parallel provision to NYSE American Section 950 (Explanation of Difference between Listed and Unlisted Trading Privileges) because the Exchange believes that such provision is not necessary and contains extraneous historical details that are not particularly relevant to the trading of security tokens. The Exchange notes that numerous other listing exchanges do not have a similar provision to NYSE American Section 950. *See e.g.,* IEX Listing Rules.

[295] *See* proposed Rule 26109. Because the Exchange does not propose to allow foreign issuers of security tokens, it does not propose to adopt a parallel provision to NYSE American Section 110 and other similar provisions relating to foreign issuers—*e.g.,* NYSE American Section 801(f).

[296] Consequently, the Exchange does not propose to adopt a parallel provision to NYSE American Section 113 at this time.

[297] *See e.g.,* NYSE American Sections 1003(b)(iv) and (e).

[298] *See e.g.,* NYSE American Sections 106(f), 401(i), and 1003(g).

[299] 15 U.S.C. 78f(b)(5).

[300] The Exchange also proposes certain conforming changes in Rule 26503 (Form of Notice) to reiterate that fractional interests in security tokens are not permitted by the Exchange.

[301] 15 U.S.C. 78f(b)(5).

[302] *Id.*

[303] *See* proposed Rule 26802(d).

[304] *See* proposed Rule 26801(b).

[305] As with all sections of the proposed rules, references to ''securities'' have been changed to ''security tokens'' where appropriate and, in the Rule 27000 series, certain references have been conformed from the baseline NYSE American provisions to account for the differences in governance structure and naming conventions of BSTX.

consistent with Section 6(b)(5) of the Exchange Act.[306]

L. Fees (Rule 28000 Series)

The Exchange proposes to set forth as its Rule 28000 Series (Fees) the Exchange's authority to prescribe reasonable dues, fees, assessments or other charges as it may deem appropriate.[307] As provided in proposed Rule 28000 (Authority to Prescribe Dues, Fees, Assessments and Other Charges), these fees may include membership dues, transaction fees, communication and technology fees, regulatory fees, and other fees, which will be equitably allocated among BSTX Participants, issuers, and other persons using the Exchange's facilities.[308] Proposed Rule 28010 (Regulatory Revenues) generally provides that any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities).

The Exchange believes that the proposed Rule 28000 Series (Fees) is consistent with Sections 6(b)(5) of the Exchange Act because these proposed rules are designed to protect investors and the public interest by setting forth the Exchange's authority to assess fees on BSTX Participants, which would be used to operate the BSTX System and surveil BSTX for compliance with applicable laws and rules. The Exchange believes that the proposed Rule 28000 Series (Fees) is also consistent with Sections 6(b)(3) of the Exchange Act [309] because the proposed Rules specify that all fees assessed by the Exchange shall be equitably allocated among BSTX Participants, issuers and other persons using the Exchange's facilities. The Exchange notes that the proposed Rule 28000 Series is substantially similar to the existing rules of another exchange.[310] The Exchange intends to submit a proposed rule change to the Commission setting forth the proposed fees relating to trading on BSTX in advance of the launch of BSTX.

IV. *Minor Rule Violation Plan*

The Exchange's disciplinary rules, including Exchange Rules applicable to ''minor rule violations,'' are set forth in the Rule 12000 Series of the Exchange's current Rules. Such disciplinary rules would apply to BSTX Participants and their associated persons pursuant to proposed Rule 24000. The Exchange's Minor Rule Violation Plan (''MRVP'') specifies those uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the provisions of Rule 19d-1(c)(1) under the Exchange Act [311] requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[312] The Exchange's MRVP includes the policies and procedures set forth in Exchange Rule 12140 (Imposition of Fines for Minor Violations).

The Exchange proposes to amend its MRVP and Rule 12140 to include proposed Rule 24010 (Penalty for Minor Rule Violations). The Rules included in proposed Rule 24010 as appropriate for disposition under the Exchange's MRVP are: (a) Rule 20000 (Maintenance, Retention and Furnishing of Records); (b) Rule 25070 (Audit Trail); (c) Rule 25210(a)(1) (Two-Sided Quotation Obligations of BSTX Market Makers); and Rule 25120 (Short Sales). The rules included in proposed Rule 12140 are the same as the rules included in the MRVPs of other exchanges.[313] Upon implementation of this proposal, the Exchange will include the enumerated trading rule violations in the Exchange's standard quarterly report of actions taken on minor rule violations under the MRVP. The quarterly report includes: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition. The Exchange's MRVP, as proposed to be amended, is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Exchange Act,[314] which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange. In addition, because amended Rule 12140 will offer procedural rights to a person sanctioned for a violation listed in proposed Rule 24010, the Exchange will provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Exchange Act.[315]

This proposal to include the rules listed in Rule 24010 in the Exchange's MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, as required by Rule 19d–1(c)(2) under the Exchange Act,[316] because it should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In requesting the proposed change to the MRVP, the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.

V. Amendments to Existing BOX Rules

Due to the new BSTX trading facility and the introduction of trading in security tokens, a type of equity security, on the Exchange, the Exchange proposes to amend those Exchange Rules that would apply to BSTX

[306] 15 U.S.C. 78f(b)(5).

[307] As described above, recording information to the Ethereum blockchain requires payment of gas by the individual or entity who desires to post such a record. The payment of gas will be performed by the Wallet Manager as a service provider to the Exchange carrying out the function of updating the Ethereum blockchain as an ancillary recordkeeping mechanism. The Exchange does not plan to charge a fee to cover the costs associated with gas and updating the Ethereum blockchain. The Exchange also notes that gas costs are typically negligible and anticipates actual monthly gas expenditures to be of a de minims amount.

[308] Proposed Rule 28000 further provides authority for the Exchange to charge BSTX Participants a regulatory transaction fee pursuant to Section 31 of the Exchange Act (15 U.S.C. 78ee) and that the Exchange will set forth fees pursuant to publicly available schedule of fees.

[309] 15 U.S.C. 78f(b)(5).

[310] *See* Cboe BZX Rules 15.1 and 15.2.

[311] 17 CFR 240.19d–1(c)(1).

[312] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered ''final'' for purposes of Section 19(d)(1) of the Exchange Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[313] *See e.g.,* IEX Rule 9.218 and Cboe BZX Rule 8.15.01.

[314] 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6).

[315] 15 U.S.C. 78f(b)(7).

[316] 17 CFR 240.19d–1(c)(2).

Participants, but that currently only contemplate trading in options. Therefore, the Exchange is seeking to amend the following Exchange Rules, each of which is set forth in Exhibit 5B [sic]:

• *Rule 100(a) (Definitions) ''Options Participant'' or ''Participant'':* The Exchange proposes to change the definition of ''Options Participant or Participant'' to ''Participant'' to reflect Options Participants and BSTX Participants and to amend the definition as follows: ''The term 'Participant' means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange and includes an 'Options Participant' and 'BSTX Participant.'''

• *Rule 100(a) (Definitions) ''Options Participant'':* The Exchange proposes to add a definition of ''Options Participant'' that would be defined as follows: ''The term 'Options Participant' is a Participant registered with the Exchange for purposes of participating in options trading on the Exchange.'' [317]

• *Rule 2020(g)(2) (Participant Eligibility and Registration):* The Exchange proposes to delete subsection (g)(2) and replace it with the following: ''(2) persons associated with a Participant whose functions are related solely and exclusively to transactions in municipal securities; (3) persons associated with a Participant whose functions are related solely and exclusively to transactions in commodities; (4) persons associated with a Participant whose functions are related solely and exclusively to transactions in securities futures, provided that any such person is appropriately registered with a registered futures association; and (5) persons associated with a Participant who are restricted from accessing the Exchange and that do not engage in the securities business of the Participant relating to activity that occurs on the Exchange.'' [318]

• *Rule 2060 (Revocation of Participant Status or Association with a Participant):* The Exchange proposes to amend Rule 2060 to refer to ''securities transactions'' rather than ''options securities transactions.''

• *Rule 3180(a) (Mandatory Systems Testing):* The Exchange proposes to amend subsection (a)(1) of Rule 3180 to also include BSTX Participants, in addition to the categories of Market Makers and OFPs.

• *Rule 7130(a)(2)(v) Execution and Price/Time Priority:* The Exchange proposes to update the cross reference to Rule 100(a)(58) to refer to Rule 100(a)(59), which defines the term ''Request for Quote'' or ''RFQ'' under the Rules after the proposed renumbering.

• *Rule 7150(a)(2) (Price Improvement Period):* The Exchange proposes to amend Rule 7150(a)(2) to update the cross reference to the definition of a Professional in Rule 100(a)(51) to instead refer to Rule 100(a)(52), which is where that term would be defined in the Rules after the proposed renumbering.

• *Rule 7230 (Limitation of Liability):* The Exchange proposes to amend the references in Rule 7230 to ''Options Participants'' to simply ''Participants.''

• *Rule 7245(a)(4) (Complex Order Price Improve Period):* The Exchange proposes to update the cross reference to Rule 100(a)(51) to refer to Rule 100(a)(52), which defines the term ''Professional'' after the proposed renumbering.

• *IM–8050–3:* The Exchange proposes to update the cross reference to Rule 100(a)(55) to refer to Rule 100(a)(56), which defines the term ''quote'' or ''quotation'' after the proposed renumbering.[319]

• *Rule 11010(a) ''Investigation Following Suspension'':* The Exchange proposes to amend subsection (a) of Rule 11010 to remove the reference to ''in BOX options contracts'' and to modify the word ''position'' with the word ''security'' as follows: ''. . . the amount owing to each and a complete list of each open long and short security position maintained by the Participant and each of his or its Customers.''

• *Rule 11030 (Failure to Obtain Reinstatement):* The Exchange proposes to amend Rule 11030 to replace the reference to ''Options Participant'' to simply ''Participant.''

• *Rule 12030(a)(1) (Letters of Consent):* The Exchange proposes to amend subsection (a)(1) of Rule 12030 to replace the reference to ''Options Participant'' to simply ''Participant.''

• *Rule 12140 (Imposition of Fines for Minor Rule Violations):* The Exchange proposes to amend Rule 12140 to replace references to ''Options Participant'' to simply ''Participant.'' In addition, the Exchange proposes to add paragraph (f) to Rule 12140, to incorporate the aforementioned modifications to the Exchange's MRVP. New paragraph (f) of Rule 12140 would provide: ''(f) Transactions on BSTX. Rules and penalties relating to trading on BSTX that are set forth in Rule 24010 (Penalty for Minor Rule Violations).''

The Exchange believes that the proposed amendments to the definitions set forth in Rule 100 are consistent with Section 6(b)(5) of the Exchange Act [320] because they protect investors and the public interest by setting forth clear definitions that help BOX and BSTX Participants understand and apply Exchange Rules. Without defining terms used in the Exchange Rules clearly, market participants could be confused as to the application of certain rules, which could cause harm to investors.

The Exchange believes that the proposed amendments to the other Exchange Rules detailed above are consistent with Section 6(b)(5) of the Exchange Act [321] because the proposed rule change is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. The Exchange believes that the proposed rule change enables the Exchange to continue to enforce the Exchange's rules. The Exchange notes that none of the proposed changes to the current Exchange rulebook would materially alter the application of any of those Rules, other than by extending them to apply to BSTX Participants and trading on the BSTX System. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national exchange system. Further, the Exchange believes that, by

[317] In addition, as a result of these new defined terms, the Exchange proposes to renumber definitions set forth in Rule 100(a) to keep the definitions in alphabetically order.

[318] In addition to revising Rule 2020(g)(2) to broaden it to include securities activities beyond just options trading, the Exchange proposes to add greater specificity to define persons that are exempt from registration, consistent with the approach adopted by other exchanges. *See e.g.,* IEX Rule 2.160(m).

[319] Current Exchange Rule 100(a)(55) defines the term ''Quarterly Options Series,'' but the intended reference in IM–8050–3 was the definition of ''quote'' or ''quotation.'' The term ''quote'' or ''quotation'' is currently defined in Rule 100(a)(56), but is proposed to be renumbered as Rule 100(a)(57).

[320] 15 U.S.C. 78f(b)(5).

[321] *Id.*

ensuring the rulebook accurately reflects the intention of the Exchange's rules, the proposed rule change reduces potential investor or market participant confusion.

VI. Forms to Be Used in Connection with BSTX

In connection with the operation of BSTX, the Exchange proposes to uses a series of new forms to facilitate becoming a BSTX Participant and for issuers to list their security tokens. These forms have been attached hereto as Exhibits 3A–3N [sic]. Each are described below.

A. BSTX Participant Application

Pursuant to proposed Rule 18000(b), in order to become a BSTX Participant, an applicant must complete a BSTX Participant Application, which is attached as Exhibit 3A [sic]. The proposed BSTX Participant Application requires the applicant to provide certain basic information such as identifying the applicants name and contact information, Designated Examining Authority, organizational structure, and Central Registration Depository (''CRD'') number. The BSTX Participant Application also requires applicants to provide additional information including certain beneficial ownership information, the applicant's current Form BD, an organization chart, a description of how the applicant receives orders from customers, how it will send orders to BSTX, and a copy of written supervisory procedures and information barrier procedures.

In addition, the BSTX Participant Application allows applicants to indicate whether they are applying to be a BSTX Market Maker or a Designated Market Maker. Applicants wishing to become a BSTX Market Maker or Designated Market Maker must provide certain additional information including a list of each of the applicant's trading representatives (including a copy of each representative's Form U4), a copy of the applicant's written supervisory procedures relating to market making, a description of the source and amount of the applicant's capital, and information regarding the applicant's other business activities and information barrier procedures.

B. BSTX Participant Agreement

Pursuant to Exchange Rule 18000(b), to transact business on BSTX, prospective BSTX Participants must complete a BSTX Participant Agreement. The BSTX Participant Agreement is attached as Exhibit 3B [sic]. The BSTX Participant Agreement provides that a BSTX Participant must agree with the Exchange as follows:

1. Participant agrees to abide by the Rules of the Exchange and applicable bylaws, as amended from time to time, and all circulars, notices, interpretations, directives and/or decisions adopted by the Exchange.

2. Participant acknowledges that BSTX Participant and its associated persons are subject to the oversight and jurisdiction of the Exchange.

3. Participant authorizes the Exchange to make available to any governmental agency or SRO any information it may have concerning the BSTX Participant or its associated persons, and releases the Exchange from any and all liability in furnishing such information.

4. Participant acknowledges its obligation to update any and all information contained in any part of the BSTX Participant's application, including termination of membership with another SRO.

These provisions of the BSTX Participant Agreement and others therein are generally designed to reflect the Exchange's SRO obligations to regulate BSTX Participants. Accordingly, these provisions contractually bind a BSTX Participant to comply with Exchange rules, acknowledge the Exchange's oversight and jurisdiction, authorize the Exchange to disclose information regarding the Participant to any governmental agency or SRO and acknowledge the obligation to update any and all Application contained in the Participant's application.

C. BSTX User Agreement

In order to become a BSTX Participant, prospective participants must also execute a BSTX User Agreement pursuant to proposed Rule 18000(b). The BSTX User Agreement, attached as Exhibit 3C [sic], includes provisions related to the term of the agreement, compliance with exchange rules, right and obligations under the agreement, changes to BSTX, proprietary rights under the agreement, use of information received under the relationship, disclaimer of warranty, limitation of liability, indemnification, termination and assignment. The information is necessary to outline the rights and obligations of the prospective Participant and the Exchange under the terms of the agreement. Both the BSTX Participant Agreement and BSTX User Agreement will be available on the Exchange's website (boxoptions.com).

D. BSTX Security Token Market Designated Market Maker Selection Form

In accordance with proposed Rule 25230(b)(1), BSTX will maintain the BSTX Security Token Designated Market Maker Selection Form, which is attached as Exhibit 3D [sic]. The issuer may select its DMM from among a pool of DMMs eligible to participate in the process. Within two business days of the issuer selecting its DMM, it will use the BSTX Security Token Market Designated Market Maker Selection form to notify BSTX of the selection. The form must be signed by a duly authorized officer as specified in proposed Rule 25230(b)(1).

E. Clearing Authorization Forms

In accordance with proposed Rule 18010, BSTX Participants that are not members/participants of a registered clearing agency must clear their transactions through a BSTX Participant that is a member of a registered clearing agency. A BSTX Participant clearing through another BSTX Participant would do so using, as applicable, either the BSTX Clearing Authorization (non-Market Maker) form (attached as Exhibit 3E [sic]) or the BSTX Participant Clearing Authorization (Market Maker) form (attached as Exhibit 3F [sic]). Each form would be maintained by BSTX and each form specifies that the BSTX Participant clearing on behalf of the other BSTX Participant accepts financial responsibility for all transactions on BSTX that are made by the BSTX Participant designated on the form.

F. BSTX Listing Applications

The Exchange proposes to specify the required forms of listing application, listing agreement and other documentation that listing applicants and listed companies must execute or complete (as applicable) as a prerequisite for initial and ongoing listing on the Exchange, as applicable (collectively, ''listing documentation''). As proposed, the listing forms are substantially similar to those currently in use by NYSE American LLC, with certain differences to account for the trading of security tokens. All listing documentation will be available on the Exchange's website (boxoptions.com). Each of the listing documents form a duly authorized representative of the company must sign an affirmation that the information provided is true and correct as of the date the form was signed. In the event that in the future the Exchange makes any substantive changes (including changes to the rights, duties, or obligations of a listed

company or listing applicant or the Exchange, or that would otherwise require a rule filing) to such documents, it will submit a rule filing in accordance with Rule 19b–4.[322]

Pursuant to Rule 26130 and 26300 of the Exchange Rules, a company must file and execute the BSTX Original Listing Application (attached as Exhibit 3G [sic]) or the BSTX Additional Listing Application (attached as Exhibit 3H [sic]) to apply for the listing of security tokens on BSTX.[323] The BSTX Original Listing Application provides information necessary, and in accordance with Section 12(b) of the Exchange Act,[324] for Exchange regulatory staff to conduct a due diligence review of a company to determine if it qualifies for listing on the Exchange. The BSTX Additional Listing Application requires certain further information for an additional listing of security tokens. Relevant factors regarding the company and securities to be listed would determine the type of information required. The following describes each category and use of application information:

1. Corporate information regarding the issuer of the security to be listed, including company name, address, contact information, Central Index Key Code (CIK), SEC File Number, state and country of incorporation, date of incorporation, whether the company is a foreign private issuer, website address, SIC Code, CUSIP number of the security being listed and the date of fiscal year end. This information is required of all applicants and is necessary in order for the Exchange's regulatory staff to collect basic company information for recordkeeping and due diligence purposes, including review of information contained in the company's SEC filings.

2. For original listing applications only, corporate contact information including the company's Chief Executive Officer, Chief Financial Officer, Corporate Secretary, General Counsel and Investor Relations Officer. This information is required of all initial applicants and is necessary in order for the Exchange's regulatory staff to collect current company contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

3. For original listing applications only, offering and security information regarding an offering, including the type of offering, a description of the issue, par value, number of security tokens outstanding or offered, total security tokens unissued, but reserved for issuance, date authorized, purpose of security tokens to be issued, number of security tokens authorized, and information relating to payment of dividends. This information is required of all applicants listing security tokens on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

4. For original listing applications only, information regarding the company's transfer agent. Transfer agent information is required for all applicants. This information is necessary in order for the Exchange's regulatory staff to collect current contact information for such company transfer agent for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

5. For original listing applications only, contact information for the outside counsel with respect to the listing application, if any. This information is necessary in order for the Exchange's regulatory staff to collect applicable contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant and assess compliance with Exchange Rule 26130.

6. For original listing applications only, a description of any security preferences. This information is necessary to determine whether the Applicant issuer has any existing class of common stock or equity securities entitling the holders to differential voting rights, dividend payments, or other preferences.

7. For original listing applications only, type of security token listing, including the type of transaction (initial public offering of a security token, merger, spin-off, follow on offering, reorganization, exchange offer or conversion) and other details related to the transaction, including the name and contact information for the investment banker/financial advisor contacts. This information is necessary in order for the Exchange's regulatory staff to collect information for such company for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

8. For original listing applications only, exchange requirements for listing consideration. This section notes that to be considered for listing, the Applicant Issuer must meet the Exchange's minimum listing requirements, that the Exchange has broad discretion regarding the listing of any security token and may deny listing or apply additional or more stringent criteria based on any event, condition or circumstance that makes the listing of an Applicant Issuer's security token inadvisable or unwarranted in the opinion of the Exchange. The section also notes that even if an Applicant Issuer meets the Exchange's listing standards for listing on the BSTX Security Token Market, it does not necessarily mean that its application will be approved. This information is necessary in order for the Exchange's regulatory staff to assess whether an Applicant Issuer is qualified for listing.

9. For original listing applications only, regulatory review information, including a certification that no officer, board member or non-institutional shareholder with greater than 10% ownership of the company has been convicted of a felony or misdemeanor relating to financial issues during the past ten years or a detailed description of any such matters. This section also notes that the Exchange will review background materials available to it regarding the aforementioned individuals as part of the eligibility review process. This regulatory review information is necessary in order for the Exchange's regulatory staff to assess whether there are regulatory matters related to the company that render it unqualified for listing.

10. For original listing applications only, supporting documentation required prior to listing approval includes a listing agreement, corporate governance affirmation, security token design affirmation, listing application checklist and underwriter's letter. This documentation is necessary in order to support the Exchange's regulatory staff listing qualification review (corporate governance affirmation, listing application checklist and underwriter's letter) and to effectuate the listed company's agreement to the terms of listing (listing agreement).

11. For additional listing applications only, transaction details, including the purpose of the issuance, total security tokens, date of board authorization, date of shareholder authorization and anticipated date of issuance. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order for

[322] The Exchange will not submit a rule filing if the changes made to a document are solely typographical or stylistic in nature.

[323] Pursuant to proposed Exchange Rule 26130, an applicant seeking the initial listing of its security token must also provide a legal opinion that the applicant's security token is a security under applicable United States securities laws.

[324] 15 U.S.C. 78l(b).

the Exchange's regulatory staff to collect basic information about the offering.

12. For additional listing applications only, insider participation and future potential issuances, including whether any director, officer or principal shareholder of the company has a direct or indirect interest in the transaction, and if the transaction potentially requires the company to issue any security tokens in the future above the amount they are currently applying for. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

13. For additional listing applications only, information for a technical original listing, including reverse security token splits and changes in states of incorporation. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

14. For additional listing applications only, information for a forward security token split or security token dividend, including forward security token split ratios and information related to security token dividends. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order to determine the rights associated with the security tokens.

15. For additional listing applications only, relevant company documents. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review.

16. For additional listing applications only, reconciliation for technical original listing, including security tokens issued and outstanding after the technical original event, listed reserves previously approved for listing, and unlisted reserves not yet approved by the Exchange. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review and to obtain all of the information relevant to the offering.

G. Checklist for Original Listing Application

In order to assist issuers seeking to list its security tokens on BSTX, the Exchange has provided a checklist for issuers to seeking to file an original listing application with BSTX. The BSTX Listing Application Checklist, attached as Exhibit 3I [sic], provides that issuers must provide BSTX with a listing application, listing agreement, corporate governance affirmation, BSTX security token design affirmation, underwriter's letter (for an initial public offering of a security token only) and relevant SEC filings (*e.g.,* 8–A, 10, 40–F, 20–F). Each of the above referenced forms are fully described herein. The checklist is necessary to assist issuers and the Exchange regulatory staff in assessing the completion of the relevant documents.

H. BSTX Security Token Market Listing Agreement

Pursuant to proposed Exchange Rule 26132, to apply for listing on the Exchange, a company must execute the BSTX Security Token Market Listing Agreement (the ''Listing Agreement''), which is attached as Exhibit 3J [sic]. Pursuant to the proposed Listing Agreement, a company agrees with the Exchange as follows:

1. Company certifies that it will comply with all Exchange rules, policies, and procedures that apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the Company's organization documents would allow for a different result.

2. Company shall notify the Exchange at least 20 days in advance of any change in the form or nature of any listed security tokens or in the rights, benefits, and privileges of the holders of such security tokens.

3. Company understands that the Exchange may remove its security tokens from listing on the BSTX Security Token Market, pursuant to applicable procedures, if it fails to meet one or more requirements of Paragraphs 1 and 2 of this agreement.

4. In order to publicize the Company's listing on the BSTX Security Token Market, the Company authorizes the Exchange to use the Company's corporate logos, website address, trade names, and trade/service marks in order to convey quotation information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the Exchange with the Company's current corporate logos, website address, trade names, and trade/service marks and with any subsequent changes to those logos, trade names and marks. The Listing Agreement further requires that the Company specify a telephone number to which questions regarding logo usage should be directed.

5. Company indemnifies the Exchange and holds it harmless from any third-party rights and/or claims arising out of use by the Exchange or, any affiliate or facility of the Exchange (''Corporations'') of the Company's corporate logos, website address, trade names, trade/service marks, and/or the trading symbol used by the Company.

6. Company warrants and represents that the trading symbol to be used by the Company does not violate any trade/service mark, trade name, or other intellectual property right of any third party. The Company's trading symbol is provided to the Company for the limited purpose of identifying the Company's security in authorized quotation and trading systems. The Exchange reserves the right to change the Company's trading symbol at the Exchange's discretion at any time.

7. Company agrees to furnish to the Exchange on demand such information concerning the Company as the Exchange may reasonably request.

8. Company agrees to pay when due all fees associated with its listing of security tokens on the BSTX Security Token Market, in accordance with the Exchange's rules.

9. Company agrees to file all required periodic financial reports with the SEC, including annual reports and, where applicable, quarterly or semi-annual reports, by the due dates established by the SEC.

The various provisions of the Listing Agreement are designed to accomplish several objectives. First, clauses 1–3 and 6–8 reflect the Exchange's SRO obligations to assure that only listed companies that are compliant with applicable Exchange rules may remain listed. Thus, these provisions contractually bind a listed company to comply with Exchange rules, provide notification of any corporate action or other event that will cause the company to cease to be in compliance with Exchange listing requirements, evidence the company's understanding that it may be removed from listing (subject to applicable procedures) if it fails to be in compliance or notify the Exchange of any event of noncompliance, furnish the Exchange with requested information on demand, pay all fees due and file all required periodic reports with the SEC. Clauses four and five contain standard legal representations and agreements from the listed company to the Exchange regarding use of its logo, trade names, trade/service markets, and trading symbols as well as potential legal claims against the Exchange in connection thereto.

