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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1400 and 1416

RIN 0560–AH69

Supplemental Agricultural Disaster Assistance Programs, Payment Limitation and Payment Eligibility

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements changes to the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP); Livestock Indemnity Program (LIP); and Tree Assistance Program (TAP) as required by the Bipartisan Budget Act of 2018 (BBA), including changes to the payment limitations, the funding limitation for ELAP, and losses for injured livestock sold at a reduced price under LIP. An application period for ELAP, LIP, TAP and the Livestock Forage Disaster Program (LFP) is included in this rule to allow additional time for producers to apply. Additionally, FSA implements changes to TAP for 2017 losses to pecan trees as specified in the Consolidated Appropriations Act, 2018. This rule also includes several clarifying amendments and corrections to the regulations for the programs.

DATES:

Effective date: October 2, 2018.

Deadline for reopened 2017 and 2018 application period: December 1, 2018.

FOR FURTHER INFORMATION CONTACT: Lisa Berry; (202) 720–7641. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The disaster assistance programs, payment limits, and payment eligibility provisions in this rule are Commodity Credit Corporation (CCC) programs and provisions; the Farm Service Agency (FSA) administers the programs and provisions for CCC. Specific requirements for supplemental agricultural disaster assistance programs will be implemented as authorized by BBA (Pub. L. 115–123), which amended the Agricultural Act of 2014 (the 2014 Farm Bill, Pub. L. 113–79), and the Consolidated Appropriations Act, 2018 (Pub. L. 115–141), which expanded TAP eligibility for producers with losses to pecan trees during the 2017 calendar year. FSA is also making minor clarifying amendments and corrections to the regulations in 7 CFR part 1416.

Payment Limitation and Extension of Application Periods

The payment limitations for supplemental disaster programs are being changed in §§ 1400.1 and 1416.6, retroactive to the 2017 program year. Under the previous payment limitation established by the 2014 Farm Bill, the total amount of payments that a person or legal entity could receive under LIP, LFP, and ELAP combined, directly or indirectly, could not exceed $125,000 in any program year, and TAP had a separate payment limit of $125,000 per person or legal entity for any crop year. As authorized by BBA, and effective with the 2017 program year, the payment limits for LIP and TAP are being removed. Effective with the 2017 program year, for LFP and ELAP, the total amount of payments that a person or legal entity can receive, directly or indirectly, in any crop year cannot exceed $125,000 under the two programs combined.

Producers may have chosen not to apply for losses under ELAP, LFP, LIP, and TAP for which the 2017 or 2018 deadlines have passed if they had reached the payment limitation under the previous rules. Therefore, the 2017 application periods for these four programs are being re-opened until December 3, 2018, and the 2018 sign-up periods are extended for any 2018 applications that would have had a sign-up deadline earlier than December 3, 2018. Producers who previously submitted an application and received a decision that was administratively final are not eligible to reapply during the extended sign-up period, unless their application was denied only because their application or notice of loss, if required, was filed after the applicable deadline. Additionally, producers that previously applied for disaster assistance and earned payments up to the applicable payment limit under the prior payment limit for such disaster program or programs will automatically have their applications reprocessed to determine if they are now entitled to receive additional payments under the new payment limit, in which case the additional payment will automatically issue to such producer. Benefits for lower threshold mortality pecan tree losses for eligible orchardists and nursery tree growers under TAP, made available under the 2018 Consolidated Appropriations Act provisions are limited to losses on acres that were previously reported on the FSA–578, Report of Acreage. Nothing in this rule or the 2018 Consolidated Appropriations Act opened an opportunity for persons and legal entities to now file 2017 pecan acreage reports. Persons or legal entities are not required to re-apply for assistance under the programs in order for new payment limitation provisions to take effect. FSA will apply the new payment limitation and payment eligibility provisions to all applications for each program year regardless of time of filing.

Supplemental Disaster General Provisions

This rule removes duplicative provisions at § 1416.6(d) that provided that producers who are eligible to receive benefits for the same loss under both 7 CFR part 1416 and any other program, including indemnities under the Federal Crop Insurance Act (7 U.S.C. 1501–1524), could not receive benefits under both and had to elect whether to receive benefits under part 1416 or the other program. There is, however, a similar statutory provision that remains in effect under the Noninsured Crop Disaster Assistance Program (NAP) that precludes a producer from receiving assistance under NAP and assistance for the same loss under any other program—including TAP, LIP, ELAP and LFP—administered by the Secretary, subject to certain exceptions. In addition, the rule clarifies provisions at § 1416.6(c) that allows the Deputy Secretary to take action to avoid the duplication of benefits between these programs and other programs to prevent

a person or legal entity from being paid the total value of their loss.

The provisions related to direct attribution and adjust gross income limitations are removed from § 1416.6(f) because those provisions are also included in 7 CFR part 1400, which applies to the programs in part 1416; therefore, repeating those provisions in § 1416.6 is unnecessary. Application of direct attribution and adjusted gross income limits provisions at 7 CFR 1400 are not affected by this rule.