I. BSTX Security Token Market Company Corporate Governance Affirmation

In accordance with the proposed Rule 26800 Series, companies listed on BSTX would be required to comply with certain corporate governance standards, relating to, for example, audit committees, director nominations, executive compensation, board composition, and executive sessions. In certain circumstances the corporate governance standards that apply vary depending on the nature of the company. In addition, there are phase-in periods and exemptions available to certain types of companies. The proposed BSTX Security Token Market Corporate Governance Affirmation, attached as Exhibit 3K [sic], enables a company to confirm to the Exchange that it is in compliance with the applicable standards, and specify any applicable phase-ins or exemptions. Companies are required to submit a BSTX Security Token Market Corporate Governance Affirmation upon initial listing on the Exchange and thereafter when an event occurs that makes an existing form inaccurate. This BSTX Security Token Market Corporate Governance Affirmation assists the Exchange regulatory staff in monitoring listed company compliance with the corporate governance requirements.

J. Security Token Design Affirmation for the BSTX Security Token Market

In accordance with proposed Rule 26138, in order for a security token to be admitted to dealings on BSTX, such security token must follow the BSTX Security Token Protocol. The BSTX Security Token Protocol will be provided via Regulatory Circular and posted on the Exchange's website. The Exchange has included an overview of the BSTX Security Token Protocol as Exhibit 3N [sic]. The Security Token Design Affirmation, attached as Exhibit 3L [sic], enables a company to affirm to the Exchange that it is in compliance with the applicable standards. Companies are required to submit a Security Token Design Affirmation upon initial listing on the Exchange. This Security Token Design Affirmation assists the Exchange's staff in verifying that an issuer's security tokens meet the requirements of the BXTS security token protocol.

K. Sample Underwriter's Letter

In accordance with proposed Rule 26101, an initial public offering of a security token must meet certain listing requirements. The Exchange seeks to require the issuer's underwriter to execute a letter setting forth the details of the offering, including the name of the offering and why the offering meets the criteria of the BSTX rules. This information, set forth in the proposed Sample Underwriter's Letter and attached as Exhibit 3M [sic], is necessary to assist the Exchange's regulatory staff in assessing the offering's compliance with BSTX listing standards for an initial public offering of a security token.

L. BSTX Security Token Protocol Summary Overview

BSTX Rule 26138 requires that a BSTX listed company's security tokens must comply with the BSTX Security Token Protocol to trade on BSTX. Exhibit 3N [sic] provides fundamental information related to the Ethereum blockchain and background information on the functions, configurations, and events of the Asset Smart Contract of the BSTX Security Token Protocol. Exhibit 3N [sic] also provides information on the Registry and Compliance features of the BSTX Security Token Protocol.

VII. Regulation

In connection with the operation of BSTX, the Exchange will leverage many of the structures it established to operate a national securities exchange in compliance with Section 6 of the Exchange Act.[325] Specifically, the Exchange will extend its Regulatory Services Agreement with FINRA to cover BSTX Participants and trading on the BSTX System. This Regulatory Services Agreement will govern many aspects of the regulation and discipline of BSTX Participants, just as it does for options regulation. The Exchange will perform security token listing regulation, authorize BSTX Participants to trade on the BSTX System, and conduct surveillance of security token trading on the BSTX System.

Section 17(d) of the Exchange Act[326] and the related Exchange Act rules permit SROs to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d–1,[327] the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory oversight. Because Exchange Participants, including BSTX Participants, also must be members of at least one other SRO, the Exchange would generally not be designated as the DEA for any of its members.[328]

Rule 17d–2 under the Exchange Act[329] permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO (''common members''). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO. The Exchange plans to join the Plan for the Allocation of Regulatory Responsibilities Regarding Regulation NMS.[330] The Exchange may choose to join certain Rule 17d–2 agreements such as the agreement allocating responsibility for insider trading rules.[331]

For those regulatory responsibilities that fall outside the scope of any Rule 17d–2 agreements that the Exchange may join, subject to Commission approval, the Exchange will retain full regulatory responsibility under the Exchange Act. However, as noted, the Exchange will extend its existing Regulatory Services Agreement with FINRA to provide that FINRA personnel will operate as agents for the Exchange in performing certain regulatory functions with respect to BSTX. As is the case with the Exchange's options trading platform, the Exchange will supervise FINRA and continue to bear ultimate regulatory responsibility for BSTX. Consistent with the Exchange's existing regulatory structure, the Exchange's Chief Regulatory Officer shall have general supervision of the regulatory operations of BSTX, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to BSTX. Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to BSTX. Finally, as it does with options, the Exchange will

[325] 15 U.S.C. 78f.

[326] 15 U.S.C. 78q(d).

[327] 17 CFR 240.17d–1.

[328] *See* Exchange Rule 2020(a) (requiring that a Participant be a member of another registered national securities exchange or association).

[329] 17 CFR 240.17d–2.

[330] Exchange Act Release No. 85046 (February 4, 2019), 84 FR 2643 (February 7, 2019).

[331] Exchange Act Release No. 84392 (October 10, 2018), 83 FR 52243 (October 16, 2018).

perform automated surveillance of trading on BSTX for the purpose of maintaining a fair and orderly market at all times and monitor BSTX to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA.

In addition, the Exchange will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering the Exchange's process for identifying and remediating ''clearly erroneous trades'' pursuant to proposed Rule 25110. The Exchange shall also oversee the onboarding and application process for BSTX Participants as well as compliance by issuers of security tokens with the applicable initial and continuing listing requirements, including compliance with the BSTX Protocol.[332]

VIII. NMS Plans

The Exchange intends to join the Order Execution Quality Disclosure Plan, the Plan to Address Extraordinary Market Volatility, the Plan Governing the Process of Selecting a Plan Processor, and the applicable plans for consolidation and dissemination of market data. The Exchange is already a participant in the NMS plan related to the Consolidated Audit Trail. Consistent with Section 6(b)(5) of the Exchange Act,[333] the Exchange believes that joining the same set of NMS plans that all other national securities exchanges that trade equities must join fosters cooperation and coordination with other national securities exchanges and other market participants engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act,[334] in general and with Section 6(b)(5) of the Exchange Act,[335] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange.

The Exchange believes that BSTX will benefit individual investors, other market participants, and the equities market generally. The Exchange proposes to establish BSTX as a facility of the Exchange that would trade equities in a similar manner to how equities presently trade on other exchanges. However, BSTX would also require reporting of end-of-day security token balances to the Exchange in order to facilitate the use of blockchain technology as an ancillary recordkeeping mechanism. The Exchange believes that using blockchain technology as an ancillary recordkeeping mechanism that operates in parallel with the traditional trading, recordkeeping, and clearance and settlement structures that market participants are familiar with is an important first step toward exploring the potential uses and benefits of blockchain technology in securities transactions. The entry of an innovative competitor such as BSTX seeking to implement a measured introduction of blockchain technology in connection with the trading of equity securities may promote competition by encouraging other market participants to find ways of using blockchain technology in connection with securities transactions. The proposed regulation of BSTX and BSTX Participants, as well as the execution of security tokens using a price-time priority model and the clearance and settlement of security tokens will all operate in a manner substantially similar to existing equities exchanges. In this way, the Exchange believes that BSTX provides a robust regulatory structure that protects investors and the public interest while introducing the use of blockchain technology as an ancillary recordkeeping mechanism in connection with listed equity securities.

In order to implement the use of blockchain technology as an ancillary recordkeeping mechanism, the Exchange proposes two requirements pursuant to proposed Rule 17020 to: (i) Obtain a wallet address through BSTX to which end-of-day security token balances may be recorded to the Ethereum blockchain as an ancillary recordkeeping mechanism; and (ii) requiring BSTX Participants to report their end-of-day security token balances to BSTX to facilitate updates to the Ethereum blockchain as an ancillary recordkeeping mechanism to reflect changes in ownership as a result of trading security tokens.

The Exchange believes that the proposed address whitelisting and end-of-day security token balance reporting requirement is consistent with the Exchange Act, and Section 6(b)(5)[336] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in security tokens and does not unfairly discriminate among BSTX Participants, all of whom are subject to the same wallet address and end-of-day reporting requirement. The requirement to obtain a wallet address is a one-time, minimal obligation similar to obtaining an MPID or other market participant identifier that is applicable to each BSTX Participant. The end-of-day security token balance reporting obligation would be used to update the Ethereum blockchain as an ancillary recordkeeping mechanism, which the Exchange believes would be a first step in demonstrating the potential use of blockchain technology in connection with securities transactions. The Exchange does not propose to charge a fee in connection with either of these requirements. As discussed in greater detail above,[337] the Exchange believes that these proposed requirements are consistent with the Exchange Act as they are necessary to facilitate the blockchain-based ancillary recordkeeping mechanism and are consistent with authority that the Commission has already approved for exchanges regarding furnishment of records by members of the exchange. The Exchange believes that blockchain technology offers potential benefits to investors, and while such benefits may not be immediately evident while the blockchain is used only as ancillary recordkeeping mechanism, the Exchange believes that a measured and gradual introduction of blockchain technology is a useful way to explore these potential benefits that is consistent with the protection of investors and the public interest.

The Exchange also believes that the proposed rule change is consistent with Section 11A of Exchange Act which sets forth the Commission's authority to establish and maintain a national

[332] *See* proposed Exchange Rules 26230 (Security Token Architecture Audit) and 26138 (BSTX Security Token Protocol).

[333] 15 U.S.C. 78f(b)(5).

[334] 15 U.S.C. 78a *et seq.*

[335] 15 U.S.C. 78f(b)(5).

[336] 15 U.S.C. 78f(b)(5).

[337] *See supra* Parts II.G. through J for further discussion regarding why these proposed requirements are consistent with the Exchange Act.

market system.[338] In setting forth the Commission's authority to establish a national market system, Congress expressly contemplated that the national market system ''may include use of subsystems for particular types of securities with unique trading characteristics.'' [339] The Exchange has proposed here a type of security (*i.e.,* security tokens) that trade, clear, and settle entirely within the scope and using the same processes as the existing national market system, but that pursuant to the proposed BSTX Rules would have the unique characteristic of an end-of-day security token balance reporting process as an ancillary recordkeeping function using the ''subsystem'' of blockchain technology.[340] The clear intent of Congress was to provide for a national market system that could include such ''securities with unique trading characteristics.'' For these reasons the Exchange believes that the proposed rule change is consistent with Section 11A of the Exchange Act.

Finally, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Exchange Act because the BSTX Rules would not be designed to regulate by virtue of any authority conferred by the Exchange Act matters that are not related to the purposes of the Exchange Act or the administration of the Exchange. Congress adopted Section 2 of the Exchange Act to set forth the reasons for the necessity of the Exchange Act, which expressly include that ''transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are effected with a national public interest which makes it necessary to provide for regulation and control of such transactions *and of practices and matters related thereto,* including . . . *to require appropriate reports*[.]'' [341] [emphasis added.] The Exchange Act and rules of self-regulatory organizations, including national securities exchanges and national securities associations, include reporting requirements that regulate and control matters and practices related to securities transactions conducted on securities exchanges and in the over-the-counter markets. For example, all of the U.S. options exchanges and FINRA maintain rules approved by the Commission that require their member broker-dealers to prepare and submit daily large options position reports to a third-party administrator that maintains a large options position reporting system.[342] These large option positions reports are not reports regarding the trading or clearance and settlement of securities transactions themselves but, instead, are reports that are related to end-of-day positions of the members of the options exchange and/or FINRA in a particular class of standardized or over-the-counter securities option. As described above, the proposed BSTX Rules regarding the ancillary recordkeeping process would similarly require BSTX Participants to provide reports regarding their end-of-day positions in security tokens. Also as described above, the Exchange believes that the requirements regarding the ancillary recordkeeping process will promote the use of the functionality of smart contracts and their ability to allocate and re-allocate security token balances across multiple addresses in connection with end-of-day security token position balance information of BSTX Participants such that the requirements will allow market participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that parallels current equity market infrastructure and thereby advances and protects the public's interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.[343]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange operates in an intensely competitive global marketplace for transaction services. Relying on its array of services and benefits, the Exchange competes for the privilege of providing market services to broker-dealers. The Exchange's ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to the largest number of investors, as measured by speed, likelihood and costs of executions, as well as spreads, fairness, and transparency.

The Exchange believes that the primary areas where the proposed rule change has the potential to result in a burden on competition are with regard to the terms on which: (1) Issuers may list their securities for trading, (2) market participants that may access the Exchange and use its facilities, (3) security token transactions may be cleared and settled, (4) security token transactions occurring OTC, and (5) security token transactions occurring on other exchanges that might extend unlisted trading privileges to security tokens.

Regarding considerations (1) and (2), and as described in detail in Item 3 above, the BSTX Rules are drawn substantially from the existing rules of other exchanges that the Commission has already found to be consistent with the Exchange Act, including regarding whether they impose any burden on competition that is not necessary or appropriate in furtherance of its purposes. For example, the BSTX Listing Rules in the 26000 and 27000 Series that affect issuers and their ability to list security tokens for trading are based substantially on the current rules of NYSE American. The Exchange has proposed that issuers would be required to create and maintain a security token compliant with the BSTX Protocol. The Exchange recognizes that these requirements are additional to those of other exchanges. However, the Exchange does not believe this poses a burden on competition because issuers are free to choose to list on other exchanges without such requirements. The Exchange believes that these requirements may attract issuers that are interested in exploring the potentials of blockchain technology. Additionally, the BSTX Rules regarding membership and access to and use of the facilities of BSTX are also substantially based on existing exchange rules. Specifically, the relevant BSTX Rules are as follows: participation on BSTX (Rule 18000 Series); business conduct for BSTX participants (Rule 19000 Series); financial and operational rules for BSTX participants (Rule 20000 Series);

[338] 15 U.S.C. 78k–1.

[339] 15 U.S.C. 78k–1(a)(2).

[340] The Exchange notes that to the extent the Commission believes that the ancillary recordkeeping process regarding security tokens under the proposed BSTX Rules is not a ''unique trading characteristic'' of security tokens for purposes of Section 11A of the Exchange Act insofar as it does not directly relate to ''trading'' of security tokens, then there would not be any concern with respect to security tokens regarding consistency with Section 11A. In other words, either the ancillary recordkeeping process is a unique trading characteristic of security tokens as explicitly contemplated by Congress as part of the national market system or it is not a unique trading characteristic of security tokens because they will trade, clear, and settle the same as all other NMS stock. In the latter case, security tokens would be consistent with Section 11A just like all other NMS stock.

[341] 15 U.S.C. 78(b).

[342] *See e.g.,* FINRA Rule 2360(b)(5) and Cboe Rule 8.43.

[343] Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–75, at 8 (1975) (expressing Congress' finding that new data processing and communications systems create the opportunity for more efficient and effective markets).

supervision (Rule 21000 Series); miscellaneous provisions (Rule 22000 Series); trading practices (Rule 23000 Series); discipline and summary suspension (Rule 24000 Series); trading (Rule 25000 Series); market making (Rule 25200 Series); and dues, fees, assessments, and other charges (Rule 28000 Series). As described in detail in Item 3, these rules are substantially based on analogous rules of the following exchanges, as applicable: BOX; Investors Exchange LLC; Cboe BZX Exchange, Inc.; The Nasdaq Stock Market LLC; and NYSE American LLC. The address whitelisting and end-of-day security token balance reporting requirements to facilitate the use of the Ethereum blockchain as an ancillary recordkeeping mechanism in proposed Rule 17020 would apply equally to all BSTX Participants and therefore would not impose any different burden on one BSTX Participant compared to another. The Exchange believes that these requirements would impose only a minimal burden on BSTX Participants that is unlikely to materially impact the competitive balance among investors and traders of security tokens.

Regarding consideration (3) above and the manner in which security token transactions may be cleared and settled, the Exchange proposes to clear and settle security tokens in accordance with the rules, policies and procedures of a registered clearing agency, similar to how the Exchange believes other exchange-listed equity securities are cleared and settled today. Therefore, BSTX's rules do not impose any burden on competition regarding the manner in which trades may be cleared or settled because market participants would be able to clear and settle security token transactions insubstantially the same manner as they already clear and settle transactions in other types of NMS stock.

With respect to consideration (4) above, as previously noted, market participants would not be limited in their ability to trade security tokens OTC because security tokens could be traded OTC and would be cleared and settled in the same manner as other NMS stocks through the facilities of a registered clearing agency. Thus, the Exchange does not believe that its proposal will place any new burden on competition with respect to OTC trading, given that trading, clearance and settlement will take place in the same manner as for other NMS stocks. The Exchange acknowledges that BSTX Participants would be subject to additional requirements (*i.e.,* acquiring a wallet address and end-of-day security token balance reporting pursuant to proposed Rule 17020) that are not required of non-BSTX Participants trading security tokens. The Exchange believes that these additional requirements impose only a minimal burden on BSTX Participants and should not have any material or undue burden or impact on competition between BSTX Participants and non-BSTX Participants. Acquiring a wallet address is a one-time burden that can be readily addressed by contacting the Exchange, and the end-of-day security token balance reporting requests only that the BSTX Participant, either directly or through its carrying firm, report information that it (or its carrying firm) already has available to it from DTC on a daily basis regarding the balance of security tokens held.

Finally, with respect to consideration (5) noted above regarding other exchanges extending unlisted trading privileges to security tokens, the Exchange does not believe that the proposed Rules would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Security tokens would trade, clear, and settle in the same manner as other NMS stock. Accordingly, other exchanges would be able to extend unlisted trading privileges to security tokens in accordance with Commission rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2020–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2020–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2020–14 and should be submitted on or before June 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[344]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–11651 Filed 5–29–20; 8:45 am]

BILLING CODE 8011–01–P

[344] 17 CFR 200.30–3(a)(12).

FEDERAL REGISTER

Vol. 85 Monday,

No. 105 June 1, 2020

Part V

Department of Transportation

49 CFR Part 29

Tribal Transportation Self-Governance Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 29

[Docket No. DOT–OST–2018–0104]

RIN 2105–AE71

Tribal Transportation Self-Governance Program

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (DOT or Department) is issuing this final rule to establish and implement the Tribal Transportation Self-Governance Program (TTSGP or Program) pursuant to section 1121 of the Fixing America's Surface Transportation (FAST) Act. Representatives of Tribes and the Federal Government negotiated the rule in accordance with the Negotiated Rulemaking Act. The Program will afford Tribes participating in the Program greater control and decision-making authority over their use of certain DOT funding for which they are eligible recipients while reducing administrative burdens. These regulations include eligibility criteria, describe the contents of and process for negotiating self-governance compacts and funding agreements with the Department, and set forth the roles and responsibilities of and limitations on the Department and Tribes that participate in the Program.

DATES: This rule is effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Poole, Director of Intergovernmental Affairs, Office of the Secretary, (202) 366–4573 or via email at *sean.poole@dot.gov,* or Ms. Krystyna Bednarczyk, Office of the General Counsel, (202) 366–5283, or via email at *krystyna.bednarczyk@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority for This Rulemaking

These regulations implement section 1121 of the Fixing America's Surface Transportation (FAST) Act, Public Law (Pub. L.) 114–94, which was enacted on December 4, 2015, and is codified at 23 U.S.C. 207 (Section 207). This section directs the Secretary of Transportation (Secretary) to establish and carry out the TTSGP at the Department. It also directs the Department to develop regulations to implement the Program pursuant to the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.,* adapting the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Tribes. The purposes of Section 207 are to establish the TTSGP to transfer eligible Federal funding for transportation-related programs to participating Tribes and to facilitate Tribal control over the delivery of Tribal transportation programs, services, functions and activities (PSFAs). Section 207 incorporates by reference select provisions of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended, 25 U.S.C. 5301 *et seq.* (ISDEAA).[1] Congress enacted ISDEAA to promote effective and meaningful participation by Tribes in the planning, conduct, and administration of Federal programs and services for Tribes. ISDEAA authorizes Tribes to enter into self-determination contracts and self-governance compacts with the Departments of the Interior and Health and Human Services to assume operation of direct services for Tribes and administrative functions that support the delivery of these services by these Departments without regard to the agency or office within which the activity is performed.

Implementation of the TTSGP through this rule will maintain and improve the Federal Government's unique and continuing relationship with and responsibility to Tribes, without diminishing the trust responsibility of the United States to Indian Tribes and individual Indians that exists under treaties, Executive orders, laws, and court decisions, and permit each eligible Tribe to choose the extent of its participation in the TTSGP. It will implement a process for Tribes to establish eligibility and negotiate an alternative funding mechanism by executing a compact and funding agreement with the Department, provide Tribes with control over the implementation of Tribal PSFAs, and, where permitted by Section 207 and consistent with other statutory authorities, authorize Tribes to plan, conduct, redesign, and administer PSFAs that meet the needs of the individual Tribal communities. Finally, the TTSGP will reduce administrative burdens on Tribes carrying out PSFAs.

B. Negotiated Rulemaking Process

1. Development of the Proposed Rule

Section 207(n) directs the Secretary to develop the regulations consistent with the Negotiated Rulemaking Act and to adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes. Section 207(n) restricts membership of the TTSGP negotiated rulemaking committee (''Committee'') to Federal and Tribal government representatives. The Federal Highway Administration (FHWA), on behalf of the Department, published a **Federal Register** notice (81 FR 24158) on April 25, 2016, announcing the intent to establish the Committee and soliciting nominations for membership on the Committee. The Department published a **Federal Register** notice (81 FR 49193) on July 27, 2016, announcing the formation of the Committee, and identifying 23 Tribal representatives and 7 Federal representatives.

The first Committee meeting was held in Sterling, VA on August 16–18, 2016, during which the Committee negotiated protocols, a set of written procedures under which the Committee would operate.[2] The Committee held a total of 12 meetings in different locations throughout the country, including meetings hosted by the Sac and Fox Nation, Citizen Potawatomi Nation, Absentee Shawnee Tribe, Poarch Band of Creek Indians, Salt-River Pima Maricopa Indian Community, and the Morongo Band of Mission Indians.[3] The Committee members and technical advisors organized themselves into two work groups and used the Committee meetings to develop draft materials and exchange information. The Committee's meeting minutes and any materials approved by the Committee were made a part of the record.

There were no Committee meetings between December 2016 and January 2018, during which time, the Office of the Secretary assumed responsibility for the rulemaking. The Department published a **Federal Register** notice (82 FR 60571) on December 21, 2017, announcing a Committee meeting in January 2018. The Committee

[1] Following enactment of the FAST Act, Congress transferred the ISDEAA provisions within title 25 of the U.S. Code. The docket contains a table that provides the relevant provisions and their current citations.

[2] Documents adopted by the Committee, including the Protocols and meeting minutes, are available at *https://www.transportation.gov/self-governance/committee.*

[3] The December 2016 meeting did not achieve a quorum of Committee members due to inclement weather and subsequent flight cancellations. Those present participated in the established work groups to continue to develop and review proposed regulatory language, and the Committee adopted that work product at the January 2018 meeting.

reconvened in Sterling, VA on January 8–12, 2018. The Committee discussed a draft document that consolidated the products of the Committee work groups. A one-day Committee meeting followed in February 2018. These meetings were intended to gather information from the Committee to clarify areas of disagreement, identify the issues that the Committee had yet to discuss or propose text, and ensure the Federal members understood how the negotiated provisions on which the Committee previously reached consensus reflected statutory mandates.

Next, the Committee met in Washington, DC at Department headquarters on June 18–19, 2018. In advance of the meeting, the Department distributed a revised discussion draft, and a crosswalk comparison of the January and June 2018 drafts, for consideration by the Committee. The Tribal representatives attended the June 2018 Committee meeting but raised several objections. They asserted that the draft submitted to the Committee had not been prepared mutually through a negotiated process involving both the Department and Tribal representatives. On June 19, 2018, the Tribal representatives suspended negotiations based on their objections. Therefore, the Committee did not approve any meeting minutes or documents.

Concurrent with its decision to suspend negotiations, the Tribal representatives submitted a letter [4] to the Department proposing new timelines to conclude negotiations and setting forth a number of requests and conditions that must be met before the Tribal representatives would agree to resume negotiations. To meet the statutory time frame for publication of a draft and final rule, the Department declined the request of Tribal representatives to delay publication of the draft rule. However, Committee negotiations resumed after enactment, on August 14, 2018, of Public Law 115–235, which extended the statutory deadline for the Department to issue the proposed rule and final rule.

At the request of the Tribal representatives, the Department retained the services of the Federal Mediation and Conciliation Service (FMCS), a neutral third party, to facilitate subsequent negotiations. The Department and the Tribal representatives subsequently worked through their differences with the assistance of FMCS, including the disagreement issues.

In October 2018, the Tribal representatives submitted to the Department a revised discussion draft for the Committee's consideration. With assistance from FMCS, the Committee resumed negotiations in Washington, DC on October 29–November 3, 2018. At the recommendation of FMCS, the Committee appointed a drafting subcommittee, composed of nominated Committee members and technical advisors, to develop recommendations and draft regulatory text for consideration by the Committee. The Committee directed the work of the drafting subcommittee.

Between November 2018 and February 2019, FMCS convened the drafting subcommittee virtually and in-person in Washington, DC to develop recommendations and proposed regulatory text for the Committee's negotiation. After consulting with the Designated Federal Officer (DFO) and the Tribal Co-Chairs, FMCS convened the Committee in Shawnee, OK on March 18–19, 2019, followed by a two-day drafting subcommittee meeting on March 20–21, 2019. During the Committee meeting, the Committee reached tentative agreement on several proposed regulatory sections and provided additional direction to the drafting subcommittee. Finally, the Committee authorized FMCS and the drafting subcommittee to continue to negotiate additional recommendations and to propose regulatory text addressing the remaining topics.

FMCS convened the drafting subcommittee in Washington, DC on April 1–4, April 23–26, and May 20–23, 2019, to develop the remaining provisions of the draft rule for the Committee's consideration. After consulting with the DFO and the Tribal Co-Chairs, FMCS convened the Committee in Scottsdale, AZ on June 3–6, 2019. At the meeting, the drafting subcommittee presented the proposed regulatory text to the Committee, identified a limited number of areas of disagreement that remained outstanding, and provided recommendations and preferred language addressing these areas of disagreement, whether in regulatory text or in draft preamble text for the proposed rule. The Committee reached tentative agreement on most of the rule and provided additional direction to the drafting subcommittee on the outstanding provisions. The Committee authorized the drafting subcommittee to complete the draft rule for the Committee's review and agreement.

The drafting subcommittee met in Washington, DC on June 25–26, 2019, to complete its work. On June 26, 2019, FMCS facilitated the subcommittee's briefing of the Committee on the draft rule. The Committee reached consensus on the draft rule, including the description of the disagreement items discussed in this section. The Tribal Co-Chairs and the DFO confirmed the Committee's consensus determination to submit the draft rule to the Department.

2. Public Comment and Tribal Consultation

The Department published the notice of proposed rulemaking (NPRM) in the **Federal Register** on October 2, 2019 for a 60-day comment period. 84 FR 52706. In the NPRM, the Department announced three Tribal consultations and a virtual listening session, consistent with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments.* The Department held four public information, education, and consultation meetings during the public comment period to explain the rule, answer questions, and take oral testimony. The first took place on October 21, 2019, during the National Congress of American Indians' Annual Convention in Albuquerque, NM. The second was held on November 5, 2019, at the United South and Eastern Tribes Annual Meeting in Choctaw, MS. The third meeting occurred on November 19, 2019, at a Federal Aviation Administration facility in Des Moines, WA. At all three consultations, the Department presented on the proposed rule, answered questions, and took comments. Transcripts of each of these consultations are posted in the docket. On November 21, 2019, the Department held a virtual listening session via webinar. The closed captioning record of the virtual listening session is posted in the docket. Finally, after the comment period closed, on December 5, 2019, a Department representative held an information listening session at the 29th Annual Bureau of Indian Affairs (BIA) Tribal Providers Conference in Anchorage, AK.

3. Development of the Final Rule

At the direction of the Committee, the drafting subcommittee reconvened on February 3–6, 2020, in Washington, DC. The drafters reviewed the public comments and developed recommended changes to the proposed rule for consideration by the Committee. The Committee reconvened in Cabazon, CA on March 3–5, 2020. The drafting subcommittee presented the proposed final rule for the Committee's review, and the Committee reached consensus on the final rule.

[4] The letter is available in the docket.

II. Summary of Comments on the Proposed Regulations and the Final Rule

This section summarizes each subpart of the Department's regulations to implement the TTSGP, and describes the comments received on the proposed rule and the Department's response to those comments. The Department received written and oral comments from 14 Tribes, a consortium of 19 Tribes, and several individual Tribal members; a non-profit organization representing small and independent business members; 3 intertribal organizations, representing many Tribes across the United States; 2 law firms that represent Tribes nationwide; a consortium of 5 State departments of transportation; and a transit agency. The Department reviewed and carefully considered all public comments received, including those received after the comment period closed.

Except for four areas of disagreement discussed in this section, the proposed regulations are the product of consensus developed by the Committee through interest-based negotiations.

The Tribes, Tribal organizations, and law firms expressed general support for the rule and the Tribal views on the areas of disagreement. Comments on specific sections or topics are summarized and responded to in this section. Additionally, the Department received several questions in the Tribal consultations that were outside the scope of this rulemaking.

The Department made minor edits, including consistency changes, throughout the final rule to improve clarity. The Department aligned the questions in the section titles and the answers in the regulatory text. When referencing funds in a funding agreement, the proposed rule used two phrases inconsistently. The final rule uniformly uses the phrase ''included in a funding agreement.'' The final rule changes the term ''parties'' to ''the Department and the Tribe.'' Finally, the Department revised regulatory statements from passive voice to active voice.

A. Subpart A—General Provisions

This subpart sets forth the purpose and authority of these regulations, Departmental policy, effect of these regulations on existing Tribal rights, the Department's obligation to consult with self-governance Tribes, and definitions. It states the prospective effect of these regulations and addresses the relationship between a participating Tribe's existing Tribal Transportation Program (TTP) agreement entered into under the authority of 23 U.S.C. 202, and a compact and funding agreement. Finally, it addresses the effect of 23 U.S.C. 207 on requirements contained in Departmental regulations, program guidelines, manuals, or policy directives.

The Department received one comment from a non-profit organization requesting the addition of a new paragraph to § 29.1, which addresses the purpose and authority for part 29, to impose a limitation on cross-border Tribes' use of funds based on geography. The commenter noted that 23 U.S.C. 207 is silent on the issue of extraterritorial application, and the Department declines to adopt the proposed revisions because limitations on the use of specific funds under the Program, including for cross-border Tribes, are addressed by the statutes specific to the funding source.

The Department edits § 29.1 for clarity in the final rule, striking the last sentence in proposed § 29.1(a) regarding funds that may be included in a funding agreement since this is addressed in § 29.400. The Department also revises paragraph (b) to clarify the source of the negotiated rulemaking procedures by referencing the Negotiated Rulemaking Act.

The Department makes minor revisions in the final rule to § 29.2 regarding Departmental policy. Specifically, the final rule reflects the statutory language in paragraph (d) and rephrases paragraph (f) to active voice.

A commenter and a Tribal consultation attendee inquired whether a Tribe could participate in the Program at any time or whether there was an expiration date for participation. The Department revises in the final rule § 29.3(a) to clarify that a Tribe may apply at any time. The Department received comments from three Tribes and a law firm expressing support for including in the final rule the Tribal rights set forth in § 29.3(b) and the applicability of Departmental circulars, policies, manuals, guidance or rules other than those in part 29, as set forth in § 29.4. The commenters encouraged the Department to reduce regulatory burdens to Tribes through a liberal interpretation of this rule, citing the general lack of Tribal resources and staff. The Department acknowledges the comment and did not make any changes in the final rule.

The Department received comments from three Tribes and a law firm encouraging the Department to retain § 29.7 in the final rule. This provision addresses existing TTP agreements, clarifying that the TTSGP has no effect on existing or future TTP agreements, but that a Tribe cannot have both a TTP agreement and TTP funds included in a funding agreement under the Program. The Department retains this provision with no changes in the final rule.

The Department revises in the final rule § 29.8 regarding situations where more than one party purports to be the authorized representative of a Tribe to add ''if necessary.'' This change clarifies that the Department may not need to defer negotiations or execution of documents in all cases.

Section 29.9 sets forth the definitions applicable to part 29. The Department received comments from three Tribes, a Tribal organization, and a law firm supporting the use of terms with which Tribes operating under ISDEAA are familiar. They and a Tribal member also urged the Department to use an alternative term for ''Chief'' in the title ''Chief Self-Governance Official.'' The Department agrees with the recommendation and removes ''Chief'' from the title in the final rule.

The Department received several questions regarding eligibility for the Program. Section 207 and this final rule make clear that Indian Tribes, including Tribal organizations, and Tribal consortia are eligible to participate in the Program on behalf of their member Tribes. As set forth in the definition of Indian Tribe or Tribe in § 29.9, when a Tribe has authorized a consortium to carry out Tribal PSFAs on its behalf, the consortium has the same rights and responsibilities as the authorizing Tribe.

The Department revises the definitions of ''compact'' and ''funding agreement'' in the final rule to clarify that they are entered into pursuant to ''this part'' as well as 23 U.S.C. 207. The proposed rule sometimes, but not consistently, referred to compacts and funding agreements ''under this part'' or ''under the Program.'' The Department removes these inconsistent references in the final rule. The Department revises the definition of ''discretionary or competitive grant'' to clarify the term as used in part 29.

The Department received comments from three Tribes, a Tribal organization, and a law firm supporting the definition of ''programs, services, functions, and activities'' or ''PSFAs.'' One Tribe requested that the Department clearly define the term PSFAs, but did not make any suggestions on how to revise the definition. The Department does not make any revisions to the PSFA definition in the final rule. This definition clarifies that the Department does not deliver PSFAs on behalf of Tribes; rather, Tribes carry out PSFAs using the six categories of funding eligible to be included in a funding

agreement between the Department and the Tribe.

B. Subpart B—Eligibility and the Negotiation Process

This subpart sets forth the eligibility requirements for a Tribe, Tribal organization, or Tribal consortium (collectively ''Tribe'' in the final rule) to participate in the Program. Consistent with Section 207, § 29.100 requires Tribes to demonstrate financial stability and financial management capability, and transportation program management capability to be eligible to participate in the TTSGP. The Department revises paragraphs (a)(2), (b), and (c) in the final rule to clarify that the Department's determination is based on the evidence submitted by the Tribe.

Consistent with the proposed rule, § 29.100(b) provides three standards by which Tribes may demonstrate financial stability and financial management capacity. First, the regulation sets forth Section 207's conclusive evidence standard. Second, § 29.100(b)(2) provides a sufficient evidence standard for Tribes subject to the Single Audit Act that currently carry out transportation projects, programs, or services through the TTP or a DOT grant award and have no uncorrected significant and material audit exceptions in their required single audits. Tribes that meet the sufficient evidence standard are well placed to participate in the DOT self-governance program—they conduct audits under the Single Audit Act, demonstrate that they do not have material and significant audit exceptions, and demonstrate transportation experience. While TTP agreements are ''in accordance with the ISDEAA,'' Tribes are subject to Federal oversight when they administer TTP funds. Tribes plan, budget, prioritize, and otherwise manage their Tribal transportation programs. The sufficient evidence standard recognizes that Tribes that successfully implement TTP agreements and successfully manage grants for the maintenance, rehabilitation, and construction of transportation facilities should receive the benefits Congress intended in enacting the TTSGP.

The Department received comments from two Tribes and two law firms expressing support for the Department's inclusion of a sufficient evidence standard and requesting clarification that the Department intends to implement the sufficient evidence standard in the same manner as the conclusive evidence standard. The Department makes edits to paragraph (b)(2) to clarify that this is the case.

Third, the regulation provides a means for Tribes without a mandate to comply with the Single Audit Act that currently conduct business with DOT to demonstrate financial stability and financial management capability. Unlike the other two standards, this is a discretionary determination made by the Department. This option is consistent with FHWA practice in administering the TTP, provided the Tribe demonstrates financial capacity. FHWA has long permitted Tribes not subject to the Single Audit Act to enter into a TTP agreement, provided they undergo an independent audit and provide evidence demonstrating no uncorrected significant and material audit exceptions. DOT has determined that some smaller-funded Tribes have worked well with DOT under TTP agreements, as well as under the Federal Transit Administration's (FTA's) Tribal Transit Program. The Department does not want to compel those Tribes to join a consortium to be eligible for the TTSGP, and there is no requirement in the final rule for such Tribes to do so. In the final rule, the Department clarifies the meaning of independent audit to be one that is consistent with 2 CFR 200.514, reorganizes the subparagraphs to be sequential, and moves the provision on technical assistance to paragraph (e) since it is inapplicable to the evidence for demonstrating financial stability and financial management capability.

Several Tribes and the commenting law firms expressed support for the Department's approach to the financial stability and financial management capability criterion, in particular the inclusion of the sufficient evidence standard and discretionary standard. One Tribe asked that the Department clarify that, if a Tribe meets the sufficient evidence standard, it has met the financial stability and financial management capability criterion. The Department makes edits to paragraph (b)(2) to make clearer that this is the case.

Paragraph (c) of § 29.100 describes the evidence the Department would consider in making the discretionary determination that a Tribe has demonstrated transportation program management capability to be eligible to participate in the Program. As noted in the proposed rule, the Department will evaluate the totality of the evidence presented in support of the eligibility application. The Department makes clarifying edits to paragraph (c) to state this explicitly in the final rule.

One Tribal commenter requested that the Department accept as eligible Tribes that already participate in self-governance programs with the U.S. Department of the Interior (DOI) or Indian Health Service (IHS). The Department acknowledges the commenter's concern. However, this approach is inconsistent with Section 207, which sets forth the specific eligibility criteria. Section 207 does not provide an automatic entry into the Program for self-governance Tribes that participate in programs with other Federal agencies. However, many existing self-governance Tribes likely would satisfy the financial stability and financial management capability criterion under the conclusive evidence standard with three years of clean audits, and evidence of their successful management of their transportation programs. Another commenter asked whether a Tribe demonstrates transportation program management capability if it uses a consultant to assist it in carrying out transportation services. Under § 29.100(c), the Department will examine evidence of a Tribe's transportation program management capability on a case-by-case basis, considering the totality of the evidence a Tribe submits. The Department recognizes that Tribes have a right to choose how they structure their programs and personnel.

Paragraph (d) of § 29.100 sets forth the time frames related to eligibility determinations. The final rule changes the time frame for the Department to notify the Tribe that it received the submission and whether any additional evidence is necessary from 15 to 30 days, because the Department determined it needs more time to assess whether any additional evidence is necessary. The final rule also eliminates the duplicate reference to the time frame for the Department to notify a Tribe regarding the sufficiency of their systems and standards, as this is addressed in paragraph (b)(3)(ii).

Paragraph (e) of § 29.100 provides for technical assistance, to the extent the Department has the resources and expertise, to Tribes that do not meet the financial stability and financial management capacity criterion due to uncorrected significant and material audit exceptions. Where the audit exceptions relate to a contract, agreement, grant, or other funding mechanism between the Tribe and another Federal agency, the Tribe will resolve those exceptions with that agency. The Department revises paragraph (c) in the final rule to make this clear.

The Department notes that DOI operates the DOI Tribal Self-Governance Program pursuant to title IV of ISDEAA, as amended (codified at 25 U.S.C. 5301

et seq.), and jointly administers the TTP with FHWA. This subpart does not alter, affect, modify or otherwise change the eligibility requirements under 25 U.S.C. 5362, or implementing regulations at 25 CFR part 1000, for a Tribe or Tribal consortium seeking to participate in the DOI Tribal Self-Governance Program. Nothing in this final rule shall be construed to diminish or otherwise affect the authority of the Secretary of the Interior to carry out and administer the DOI Tribal Self-Governance Program. Additionally, this subpart does not alter or otherwise effect existing TTP contracting options available to Tribes with DOI.

Finally, this subpart describes the negotiation process a Tribe must follow to enter into a compact and funding agreement with the Department to participate in the TTSGP. Some Tribes and the law firms supported the simple and flexible process and the clear time frames in their comments. The final rule clarifies the timing for negotiating an amendment in § 29.101 and for negotiating compacts, funding agreements, or amendments in § 29.102. It also clarifies in § 29.107 that the Department and a Tribe should resolve negotiation disagreements informally.

C. Subpart C—Final Offer Process

This subpart sets forth the final offer process that a Tribe may invoke during negotiation with the Department of a compact or funding agreement if they cannot agree on certain terms and conditions. It is the Department's intent that a Tribe should only use the final offer process when there is a negotiation impasse and not before the parties have fully explored an area of disagreement. This subpart also sets forth the Department's responsibilities in processing a final offer, the grounds for rejecting the Tribe's final offer, and the Tribe's rights to challenge an adverse decision by the Department related to the final offer.

The Department received comments from two Tribes, a Tribal organization, and a law firm expressing support for the Department's approach in subpart C. The commenters supported the clear time frames, final offer process, and clarity in § 29.213 that the Department and a Tribe may still execute and implement the non-disputed portions of a compact or funding agreement. The Department revises § 29.213 in the final rule to change ''remaining'' provisions to ''any non-disputed, severable'' to align with similar language in § 29.911, and adds ''not already executed'' to further clarify that there could be non-disputed provisions already in place.

The Department makes some minor edits for clarity throughout the provisions in subpart C. The Department revises the timing for transfer of funds in § 29.208 to cross reference to the appropriate transfer of funds provisions in §§ 29.403 through 29.405, rather than set forth the timing in this provision. The Department notes that the final rule revises the timing for transfer of funds in these provisions from 30 to 10 days, as discussed in section II.E. Finally, the Department clarifies the response in § 29.211 regarding when the Department must provide technical assistance. The NPRM stated conflicting timing—upon receipt of the final offer and upon rejection. Consistent with 25 U.S.C. 5387(c)(1)(B), which is incorporated by 23 U.S.C. 207(*l*)(2), the final rule states that technical assistance is provided upon rejection of a final offer.

D. Subpart D—Contents of Compacts and Funding Agreements

This subpart identifies what is included in compacts, funding agreements, and amendments; the duration of such agreements; and the rights and responsibilities of the Department and a Tribe. One law firm supported the Department's flexible approach, noting, in particular, the absence of a model compact and funding agreement.

Section 29.307 addresses the required terms to include in a funding agreement. The Department received questions from attendees at the Tribal consultations about the applicability of the TTP implementing regulations, 25 CFR part 170. The Department responded that these provisions would apply if the funding agreement included TTP funds. However, the Department recognizes that there are some provisions of 25 CFR part 170 that will be inapplicable or overlap with provisions in part 29 that are best addressed in the negotiation of the funding agreement between the Department and the Tribe. Therefore, the Department adds a new paragraph (j) in the final rule, which states that if the funding agreement includes TTP funds, the funding agreement will include 25 CFR part 170 provisions related to planning, inventory, and allowable use of funds necessary for administration of the TTP.

The Department retains paragraph (i) in the final rule, which requires inclusion of Federal health and safety requirements that apply to the funds. Notwithstanding the effect of 23 U.S.C. 207(n)(4), the compacts and funding agreements must include the requirements related to public health and safety that apply to the funds included in the funding agreement. Since its establishment in 1966, the Department's primary mission has always been safety. Including public health and safety requirements that relate to transportation funding ensures that this important mission continues for Tribes and other members of the traveling public.

Finally, in response to questions in the Tribal consultations, the Department adds some examples to paragraph (k) of the types of provisions that the Department and a Tribe might agree to include in a compact and funding agreement.

The Department received comments on § 29.308 from two Tribes, a Tribal organization, and a law firm requesting that the Department add a reference to title V of ISDEAA stating that the statute provides for the inclusion of title I and title V provisions as long as they do not conflict with Section 207. The Department does not agree with this characterization. Section 207(*l*) makes certain enumerated provisions of title I and title V of ISDEAA applicable to a compact and funding agreement under the Program, except to the extent the Secretary determines they conflict with section 207. The regulations in part 29 address the provisions of title V that 23 U.S.C. 207(*l*) incorporates and identifies those provisions that conflict with 23 U.S.C. 207. The rule addresses these incorporated title V provisions throughout part 29. The Department revises the title of § 29.308 to reference title I of ISDEAA.

Finally, as discussed in section II.E, the final rule moves § 29.310 regarding redesign and consolidation to subpart E, and renumbers the two remaining sections in subpart D.

E. Subpart E—Rules and Procedures for Transfer and Use of Funds

This subpart sets forth the rules regarding transfer and use of funds under the Program. This subpart also describes responsibilities of the Department with respect to the transfer of such funds, including the time to transfer the funds, and other issues related to the funding provided to Tribes through their compact and funding agreements, including the use of such funds via the funding agreement. This subpart also addresses how Tribes may use these funds for matching or cost participation purposes and investment standards.

Section 29.400 sets forth the six categories of Department funds that a Tribe may elect to include in its funding agreement and, with agreement of a

State, the transfer of funds.[5] The Department splits proposed paragraph (e), regarding State funds, into two paragraphs in the final rule to separate out the two formula programs that allow for such transfers. The Department revises paragraph (e) regarding highway funds to add a reference to the additional transfer authority set forth in 23 U.S.C. 207(d)(2)(A)(ii). The Department revises the language regarding transit funds in paragraph (f) for further clarity.

The Department revises in the final rule § 29.401 regarding transfer of funds to address all of the potential funds that could be transferred in a funding agreement under § 29.400. Specifically, paragraph (c)(1) addresses discretionary or competitive grants, and paragraph (c)(2) addresses State funds transferred under 23 U.S.C. 202(a)(9), 23 U.S.C. 207(d)(2)(A)(ii), or 49 U.S.C. 5311. As stated in the NPRM, while § 29.401(c)(4) sets forth the requirement from 23 U.S.C. 207(h)(2) that the Department include in a funding agreement amounts equal to the project-related administrative expenses (PRAE) incurred by the BIA that the Department would have withheld under the TTP, the Department notes that it does not presently provide to the BIA any funds for PRAE.

The Department received 17 comments from Tribes, Tribal members, and law firms regarding the timing for transfer of funds set forth in §§ 29.403, 29.404, and 29.405. Commenters disagreed with the 30-day time frame for the Department to transfer funds to the Tribes. Commenters argued that under ISDEAA, the Department must make fund transfers within 10 days, and that the proposed regulation should not be inconsistent with ISDEAA. The comments noted that delays would negatively impact operations and planned construction or maintenance projects. Many of the comments noted the Department's concern about the ability to meet the 10-day deadline and encouraged the Department to upgrade its financial systems to allow for 10-day disbursements. One commenter suggested that FTA should implement the same payment system as FHWA and make annual lump sum advance payments.

The Department agrees that changing §§ 29.403, 29.404, and 29.405 from 30 days to 10 days is appropriate and consistent with 25 U.S.C. 5388(g), as incorporated by 23 U.S.C. 207(*l*)(3). While this provision only applies to initial annual transfers of funds, the Department is applying these timeframes as a matter of policy for subsequent transfers in § 29.404 and discretionary and competitive grants in § 29.405, unless the funding agreement provides otherwise. The final rule also strikes references in §§ 29.403 and 29.404 to distribution methodologies and other decisions because these decisions occur prior to the apportionment of the funds by OMB. OMB Circular No. A–11 (2016) clarifies that, consistent with 31 U.S.C. 1513(b) and E.O. 11541, an apportionment is an OMB-approved plan to use budgetary resources, which limits the obligations the Department may incur for specified time periods, programs, activities, projects, objects, or any combination. As such, the apportionment process is not complete until the Department receives approval from OMB of its planned use of funds. The final rule also revises these provisions to include a new sentence referencing the Prompt Payment Act to clarify that there is no interest penalty so long as the Department makes the transfer within 30 days. Finally, for consistency throughout these three provisions, the Department adds the phrase ''unless the funding agreement provides otherwise'' in § 29.403 to §§ 29.404 and 29.405.

The Department revises for clarity in the final rule § 29.407 addressing discretionary or competitive grant awards and eligibility for contract support costs. Specifically, the first sentence states that such awards do not entitle a Tribe to contract support costs or other amounts under 25 U.S.C. 5325. Additionally, the Department strikes as unnecessary the reference to reduction in funds, which erroneously cross-referenced to § 29.413(a)(4) in the NPRM (the correct reference was § 29.414(d)(4)).

The Department revises in the final rule § 29.409 regarding carry over funds to split into separate paragraphs the periods of availability for discretionary or competitive grants and formula funds. The final rule also adds an introductory paragraph to reflect the question in the regulatory text.

For clarity in § 29.411 regarding matching or cost participation requirements, the Department adds a reference to the relevant incorporated provision of ISDEAA because there are two incorporated provisions in 23 U.S.C. 207 addressing matching and cost participation.

The Department makes minor edits to § 29.414 regarding limitations related to the transfer of funds. The final rule revises paragraph (d)(1) to align the language with the statute. In the proposed rule, paragraphs (d)(5) and (d)(7) both addressed termination. The final rule eliminates proposed § 29.414(d)(5) and renumbers the subsequent paragraphs accordingly. The final rule corrects the citation to the Prompt Payment Act in § 29.415.

The Department makes revisions for clarity to § 29.418 regarding transfers of State funds. The final rule adds a reference to the transfer authority set forth in 23 U.S.C. 207(d)(2)(A)(ii). In paragraph (c), the final rule clarifies that the language in 23 U.S.C. 207(d)(2)(A)(ii)(III)(aa) and (bb) ''during the applicable statute of limitations period related to the construction of the project'' refers to compliance with applicable post-construction requirements. The Department revises paragraph (d) to align the language and format with the discussion of contract support costs in § 29.419.

With respect to § 29.419 addressing contract support costs (CSCs), the Department received comments on this matter from Tribes, Tribal organizations, and law firms, as well as several comments and questions at the Tribal consultations. Tribal commenters supported the Tribal representatives' objection to this language, and disagreed with the Department's preliminary interpretation that the incorporated provision of ISDEAA, 25 U.S.C. 5325(a), conflicts with 23 U.S.C. 207(h)(1). A Tribal consortium further urged the Department to find that 25 U.S.C. 5325(a), as well as other title I and title V provisions of ISDEAA, should not be found in conflict unless such a provision would undermine the effectiveness of the TTSGP. The consortium noted that, under 23 U.S.C. 207(j)(1), except as otherwise provided by law, the Secretary must interpret Federal laws, orders, and regulations in a manner to facilitate the inclusion of PSFAs and funds associated therewith, in compacts and funding agreements. Other Tribes referenced the ISDEAA definition of CSCs, and stated that CSC activities do not duplicate activities of the Department, and CSCs are an integral component of the ISDEAA program. Tribal commenters stated that CSCs are eligible expenses and are critical financial resources required by Tribes to operate and manage Federal programs. The Department acknowledges that Tribal commenters and Tribal representatives on the Committee disagreed with the Department's position and the Tribes' articulation of the critical need to fund Tribal transportation infrastructure. The Committee agreed that, under 25 U.S.C. 5325, CSCs are not applicable to

[5] The Department will maintain a list of the funding programs eligible for inclusion in a funding agreement under § 29.400 on the self-governance website, currently at *https://www.transportation.gov/self-governance.*

amounts transferred to a Tribe pursuant to a discretionary or competitive grant award, or Federal-aid funds transferred under 23 U.S.C. 202(a)(9).

Following additional review of this issue and after considering the rationale in the Tribal comments regarding the applicability of CSCs to formula funding, it is the Department's determination that 25 U.S.C. 5325(a), as incorporated by 23 U.S.C. 207(*l*)(8), conflicts with 23 U.S.C. 207(h) consistent with the Department's analysis in the NPRM. *See* 84 FR 52706, 52710–52712 (Oct. 2, 2019).

The Department acknowledges that, except to the extent there are conflicts, 25 U.S.C. 5325(a) is made applicable to the Program pursuant to 23 U.S.C. 207(*l*)(8). However, pursuant to 23 U.S.C. 207(*l*), the Department has determined that 25 U.S.C. 5325(a) conflicts with 23 U.S.C. 207(h), which mandates that the Secretary provide funds to Tribes in ''an amount equal to'' (1) the sum of funds the Tribes would receive under a funding formula or other allocation method established under title 23 and chapter 53 of title 49 of the U.S. Code added to ''(2) such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.''[6] The plain language of 23 U.S.C. 207(h) is a funding limitation because the provision uses the phrase ''an amount equal to.'' This limitation conflicts with two mandates in 25 U.S.C. 5325(a) that otherwise direct the Department: (1) To provide to a Tribe funds, pursuant to 25 U.S.C. 5325(a)(1), in an amount ''not . . . less than'' the agency would have provided to operate the program for the contract period, including supportive administrative functions;'' and (2) to ''add,'' pursuant to 25 U.S.C. 5325(a)(2), contract support costs (CSCs) to the amount provided under 25 U.S.C. 5325(a)(1). Because the mandates in 25 U.S.C. 5325(a)(1)–(2), directing the Department to supplement the funding it provides to Tribes, are in direct conflict with the limitation on funding set forth in 23 U.S.C. 207(h), the Department is not persuaded by the comments and maintains that the statutory conflict it identified in the NPRM renders 25 U.S.C. 5325(a) inapplicable to the Program.

There is additional support for the Department's conclusion. The funds set forth in 25 U.S.C. 5325(a)(1), which the ''Secretary would have otherwise provided for the operation of the programs or portions thereof,'' do not describe any sources of funds eligible to be transferred under 23 U.S.C. 207(d)(2)(A) because Congress directed the Department to make available in funding agreements only direct financial assistance to Tribes. *See also* § 29.400. The Department has never operated a program or portions thereof for the benefit of Tribes.[7] Therefore, Tribes carrying out their Tribal PSFAs with Department funding do not risk diminishing their program resources due to their participation in the Program because the Department has never administered the activities.

The Department administers two programs—the TTP and the Tribal Transit Program—that solely benefit Tribes and that allocate funds to Tribes under a funding formula. Tribes receive formula funds (and may compete to receive other discretionary funds) that a Tribe may direct toward constructing, maintaining, refurbishing, or rehabilitating infrastructure, transportation facilities, as well as related operational costs. As such, Tribes—like States and municipalities—must make difficult decisions about how to direct Federal funding. Tribes may use TTSGP funds to recover direct, indirect, startup, and pre-award costs associated with the implementation and operation of their transportation programs, subject to applicable requirements contained in statutes governing the sources of funds, applicable cost principles under 2 CFR part 200, and any applicable caps on indirect cost funding. Under these programs, Tribal recipients may use Federal funds for eligible planning, operating, and capital expenses. In addition, Tribes may use program funds for startup and audit costs, including the reimbursement of eligible pre-award costs when authorized by agency policy or the TTSGP. This does not mean that additional funds have been authorized or appropriated for these expenses, since there are no additional funds to provide to Tribes for CSCs. Based on the Department's determination, the funding limitation in 23 U.S.C. 207(h) does not allow any other outcome.

Additionally, some commenters acknowledged that there are no Department appropriations for CSCs, but proposed the Department add a new section for the transfer of CSCs to Tribes if Congress provides future appropriations for CSCs. Such a provision would be inconsistent with the Department's determination that inclusion of CSCs conflicts with 23 U.S.C. 207.

The Department also received numerous comments supporting the Tribal views regarding § 29.420 and noting that, in the absence of additional funds being made available for facility lease payments, Tribes will have to divert funds from needed infrastructure improvements to cover facility support costs. Here too, the comments did not present new rationale to overcome the Department's determination. As such, the Department declines to change its approach regarding the applicability of facility lease and support costs under 25 U.S.C. 5324(*l*). The Department acknowledges that Tribal commenters and Tribal representatives on the Committee disagreed with the Department's position.

Similar to the Department's analysis regarding CSCs, the Department has determined that the funding limitation of 23 U.S.C. 207(h) conflicts with the mandate in section 105(*l*) of ISDEAA, codified at 25 U.S.C. 5324(*l*), and incorporated by 23 U.S.C. 207(*l*)(8), to provide additional amounts for facility lease and support costs. A conflict exists because the amount of 25 U.S.C. 5324(*l*) funds and 23 U.S.C. 207(d)(2)(A) funds would never ''equal'' the amount contemplated by 23 U.S.C. 207(h). Accordingly, the Department invokes its authority under 23 U.S.C. 207(*l*) to determine a conflict makes 25 U.S.C. 5324(*l*) inapplicable to the Program. Finally, the Department understands that the two Tribal Transportation programs require Tribes to make difficult choices in determining how best to allocate limited Federal funding within their Tribal transportation and transit programs.

In the proposed rule, the Department addressed redesign, consolidation, reallocation, or redirection of funds in § 29.310 in subpart D, which addresses terms of compacts and funding agreements. Upon further consideration, because § 29.310 addresses the use of funds, the final rule moves this provision to § 29.421 in subpart E because that subpart generally addresses how the Department transfers and the Tribes use funds.

The Department received five comments from Tribes, Tribal members, and Tribal organizations regarding proposed § 29.310. Commenters noted that seeking the Department's approval to redesign or reprogram funds is

[6] The Department does not withhold funds for the costs of the Bureau of Indian Affairs for project or program administration, and therefore anticipates that this amount will always be zero.

[7] Notably, 23 U.S.C. 207(d)(2)(A)(i) authorizes the Department to transfer in a funding agreement funding associated with formula, discretionary, or competitive grant programs for which Tribes are eligible recipients. It does not, however, transfer programs in which the Department carries out inherent Federal functions, such as when Federal employees operate the air traffic control program.

incongruent with the tenets of self-governance and Tribal sovereignty. Some commenters noted that proposed § 29.310 provided for redesign, reprogramming, and reallocation consistent with Section 207, but disagreed with the provision requiring that Tribes reprogram or reallocate funds consistent with the transportation improvement program (TIP). Some commenters stated that submitting a TIP to the Department for approval undermines Tribal self-governance.

Section 207(e)(1)(A)(ii)(I) requires that Tribes expend the funds on projects identified in an approved TIP, and the Department cannot waive this statutory requirement. *See also* 23 U.S.C. 202(b)(4)(B). The Department did revise the final rule provision, § 29.421, to improve clarity. Specifically, the final rule subdivides the language into multiple paragraphs. Additionally, the final rule revises paragraph (b) to better respond to the question and clarify that a Tribe may not redesign, consolidate, reallocate, or redirect discretionary or competitive grant funds, consistent with Section 207.

F. Subpart F—Program Operations

This subpart includes information and instructions to Tribes that participate in the TTSGP. Topics covered in this subpart include: (1) Audits and cost principles; (2) financial, procurement, and property management systems and standards; (3) procurement requirements; (4) property; (5) recordkeeping requirements; (6) reporting; (7) technical assistance; (8) prevailing wages; (9) Tribal preference; (10) environmental and cultural resource compliance; (11) Federal Tort Claims Act applicability; and (12) waiver of TTSGP regulations. The Department received four general comments on Subpart F, supporting the inclusion of provisions that impose requirements familiar to Tribes participating in self-governance programs with DOI and IHS.

The proposed rule included near identical provisions addressing record retention in proposed §§ 29.502 and 29.514. In the final rule, the Department eliminates the proposed § 29.502 in favor of a consolidated provision in § 29.513. Given the removal of this section, the final rule numbering for the subsequent sections in subpart F differs by one from the numbering in the proposed rule.

In the final rule, the Department makes several edits to §§ 29.505, 29.506 and 29.507 (proposed §§ 29.506, 29.507, and 29.508) to make these sections easier to understand and reduce overlapping language. Additionally, § 29.507 addresses the minimum requirements for a Tribe's financial management system. This provision is similar to an existing provision in 25 CFR 900.45, implementing title I of ISDEAA, except for paragraphs addressing source documentation and cash management. The final rule includes two new paragraphs addressing source documentation and cash management based on the language in 25 CFR 900.45.

The Department revises the introductory phrase of paragraph (a)(4)(ii) of § 29.515 regarding procurement standards to align with the statute. With respect to § 29.517 (proposed § 29.518) addressing a Tribe's use of Federal supply sources in the performance of a compact and funding agreement, a commenter noted difficulties with obtaining approvals for access to the General Services Administration's systems and surplus property. Consistent with § 29.517, the Department will make reasonable efforts to expedite approvals as requested.

Section 29.523 (proposed § 29.524) addresses technical assistance, clarifying that the Department is committed to carrying out the principles of self-governance while also ensuring proper stewardship and oversight of Federal funds. The Department received questions about the specific types of technical assistance that would be available. While the Department did not make any changes in the final rule, it views technical assistance as part of its commitment to self-governance as well as its program management and oversight responsibilities. The Department anticipates responding to technical assistance requests on a case-by-case basis and recognizes the importance to Tribes of building their internal transportation capacity.

The Department received one comment on § 29.527 (proposed § 29.528) from a Tribal member who asked whether compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) was required to establish a right-of-way on a BIA-owned trust property, and whether there was any conflict with 25 CFR part 169 and subpart F of this rule. These regulations would not affect the DOI's authority over rights-of-way on Tribal lands. DOI will continue to exercise its authority relating to the application, review, grant, administration, and oversight of rights-of-way on Tribal lands under 25 U.S.C. 323–328 and 25 CFR part 169.

The Department received four comments from a Tribe, Tribal member, and a law firm on proposed § 29.535 regarding the process and criteria for granting waivers from part 29. Two commenters noted that proposed § 29.535 implements 23 U.S.C. 207(j)(2), which directs a Tribe to submit a written request to the Secretary to waive application of a part 29 provision to a compact or funding agreement by ''identify[ing] the regulation sought to be waived and the basis for the request.'' Specifically, commenters stated that the criteria in proposed § 29.535 are overly broad, ambiguous, and may make granting waivers more difficult or cause inconsistent application. Commenters recommended that the Department review the criteria for granting a waiver in 49 CFR part 5 and simplify the proposed regulation accordingly. Commenters also asked whether failure by the Department to respond to a waiver request within 90 days would result in an automatic approval of the waiver.

The Department notes that it substantially revised its rulemaking procedures, including those in 49 CFR part 5, in December 2019 and eliminated the criteria referenced by the commenters. *See* 84 FR 71714 (Dec. 27, 2019). After further consideration of the comments and discussion by the drafting subcommittee, the Department is retaining the waiver criteria, set forth in § 29.524 in the final rule, but updates paragraph (d)(2) to add ''consistent with the principles of self-governance.'' The Department notes that paragraph (e) states that waiver requests are deemed approved by operation of law if the Department does not take action on a request within 90 days of receipt of the request.

G. Subpart G—Withdrawal

Subpart G sets forth the process for a Tribe to withdraw from a consortium's compact or funding agreement with the Department, including distribution of the Tribe's shares of TTSGP funding. It clarifies that the Department is not a party to internal consortia disputes and would provide notice to consortia that seek to participate in the TTSGP that their agreements should adequately address the circumstances under which a member Tribe may withdraw.

The Department did not receive any comments on the provisions in this subpart and only makes minor edits for clarity to these sections in the final rule.

H. Subpart H—Retrocession

This subpart provides that a Tribe may voluntarily discontinue performing a portion or all of the PSFAs under its compact and funding agreement, and may return remaining funds to the Department in accordance with the process set forth in this subpart. It also

clarifies the effect of a Tribe's retrocession on its eligibility, and sets forth how funds must be distributed when the retrocession takes effect.

The Department did not receive any comments on the provisions in this subpart and only makes minor edits for clarity to these sections in the final rule.

I. Subpart I—Termination and Reassumption

This subpart sets forth when and under what circumstances the Department may terminate a Tribe's compact or funding agreement. The Department received one comment regarding determinations of imminent jeopardy with respect to trust assets that could trigger a termination under this subpart. The commenter noted that such determinations are made by the Office of Special Trustee under the regulations applicable to the DOI self-governance program.

The Department notes that 23 U.S.C. 207(f)(2)(B)(i) applies the imminent jeopardy standard to ''a trust asset, natural resources, or public health and safety.'' Although the Department does not hold trust assets or natural resources on behalf of Tribes, the final rule retains this phrase in § 29.800 because it is consistent with Section 207. The Department does not reference the Office of Special Trustee because termination decisions under this standard are made solely at the discretion of the Department, consistent with 23 U.S.C. 207(f)(2)(B)(i).

J. Subpart J—Dispute Resolution and Appeals

This subpart sets forth procedures, including alternative dispute resolution mechanisms, that a Tribe may use to resolve disputes with the Department arising before or after execution of a compact or funding agreement, as well as the appeal rights and procedures Tribes must use to appeal Departmental decisions to terminate a Tribe's compact or funding agreement. It establishes the process for filing and processing appeals from adverse decisions and the applicable burden of proof. This subpart also contains the Department's preferred language on § 29.906, reflecting an area of disagreement regarding exhaustion of administrative remedies. The Tribal and Departmental views regarding this disagreement item are set forth in the NPRM. *See* 84 FR 52706, 52712 (Oct. 2, 2019).

The Department received comments from two Tribes, an intertribal organization, and a law firm generally supporting the Department's streamlined approach in subpart J. In particular, commenters supported the narrow class of determinations that may be appealed in § 29.903, clear timelines in §§ 29.907 and 29.919, and clarity with respect to the effect of appeals in §§ 29.923 and 29.931. However, 15 comments from Tribes, Tribal organizations, and law firms adopted the Tribal Committee members' position opposing the proposed provision on the exhaustion of administrative remedies, § 29.906. Commenters noted that Section 207 does not require exhaustion of administrative remedies. They further stated that pursuing administrative remedies is an act of self-determination and self-governance to which the Department should give deference. They reasoned that exhaustion, when not mandated by a statute, is an infringement on Tribal sovereignty; that the exhaustion requirement is inconsistent with DOI and IHS regulations; and that Tribes have limited resources with which to pursue administrative or judicial remedies. Therefore, the commenters encouraged the Department to interpret the provision in favor of Tribes not to require administrative exhaustion.

The Department has considered the comments it received and is retaining the provision in § 29.906 to require exhaustion of administrative remedies for pre-award disputes. Section 207 does not incorporate by reference 25 U.S.C. 5331 of ISDEAA. The Department interprets 25 U.S.C. 5331 to address the proper venue and relief that can be granted for civil actions filed pursuant to this section, but it does not address timing of when these civil actions may be brought. Tribes disagree with this interpretation.

While Section 207 does not include an express exhaustion requirement, the Department interprets the Administrative Procedure Act and Supreme Court precedent to grant the Department discretion to impose a requirement that Tribes exhaust their administrative remedies before proceeding to the U.S. District Courts. The final rule establishes a two-step process for pre-award disputes, under which initial decisions are made by the Self-Governance Official and appealed to a hearing official appointed by the Office of the General Counsel. This efficient process will ensure a proper record for certain pre-award disputes that will benefit both the Department and the Tribe. The Department notes that the exhaustion requirement does not apply to appeals of the Department's denial of a final offer because Section 207 provides that a Tribe may proceed directly to the U.S. District Courts, in lieu of an administrative appeal.

Finally, in the final rule, the Department revises § 29.930 and adds §§ 29.931 and 29.932 to address administrative law judge (ALJ) decisions in termination appeals. Because such decisions are not final agency actions, the final rule provides a process for review by the Secretary, or her designee, if the Department or the Tribe elects to appeal the ALJ's decision. Otherwise, the ALJ's decision becomes the final decision of the Secretary after 30 days.

K. Other Comments

1. Office of Self-Governance

The Committee did not reach consensus on the issue of whether to create an Office of Self-Governance. The proposed rule set forth the Tribal and Departmental positions. *See* 84 FR 52706, 52710 (Oct. 2, 2019). The Department received 37 comments from Tribes, Tribal members, and law firms regarding the establishment of an Office of Self-Governance. Commenters supported the creation of an office before the rule becomes effective. Commenters stated that without an Office of Self-Governance, implementation of the program could be haphazard and inefficient. Commenters maintained that without an Office of Self-Governance, Department personnel might be overwhelmed by the number of applications, and staff might lack the proper experience necessary to handle Tribal issues resulting in negative impacts to the Tribes. In support of establishing an Office of Self-Governance, commenters pointed to established offices at DOI and IHS that have helped those agencies successfully work with Tribes and implement new programs. Additionally, commenters maintained that establishing an Office of Self-Governance would provide a point of contact to Tribes regarding the Program, coordinate the Department's policies relating to the Program, and establish long-term institutional expertise within the Department.

The Department carefully considered the Tribal comments, views, and recommendations on this issue, but is not in a position to accept the Tribal proposal to establish an Office of Self-Governance through this rule. As discussed in the NPRM, Section 207 does not require the Department to establish an Office of Self-Governance, and it is not Federal agency practice to establish new offices in regulation. The Department is not persuaded that it must establish in this regulation a new office to ensure that the Department effectively implements the Program. The Department has experience implementing programs by diverting

resources and staff to meet program needs and will administer its internal operations, as necessary, to implement the TTSGP. The regulations provide for a Self-Governance Official, who is charged with the responsibility to ensure proper implementation of the Program. In addition, the Deputy Assistant Secretary for Tribal Affairs has authority to coordinate across the Department to provide Tribal representatives with information and technical assistance.

2. Self-Governance Advisory Committee

The Committee did not reach consensus on the issue of whether to create a self-governance advisory committee, similar to those that exist within DOI and IHS. Tribal members requested the Department establish an advisory committee in the regulations or otherwise, and the NPRM set forth the Tribal position, 84 FR 52706, 52710 (Oct. 2, 2019). Commenters stated that input from Tribal leaders is important for the development and implementation of programs, pointing to recently proposed rules that were developed with Tribal input. Commenters maintained that creating an advisory committee would save the Department funds because members of the committee would provide better oversight and administration of Tribal programs, promote best practices among participating Tribes, and facilitate the Department's consultation with Tribes. Commenters noted that established self-governance advisory committees have been successful in other agencies, such as DOI, and noted the success of a recently established advisory committee within the Department. Commenters discussed the lack of channels available for Tribes to share information about their transportation needs with Department officials, stating that this has contributed to unsafe Tribal transportation systems. Commenters recommended that the Department establish an advisory committee during the implementation and transition periods for Tribes entering the Program to make recommendations on necessary improvements to the Program and provide guidance to the Department. One commenter recommended the advisory committee be established by regulation so that it is permanent and a change in administrations would not affect its duration.

The Department has carefully considered the Tribal comments, views, and recommendations on this issue, but it has decided not to establish an advisory committee in this rule. The Department is committed to working with Tribal representatives to address the concerns identified by Tribal representatives in implementing the Program in a manner that is transparent, collaborative, and that furthers and fosters Tribal self-governance. The Department also recognizes that other Federal agencies have engaged with Tribal governments by establishing advisory committees to address implementation, transition, and improvement recommendations. The Department will continue to engage with Tribal representatives to ensure the Department solicits Tribal views and considers them in implementing the program. The Department also encourages Tribal representatives to contact the Office of Government Affairs with any concerns or suggestions regarding the program.

3. Additional Comments

The Department received questions from Tribal members about the statutory deadline for the final rule. Section 207 provides that the authority to promulgate regulations for the Program expires 48 months after the date of enactment of the FAST Act, or December 4, 2019, which may be extended up to 180 days if the Committee determines it needs more time and the Department notifies Congress. 23 U.S.C. 207(n)(1). The Committee invoked this extension for the final rule until June 1, 2020, and the Department notified Congress on November 26, 2019.

The Department received a comment from a Tribal member encouraging the Department to include a provision requiring a negotiated rulemaking process for any future rulemakings to amend part 29. The Department does not find it necessary or appropriate to include such a provision in the regulation itself. The Department would make a process determination if and when it engages in a rulemaking to amend part 29 and would consult with Tribes on the process, consistent with § 29.6.

The Department received one comment, addressing use of Department facilities, equipment, and property, from a transit agency noting that while recipients of FTA funding must report to the National Transit Database (NTD), much of the current NTD system is not applicable to Tribal governments. The commenter encouraged FTA to develop a module specific to Tribal governments. The Department acknowledges the comment.

IV. Regulatory Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improving Regulation and Regulatory Review, Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and DOT Regulatory Policies and Procedures

The Department, in consultation with the Office of Management and Budget, has determined that this action does not constitute a significant regulatory action within the meaning of Executive Order (E.O.) 12866 or within the meaning of DOT regulatory policies and procedures. Because this rule is not significant under E.O. 12866, the rule is not an E.O. 13771 regulatory action.

E.O. 12866 and E.O. 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' DOT believes that the economic impact of this rule will be minimal. The rule establishes the TTSGP, which offers Tribes a new mechanism to receive funds from the Department. The Department will incur a minimal amount of administrative costs to create and administer the TTSGP, but plans to accomplish this work predominantly by reallocating existing full-time employees rather than through a net increase in staff levels. Thus, the rule will not fundamentally affect funding or resource levels within the Department.

The Department believes that Tribes could experience modest cost savings relative to the status quo if they join the TTSGP. These savings might arise due to increased efficiencies from streamlined contract negotiations, simplified fund transfers, and greater autonomy to manage funds. Tribes may incur minimal administrative costs to join the TTSGP, such as drafting letters of interest and participating in negotiation meetings. Joining is voluntary, however, and Tribes are unlikely to join unless they experience cost savings greater than any increase in administrative costs.

The Department also expects that Tribes will experience benefits from joining the TTSGP. These benefits include greater legal certainty and protections, greater clarity from using consolidated funding agreements, more timely delivery of funds, and greater autonomy. These benefits will lead to positive outcomes for project planning, management, and delivery.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), DOT has evaluated the effects of this rule on small entities, such as local governments and businesses. Based on the evaluation, the Department concluded that this action will not have a significant economic impact on small entities. The Department determined that this rule only has an impact on the Federal Government and Tribes, which are not small entities for purposes of this Act. The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities.

C. Unfunded Mandates Reform Act

The Department has determined that this rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $151 million or more in any one year (when adjusted for inflation) in 2012 dollars. In addition, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have the authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The funding programs subject to this rulemaking permit this type of flexibility.

D. Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

The Department analyzed this rule under E.O. 12630. The Department determined that this rule will not affect taking of private property interests or otherwise have taking implications under E.O. 12630.

E. Executive Order 13132, Federalism

The Department analyzed this rule in accordance with the principles and criteria contained in E.O. 13132. This rule will impact Tribal governments, but there is no federalism impact on the relationship or balance of power between the United States and Tribes affected by this rule. The Department determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The Department has also determined that this rule will not preempt any State law or regulation, or affect the States' ability to discharge traditional State governmental functions.

F. Executive Order 12988, Civil Justice Reform

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988 to minimize litigation, eliminate ambiguity, and reduce burden.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The Department has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

H. National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, *Procedures for Considering Environmental Impacts* (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* The purpose of this rulemaking is to establish a self-governance program at the Department, which will not have any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

I. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department analyzed this rule under E.O. 13175 and determined that the rule uniquely affects Tribal governments. Therefore, it followed departmental and Administration procedures to consult with Tribal governments on the proposed rule as described in section I.B.2. The Department evaluated this action for potential effects on Tribes and determined that the rule will not impose substantial direct compliance costs on Tribes, will not preempt Tribal law, will not have any potentially adverse effects, economic or otherwise, on the viability of Tribes. Rather, this action will reduce the administrative burden on Tribes participating in the Program. Therefore, a Tribal summary impact statement is not required.

The Department conducted a negotiated rulemaking with Tribal and Federal representatives, including Tribal consultations concerning the proposed rule, which the Department asserts fulfills its obligations to consult, as appropriate. The results of the negotiated rulemaking meetings were periodically reported and discussed in other Federal and Tribal fora. The Tribal and Federal representatives reached consensus on the final rule, including the characterization of all disagreement items.

J. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The Department analyzed this rule under E.O. 13045. The Department certifies that this rule will not cause an environmental risk to health or safety that may disproportionately affect children.

K. Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 29

Grant programs—transportation, Grant programs—Indians, Indians.

Elaine L. Chao,

Secretary of Transportation.

■ For the reasons set out in the preamble, the Department of Transportation adds part 29 to title 49 of the Code of Federal Regulations to read as follows:

PART 29—TRIBAL TRANSPORTATION SELF-GOVERNANCE PROGRAM

Subpart A—General Provisions

Sec.

29.1 What is the purpose and authority for this part?
29.2 What is the Department's policy for the Program?
29.3 What is the effect of this part on existing Tribal rights?
29.4 How do Departmental circulars, policies, manuals, guidance, or rules

apply to a Tribe's performance under the Program?
29.5 Who is responsible for carrying out the functions connected with the Program?
29.6 Must the Department consult with Tribes regarding matters that affect the Program?
29.7 What is the effect of this Program on existing Tribal Transportation Program agreements?
29.8 What happens if more than one party purports to be the authorized representative of a Tribe?
29.9 What definitions apply to this part?

Subpart B—Eligibility and Negotiation Process

Eligibility

29.100 What are the criteria for eligibility to participate in the Program?

Negotiations

29.101 How does a Tribe commence negotiations for a compact or funding agreement?
29.102 What information should the Tribe provide to the Department when it expresses its interest in negotiating a compact, funding agreement, or amendment?
29.103 How will the Department respond to the Tribe's written request?
29.104 Must the Department and the Tribe follow a specific process when negotiating compacts, funding agreements, and amendments?
29.105 Will negotiations commence or conclude within a specified time period?
29.106 What are best practices to pursue negotiations?
29.107 What recourse does the Department or the Tribe have if the negotiations reach an impasse?
29.108 May the Department and the Tribe continue to negotiate after the Tribe submits a final offer?
29.109 Who is responsible for drafting the compact or funding agreement?

Subpart C—Final Offer Process

29.200 What is covered by this subpart?
29.201 In what circumstances should a Tribe submit a final offer?
29.202 How does a Tribe submit a final offer?
29.203 What must a final offer contain?
29.204 How many days does the Department have to respond to a final offer?
29.205 How does the Department acknowledge receipt of a final offer?
29.206 May the Department request and obtain an extension of time of the 45-day review period?
29.207 What happens if the Department takes no action within the 45-day review period (or any extensions thereof)?
29.208 What happens once the Department accepts the Tribe's final offer or the final offer is accepted by operation of law?

Rejection of Final Offers

29.209 On what basis may the Department reject a Tribe's final offer?
29.210 How does the Department reject a final offer?
29.211 Is technical assistance available to a Tribe to overcome rejection of a final offer?
29.212 May a Tribe appeal the rejection of a final offer?
29.213 If a Tribe appeals a final offer, do the remaining provisions of the compact, funding agreement, or amendment not in dispute go into effect?

Subpart D—Contents of Compacts and Funding Agreements

Compacts

29.300 What is included in a compact?
29.301 Is a compact required to participate in the Program?
29.302 What is the duration of a compact?
29.303 May more than one Tribe enter into a single compact and funding agreement?
29.304 May a compact be amended?

Funding Agreements

29.305 When can a Tribe initiate negotiation of a funding agreement?
29.306 What is the duration of a funding agreement?
29.307 What terms must a funding agreement include?
29.308 May the funding agreement include additional terms from title I of the Indian Self-Determination and Education Assistance Act?
29.309 Will a funding agreement include provisions pertaining to flexible or innovative financing?
29.310 How is a funding agreement amended?
29.311 Is a subsequent funding agreement retroactive to the end of the term of the preceding funding agreement?

Subpart E—Rules and Procedures for Transfer and Use of Funds

29.400 What funds may a Tribe elect to include in a funding agreement?
29.401 What funds must the Department transfer to a Tribe in a funding agreement?
29.402 Is the Tribe responsible for the funds included in a funding agreement?
29.403 When must the Department transfer to a Tribe the funds identified in a funding agreement?
29.404 When must the Department transfer funds that were not paid as part of the initial lump sum payment (or initial periodic payment)?
29.405 When must the Department transfer funds for a discretionary or competitive grant?
29.406 Does the award of funds for a discretionary or competitive grant entitle a Tribe to receive the same amount in subsequent years?
29.407 Does the award of funds for discretionary or competitive grants entitle the Tribe to receive contract support costs?
29.408 How may a Tribe use interest earned on funds included in a funding agreement?
29.409 May a Tribe carry over from one fiscal year to the next any funds that remain at the end of the funding agreement?
29.410 May a Tribe use remaining funds from a discretionary or competitive grant included in a funding agreement?
29.411 Are funds included in a compact and funding agreement non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program?
29.412 May the Department increase the funds included in the funding agreement if necessary to carry out the Program?
29.413 How will the Department assist a Tribe with its credit requests?
29.414 What limitations apply to Department actions related to transfer of funds associated with PSFAs?
29.415 Does the Prompt Payment Act apply to funds included in a funding agreement?
29.416 What standard applies to a Tribe's management of funds included in a funding agreement?
29.417 Must a Tribe continue performance of the Tribal Transportation Program or the Tribal Transit Program under a compact and funding agreement if the Department does not transfer sufficient funds?
29.418 May a funding agreement include transfers of State funds?
29.419 Does the award of formula funds entitle a Tribe to receipt of contract support costs?
29.420 Is a Tribe entitled to enter into facility leases from the Department and to receive facility support costs?
29.321 May a Tribe redesign, consolidate, reallocate, or redirect the funds included in a funding agreement?

SUBPART F—PROGRAM OPERATIONS

Audits and Cost Principles

29.500 Must a Tribe undertake an annual audit?
29.501 Must a Tribe submit any required audits to the Federal Audit Clearinghouse and the Department?
29.502 Who is responsible for compiling, copying, and paying for materials for any audit or examination?
29.503 How may the Federal Government make a claim against a Tribe relating to any disallowance of costs based on an audit conducted under this part?
29.504 What cost principles must a Tribe apply in compacts and funding agreements?

Standards for Tribal Management Systems

29.505 Must a Tribe carrying out a compact and funding agreement develop, implement, and maintain management systems that meet financial standards?
29.506 What financial standards apply to a Tribe's management systems when carrying out a compact and funding agreement?
29.507 What minimum requirements must a Tribe's management system include to meet the financial standards set forth in § 29.506?
29.508 What procurement standards apply to contracts carried out using funds included in a funding agreement?
29.509 What property management systems and standards must a Tribe maintain?

Records

29.510 Must a Tribe maintain a recordkeeping system?
29.511 Are Tribal records subject to the Freedom of Information Act and Federal Privacy Act?
29.512 Must a Tribe make its records available to the Department?
29.513 How long must a Tribe keep and make available records?

Procurement

29.514 When procuring property or services with funds included in a funding agreement, can a Tribe follow its own procurement standards?
29.515 What are the minimum procurement standards that a Tribe must follow when procuring property or services with funds included in a funding agreement?
29.516 Do Federal laws and regulations apply to a Tribe's contractors or subcontractors?
29.517 Can a Tribe use Federal supply sources in the performance of a compact and funding agreement?

Reporting

29.518 What reporting must a Tribe provide?

Property

29.519 How may a Tribe use existing Department facilities, equipment, or property?
29.520 How may a Tribe acquire surplus or excess Federal property for use under the Program?
29.521 How must a Tribe use surplus or excess Federal property acquired under the Program?
29.522 If a compact or funding agreement (or portion thereof) is retroceded, reassumed, terminated, or expires, may the Department reacquire title to property purchased with funds under any compact and funding agreement or excess or surplus Federal property that was donated to the Tribe under the Program?

Technical Assistance

29.523 What technical assistance is available to a Tribe from the Department?

Prevailing Wages

29.524 Do the wage and labor standards in the Davis-Bacon Act apply to employees of a Tribe?

Tribal Preference

29.525 Does Indian preference apply to PSFAs under the Program?
29.526 When do Tribal employment law and contract preference laws govern?

Environmental and Cultural Resource Compliance

29.527 What compliance with environmental and cultural resource statutes is required?

Federal Tort Claims Act

29.528 Is the Federal Tort Claims Act applicable to a Tribe when carrying out a compact and funding agreement under the Program?
29.529 What steps should a Tribe take after becoming aware of a Federal Tort Claim?
29.530 Is it necessary for a compact or funding agreement to include any terms about FTCA coverage?
29.531 Does FTCA cover employees of the Tribe who are paid by the Tribe from funds other than those provided through the compact and funding agreement?
29.532 May persons who are not Indians assert claims under FTCA?
29.533 Does the year PSFAs are funded affect FTCA coverage?

Waiver of Program Regulations

29.534 What is the process for regulation waivers under this part?

Subpart G—Withdrawal

29.600 May a Tribe withdraw from a consortium?
29.601 When does a withdrawal from a consortium become effective?
29.602 How are funds redistributed when a Tribe fully or partially withdraws from a compact and funding agreement administered by a consortium serving more than one Tribe and elects to enter into a compact and funding agreement with the Department?
29.603 How are funds distributed when a Tribe fully or partially withdraws from a compact and funding agreement administered by a consortium serving more than one Tribe, and the withdrawing Tribe elects not to or is ineligible to enter into a compact and funding agreement?

Subpart H—Retrocession

29.700 May a Tribe retrocede a PSFA and the associated funds?
29.701 How does a Tribe notify the Department of its intention to retrocede?
29.702 What happens if the Department of the Interior determines that it provides the transportation services the Tribe intends to retrocede?
29.703 What happens if the Department of the Interior determines that it does not provide the transportation services the Tribe intends to retrocede?
29.704 When is the retrocession effective?
29.705 What effect will a retrocession have on a Tribe's right to compact under the Program?
29.706 Will retrocession adversely affect future funding available for the retroceded program?

Subpart I—Termination and Reassumption

29.800 When can the Department reassume a compact or funding agreement?
29.801 Can the Department reassume a portion of a compact or funding agreement and the associated funds?
29.802 What process must the Department follow before termination of a compact or funding agreement (or portion thereof)?
29.803 What happens if the Department determines that the Tribe has not corrected the conditions that the Department identified in the notice?
29.804 When may the Department reassume?
29.805 When can the Department immediately terminate a compact or funding agreement (or portion thereof)?
29.806 Upon termination, what happens to the funds associated with the terminated portions of the compact or funding agreement?

Subpart J—Dispute Resolution and Appeals

29.900 What is the purpose of this subpart?
29.901 Can the Department and a Tribe resolve disputes using alternative dispute resolution processes?
29.902 Does the Equal Access to Justice Act apply to the Program?
29.903 What determinations may not be appealed under this subpart?

Pre-Award Decisions

29.904 What are pre-award decisions that a Tribe may appeal?
29.905 To whom does a Tribe appeal a pre-award decision?
29.906 Must a Tribe exhaust its administrative remedies before initiating a civil action against the Department in the U.S. District Courts for a pre-award decision?
29.907 When and how must a Tribe appeal a pre-award decision?
29.908 May a Tribe request an extension of time to file an administrative appeal?
29.909 When and how must the hearing official respond to the Tribe's appeal?
29.910 What is the Department's burden of proof for appeals of pre-award decisions?
29.911 What is the effect of a pending appeal on negotiations?

Post-Award Disputes

29.912 What is a post-award dispute?
29.913 What is a claim under the Contract Disputes Act?
29.914 How does a Tribe file a Contract Disputes Act claim?
29.915 Must a Tribe certify a Contract Disputes Act claim?
29.916 Who bears the burden of proof in a Contract Disputes Act claim?
29.917 What is the Department's role in processing the Contract Disputes Act claim?
29.918 What information must the Self-Governance Official's decision contain?
29.919 When must the Self-Governance Official issue a written decision on the claim?
29.920 Is a decision of the Self-Governance Official final?
29.921 Where may a Tribe appeal the Self-Governance Official's decision on a Contract Disputes Act claim?
29.922 May a party appeal a Civilian Board of Contract Appeals decision?
29.923 What is the effect of a pending appeal?

Termination Appeals

29.924 May a Tribe appeal the Department's decision to terminate a compact or funding agreement?
29.925 Is a Tribe entitled to a hearing on the record?

29.926 What rights do the Department and the Tribe have in an appeal of a termination decision?
29.927 What notice and service must the Department and the Tribe provide?
29.928 What is the Department's burden of proof for a termination decision?
29.929 How will the Department communicate its decision following a hearing on a termination decision?
29.930 May the Department or the Tribe appeal the decision of an administrative law judge?
29.931 How can the Department or the Tribe obtain review of the recommended decision of an administrative law judge?
29.932 May a Tribe appeal the decision of the Secretary?
29.933 What is the effect of an appeal on negotiations?

Authority: 23 U.S.C. 207

Subpart A—General Provisions

§ 29.1 What is the purpose and authority for this part?

(a) The regulations in this part implement the Tribal Transportation Self Governance Program established in 23 U.S.C. 207 and set forth rules for compacts and funding agreements negotiated between the Department and Tribes eligible under the Program.

(b) The Department prepared and issued these rules pursuant to 23 U.S.C. 207(n) with the active participation and representation of Tribes, Tribal organizations, consortia, and individual Tribal members, consistent with the procedures of the Negotiated Rulemaking Act.

§ 29.2 What is the Department's policy for the Program?

It is the Department's policy to:

(a) Recognize the unique government-to-government relationship with Tribes, including the right of Tribes to self-government, and to support Tribal sovereignty and self-determination;

(b) Encourage Tribes to participate in the Program;

(c) Affirm and enable the United States to fulfill its obligations to Tribes under treaties and other laws, and to ensure the continuation of the trust responsibility of the United States to Tribes and Indians that exist under treaties, other laws, and Executive orders;

(d) Interpret Federal laws and regulations in a manner that will facilitate the inclusion of eligible funds in funding agreements under the Program to carry out Tribal PSFAs, except as otherwise provided by law;

(e) Consult with Tribes directly and meaningfully on policies that have Tribal implications and affect the Program;

(f) Acknowledge that Tribes perform PSFAs as an exercise of Tribal self-determination and self-governance; are responsible for day-to-day operation of PSFAs carried out under the Program; and accept responsibility and accountability for the use of funds and satisfactory performance consistent with the terms of funding agreements; and

(g) Liberally construe this part to effectuate 23 U.S.C. 207 for the benefit of Tribes participating in the Program.

§ 29.3 What is the effect of this part on existing Tribal rights?

(a) A Tribe may apply for the Program at any time, but nothing in this part requires a Tribe to do so.

(b) A Tribe's decision to participate in the Program does not:

(1) Affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by the Tribe;

(2) Terminate, waive, modify, or reduce the trust responsibility of the United States to the Tribe or individual Indians; or

(3) Reduce the amount of the Tribe's formula or discretionary funding from the Department or impair the Tribe's ability to obtain funding from another Federal program.

§ 29.4 How do Departmental circulars, policies, manuals, guidance, or rules apply to a Tribe's performance under the Program?

A Tribe's performance under the Program is not subject to any Departmental circular, policy, manual, guidance, or rule, except for this part, unless the Department and the Tribe otherwise negotiate and agree in the compact or funding agreement.

§ 29.5 Who is responsible for carrying out the functions connected with the Program?

The Department will carry out the Program, including making eligibility determinations; negotiating compacts and funding agreements with Tribes; overseeing compliance with Department requirements; and otherwise administering and implementing the Program consistent with this part. As provided in § 29.402, a Tribe is responsible for day-to-day management of the Tribe's PSFAs consistent with the compact and funding agreement.

§ 29.6 Must the Department consult with Tribes regarding matters that affect the Program?

The Department must consult with Tribes on matters relating to the Program. The Department will carry out consultations in accordance with Executive Order 13175 and applicable Department policies, including the Department's Tribal Consultation Plan.

§ 29.7 What is the effect of this Program on existing Tribal Transportation Program agreements?

This Program does not terminate existing authority for a Tribe to enter into agreements with the Federal Highway Administration, or contracts or agreements with the Department of the Interior, for the Tribal Transportation Program. A Tribe may maintain its current contracts or agreements, or include Tribal Transportation Program funds in a funding agreement under this Program. A Tribe may only have one agreement at a time for the same funds.

§ 29.8 What happens if more than one party purports to be the authorized representative of a Tribe?

If more than one party purports to be the authorized representative of a Tribe during the negotiation of a compact, funding agreement, or amendment, the Department will notify the parties, consult with the Department of the Interior, defer negotiation or execution of any documents, if necessary, until such authority is clarified, and provide written notice to the parties of the Department's decision to defer.

§ 29.9 What definitions apply to this part?

Unless otherwise provided, the following definitions apply to this part:

Appeal means a request by a Tribe for an administrative or judicial review of a decision by the Department.

Self-Governance Official means a Department official responsible for overseeing the Program and carrying out the responsibilities set forth in this part.

Compact means a legally binding and mutually enforceable written agreement between the Department and a Tribe entered into pursuant to 23 U.S.C. 207(c) and this part that sets forth the general terms that will govern the Tribe's participation in the Program and affirms the government-to-government relationship.

Consortium means an organization or association of Tribes that is authorized by those Tribes to participate in the Program under this part and is responsible for negotiating, executing, and implementing compacts and funding agreements on behalf of its member Tribes.

Consultation means the process by which the Department and Tribes engage in timely, substantive, and meaningful government-to-government communication, collaboration and participation, and exchange views in furtherance of the Federal trust responsibility and the principles of self-governance, before any action is taken that will have Tribal implications as defined by Executive Order 13175, in

accordance with the Department's Tribal Consultation Plan, Executive Order 13175, all subsequent Presidential Memoranda regarding Tribal consultation, and applicable Federal law.

Contractor means a third party who has entered into a legally binding agreement with a Tribe to provide goods or services.

Days means calendar days. When the last day of any time period specified in this part falls on a Saturday, Sunday, or Federal holiday, the period shall carry over to the next business day unless otherwise prohibited by law.

Department means the U.S. Department of Transportation.

Discretionary or *competitive grant* means funds provided by the Department where it selects the award amount and recipients from among all eligible applicants consistent with the legislative and regulatory requirements and selection criteria established for a program.

Excess property means real or personal property under the control of a Federal agency that is not required for the agency's needs and the discharge of its responsibilities.

Funding agreement means a legally binding and mutually enforceable written agreement between the Department and a Tribe entered into pursuant to 23 U.S.C. 207(d) and this part that identifies the funds the Tribe will use to carry out its PSFAs, and sets forth the terms and conditions under which the Tribe will receive the funds.

Gross mismanagement means a significant, clear, and convincing violation of a compact, funding agreement, or regulatory or statutory requirements applicable to Federal funds included in a compact and funding agreement that results in a significant reduction of funds available for a PSFA carried out by a Tribe.

Imminent jeopardy means an immediate threat to a trust asset, natural resource, or public health and safety that is caused by the act or omission of a Tribe and that arises out of a failure by the Tribe to carry out the compact or funding agreement.

Indian means a person who is a member or citizen of a Tribe.

Indian Tribe or *Tribe* means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community (including colonies and rancherias) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. In any case in which an Indian Tribe has authorized another Indian Tribe, an intertribal consortium, or a Tribal organization to plan for or carry out PSFAs on its behalf under this part, the authorized Indian Tribe, intertribal consortium, or Tribal organization shall have the rights and responsibilities of the authorizing Indian Tribe (except as otherwise provided in the authorizing resolution or in title 23 of the U.S. Code). In such event, the term Indian Tribe or Tribe as used in this part shall include such other authorized Indian Tribe, intertribal consortium, or Tribal organization.

Inherent Federal functions means those Federal functions that cannot legally be delegated to a non-Federal entity, including a Tribe.

Operating Administration means a component administration of the U.S. Department of Transportation.

Program means the Tribal Transportation Self-Governance Program established by 23 U.S.C. 207.

Project means any activity determined as being eligible under the U.S. Code title and program for which funds are being provided.

Programs, services, functions, and activities or *PSFAs* means programs, services, functions, and activities, or portions thereof, that a Tribe carries out using funds included in a funding agreement under the Program.

Real property means any interest in land together with the improvements, structures, and fixtures and appurtenances.

Reassumption means the termination, in whole or part, of a funding agreement and assuming or reassuming the remaining funds included in the compact and funding agreement pursuant to 23 U.S.C. 207(f)(2)(A).

Receipt means the actual date on which a submission is received. With respect to receipt by the Department, receipt is the date on which the Department official specified in this part receives the submission. Demonstration of receipt includes a postal return receipt, express delivery service receipt, or any other method that demonstrates actual receipt by the Departmental official specified in this part, including via electronic mail.

Retrocession means the voluntary return of a Tribe's PSFA and associated remaining funds for any reason before or on the expiration of the term of the funding agreement.

Secretary means the Secretary of Transportation.

Self-Determination Contract means a contract (or grant or cooperative agreement) entered into pursuant to title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5321) between a Tribe and the appropriate Federal agency for the planning, conducting and administration of programs or services that are otherwise provided to Tribes.

Self-governance means the Federal policy of Indian self-determination and self-government rooted in the inherent sovereignty of Tribes, reflected in the government-to-government relationship between the United States and Tribes, and expressed in the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended, and the policy of Tribal self-determination established under the Program.

State means any of the 50 States, the District of Columbia, or Puerto Rico.

Surplus government property means excess real or personal property that is not required for the needs of and the discharge of the responsibilities of all Federal agencies that has been declared surplus by the General Services Administration.

Technical assistance means the process by which the Department provides targeted support to a Tribe with a development need or problem.

Transit means regular, continuing shared ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income, excluding the transportation services set forth in 49 U.S.C. 5302(14)(B).

Tribal Transportation Program (TTP) means a program established in section 1119 of Moving Ahead for Progress in the 21st Century (MAP–21), Public Law 112–141 (July 6, 2012), and codified in 23 U.S.C. 201 and 202. The Fixing America's Surface Transportation Act (FAST Act), Public Law 114–94 (December 4, 2015) reauthorized this program.

TTP Agreement means an agreement between a Tribe and either the Federal Highway Administration or the Bureau of Indian Affairs pursuant to 23 U.S.C. 202 that authorizes a Tribe to carry out all but the inherently Federal functions of the TTP.

Tribal Organization means the recognized governing body of any Tribe, any legally established organization of Indians that is controlled, sanctioned, or chartered by such governing body or is democratically elected by the adult members of the Indian community to be served by such organization, and includes the maximum participation of Indians in all phases of its activities.

Subpart B—Eligibility and Negotiation Process

Eligibility

§ 29.100 What are the criteria for eligibility to participate in the Program?

(a) *Eligibility.* A Tribe is eligible to participate in the Program if—

(1) The Tribe requests participation in the Program by resolution or other official action by the governing body of the Tribe; and

(2) The Department determines, based on the evidence submitted by the Tribe, that, over the 3 most recent fiscal years, the Tribe has demonstrated financial stability and financial management capability, and transportation program management capability in accordance with the criteria specified in 23 U.S.C. 207(b) and this section.

(b) *Financial stability and financial management capability.* In making the eligibility determination under 23 U.S.C. 207(b), the Department must determine that a Tribe demonstrates financial stability and financial management capability. To assist the Department in determining whether a Tribe meets the financial stability and financial management capability criterion, a Tribe must satisfy one of the following evidence standards:

(1) *Conclusive evidence.* A Tribe subject to the Single Audit Act demonstrates financial stability and financial management capability by providing evidence establishing that, during the preceding 3 fiscal years, the Tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Tribe's self-determination contracts or self-governance funding agreements with any Federal agency. This will be conclusive evidence that the Tribe has satisfied the financial stability and financial management capability criterion.

(2) *Sufficient evidence.* A Tribe subject to the Single Audit Act that has a TTP Agreement, or a grant award provided by the Department may provide evidence establishing that, during the preceding 3 fiscal years, the Tribe had no uncorrected significant and material audit exceptions in its required single audit of the Tribe's Federal award programs. This will be sufficient evidence that the Tribe has satisfied the financial stability and financial management capability criterion.

(3) *Evidence without a mandate to comply with the Single Audit Act.* If a Tribe is not subject to the Single Audit Act, a Tribe may provide evidence of the following for the Department's determination of whether the Tribe satisfies the financial stability and financial management capability criterion:

(i) An independent audit, consistent with 2 CFR 200.514, containing no uncorrected significant and material audit exceptions that covers the preceding 3 fiscal years of the Tribe's self-determination contracts or self-governance funding agreements with any Federal agency, TTP Agreements, or a grant award from the Department; and

(ii) Evidence demonstrating that the Tribe has financial management systems and standards that meet or exceed the standards set forth in §§ 29.505 through 29.511 and 29.515 of this part. The Department will confirm in writing within 90 days of receipt of any such submission by the Tribe whether the Tribe's management systems meet the required standards.

(c) *Transportation program management capability.* In making the eligibility determination under 23 U.S.C. 207(b), the Department also must determine that a Tribe demonstrates transportation program management capability, including the capability to manage and complete projects eligible under title 23 and chapter 53 of title 49 of the U.S. Code, based on the totality of the evidence that a Tribe submits to the Department.

(1) *Evidence of transportation management capability.* To assist the Department in determining whether a Tribe meets the transportation program management capability criterion, a Tribe may submit evidence including:

(i) Documentation showing that the Tribe has previously or is currently directing or carrying out transportation services, projects, or programs under a self-determination contract, self-governance compact, a TTP Agreement, or a grant award with the Department.

(ii) Documentation showing the extent to which the Tribe previously received Federal funding and carried out management responsibilities relating to the planning, design, delivery, construction, maintenance, or operation of transportation-related projects, and whether they were completed;

(iii) Documentation that the Tribe has established and maintains, as appropriate, a staffed and operational transportation or transit program, department, commission, board, or official of any Tribal government charged by its laws with the responsibility for transportation-related responsibilities, including administration, planning, maintenance, and construction activities. This documentation should identify the Tribal personnel, job descriptions, and expertise necessary to administer or implement PSFAs that the Tribe proposes to assume under the Program. The documentation may also include resolutions, other authorizations, or proposed budgets demonstrating that the Tribe has taken steps to organize a Tribal office or department to address the transportation-related needs of the Tribe and how that entity has or will demonstrate transportation program management capacity; and

(iv) Documentation showing the completion of one or more transportation projects or operation of a program that is related to or similar to the PSFA the Tribe requests to include in a funding agreement negotiated between the Department and the Tribe. The Department will consider the number, complexity, and type of projects or programs that the Tribe has carried out and describes as part of this determination. This documentation should address the substantive involvement of the Tribe in operating a transportation program, which may be demonstrated by:

(A) Involvement in the development of a completed and approved highway safety plan;

(B) Involvement in the development of completed and approved plans, specifications, and estimates design package for one or more transportation projects to be carried out with available funding;

(C) Involvement in the delivery of a completed and approved transportation construction project using Federal or non-Federal funds;

(D) Oversight or operation of a public transit project or public transit system;

(E) Oversight or operation of a transportation maintenance system; or

(F) Other information that evidences the transportation program management capabilities of the Tribe.

(2) *Other indicia of program management capability.* In determining transportation program management capability, the Department will consider any other evidence that a Tribe may submit, including the operation by the Tribe of non-transportation programs of similar complexity, size, administrative need, staffing requirement, or budget.

(d) *Program eligibility determination.* The Department will make its determination of a Tribe's eligibility according to the following time frames:

(1) Within 30 days of receipt of a Tribe's submission seeking an eligibility determination under this section to participate in the Program, the Department will notify the Tribe in writing to confirm that it has received the submission and notify the Tribe

whether any evidence necessary to make the determination is missing.

(3) Within 120 days of receipt of an initial submission, the Department will issue its determination of a Tribe's eligibility to participate in the Program. If the Tribe provides additional evidence to complete the application, the Department will have up to an additional 45 days after such submittal to issue its determination of the Tribe's eligibility to participate in the Program. The determination will constitute final agency action, which the Tribe may appeal in accordance with §§ 29.904 through 29.911.

(e) *Technical assistance.* A Tribe with one or more uncorrected significant and material audit exceptions may request technical assistance from the Department through the Self-Governance Official. To the extent feasible, the Department will provide technical assistance, such as feedback on management systems and standards or review of internal controls, with the goal of assisting the Tribe to establish eligibility for the Program. Where audit exceptions involve funding administered by another Federal agency, the Tribe will resolve those exceptions with that agency.

Negotiations

§ 29.101 How does a Tribe commence negotiations for a compact, funding agreement, or amendment?

After the Department notifies a Tribe in writing that it is eligible to participate in the Program pursuant to § 29.100, the Tribe must submit a written request to the Self-Governance Official to begin negotiating a compact and funding agreement. A Tribe participating in the Program may submit a written request to the Self-Governance Official at any time to begin negotiating an amendment. A Tribe may send the request to *ttsgp@dot.gov* or use any other method that provides receipt.

§ 29.102 What information should a Tribe provide to the Department when it expresses its interest in negotiating a compact, funding agreement, or amendment?

After the Department notifies a Tribe in writing that it is eligible to participate in the Program pursuant to § 29.100, the Tribe may express its interest in negotiating a compact, funding agreement, or amendment by written request. Such request need only request that the Department enter into negotiations for a compact, funding agreement, or amendment. To the degree the Tribe has the following information available to it, the request may include, as appropriate:

(a) Whether the Tribe wants to negotiate a compact, funding agreement, or amendment;

(b) The funding programs that the Tribe wants to include in the funding agreement or amendment;

(c) The terms the Tribe wants to include in the compact, funding agreement, or amendment;

(d) Any information or technical assistance the Tribe needs from the Department to assist in pursuing the negotiation process; and

(e) The Tribal official with authority to negotiate on behalf of the Tribe, the designated Tribal contact, relevant contact information, and, if applicable, the name and contact information of an attorney authorized to represent the interests of the Tribe in the negotiation.

§ 29.103 How will the Department respond to a Tribe's written request?

Within 15 days of receipt of a Tribe's written request, the Department will notify the Tribe in writing of the identity of the designated representative(s) of the Department who will conduct the negotiation and, to the extent feasible, will provide to the Tribe the information requested by the Tribe consistent with § 29.102(d).

§ 29.104 Must the Department and a Tribe follow a specific process when negotiating compacts, funding agreements, and amendments?

The Department and a Tribe do not have to follow a specific process when negotiating compacts, funding agreements, and amendments. The Department and the Tribe should cooperate to develop a plan to address each issue subject to negotiation and provide the representatives an opportunity to address the Tribal proposals, legal or program issues of concern, the time needed to complete the negotiations, and the development of a term sheet.

§ 29.105 Will negotiations commence or conclude within a specified time period?

Unless the Department and the Tribe agree otherwise, negotiations will commence within 60 days of the Department's receipt of the Tribe's written request to negotiate a compact, funding agreement, or amendment. The Department and the Tribe should make every effort to conclude negotiations within 90 days from the date on which negotiations commence, unless they agree to extend the time period for negotiations. Negotiations may proceed by electronic mail, teleconferences, or in-person meetings.

§ 29.106 What are best practices to pursue negotiations?

(a) The Department and the Tribe should collaborate and provide a clear explanation of their positions and interests. Each party should provide timely and specific responses to proposals presented during negotiations in order to conclude negotiations as soon as possible within the period provided in § 29.105.

(b) In negotiating the applicable construction, design, monitoring, or health and safety requirements that apply to the PSFAs the Tribe carries out using funds included in a funding agreement, along with the other terms set forth in § 29.307, the Department and the Tribe should cooperate and the Department will prioritize the reduction of administrative requirements on the Tribe when negotiating the terms of the compact, funding agreement, or amendment to effectuate Tribal self-governance.

(c) The Department and the Tribe should conduct the negotiations in order to reach agreement on as many items as possible, and to refine unresolved issues in order to avoid disputed terms. The negotiations should conclude with mutually agreed upon terms and conditions. If any unresolved issues remain, the Tribe may submit a final offer to the Department under subpart C of this part.

§ 29.107 What recourse does the Department or the Tribe have if the negotiations reach an impasse?

The Department and the Tribe should resolve disagreements informally and by mutual agreement whenever possible. If the Department and the Tribe are unable to reach agreement by the agreed upon date for completing negotiations, the Tribe may request to participate in an alternative dispute resolution process pursuant to § 29.901, or it may submit a final offer to the Self-Governance Official in accordance with subpart C of this part.

§ 29.108 May the Department and the Tribe continue to negotiate after the Tribe submits a final offer?

The Department and the Tribe may continue negotiations after the Tribe submits a final offer by mutual agreement, and may execute the remaining terms of the compact, funding agreement, or amendment not subject to the final offer, consistent with § 29.213.

§ 29.109 Who is responsible for drafting the compact or funding agreement?

It is the mutual obligation of the Department and the Tribe to draft the compact, funding agreement, or

amendment. Either the Department or the Tribe may prepare the initial draft for the other party's review.

Subpart C—Final Offer Process

§ 29.200 What is covered by this subpart?

This subpart explains the final offer process for resolving, within a specific time frame, disputes that may develop in negotiation of a compact, funding agreement, or amendment.

§ 29.201 In what circumstances should a Tribe submit a final offer?

If the Department and a Tribe are unable to agree, in whole or in part, on the terms of a compact, funding agreement, or amendment, the Tribe may submit a final offer to the Department.

§ 29.202 How does a Tribe submit a final offer?

(a) A Tribe must submit a written final offer to the Self-Governance Official to *ttsgp@dot.gov* or send the final offer using any other method that provides receipt to: Self-Governance Official, U.S. Department of Transportation, Office of the Secretary, Office of the Assistant Secretary for Governmental Affairs (I–10), 1200 New Jersey Avenue SE, Washington, DC 20590.

(b) The final offer should be a separate document from the compact, funding agreement, or amendment and clearly identified as a ''Final Offer—Response due within 45 days of receipt.''

§ 29.203 What must a final offer contain?

A final offer must contain a description of the disagreement between the Department and the Tribe, the Tribe's final proposal to resolve the disagreement, including any draft proposed terms to be included in a compact, funding agreement, or amendment, and the name and contact information for the person authorized to act on behalf of the Tribe. If the final offer is insufficient for the Department to make a decision, the Department will notify the Tribe and request additional information. A request for more information has no effect on deadlines for response.

§ 29.204 How many days does the Department have to respond to a final offer?

The Department has 45 days to respond to the final offer. The 45-day review period begins on the date the Self-Governance Official receives the final offer.

§ 29.205 How does the Department acknowledge receipt of a final offer?

Within 10 days of the Self-Governance Official receiving the final offer, the Department will send the Tribe an acknowledgement of the final offer, together with documentation that indicates the date on which the Self-Governance Official received the final offer. The Department's failure to send the acknowledgement does not constitute approval of the final offer.

§ 29.206 May the Department request and obtain an extension of time of the 45-day review period?

The Department may request an extension of time before the expiration of the 45-day review period. The Tribe may either grant or deny the Department's request for an extension. Any grant of extension of time must be in writing and signed by a person authorized by the Tribe to grant the extension before the expiration of the 45-day review period.

§ 29.207 What happens if the Department takes no action within the 45-day review period (or any extensions thereof)?

The final offer is accepted by operation of law if the Department takes no action within the 45-day review period (or any extensions thereof).

§ 29.208 What happens once the Department accepts the Tribe's final offer or the final offer is accepted by operation of law?

Once the Department accepts the Tribe's final offer or the final offer is accepted by operation of law, the Department must add the terms of the Tribe's accepted final offer to the compact, funding agreement, or amendment, and transfer funds consistent with §§ 29.403 through 29.405.

Rejection of Final Offers

§ 29.209 On what basis may the Department reject a Tribe's final offer?

The Department may reject a Tribe's final offer for any of the following reasons:

(a) The amount of funds proposed in the final offer exceeds the applicable funding level to which the Tribe is entitled;

(b) The subject of the final offer is an inherent Federal function that cannot legally be delegated to the Tribe;

(c) Carrying out the PSFA would result in significant danger or risk to public health or safety; or

(d) The Tribe is not eligible to participate in self-governance under section 23 U.S.C. 207(b).

§ 29.210 How does the Department reject a final offer?

The Department must reject a final offer by providing written notice to the Tribe based on the criteria in § 29.209 no more than 45 days after receipt of a final offer by the Self-Governance Official, or within a longer time period as agreed to by the Department and the Tribe consistent with this subpart. The notice must explain the basis for the rejection of the final offer.

§ 29.211 Is technical assistance available to a Tribe to overcome rejection of a final offer?

The Department must provide technical assistance to overcome the objections stated in the Department's rejection of a final offer.

§ 29.212 May a Tribe appeal the rejection of a final offer?

A Tribe may appeal the rejection of a final offer in accordance with §§ 29.904 through 29.911.

§ 29.213 If a Tribe appeals a final offer, do the remaining provisions of the compact, funding agreement, or amendment not in dispute go into effect?

If a Tribe appeals the rejection of a final offer, the Department and the Tribe may execute and make effective any non-disputed, severable provisions of the compact, funding agreement, or amendment that are not already executed and are not subject to appeal.

Subpart D—Contents of Compacts and Funding Agreements

Compacts

§ 29.300 What is included in a compact?

A compact only includes the general terms that govern a Tribe's participation in the Program and such other terms as the Department and the Tribe mutually agree that will continue to apply from year to year, and affirms the government-to-government relationship between the Department and the Tribe. Such terms include the authority, purpose, and obligations of the Department and the Tribe. The written compact memorializes matters on which the Department and the Tribe agree. The compact will not include language not agreed to by the Department and the Tribe.

§ 29.301 Is a compact required to participate in the Program?

A Tribe must have a compact in place to participate in the Program. A compact must be in effect between the Department and the Tribe before the Tribe may enter into a funding agreement with the Department. The Tribe may negotiate a compact at the

same time it is negotiating a funding agreement, so long as the compact is executed prior to or concurrent with the funding agreement.

§ 29.302 What is the duration of a compact?

A compact remains in effect until it is terminated by mutual written agreement, retrocession, or reassumption under this part.

§ 29.303 May more than one Tribe enter into a single compact and funding agreement?

A consortium of two or more Tribes may participate in the Program by entering into a single compact and funding agreement on the same basis as an individual Tribe. A consortium may comprise a combination of one or more Tribes that may or may not be independently eligible under § 29.100, so long as the consortium is eligible.

§ 29.304 May a compact be amended?

A compact may be amended at any time by the mutual written agreement of the Department and the Tribe.

Funding Agreements

§ 29.305 When can a Tribe initiate negotiation of a funding agreement?

Concurrent with or after a Tribe has entered into a compact with the Department, the Department and the Tribe will negotiate a funding agreement, consistent with §§ 29.101 through 29.109. The funding agreement is the legally binding written agreement that identifies the funds the Tribe will use to carry out its PSFAs, and sets forth the terms and conditions under which the Tribe will receive the funds.

§ 29.306 What is the duration of a funding agreement?

(a) The duration of a funding agreement is one year unless the Department and a Tribe negotiate a multi-year funding agreement or, for an initial funding agreement, a partial-year agreement.

(b) Each funding agreement will remain in full force and effect until the Department and the Tribe execute a subsequent funding agreement, except when:

(1) The Tribe provides notice to the Department that it is withdrawing or retroceding funds for the operation of one or more PSFAs (or portions thereof) identified in the funding agreement;

(2) The Department terminates the funding agreement under 23 U.S.C. 207(f)(2); or

(3) The Department and the Tribe agree otherwise.

§ 29.307 What terms must a funding agreement include?

A funding agreement must set forth the following:

(a) The funds the Department will provide, including those funds provided on a recurring basis;

(b) The PSFAs the Tribe intends to carry out using the funds;

(c) The general budget category assigned to the funds;

(d) The time and method of transfer of funds;

(e) The responsibilities of the Department and the Tribe;

(f) Any applicable statutory limitations on the use of funds;

(g) Any statutory or negotiated reporting requirements;

(h) Any applicable Federal or federally approved design, construction, and monitoring standards, or the Tribe's design, construction, and monitoring standards, if they are consistent with or exceed the Federal or federally approved standards;

(i) Other Federal health and safety requirements that apply to the funds included in the funding agreement, or the Tribe provides adequate assurance that its relevant health and safety requirements are consistent with or exceed such requirements;

(j) If the funding agreement includes TTP funds under 23 U.S.C. 202 and § 29.400(a), provisions related to planning, inventory, and allowable use of funds in 25 CFR part 170 necessary for administration of the TTP, consistent with the Program's goal to reduce administrative burdens on the Tribe, or Tribal provisions that meet or exceed those standards;

(k) Any other provision agreed to by the Department and the Tribe, such as program oversight, accountability, annual reporting on expenditure of Federal funds, and technical assistance; and

(l) Provisions authorizing the Department to terminate the funding agreement (in whole or in part) and reassume the remaining funding for transfer, as appropriate.

§ 29.308 May the funding agreement include additional terms from title I of the Indian Self-Determination and Education Assistance Act?

At a Tribe's request, the Department and the Tribe may incorporate into a compact or funding agreement any other provision of title I of the Indian Self-Determination and Education Assistance Act, unless the Department determines there is a conflict between the provision and 23 U.S.C. 207. The Department will make the determination consistent with 23 U.S.C. 207(j).

§ 29.309 Will a funding agreement include provisions pertaining to flexible or innovative financing?

If the Department and a Tribe agree, a funding agreement will include provisions pertaining to flexible financing and innovative financing. In that event, the Department and the Tribe will establish terms and conditions relating to the flexible and innovative financing provisions that are consistent with 23 U.S.C. 207(d)(2)(C).

§ 29.310 How is a funding agreement amended?

A funding agreement may be amended by the mutual written agreement of the Department and the Tribe as provided for in the funding agreement. The Department will not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Tribe, unless such terms are required by Federal law.

§ 29.311 Is a subsequent funding agreement retroactive to the end of the term of the preceding funding agreement?

When the Department and a Tribe execute a subsequent funding agreement, the provisions of such a funding agreement are retroactive to the end of the term of the preceding funding agreement.

Subpart E—Rules and Procedures for Transfer and Use of Funds

§ 29.400 What funds may a Tribe elect to include in a funding agreement?

A Tribe may elect to include in a funding agreement the following funds:

(a) Funds provided to the Tribe under the Tribal Transportation Program identified in 23 U.S.C. 202 in accordance with the statutory formula set forth in 23 U.S.C. 202(b);

(b) Any transit funds provided to the Tribe under 49 U.S.C. 5311;

(c) Funds for any discretionary or competitive grant administered by the Department awarded to the Tribe for a transportation program under title 23 of the U.S. Code or chapter 53 of title 49 of the U.S. Code;

(d) Funds for any other discretionary or competitive grant for a transportation-related purpose administered by the Department otherwise available to the Tribe;

(e) Federal-aid funds apportioned to a State under chapter 1 of title 23 of the U.S. Code if the State elects to transfer, pursuant to 23 U.S.C. 207(d)(2)(A)(ii) or 23 U.S.C. 202(a)(9), a portion of such funds to the Tribe for an eligible project; and

(f) Formula funds awarded to a State under 49 U.S.C. 5311 that the State

elects to award to the Tribe, where the Tribe and State agree that the Department will award the funds directly to the Tribe.

§ 29.401 What funds must the Department transfer to a Tribe in a funding agreement?

(a) Subject to the terms of a funding agreement, the Department must transfer to a Tribe all the funds provided for in the funding agreement.

(b) The Department must provide funds for periods covered by a joint resolution adopted by Congress making continuing appropriations and authorization extensions, to the extent permitted by such resolutions. The Department will defer payment of funds to the Tribe if the period of continuing appropriations is less than 35 days.

(c) To the extent a Tribe elects to include the following funds in its funding agreement, the Department will include the amount equal to:

(1) The amount awarded to the Tribe for any discretionary or competitive grant;

(2) The amount transferred to the Tribe by a State;

(3) The sum of the funds that the Tribe would otherwise receive in accordance with a funding formula or other allocation method set forth in title 23 of the U.S. Code or chapter 53 of title 49 of the U.S. Code; and

(4) Such additional amounts as the Department determines equal the amounts that would have been withheld, if any, for the costs of the Bureau of Indian Affairs to administer the program or project on behalf of the Tribe.

§ 29.402 Is the Tribe responsible for the funds included in a funding agreement?

The Tribe is responsible for implementing the Tribe's PSFAs using the funds included in a funding agreement and for administering the funds in accordance with this part. In addition, the Tribe must carry out its PSFAs in accordance with the funding agreement, and all applicable statutes and regulations identified in the funding agreement.

§ 29.403 When must the Department transfer to a Tribe the funds identified in a funding agreement?

When a funding agreement requires an annual transfer of funds to be made by the Department at the beginning of a fiscal year, or requires semiannual or other periodic transfers of funds to be made to a Tribe, the Department will make the first transfer no later than 10 days after the apportionment of such funds by the Office of Management and Budget to the Department, unless the funding agreement provides otherwise. Consistent with the Prompt Payment Act, the Department is not responsible for any interest penalty if the Department makes the transfer within 30 days.

§ 29.404 When must the Department transfer funds that were not paid as part of the initial lump sum payment (or initial periodic payment)?

The Department must transfer any funds that were not paid in the initial lump sum payment (or initial periodic payment) within 10 days after the apportionment of such funds by the Office of Management and Budget to the Department, unless the funding agreement provides otherwise. Consistent with the Prompt Payment Act, the Department is not responsible for any interest penalty if the Department makes the transfer within 30 days.

§ 29.405 When must the Department transfer funds for a discretionary or competitive grant?

If the Department selects a Tribe for a discretionary or competitive grant, and the Tribe elects to include the grant funds in its funding agreement, the Department will transfer the funds to the Tribe in accordance with the terms of the Notice of Funding Opportunity or as the Department and the Tribe may otherwise agree. The Department will transfer these funds no later than 10 days after the Department and the Tribe execute a funding agreement or an amendment covering the grant, unless the funding agreement provides otherwise. Consistent with the Prompt Payment Act, the Department is not responsible for any interest penalty if the Department makes the transfer within 30 days.

§ 29.406 Does the award of funds for a discretionary or competitive grant entitle a Tribe to receive the same amount in subsequent years?

The award of funds for a discretionary or competitive grant does not entitle a Tribe to receive the same amount of funds in subsequent years.

§ 29.407 Does the award of funds for discretionary or competitive grants entitle the Tribe to receive contract support costs?

Receipt of discretionary or competitive grant awards does not entitle the Tribe to receive contract support costs or any other amounts identified in 25 U.S.C. 5325. However, a Tribe may use grant awards to cover overhead and administrative expenses associated with operation of the grant, as provided in the grant award.

§ 29.408 How may a Tribe use interest earned on funds included in a funding agreement?

A Tribe may retain interest earned on funds included in a funding agreement to carry out transportation or governmental functions.

§ 29.409 May a Tribe carry over from one fiscal year to the next any funds that remain at the end of the funding agreement?

A Tribe may carry over from one fiscal year to the next any funds that remain at the end of the funding agreement, consistent with the following:

(a) The period of availability for formula funds included in a funding agreement does not lapse. After transfer to the Tribe, such funds will remain available until expended. If a Tribe elects to carry over funds from one fiscal year to the next, such carryover funds will not diminish the amount of formula funds the Tribe is authorized to receive under its funding agreement in that or any subsequent fiscal year.

(b) The period of availability for discretionary or competitive grants are specific to the funding source and will be set forth in the funding agreement.

§ 29.410 May a Tribe use remaining funds from a discretionary or competitive grant included in a funding agreement?

A Tribe may use remaining funds from a discretionary or competitive grant included in a funding agreement, but only with written approval from the Department. The Department must determine that the use of such funds is consistent with the statutory requirements of the grant program, including purpose and time, and is for the project for which the grant was provided.

§ 29.411 Are funds included in a compact and funding agreement non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program?

Notwithstanding any other provision of law, pursuant to 25 U.S.C. 5325(j), funds included in a compact and funding agreement are considered non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program.

§ 29.412 May the Department increase the funds included in the funding agreement if necessary to carry out the Program?

The Department may increase the funds included in the funding agreement if necessary to carry out the Program. However, the Department and the Tribe must agree to any transfer of funds to the Tribe unless otherwise provided for in the funding agreement.

§ 29.413 How will the Department assist a Tribe with its credit requests?

At the request of a Tribe that has applied for a loan or other credit assistance from a State infrastructure bank or other financial institution to complete an eligible transportation-related project with funds included in a funding agreement, the Department will provide documentation in its possession or control to assist the Tribe.

§ 29.414 What limitations apply to Department actions related to transfer of funds associated with PSFAs?

The Department will not:

(a) Fail or refuse to transfer to a Tribe its full share of funds due under the Program, except as required by Federal law;

(b) Withhold portions of such funds for transfer over a period of years;

(c) Reduce the amount of funds identified for transfer in a funding agreement to make funding available for self-governance monitoring or administration by the Department;

(d) Reduce the amount of funds included in a funding agreement in subsequent years, except pursuant to:

(1) A reduction in appropriations from the previous fiscal year or a change in the funding formula;

(2) A congressional directive in legislation or accompanying report;

(3) A Tribal authorization;

(4) A change in the amount of pass-through funds;

(5) Completion of a project, activity, or program for which discretionary or competitive grant funds were provided;

(6) Expenditure of all discretionary or competitive grant funds authorized by the Department under separate statutory authorities for an eligible project, activity, or program; or

(7) A final decision by the Department pursuant to subpart I to terminate a compact or funding agreement (or portions thereof) due to a finding of gross mismanagement or imminent jeopardy.

(e) Reduce the amount of funds identified in a funding agreement to pay for Federal functions, including Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under the Program, except that such prohibition is inapplicable when Congress authorizes the Department to set aside a portion of the funds for Department project monitoring and oversight related functions; or

(f) Reduce the amount of funds required under the Program to pay for costs of Federal personnel displaced by compacts and funding agreements.

§ 29.415 Does the Prompt Payment Act apply to funds included in a funding agreement?

The Prompt Payment Act, 31 U.S.C. 3901 *et seq.,* applies to the transfer of funds under the Program.

§ 29.416 What standard applies to a Tribe's management of funds included in a funding agreement?

(a) A Tribe must invest and manage funds included in a funding agreement as a prudent investor would, in light of the purpose, terms, distribution requirements, and applicable provisions, in the compact and funding agreement. This duty requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation, but in the context of the investment portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suited to the Tribe. In making and implementing investment decisions, the Tribe has a duty to diversify the investments unless, under the circumstances, it is prudent not to do so.

(b) A Tribe must:

(1) Conform to fundamental fiduciary duties of loyalty and impartiality;

(2) Act with prudence in deciding whether and how to delegate authority and in the selection and supervision of agents; and

(3) Incur only costs that are reasonable in amount and appropriate to the investment responsibilities of the Tribe.

§ 29.417 Must a Tribe continue performance of the Tribal Transportation Program or the Tribal Transit Program under a compact and funding agreement if the Department does not transfer sufficient funds?

A Tribe does not have to continue performance of the Tribal Transportation Program (23 U.S.C. 202(b)) or the Tribal Transit Program (49 U.S.C. 5311(c)(1)) that requires an expenditure of funds in excess of the amount of funds included in a funding agreement. If at any time the Tribe has reason to believe that the total amount included in a funding agreement is insufficient, the Tribe must provide reasonable notice of such insufficiency to the Self-Governance Official. If the Department does not increase the amount of funds included in the funding agreement for the Tribal Transportation Program or Tribal Transit Program, the Tribe may suspend performance of the program activity until such time as the Department transfers additional funds.

§ 29.418 May a funding agreement include transfers of State funds?

(a) A State may elect to provide a portion of Federal-aid funds apportioned to the State under chapter 1 of title 23 of the U.S. Code to an eligible Tribe for a project eligible under 23 U.S.C. 202(a).

(b) If a State provides such funds, the transfer may occur in accordance with 23 U.S.C. 202(a)(9), 23 U.S.C. 207(d)(2)(A)(ii), or the State may transfer the funds to the Department, and the Department will transfer the funds to the participating Tribe through the Tribe's funding agreement.

(c) If a State provides such funds, the Tribe (and not the State) will be responsible for:

(1) Constructing and maintaining any projects carried out using the funds;

(2) Administering and supervising the projects and funds in accordance with 23 U.S.C. 207;

(3) Complying with applicable post-construction requirements.

(d) The receipt of any State funds transferred at the election of a State to the Tribe pursuant to 23 U.S.C. 202(a)(9), 23 U.S.C. 207(d)(2)(A)(ii), or funds awarded to a State pursuant to 49 U.S.C. 5311 that are transferred at the election of a State to the Federal Transit Administration for the benefit of a Tribe does not entitle the Tribe to receive contract support costs under 25 U.S.C. 5325(a). While a Tribe is not entitled to additional funds for contract supports costs, a Tribe may use a portion of such State funds for overhead and administrative expenses if such costs are reasonable, allowable, and allocable in accordance with 2 CFR part 200 and the statutory and regulatory requirements applicable to the funding source.

§ 29.419 Does the award of formula funds entitle a Tribe to receipt of contract support costs?

The award of formula funds does not entitle a Tribe to receive contract support costs under 25 U.S.C. 5325(a). A funding agreement will not provide additional funds for contract support costs to carry out PSFAs. While a Tribe is not entitled to additional funds for contract support costs, a Tribe may use a portion of its formula funds (§ 29.400(a) and (b)) for overhead and administrative expenses if such costs are reasonable, allowable, and allocable in accordance with 2 CFR part 200 and the statutory and regulatory requirements applicable to the funding source.

§ 29.420 Is a Tribe entitled to enter into facility leases from the Department and to receive facility support costs?

A Tribe is not entitled to enter into facility leases with the Department and receive facility support costs. A funding agreement will not provide additional funds for facility leases and facility support costs to carry out PSFAs. However, facility leases and facility support costs may be an eligible and allowable use of funds a Tribe receives under a funding agreement.

§ 29.421 May a Tribe redesign, consolidate, reallocate, or redirect the funds included in a funding agreement?

(a) A Tribe may redesign, consolidate, reallocate, or redirect funds included in a funding agreement in any manner it considers to be in the best interest of the Indian community being served, provided that:

(1) The funds are expended on projects identified in a transportation improvement program approved by the Department, where statutorily required; and

(2) The funds are used in accordance with the requirements in appropriations acts, title 23 of the U.S. Code, chapter 53 of title 49 of the U.S. Code, and any other applicable law.

(b) Consistent with 23 U.S.C. 207(e)(1)(B), a Tribe may not redesign, consolidate, reallocate, or redirect any discretionary or competitive grant funds or State transfers of funds that are included in the funding agreement. A Tribe may use remaining funds from a discretionary or competitive grant in accordance with § 29.410.

Subpart F—Program Operations

Audits and Cost Principles

§ 29.500 Must a Tribe undertake an annual audit?

A Tribe that meets the applicable thresholds under 2 CFR 200.501 must undertake an annual audit pursuant to the regulations set forth in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, except to the extent that part 200 exempts a Tribe from complying with the audit requirements.

§ 29.501 Must a Tribe submit any required audits to the Federal Audit Clearinghouse and the Department?

A Tribe must submit any required audits to the Federal Audit Clearinghouse pursuant to the Office of Management and Budget procedures and provide prompt notice to the Department it has done so.

§ 29.502 Who is responsible for compiling, copying, and paying for materials for any audit or examination?

The agency or entity undertaking the examination or audit will be responsible for all costs associated with an audit or examination of Tribal records. A Tribe is responsible for making records available during regular business hours, and may prevent removal of the records from Tribal offices. If an agency or entity undertaking the examination or audit requests that the Tribe make copies of records for its use, the Tribe must do so, but may charge the examining agency reasonable per-page fees for photocopying or scanning of documents and records.

§ 29.503 How may the Federal Government make a claim against a Tribe relating to any disallowance of costs based on an audit conducted under this part?

(a) *Disallowance of costs.* Any claim by the Federal Government against a Tribe relating to funds included in a funding agreement based on any audit conducted pursuant to this part is subject to 25 U.S.C. 5325(f).

(1) Any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs is barred unless the Department provides notice of such a disallowance within 365 days from receiving any required annual audit report. The notice must set forth the Tribe's appeal and hearing rights in accordance with §§ 29.912 through 29.923.

(2) To calculate the 365–day period, an audit report is deemed received by the Department on the date of electronic submission to the Federal Audit Clearinghouse. The Department has 60 days after receiving the audit report to give notice to the Tribe of its determination to reject an audit report as insufficient due to non-compliance with the applicable provisions of 2 CFR part 200 or any applicable statute.

(b) *Criminal penalties.* Any person, officer, director, agent, employee, or person otherwise connected with a recipient of a contract, subcontract, grant, or sub-grant under a compact or funding agreement who embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property provided to the recipient will be fined not more than $10,000 or imprisoned for not more than 2 years, or both. If the amount of funds in question does not exceed $100, then the fine will be no more than $1,000 and imprisonment not more than 1 year, or both.

§ 29.504 What cost principles must a Tribe apply in compacts and funding agreements?

(a) A Tribe must apply the applicable cost principles of the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200, except as modified by:

(1) 25 U.S.C. 5325(k), which sets forth certain categories of allowable uses of funds that a Tribe may include in a funding agreement provided that such use supports implementation of a PSFA;

(2) Other provisions of Federal law; or

(3) Any subsequent exemptions granted by the Office of Management and Budget.

(b) The Department may not require a Tribe to apply other audit or accounting standards.

Standards for Tribal Management Systems

§ 29.505 What are the financial management systems that a Tribe carrying out a compact and funding agreement must develop, implement, and maintain to ensure the proper expenditure and accounting of Federal funds?

(a) *Generally.* To ensure the proper expenditure and accounting of Federal funds, a Tribe carrying out a compact and funding agreement must develop, implement, and maintain financial management systems that meet the financial standards and minimum requirements set forth in §§ 29.506 and 29.507, unless the Department waives, in whole or in part, one or more of the standards.

(b) *Applicability to Tribal contractors.* A Tribe may require that its contractors comply with some or all of the standards and requirements in §§ 29.506 and 29.507 when the Tribe retains contractors to assist in carrying out the requirements of a funding agreement.

(c) *Evaluation.* When required under 2 CFR part 200, an independent auditor retained by a Tribe must evaluate the financial management systems of the Tribe through an annual audit report in accordance with the Single Agency Audit Act, 31 U.S.C. 7501–7506.

§ 29.506 What standards apply to a Tribe's financial management systems when carrying out a compact and funding agreement?

The following standards apply to a Tribe's financial management systems when carrying out a compact and funding agreement:

(a) The system must expend and account for funds included in a funding agreement in accordance with:

(1) The compact and funding agreement;

(2) All statutory requirements applicable to the funding source; and

(3) Applicable provisions of 2 CFR part 200.

(b) The fiscal control and accounting procedures of a Tribe's financial management system must be sufficient to:

(1) Permit the preparation of reports required by applicable Federal law, the compact, funding agreement, and this part; and

(2) Permit the tracing of program or project funds to a level of expenditure adequate to establish that the funds have not been used in violation of any restrictions or prohibitions contained in any statute or provision of 2 CFR part 200 that applies to the funds included in the compact and funding agreement.

§ 29.507 What minimum requirements must a Tribe's financial management system include to meet the standards set forth in § 29.506?

To meet the standards set forth in § 29.506, a Tribe's financial management system must include the following minimum requirements:

(a) *Financial reports.* The financial management system must provide for accurate, current, and complete disclosure of the financial results of activities carried out by a Tribe under a compact and funding agreement;

(b) *Accounting records.* The financial management system must maintain records sufficiently detailed to identify the source and application of funds transferred to a Tribe in a funding agreement. The system must contain sufficient information to identify awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income;

(c) *Internal controls.* The financial management system must maintain effective control and accountability for all funds included in a funding agreement and for all Federal real property, personal property, and other assets furnished for use by a Tribe under its compact and funding agreement;

(d) *Budget controls.* The financial management system must permit the comparison of actual expenditures or outlays with the amounts budgeted by a Tribe for each funding agreement;

(e) *Allowable costs.* The financial management system must be sufficient to determine that the expenditure of funds is reasonable, allowable, and allocable based upon the terms of the compact and funding agreement and applicable provisions of 2 CFR part 200;

(f) *Source documentation.* The financial management system must contain accounting records that are supported by source documentation, such as canceled checks, paid bills, payroll records, time and attendance records, contract award documents, purchase orders, and other primary records that support expenditures; and

(g) *Cash management.* The financial management system must provide for accurate, current, and complete disclosure of cash revenues disbursements, cash-on-hand balances, and obligations by source and application for a Tribe so that complete and accurate cash transactions may be prepared by the Tribe.

§ 29.508 What procurement standards apply to contracts carried out using funds included in a funding agreement?

(a) Each contract carried out using funds included in a funding agreement must, at a minimum:

(1) Be in writing;

(2) Identify the interested parties, their respective roles and responsibilities, and the purposes of the contract;

(3) State the work to be performed under the contract;

(4) State the process for making any claim, the payments to be made, and the terms of the contract; and

(5) State that it is subject to 25 U.S.C. 5307(b) consistent with § 29.524.

(b) A Tribe that chooses to use a procurement method that is not provided for in its established procurement management standards in the delivery of a Tribal transportation project must submit the request to deviate from these standards to the Department for review and approval in accordance with § 29.515. The deviation request must specify the procurement method that the Tribe proposes to use and the project to which such method will be applied.

§ 29.509 What property management systems and standards must a Tribe maintain?

(a) *Property management system.* A Tribe must maintain a property management system to account for all property acquired with funds included in a funding agreement, acquired with Federal funds awarded by the Department or the Department of the Interior, or obtained as excess or surplus Federal property to be used for activities under the Program. The property management system must address the use, care, maintenance, and disposition of such property as follows:

(1) Where title vests in the Tribe, in accordance with Tribal law and procedures; or

(2) In the case of a consortium, according to the internal property procedures of the consortium.

(b) *Transit asset management.* In addition to the property management system and standards in this section, property acquired with transit funds (chapter 53 of title 49 of the U.S. Code) is subject to the property management requirements set forth in 49 U.S.C. 5326 concerning the transit asset management plan, performance targets, and reports.

(c) *Tracking requirements under a property management system.* The property management system of a Tribe relating to property used under the Program must track:

(1) Personal property and rolling stock with an acquisition value in excess of $5,000 per item;

(2) Sensitive personal property, which is all personal property that is subject to theft and pilferage, as defined by the Tribe; and

(3) Real property.

(d) *Records.* The property management system must maintain records that accurately describe the property, including any serial number, vehicle identification number, or other identification number. These records should contain current information such as the source, titleholder, acquisition date, acquisition cost, share of Federal participation in the cost, location, use and current condition of the property, and the date of disposal and sale price, if any.

(e) *Internal controls.* The property management system must maintain effective internal controls that include, at a minimum, procedures for a Tribe to:

(1) Conduct periodic, physical inventories at least once every 2 years and reconcile such inventories with the Tribal internal property and accounting records;

(2) Prevent loss or damage to property; and

(3) Ensure that property is used by the Tribe to carry out activities under a funding agreement until the Tribe declares the property excess to the needs of the PSFAs carried out by the Tribe under the funding agreement, consistent with the property management system of the Tribe.

(f) *Maintenance requirements.* Required maintenance includes the performance of actions necessary to keep the property in good working condition, the procedures recommended by equipment manufacturers, and steps necessary to protect the interests of the Department and the Tribe in any express warranties or guarantees covering the property.

(g) *Disposition of personal property acquired under a funding agreement.* Prior to disposition of any personal property acquired under a funding agreement, including rolling stock, a

Tribe must report to the Self-Governance Official in writing on the property's status (*e.g.,* worn out, lost, stolen, damaged beyond repair, or no longer needed to carry out activities under a funding agreement). The Department will provide disposition instructions in accordance with 2 CFR 200.313. A Tribe may retain, sell, or otherwise dispose of personal property with a current per unit fair market value of $5,000 or less with no further obligation to the Department.

(h) *Disposition of real property acquired under a funding agreement.* Prior to disposition of any real property acquired under a funding agreement, a Tribe must report to the Self-Governance Official, who will ensure the Department provides disposition instructions in accordance with 2 CFR 200.311.

Records

§ 29.510 Must a Tribe maintain a recordkeeping system?

A Tribe must maintain records and provide Federal agency access to those records as provided in 25 U.S.C. 5386(d) and the statutory requirements of the funds included in a funding agreement.

§ 29.511 Are Tribal records subject to the Freedom of Information Act and Federal Privacy Act?

(a) Except to the extent that a Tribe specifies otherwise in its compact or funding agreement, the records of the Tribe retained by the Tribe will not be considered Federal records for purposes of chapter 5 of title 5 of the U.S. Code.

(b) Tribal records submitted to the Department are considered Federal records for the purposes of the Freedom of Information Act (FOIA) and Federal Privacy Act. If a Tribe provides information to the Department that the Tribe considers to be trade secret, or confidential commercial or financial information, the Tribe must identify it as such. The Department will not disclose the information to the public, except to the extent required by law. In the event the Department receives a FOIA request for such information, the Department will follow the procedures described in its FOIA regulations at 49 CFR part 7.

§ 29.512 Must a Tribe make its records available to the Department?

After 30 days advance written notice from the Department, a Tribe must provide the Department with reasonable access to such records to enable the Department to meet its minimum legal recordkeeping system and audit requirements.

§ 29.513 How long must a Tribe keep and make available records?

A Tribe must keep books, documents, papers, and records of funding, grants, and State-provided funds for 3 years from the date of submission of the Single Audit Act audit report and provide the Department or the Comptroller General access to such records for audit and examination related to compacts, funding agreements, grants, contracts, subcontracts, sub-grants, or other arrangements under the Program.

Procurement

§ 29.514 When procuring property or services with funds included in a funding agreement, can a Tribe follow its own procurement standards?

When procuring property or services with funds included in a funding agreement, a Tribe must have standards that conform to the procurement standards in this subpart. If a Tribe relies upon procurement standards different than those described in § 29.515, it must identify the standards it will use in in the initial negotiation of a funding agreement or as a waiver request to an existing funding agreement. The Tribe must submit the request to the Department in accordance with § 29.534.

§ 29.515 What are the minimum procurement standards that a Tribe must follow when procuring property or services with funds included in a funding agreement?

A Tribe must follow the minimum procurement standards set forth in this section when procuring property or services with funds included in a funding agreement.

(a) *Minimum procurement standards.* (1) A Tribe must ensure that its vendors and contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase agreements or orders.

(2) A Tribe must maintain written standards of conduct governing the performance of its employees who award and administer contracts paid for using funds included in a funding agreement.

(i) An employee, officer, elected official, or agent of a Tribe must not participate in the selection, award, or administration of a procurement supported by Federal funds if a conflict of interest, real or apparent, as defined in the conflict of interest policies of the Tribe, would be involved.

(ii) Employees, officers, elected officials, or agents of a Tribe, or of a subcontractor of the Tribe, must not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, except that the Tribe may exempt a financial interest that is not substantial or a gift that is an unsolicited item of nominal value.

(iii) The standards must also provide for penalties, sanctions, or other disciplinary actions for violations of the procurement standards.

(3) A Tribe must review proposed procurements to avoid buying unnecessary or duplicative items and ensure the reasonableness of the price. The Tribe should consider consolidating or separating out procurement to obtain more economical purchases. Tribes are encouraged to realize economies of scale in the procurement of goods, services, and supplies under this part, including the negotiation of cooperative agreements with other public authorities. Where appropriate, the Tribe must compare leasing and purchasing alternatives to determine which is more economical.

(4) A Tribe must conduct all major procurement transactions that exceed the simplified acquisition threshold set forth in 2 CFR 200.88 by providing full and open competition to the extent necessary to assure efficient expenditure of contract funds and to the extent feasible in the local area.

(i) Consistent with 2 CFR 200.88, a Tribe may develop its own definition for a simplified acquisition threshold.

(ii) To the greatest extent feasible, a Tribe must apply to any procurement award the Indian preference requirements for wages and grants contained in 25 U.S.C. 5307(b).

(5) A Tribe must make procurement awards only to responsible entities with the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Tribe will consider such matters as the contractor's integrity, its compliance with public policy, its record of past performance, and its financial and technical resources.

(6) A Tribe must maintain records on the significant history of all major procurement transactions. These records must include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price.

(7) A Tribe is solely responsible, using good administrative practice and sound business judgment, for processing and settling all contractual and administrative issues arising out of a procurement. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

(i) The settlement of any protest, dispute, or claim will not relieve the Tribe of any obligations under a funding agreement.

(ii) Violations of law must be referred to the Tribal or Federal authority having proper jurisdiction.

(b) *Conflicts of interest.* A Tribe participating in the program must ensure that internal measures and controls are in place to address conflicts of interest in the administration of compacts and funding agreements.

§ 29.516 Do Federal laws and regulations apply to a Tribe's contractors or subcontractors?

A Tribe's contractors or subcontractors are responsible for complying with Federal laws and regulations. Contracts between a Tribe and its contractors should inform contractors that the contract is carried out using funds included in a funding agreement, and that the contractors and its subcontractors are responsible for identifying and ensuring compliance with applicable Federal laws and regulations. The Department and the Tribe may, through negotiation, identify all or a portion of such requirements in the funding agreement and, if so identified, these requirements should be identified in the contracts the Tribe awards using funds included in a funding agreement.

§ 29.517 Can a Tribe use Federal supply sources in the performance of a compact and funding agreement?

A Tribe and its employees may use Federal supply sources (including lodging, airline, interagency motor pool vehicles, and other means of transportation) in the performance of a compact and funding agreement to the same extent as if the Tribe were a Federal agency. The Department will assist the Tribes, to the extent feasible, to resolve any barriers to full implementation.

Reporting

§ 29.518 What reporting must a Tribe provide?

(a) A Tribe must provide reports mandated by statute associated with the funds included in the funding agreement. In accordance with § 29.307, the funding agreement will list these reporting requirements. The Tribe will cooperate with the Department to assist the Department in complying with its statutory reporting requirements. No additional reporting will be required of the Tribe.

(b) Notwithstanding paragraph (a) of this section, if the Tribe includes funds for a discretionary or competitive grant in a funding agreement, the Department and the Tribe will negotiate the appropriate reporting requirements to include in the funding agreement.

Property

§ 29.519 How may a Tribe use existing Department facilities, equipment, or property?

At the request of a Tribe, the Department will permit the Tribe to use and maintain existing facilities, equipment therein or appertaining thereto, and other personal property, if applicable, owned by the Government within the Department's jurisdiction, subject to terms and conditions agreed to by the Department and the Tribe. The requested facilities, equipment, or property must be used to carry out the Tribe's PSFAs under the compact and funding agreement. Such facilities, equipment, or other personal property will be eligible for replacement, maintenance, and improvement using funds included in a funding agreement, or the Tribe may expend its own funds. The Department does not have any additional funding sources for replacement, maintenance, or improvement of such facilities, equipment, other personal property. The Department will exercise discretion in a way that gives the maximum effect to the request of the Tribe to use such facilities, equipment, or property.

§ 29.520 How may a Tribe acquire surplus or excess Federal property for use under the Program?

A Tribe may acquire any surplus or excess property for use in the performance of the compact and funding agreement consistent with the procedures established by the General Services Administration. The Tribe must notify the Self-Governance Official of the surplus or excess property it proposes to acquire and the purpose for which it will be used in the performance of the compact or funding agreement. If the Department participates in the acquisition by the Tribe of any excess or surplus Federal property, the Department will expeditiously process the request and assist the Tribe in its acquisition to the extent feasible and exercise discretion in a way that gives maximum effect to the Tribe's request for donation of the excess or surplus Federal property. When the Department's participation is required, the Department should expeditiously request acquisition of the property from the General Services Administration or the holding agency, as appropriate, by submitting the necessary documentation prior to the expiration of any ''freeze'' placed on the property by the Tribe or the Department on the Tribe's behalf. The Tribe must take title to any property acquired pursuant to this section. Such surplus or excess property will be eligible for replacement, maintenance, and improvement using funds included in a funding agreement, or the Tribe may expend its own funds. The Department does not have any additional funding sources for replacement, maintenance, or improvement of such surplus or excess property.

§ 29.521 How must a Tribe use surplus or excess Federal property acquired under the Program?

A Tribe must use any property acquired under this section in a manner consistent with the justification submitted at acquisition. The Tribe should notify the Self-Governance Official whenever use of the property changes significantly and upon disposal or sale.

§ 29.522 If a compact or funding agreement (or portion thereof) is retroceded, reassumed, terminated, or expires, may the Department reacquire title to property purchased with funds under any compact and funding agreement or excess or surplus Federal property that was donated to the Tribe under the Program?

If a compact or funding agreement (or portion thereof) is retroceded, reassumed, terminated, or expires, the Tribe retains title to the property purchased with funds under any compact and funding agreement or excess or surplus Federal property donated under the Program if it is valued at $5,000 or less. If the value of the property is over $5,000 at the time of retrocession, withdrawal, or reassumption, title to such property may revert to the Department at the Department's discretion.

Technical Assistance

§ 29.523 What technical assistance is available to a Tribe from the Department?

Upon the written request of a Tribe, and to the extent feasible, the Department will provide technical assistance, including periodic program reviews, to assist a Tribe improve its performance in carrying out the Program.

Prevailing Wages

§ 29.524 Do the wage and labor standards in the Davis-Bacon Act apply to employees of a Tribe?

Wage and labor standards of the Davis-Bacon Act do not apply to employees of a Tribe. However, Davis-Bacon wage rates apply to all Tribal contractors and subcontractors.

Tribal Preference

§ 29.525 Does Indian preference apply to PSFAs under the Program?

To the greatest extent feasible, any contract, subcontract, grant, or sub-grant under a compact and funding agreement must give preference for employment and training, and the award of subcontracts and sub-grants, to Indians, Indian organizations, and Indian-owned economic enterprises, as defined in 25 U.S.C. 1452.

§ 29.526 When do Tribal employment law and contract preference laws govern?

To the extent provided in applicable Federal law, Tribal law governs Indian preference policies in the performance of a compact and funding agreement. When a compact or funding agreement is intended to benefit one Tribe, the Tribal employment or contract preference laws adopted by such Tribe will govern with respect to the administration of the compact and funding agreement.

Environmental and Cultural Resource Compliance

§ 29.527 What compliance with environmental and cultural resource statutes is required?

(a) The Department must meet the requirements of applicable Federal environmental and cultural resource laws, such as the National Environmental Policy Act (NEPA) and the National Historic Preservation Act, for a proposed project under the Program.

(b) The Secretary has delegated environmental and cultural resource compliance responsibilities to the Operating Administrations, as appropriate. As such, an Operating Administration will serve as the lead agency responsible for final review and approval of environmental documents, and any associated environmental determinations and findings for a proposed project under the Program. The Secretary, as delegated to the Operating Administrations, is also responsible for making determinations and issuing approvals in accordance with 23 U.S.C. 138 and 49 U.S.C. 303 (Section 4(f)), as applicable. Tribes may consult with the Self-Governance Official to determine which Operating Administration should serve as the lead agency.

(c) If the Department is conducting the environmental review process for a proposed project under the Program, the Tribe must assist the Department to satisfy the requirements of applicable Federal environmental and cultural resource laws.

(d) A Tribe may manage or conduct the environmental review process for a proposed project under the Program and may prepare drafts of the appropriate environmental review documents for submission to the Department.

(1) A Tribe may follow its own environmental review procedures if the procedures and documentation also satisfy the Federal environmental review requirements applicable to the project. A Tribe should work with the Operating Administration serving as lead agency to ensure the Tribal process will satisfy all applicable Federal environmental review requirements.

(2) The Operating Administration serving as lead agency must determine that the Tribe's process and documentation satisfy the applicable Federal environmental review requirements.

(e) As resources permit and at the request of a Tribe, the Department will provide advice and technical assistance to the Tribe to assist in the management of the Federal environmental review process and preparation of environmental documents.

(f) Unless prohibited by law, a Tribe may use funds included in a funding agreement to pay for environmental review activities.

Federal Tort Claims Act

§ 29.528 Is the Federal Tort Claims Act applicable to a Tribe when carrying out a compact and funding agreement?

(a) Section 314 of Public Law 101–512 and 25 U.S.C. 5396(a) incorporated by 23 U.S.C. 207(*l*)(8) make the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2401, 2671–2680, applicable to a Tribe carrying out a compact and funding agreement.

(b) Contractors, subcontractors, or sub-recipients of a Tribe are not subject to the terms and conditions of the FTCA. The Tribe may use the regulations set forth in 25 CFR part 900, subpart M, as guidance on the Tribe's rights and responsibilities under the FTCA. Accordingly, the Tribe must include, in any contract entered into with funds provided under a compact and funding agreement, a requirement that contractors, sub-contractors, or sub-recipients maintain applicable insurance coverage, such as workers compensation, auto, and general liability insurance, consistent with statutory minimums and local industry standards.

§ 29.529 What steps should a Tribe take after becoming aware of a Federal Tort Claim?

(a) Immediately after receiving a claim or a summons and complaint filed under the FTCA, the Tribe must notify the Self-Governance Official at *ttsgp@dot.gov* or use any other method that provides receipt.

(b) The Tribe, through a designated tort claims liaison assigned by the Tribe, must assist the Department in preparing a comprehensive and factually based report, which will inform the Department's report to the U.S. Department of Justice.

(c) The Tribe's designated tort claims liaison must immediately provide the following significant details of the event and include, as appropriate and to the extent within their knowledge, possession, or control:

(1) The date, time, and exact place of the accident or incident;

(2) A concise and complete statement of the circumstances of the accident or incident;

(3) The names and addresses of Tribal or Federal employees involved as participants or witnesses;

(4) The names and addresses of all other eyewitnesses;

(5) An accurate description of all Federal, Tribal, and privately owned property involved, and the nature and amount of damage, if any;

(6) A statement as to whether any person involved was cited for violating a Federal, State, or Tribal law, ordinance, or regulation;

(7) The Tribe's determination as to whether any of its employees (including Federal employees assigned to the Tribe) involved in the incident giving rise to the tort claim were acting within the scope of their employment in carrying out the funding agreement at the time the incident occurred;

(8) Copies of all relevant documentation, including available police reports, statements of witnesses, newspaper accounts, weather reports, plats, and photographs of the site or damaged property, that may be necessary or useful for the Department to determine the claim; and

(9) Insurance coverage information, copies of medical bills, and relevant employment records.

(d) The Tribe must cooperate with and provide all necessary assistance to the U.S. Department of Justice and the Department's attorneys assigned to defend the tort claim including case preparation, discovery, and trial.

(e) If requested by the Department, the Tribe must make an assignment and subrogation of all the Tribe's rights and claims (except those against the Federal Government) arising out of a tort claim against the Tribe.

(f) If requested by the Department, the Tribe must authorize representatives of the Department to settle or defend any

claim and to represent the Tribe in or take charge of any action. If the Federal Government undertakes the settlement or defense of any claim or action, the Tribe must provide all reasonable additional assistance in reaching a settlement or asserting a defense.

§ 29.530 Is it necessary for a compact or funding agreement to include any terms about FTCA coverage?

Terms about FTCA coverage are optional in a compact or funding agreement, and the FTCA applies even if terms regarding FTCA are not included in a compact or funding agreement.

§ 29.531 Does FTCA cover employees of the Tribe who are paid by the Tribe from funds other than those provided through the compact and funding agreement?

Subject to FTCA limitations, the FTCA covers employees of the Tribe who are not paid from compact and funding agreement funds as long as the services out of which the claim arose were performed in carrying out a compact and funding agreement.

§ 29.532 May persons who are not Indians assert claims under FTCA?

Any aggrieved person may assert claims for alleged torts arising from activities performed in carrying out compacts and funding agreements.

§ 29.533 Does the year PSFAs are funded affect FTCA coverage?

The year the funding was provided has no effect on the application of the FTCA.

Waiver of Program Regulations

§ 29.534 What is the process for regulation waivers under this part?

(a) A Tribe may request a waiver of a regulation in this part with respect to a compact or funding agreement. The Tribe must submit the request in writing to the Self-Governance Official to *ttsgp@dot.gov* or use any other method that provides receipt, at the following address: Self-Governance Official, U.S. Department of Transportation, Office of the Secretary [INSERT MAIL CODE], 1200 New Jersey Avenue SE, Washington, DC 20590. The request must be marked with the words ''REQUEST TO WAIVE REGULATIONS'' on the first page of the request and on the envelope enclosing the request (or in the subject line if by electronic mail). The request must identify the regulation subject to the waiver request, the language the Tribe seeks to waive, and the basis for the request.

(b) Within 10 days of receipt of the waiver request, the Self-Governance Official will send the Tribe an acknowledgement of the waiver request, together with a date-stamped cover sheet that indicates the date on which the Department received the waiver request.

(c) No later than 90 days after the date of receipt of a written request under paragraph (a) of this section, the Department must approve or deny the request in writing. If the application for a waiver is denied, the Department must provide the Tribe with the reasons for the denial as part of the written response.

(d) The Department will consider the following factors in making its decision on a waiver request:

(1) Whether the waiver is contrary to Federal law;

(2) The extent to which the waiver provides flexibility to facilitate the implementation of the Program at the Tribal level consistent with the principles of self-governance;

(3) The extent to which the Tribe will benefit from the waiver; and

(4) Whether the waiver is consistent with Federal transportation policy.

(e) If the Department does not approve or deny a request submitted under paragraph (a) of this section on or before the last day of the 90-day period, the request will be deemed approved by operation of law.

(f) A decision by the Department on a waiver request is a final agency action subject to judicial review under the Administrative Procedure Act.

Subpart G—Withdrawal

§ 29.600 May a Tribe withdraw from a consortium?

A Tribe may fully or partially withdraw from a consortium in accordance with any applicable terms and conditions of a consortium agreement with the Tribe. The withdrawing Tribe must provide written notification to the consortium and the Department of its decision to withdraw.

§ 29.601 When does a withdrawal from a consortium become effective?

A withdrawal from a consortium becomes effective within the time frame specified in the resolution that authorizes the Tribe to withdraw from the consortium. In the absence of a specific time frame set forth in the resolution, such withdrawal becomes effective on:

(a) The earlier of 1 year after the date of submission of such request, or the date on which the funding agreement expires; or

(b) Such date as may be mutually agreed upon by the Department, the withdrawing Tribe, and the consortium that has executed the compact and funding agreement.

§ 29.602 How are funds redistributed when a Tribe fully or partially withdraws from a compact and funding agreement administered by a consortium serving more than one Tribe and elects to enter into a compact and funding agreement with the Department?

A withdrawing Tribe that is eligible for the Program under 23 U.S.C. 207(b) and § 29.100 may negotiate and enter into a compact and funding agreement for its share of funds supporting those PSFAs that the Tribe will carry out. The share of funds is calculated on the same basis as the funds were initially allocated in the funding agreement of the consortium, unless otherwise agreed to by the consortium and the Tribe.

§ 29.603 How are funds distributed when a Tribe fully or partially withdraws from a compact and funding agreement administered by a consortium serving more than one Tribe, and the withdrawing Tribe elects not to or is ineligible to enter into a compact and funding agreement?

Unless otherwise agreed to by the consortium and the withdrawing Tribe, the consortium must return to the Department all funds not obligated and expended by the consortium associated with the withdrawing Tribe when the withdrawing Tribe elects not to or is ineligible to enter into a compact and funding agreement.

Subpart H—Retrocession

§ 29.700 May a Tribe retrocede a PSFA and the associated funds?

A Tribe may voluntarily retrocede (fully or partially) its PSFA and the associated funds under a compact and funding agreement. A Tribe may retrocede for any reason.

§ 29.701 How does a Tribe notify the Department of its intention to retrocede?

(a) *Notice to the Department.* A Tribe must submit a written notice of its intent to retrocede to the Self-Governance Official to *ttsgp@dot.gov* or by any other method that provides receipt. The notice must specifically identify those PSFAs the Tribe intends to retrocede.

(b) *Notice to the Department of the Interior.* The Department will send the Tribe's notice of its intention to retrocede to the Department of the Interior and request that the Department of the Interior determine whether the PSFA is associated with transportation services provided by the Department of the Interior.

§ 29.702 What happens if the Department of the Interior determines that it provides the transportation services the Tribe intends to retrocede?

If the Department of the Interior determines that it provides the transportation services the Tribe intends to retrocede, the Department will notify the Tribe. The Tribe must return all remaining funds, less closeout costs, associated with those transportation services to the Department for transfer to the Department of the Interior.

§ 29.703 What happens if the Department of the Interior determines that it does not provide the transportation services the Tribe intends to retrocede?

If the Department of the Interior determines that it does not provide the transportation services the Tribe intends to retrocede, the Tribe may withdraw its notice to retrocede or return all remaining funds, less closeout costs, associated with the retroceded PSFA, and the Department will distribute those funds in accordance with applicable law.

§ 29.704 When is the retrocession effective?

The retrocession is effective within the time frame specified in the funding agreement. In the absence of a specified date, the retrocession becomes effective:

(a) On the earlier of 1 year after the date of the Tribe's submission of the request, or the date on which the funding agreement expires; or

(b) Such date mutually agreed upon by the Departments and the retroceding Tribe when the Department of the Interior has agreed to assume a retroceded PSFA.

§ 29.705 What effect will a retrocession have on a Tribe's right to compact under the Program?

Provided that a Tribe is eligible under § 29.100, retrocession will not adversely affect any future request by the Tribe to include funds from the same program in a compact or funding agreement.

§ 29.706 Will retrocession adversely affect future funding available for the retroceded program?

Retrocession will not adversely affect future funding for the retroceded program. Future funding will be available to the Tribe at the same level of funding as if there had been no retrocession.

Subpart I—Termination and Reassumption

§ 29.800 When can the Department reassume a compact or funding agreement?

The Department may terminate and reassume a compact or funding agreement (or portion thereof) when the Department makes a specific finding, in writing, to a Tribe, that the Department has found that there is:

(a) Imminent jeopardy to a trust asset, natural resources, or public health and safety that is caused by an act or omission of the Tribe and that arises out of a failure by the Tribe to carry out the compact or funding agreement; or

(b) Gross mismanagement with respect to funds included in a funding agreement, as determined by the Department in consultation with the Office of the Inspector General, as appropriate. Gross mismanagement means a significant, clear, and convincing violation of compact, funding agreement, or regulatory or statutory requirements applicable to Federal funds included in a compact and funding agreement that results in a significant reduction of funds available for the PSFA carried out by the Tribe.

§ 29.801 Can the Department reassume a portion of a compact or funding agreement and the associated funds?

The Department may reassume a portion of a compact or funding agreement and the associated funds if the Department has sufficient grounds to do so. The Department must identify the narrowest portion of the compact or funding agreement for reassumption.

§ 29.802 What process must the Department follow before termination of a compact or funding agreement (or portion thereof)?

Except as provided in § 29.805, prior to a termination becoming effective, the Department must:

(a) Notify the Tribe in writing by any method that provides receipt of the findings required under § 29.800;

(b) Request specific corrective action within a reasonable period, no less than 45 days, to correct the conditions that may result in the Department's termination of a compact or funding agreement (or portion thereof);

(c) To the extent feasible and if requested, provide technical assistance to assist the Tribe in overcoming the conditions that led to the findings described under paragraph (a) of this section. Technical assistance may take the form of feedback, review, and other assistance requested, as appropriate; and

(d) Provide an opportunity for a hearing on the record in accordance with Subpart J of this part.

§ 29.803 What happens if the Department determines that the Tribe has not corrected the conditions that the Department identified in the notice?

(a) If the Department determines that the Tribe has not corrected the conditions that the Department identified in the notice, the Department must provide a second written notice by any method that provides receipt to the Tribe notifying it that the Department will terminate the compact or funding agreement, in whole or in part.

(b) The second notice must include:

(1) The effective date of the termination;

(2) The details and facts supporting the termination; and

(3) Instructions that explain the Tribe's right to a hearing pursuant to § 29.925.

§ 29.804 When may the Department reassume?

Except as provided in § 29.805, the Department may not reassume until 30 days after receipt of the notice, the final resolution of the hearing, or the resolution of any appeals, whichever is latest, to provide the Tribe with an opportunity to take corrective action in response to any adverse final ruling.

§ 29.805 When can the Department immediately terminate a compact or funding agreement (or portion thereof)?

(a) The Department may immediately terminate a compact or funding agreement (or a portion thereof) if:

(1) The Department makes a finding of imminent substantial and irreparable jeopardy to a trust asset, natural resource, or public health and safety; and

(2) The jeopardy arises out of a failure to carry out the compact or funding agreement.

(b) The Department must provide notice of immediate termination by any method that provides receipt. The notice must set forth the findings that support the Department's determination, advise the Tribe whether it will be reimbursed for any closeout costs incurred after the termination, request the return of any property, and advise the Tribe of its right to a hearing pursuant to § 29.925. Concurrently, the Department must notify the Office of Hearings that the Department intends to immediately terminate a compact or funding agreement. Pursuant to 23 U.S.C. 207(f)(2)(E) and § 29.928, the Department has the burden of proof in any hearing or appeal of an immediate termination.

§ 29.806 Upon termination, what happens to the funds associated with the terminated portions of the compact or funding agreement?

Upon termination, the Department will reassume the remaining funds associated with the terminated portions of the compact or funding agreement. The Department may:

(a) Transfer funds associated with transportation services provided by the Department of the Interior to the Department of the Interior; or

(b) Distribute any funds not transmitted to the Department of the Interior in accordance with applicable law.

Subpart J—Dispute Resolution and Appeals

§ 29.900 What is the purpose of this subpart?

This subpart sets forth procedures that a Tribe may use to resolve disputes with the Department arising before or after the execution of a compact or funding agreement. It also sets forth the process for filing and processing administrative appeals under this part.

§ 29.901 Can the Department and a Tribe resolve disputes using alternative dispute resolution processes?

At any time, the Department or a Tribe may request an informal process or an alternate dispute resolution procedure, such as mediation, conciliation, or arbitration, to resolve disputes. The goal of any such process (which may involve a third party) is to provide an inexpensive and expeditious mechanism to resolve disputes by mutual agreement instead of an administrative or judicial proceeding. The Department and the Tribe should resolve disputes at the lowest possible organizational level whenever possible.

§ 29.902 Does the Equal Access to Justice Act apply to the Program?

The Equal Access to Justice Act (EAJA), 5 U.S.C. 504 and 28 U.S.C. 2414, and the relevant implementing regulations (48 CFR 6101.30 and 6101.31; 49 CFR part 6) will apply if the Tribe's compact or funding agreement make these provisions applicable.

§ 29.903 What determinations may not be appealed under this subpart?

A Tribe may not appeal the following determinations under this subpart:

(a) *Waiver determination.* A waiver determination made pursuant to § 29.534 is a final agency action subject to judicial review under the Administrative Procedure Act.

(b) *Disputes or appeals arising under other Federal laws.* Decisions made under other Federal statutes, such as the Freedom of Information Act and the Privacy Act. Such decisions may be appealable under those statutes and their implementing regulations.

(c) *Selection and award decisions for discretionary or competitive grants.* The Department's selection and level of funding decisions for discretionary or competitive grants are not subject to appeal.

Pre-Award Decisions

§ 29.904 What are pre-award decisions that a Tribe may appeal?

A Tribe may appeal pre-award decisions, which include:

(a) A decision whether to include a Department program in a funding agreement;

(b) A decision whether an activity is an inherent Federal function;

(c) A decision on a final offer before the Department and the Tribe enter into a compact or funding agreement;

(d) A decision on a final offer before the Department and the Tribe execute an amendment modifying the terms of an existing compact or funding agreement; and

(e) An eligibility determination.

§ 29.905 To whom does a Tribe appeal a pre-award decision?

A Tribe appeals a pre-award decision in accordance with the process in § 29.907 to a hearing official who was not involved in the initial decision and is appointed by the General Counsel of the Department.

§ 29.906 Must a Tribe exhaust its administrative remedies before initiating a civil action against the Department in the U.S. District Courts for a pre-award decision?

A Tribe must exhaust its administrative remedies before initiating a civil action against the Department in the U.S. District Courts, except a Tribe may appeal the rejection of a final offer directly to the U.S. District Courts in lieu of an administrative appeal.

§ 29.907 When and how must a Tribe appeal a pre-award decision?

(a) Unless a Tribe appeals, a pre-award decision becomes final 30 days after receipt by the Tribe. To appeal the pre-award decision, a Tribe must submit a written request to the Office of the General Counsel and the Self-Governance Official within 30 days of receiving the pre-award decision. The request must include a statement describing the reasons for appeal and any supporting documentation.

(b) The Tribe may request to resolve the dispute using an alternative dispute resolution process before the hearing official issues a decision.

§ 29.908 May a Tribe request an extension of time to file an administrative appeal?

If a Tribe needs additional time, it may request an extension of time to file an appeal of a pre-award decision. Within 30 days of receiving a decision, a Tribe must request the extension from the Office of the General Counsel, which has the discretion to grant the extension, and notify the Self-Governance Official of the request. The request must be in writing and give a reason for not filing its administrative appeal within the 30–day period. The Department may accept an appeal after the 30–day period for good cause.

§ 29.909 When and how must the hearing official respond to the Tribe's appeal?

(a) The hearing official must issue a decision in writing within 60 days of the receipt of the appeal. If the Tribe requests an informal hearing, the hearing official must issue a decision within 60 days of the hearing.

(b) All decisions issued by the hearing official must include a statement describing the rights of a Tribe to appeal the decision to the U.S. District Courts. The Department must provide the decision to the Tribe by any method that provides a receipt.

§ 29.910 What is the Department's burden of proof for appeals of pre-award decisions?

The Department must demonstrate by clear and convincing evidence the validity of a pre-award decision, and that the decision is consistent with 23 U.S.C. 207.

§ 29.911 What is the effect of a pending appeal on negotiations?

A pending appeal of a pre-award decision will not prevent the Department from negotiating and executing the non-disputed, severable provisions of a compact or funding agreement or prevent the Department from awarding funds to the Tribe that may be included in a funding agreement.

Post-Award Disputes

§ 29.912 What is a post-award dispute?

A post-award dispute is a claim that arises under the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 7101–7109. Such disputes arise once a compact or funding agreement is executed. Post-award disputes include:

(a) Disputed interpretation of a provision of an executed compact or funding agreement;

(b) Disallowance of costs under a funding agreement;

(c) Suspension of payments under a funding agreement;

(d) Allocation, distribution, or reduction of funds when a dispute arises between a consortium and a withdrawing Tribe;

(e) Failure to comply with the terms of a funding agreement; and

(f) Any other claim arising out of a compact or funding agreement.

§ 29.913 What is a claim under the Contract Disputes Act?

A Contract Disputes Act claim is a written demand filed by a Tribe that seeks one or more of the following:

(a) Payment of a specific sum of money under the funding agreement;

(b) Adjustment or interpretation of terms in a funding agreement;

(c) Payment that is disputed as to liability or amount;

(d) Payment that the Department has not acted upon in a reasonable time following a demand for payment; or

(e) Any other claim relating to the terms of the compact or funding agreement.

§ 29.914 How does a Tribe file a Contract Disputes Act claim?

A Tribe must submit its claim in writing to the Self-Governance Official, who serves as the Department's awarding official for the purposes of Contract Disputes Act claims. The Self-Governance Official will document the receipt of the claim.

§ 29.915 Must a Tribe certify a Contract Disputes Act claim?

A Tribe must certify a claim for more than $100,000 in accordance with the Contract Disputes Act. The Tribe must certify that:

(a) The claim is made in good faith;

(b) Documents or data supporting the claim are accurate and complete to the best of the Tribe's knowledge and belief;

(c) The amount claimed accurately reflects the amount the Tribe believes is owed; and

(d) The individual making the certification is authorized to make the claim on behalf of the Tribe and bind the Tribe with respect to the claim.

§ 29.916 Who bears the burden of proof in a Contract Disputes Act claim?

The Tribe bears the burden of proof to demonstrate, by a preponderance of the evidence, the validity of a Contract Disputes Act claim.

§ 29.917 What is the Department's role in processing a Contract Disputes Act claim?

(a) The Department must document the date that the Self-Governance Official received the claim.

(b) The Self-Governance Official must provide the Tribe with an opportunity to resolve the claim informally with assistance from Department officials who have not substantially participated in the disputed matter. Such informal mechanisms may include participating in dispute resolution pursuant to § 29.901.

(c) If the Department and the Tribe do not agree on a settlement, the Self-Governance Official must issue a written decision on the claim by any method that provides a receipt.

§ 29.918 What information must the Self-Governance Official's decision contain?

(a) The Self-Governance Official's decision must:

(1) Describe the claim or dispute;

(2) Reference the relevant terms of the compact or funding agreement;

(3) Set forth the factual areas of agreement and disagreement; and

(4) Set forth the Self-Governance Official's decision, and provide the facts and reasons that support the decision.

(b) The Self-Governance Official must provide the decision to the Tribe and describe the Tribe's appeal rights in language similar to the following:

This is a final decision. You may appeal this decision to the Civilian Board of Contract Appeals (CBCA), 1800 F Street NW, Washington, DC 20245. If you decide to appeal, you must provide written notice within 90 days of receipt of this decision to the CBCA and provide a copy to the Self-Governance Official. The notice must indicate that an appeal is intended, and refer to the decision and contract number. Instead of appealing to the CBCA, you may bring an action in the U.S. Court of Federal Claims or U.S. District Courts within 12 months of the date you receive this notice. If you do not appeal a decision within one of these time periods, it is not subject to further review.

§ 29.919 When must the Self-Governance Official issue a written decision on the claim?

(a) If the claim is for less than $100,000, the Tribe may request that the Self-Governance Official issue a decision within 60 days of the date of receipt of the claim. If the Tribe does not request that the Self-Governance Official issue a decision within 60 days of the date of receipt of the claim, the Self-Governance Official must issue a decision within a reasonable time, which will depend on the size and complexity of the claim and the adequacy of the information provided in support of the claim. The Tribe must request a decision by the Self-Governance Official before seeking an appeal in accordance with paragraph (c) of this section.

(b) If the claim is for more than $100,000, the Self-Governance Official must issue a decision within 60 days of the date of receipt of the claim or notify the Tribe of the time within which the Self-Governance Official will issue a decision. Such time frame must be reasonable, which will depend on the size and complexity of the claim and the adequacy of the information provided in support of the claim.

(c) If the Self-Governance Official does not issue a decision within these time frames, a Tribe may treat the delay as a denial of its claim and appeal the decision in accordance with § 29.921.

§ 29.920 Is a decision of the Self-Governance Official final?

(a) A decision of the Self-Governance Official is final and conclusive, and not subject to review, unless the Tribe timely commences an appeal or suit pursuant to the Contract Disputes Act.

(b) Once the Self-Governance Official issues a decision, the decision may not be changed except by agreement of the Department and the Tribe or under the following limited circumstances:

(1) Evidence is discovered that could not have been discovered through due diligence before the Self-Governance Official issued the decision;

(2) The Self-Governance Official learns that there has been fraud, misrepresentation, or other misconduct by a party;

(3) The decision is beyond the scope of the Self-Governance Official's authority;

(4) The claim has been satisfied, released, or discharged; or

(5) Any other reason justifying relief from the decision.

(c) If the Self-Governance Official withdraws a decision and issues a new decision, the Tribe may appeal the new decision in accordance with § 29.921. If the Self-Governance Official does not issue a new decision, the Tribe may proceed under § 29.919(c).

(d) If a Tribe files an appeal or suit, the Self-Governance Official may modify or withdraw the final decision before a decision is issued in the pending appeal.

§ 29.921 Where may the Tribe appeal the Self-Governance Official's decision on a Contract Disputes Act claim?

The Tribe may appeal the Self-Governance Official's decision on a Contract Disputes Act claim in one of the following forums:

(a) The Civilian Board of Contract Appeals. The appeal must be in accordance with the Board's implementing regulations in 48 CFR part 6101;

(b) The U.S. Court of Federal Claims; or

(c) The U.S. District Courts.

§ 29.922 May a party appeal a Civilian Board of Contract Appeals decision?

A party may appeal a decision of the Civilian Board of Contract Appeals within 120 days to the U.S. Court of Appeals for the Federal Circuit.

§ 29.923 What is the effect of a pending appeal?

(a) The Tribe must continue performance in accordance with the compact and funding agreement during the appeal of any claims to the same extent the Tribe would have performed had there been no dispute.

(b) A pending dispute will not affect or prevent the negotiation or award of any subsequent compact or funding agreement between the Department and the Tribe.

Termination Appeals

§ 29.924 May a Tribe appeal the Department's decision to terminate a compact or funding agreement?

A Tribe may appeal the Department's decision to terminate a compact or funding agreement to the Department's Office of Hearings.

§ 29.925 Is a Tribe entitled to a hearing on the record?

(a) The Department must provide a Tribe with a hearing on the record for a non-immediate termination prior to or in lieu of the corrective action period set forth in the termination notice as described in § 29.802.

(b) The Department must provide a Tribe with a hearing on the record for an immediate termination. The Department and the Tribe will work together to determine a mutually acceptable time and place for the hearing. The hearing on the record must commence no later than 10 days after the date of such termination or a later date upon mutual agreement. If feasible, the hearing may occur virtually or telephonically. If requested by the Tribe, the Department may arrange for an in-person hearing.

(c) A Tribe may decline a hearing in writing.

§ 29.926 What rights do the Department and a Tribe have in an appeal of a termination decision?

(a) During the appeal of a termination decision, the Department and a Tribe have the right to:

(1) A designated representative;

(2) Present the testimony of witnesses, orally or in writing, who have knowledge of the relevant issues;

(3) Cross-examine witnesses;

(4) Introduce oral or documentary evidence, or both;

(5) Receive, upon request and payment of reasonable costs, a copy of the transcript of the hearing, and copies of all documentary evidence that is introduced at the hearing;

(6) Take depositions, request the production of documents, serve interrogatories on other parties, and request admissions; and

(7) Any other procedural rights established under the Administrative Procedure Act.

(b) An administrative law judge assigned by the chief administrative law judge of the Department's Office of Hearings must conduct hearings on the record for a termination decision unless the Tribe waives the hearing.

§ 29.927 What notice and service must the Department and the Tribe provide?

(a) The Department and the Tribe must file each document with U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

(b) The Department and the Tribe must serve copies of each document with:

(1) The Self-Governance Official; and

(2) The authorized Tribal representative.

§ 29.928 What is the Department's burden of proof for a termination decision?

The Department must demonstrate by clear and convincing evidence the validity of the grounds for the termination.

§ 29.929 How will the Department communicate its decision following a hearing on a termination decision?

After the hearing or any post-hearing briefing schedule established by the Department's Office of Hearings, the administrative law judge must send the Department and the Tribe the decision by any method that provides a receipt. The decision must contain the administrative law judge's findings of fact and conclusions of law on all the issues.

§ 29.930 May the Department or the Tribe appeal the decision of an administrative law judge?

(a) The decision of an administrative law judge is a recommended decision that the Department or the Tribe may appeal to the Secretary.

(b) The decision of an administrative law judge becomes the final decision of the Secretary 60 days after it is served on the Department and the Tribe unless a petition for review is filed in accordance with § 29.931. The decision of the Secretary is a final agency action that the Tribe may appeal to the U.S. District Courts.

§ 29.931 How can the Department or the Tribe obtain review of the recommended decision of an administrative law judge?

(a) *Time for filing.* Within 30 days after service of any recommended decision of an administrative law judge, the Department or the Tribe may file a petition for review of the recommended decision with the Secretary. A copy must be served on the opposing party.

(b) *Service.* Each document filed with or by the Secretary must be accompanied by a certificate of service specifying the manner in which and the date on which service was made with the Secretary and the opposing party.

(c) *Form and content of objections.* The petition for review must set out separately and in detail each objection to the recommended decision, and the basis and reasons supporting such objection. The petition for review must state whether such objections are related to alleged errors of law or fact. The petition for review must also identify the relief requested.

(d) *Introduction of new information on review.* If the Department or the Tribe fail to object to any errors in the recommended decision, the party waives the right to allege such error in subsequent proceedings. The petition for review may not set forth for the first time on brief to the Secretary any matters of law or fact that were not argued before the administrative law judge.

(e) *Reply briefs.* An opposing party has 30 days from the date of service of the petition for review to file its reply brief.

(f) *Failure to file timely and adequate objections.* Late filed petitions for review are not permitted, and incomplete objections will not be reviewed.

§ 29.932 May a Tribe appeal the decision of the Secretary?

The decision of the Secretary on the merits of a petition for review constitutes final agency action. A Tribe may appeal the decision to the U.S. District Courts.

§ 29.933 What is the effect of an appeal on negotiations?

A pending appeal of a termination decision will not affect or prevent the award of another funding agreement or TTP Agreement.

However, if the Department terminates all or a portion of a compact or funding agreement due to a finding of gross mismanagement or imminent jeopardy that is sustained on appeal, and the Tribe has not corrected the adverse findings, the Department has discretion to reject a proposal to award the Tribe a new funding agreement or provide new funds in an existing funding agreement.

[FR Doc. 2020–11618 Filed 5–29–20; 8:45 am]

BILLING CODE 4910–9X–P

Reader Aids

Federal Register

Vol. 85, No. 105

Monday, June 1, 2020

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32977–33526 1

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

910 32977

9 CFR

Proposed Rules:

310 33031
352 33034

10 CFR

Proposed Rules:

431 33036

12 CFR

3 32980
6 32980
30 32991
208 ..... 32980, 32991
217 32980
324 32980
364 32991
741 32991

13 CFR

120 ..... 33004, 33010

14 CFR

Proposed Rules:

39 ..... 33043, 33046

16 CFR

1253 33015

17 CFR

229 33290
230 33290
232 33290
239 33290
240 ..... 33020, 33290
243 33290
249 33290
270 33290
274 33290

29 CFR

Proposed Rules:

1614 33049

34 CFR

361 33021

40 CFR

52 ..... 33021, 33023
70 33023
271 33026

Proposed Rules:

52 ..... 33049, 33052
180 33059

49 CFR

29 33494
385 33396
395 33396

50 CFR

648 33027

Proposed Rules:

17 33060

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List April 30, 2020

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://listserv.gsa.gov/cgi-bin/wa.exe?SUBED1=PUBLAWS-L&A=1*

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JUNE 2020

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
June 1	Jun 16	Jun 22	Jul 1	Jul 6	Jul 16	Jul 31	Aug 31
June 2	Jun 17	Jun 23	Jul 2	Jul 7	Jul 17	Aug 3	Aug 31
June 3	Jun 18	Jun 24	Jul 6	Jul 8	Jul 20	Aug 3	Sep 1
June 4	Jun 19	Jun 25	Jul 6	Jul 9	Jul 20	Aug 3	Sep 2
June 5	Jun 22	Jun 26	Jul 6	Jul 10	Jul 20	Aug 4	Sep 3
June 8	Jun 23	Jun 29	Jul 8	Jul 13	Jul 23	Aug 7	Sep 8
June 9	Jun 24	Jun 30	Jul 9	Jul 14	Jul 24	Aug 10	Sep 8
June 10	Jun 25	Jul 1	Jul 10	Jul 15	Jul 27	Aug 10	Sep 8
June 11	Jun 26	Jul 2	Jul 13	Jul 16	Jul 27	Aug 10	Sep 9
June 12	Jun 29	Jul 6	Jul 13	Jul 17	Jul 27	Aug 11	Sep 10
June 15	Jun 30	Jul 6	Jul 15	Jul 20	Jul 30	Aug 14	Sep 14
June 16	Jul 1	Jul 7	Jul 16	Jul 21	Jul 31	Aug 17	Sep 14
June 17	Jul 2	Jul 8	Jul 17	Jul 22	Aug 3	Aug 17	Sep 15
June 18	Jul 6	Jul 9	Jul 20	Jul 23	Aug 3	Aug 17	Sep 16
June 19	Jul 6	Jul 10	Jul 20	Jul 24	Aug 3	Aug 18	Sep 17
June 22	Jul 7	Jul 13	Jul 22	Jul 27	Aug 6	Aug 21	Sep 21
June 23	Jul 8	Jul 14	Jul 23	Jul 28	Aug 7	Aug 24	Sep 21
June 24	Jul 9	Jul 15	Jul 24	Jul 29	Aug 10	Aug 24	Sep 22
June 25	Jul 10	Jul 16	Jul 27	Jul 30	Aug 10	Aug 24	Sep 23
June 26	Jul 13	Jul 17	Jul 27	Jul 31	Aug 10	Aug 25	Sep 24
June 29	Jul 14	Jul 20	Jul 29	Aug 3	Aug 13	Aug 28	Sep 28
June 30	Jul 15	Jul 21	Jul 30	Aug 4	Aug 14	Aug 31	Sep 28