The provisions related to eligible producers in § 1416.3; misrepresentation in § 1416.7; offsets, assignments, and debt settlement in § 1416.9; and miscellaneous provisions in § 1416.14 are clarified. These changes are only intended to make the regulation easier to understand and do not affect the administration of the programs. The provisions related to deceased individuals and dissolved entities in § 1416.13 are removed, and the provisions in 7 CFR part 707, Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, will apply to the programs in part 1416 to be consistent with how such payments are treated under other FSA programs.

Specific Provisions for ELAP

Effective with the 2017 program year, BBA removes the annual funding limitation for ELAP of $20 million per program year; this rule implements this change and removes provisions regarding availability of funds and application of a national payment factor in § 1416.108. However, as all program payments are generally subject to availability of funds under Federal law, § 1416.2 has been amended to specify the actions FSA will take in response to changes in availability or incidence.

In § 1416.102, the definitions of ''adult beefalo bull,'' ''adult beefalo cow,'' ''adult buffalo or bison bull,'' ''adult buffalo or bison cow,'' ''blizzard,'' ''grazing animals,'' ''newborn livestock,'' ''non-adult beefalo,'' and ''non-adult buffalo or bison,'' are being added. This rule clarifies the definitions of ''commercial use,'' ''eligible adverse weather,'' ''livestock owner,'' ''non-adult beef cattle,'' and ''normal grazing period''. This rule removes the definitions of ''adult buffalo and beefalo bull,'' ''adult buffalo and beefalo cow'', and ''non-adult buffalo or beefalo'' because this rule is changing the categories and different terms are being used. This rule removes the definition of ''Deputy Administrator or DAFP'' because these definitions are now included at 7 CFR part 718, which applies to the programs in part 1416.

In § 1416.103, this rule clarifies that eligible losses must have been apparent during a program year to be an eligible loss in that year. In § 1416.104(a)(1), FSA specifies that to be eligible for losses relating to livestock grazing and feed, transporting water, or gathering livestock to treat for cattle fever, the livestock must be grazing animals, which is consistent with the intent of the program. Poultry and swine are removed from the listing of livestock types eligible for grazing and feed losses and losses from transporting water in § 1416.104(b) to be consistent with the amended requirement that eligible livestock be grazing animals. Poultry, and swine were added to the livestock types ineligible for those categories of assistance in § 1416.104(c).

The provisions related to eligible death losses are amended to correct livestock types for beefalo and bison in § 1416.104(d) and § 1416.104(b), add a separate livestock type for ''chickens, pullets, and Cornish hens (small size),'' and clarify two previously included poultry categories at § 1416.104(d) and (e). The rule clarifies when eligible livestock must have died and adds a separate provision for newborn livestock, which must have died within 7 calendar days from the ending date of the eligible loss condition. It also clarifies the requirement that livestock be produced or maintained for commercial use or for a commercial operation for producing livestock products, consistent with similar changes in § 1416.104(a)(1) and (c)(9).

This rule also clarifies provisions regarding length of time of ownership in § 1416.105 and updates applicable program years and the deadline in §§ 1416.106 and 1416.107, including dates for the extension of the 2017 application period.

Specific Provisions for LFP

This rule amends the definitions in § 1416.202 for beefalo, buffalo, and bison to be consistent with changes made to ELAP and LIP provisions and makes technical corrections to the definition of ''Federal Agency.'' This rule clarifies the LFP provisions related to contract growers by removing provisions from the definition of covered livestock and adding a separate definition of ''contract grower'' in § 1416.202 and clarifying provisions in § 1416.203(a). This rule clarifies the provisions related to grazing animals by adding a definition of ''grazing animals'' and amending the definition of ''normal grazing period'' to clarify that it is the time period when grazing animals receive daily nutrients and satisfy net energy requirements without supplemental feed. In § 1416.204, the section is amended to specify that covered livestock must be grazing animals and do not include poultry and swine, consistent with similar changes under ELAP. The requirement that eligible livestock must have been produced or maintained for commercial use or for producing livestock products in § 1416.204 is clarified, and categories for beefalo, bison, and buffalo are amended to be consistent with the clarifications for ELAP and LIP.

This rule updates the applicable program years and deadlines in § 1416.206 and makes technical corrections in § 1416.202 to the definition of ''Federal Agency.'' It also makes changes in § 1416.205, to specify that eligible grazing losses include losses occurring on land planted to annual planted ryegrass and annual planted crabgrass, and in § 1416.207 to correct paragraph references and numbering.

Specific Provisions for LIP

In addition to removing the payment limitation for LIP benefits, this rule adds provisions in § 1416.301 to provide LIP benefits for the sale of animals at a reduced price if the sale occurred due to injury that was a direct result of an eligible adverse weather event or due to an attack by an animal reintroduced into the wild by the Federal Government or protected by Federal law, including wolves or avian predators, as authorized by the BBA. It also amends provisions throughout part 1416 to include conforming language regarding the sale of animals at a reduced price where applicable, and amends § 1416.306(e) to specify that payments for sales of injured animals at a reduced price will be calculated by multiplying the national payment rate for each livestock category by the number of eligible livestock sold at a reduced price, minus the amount the producer received for the livestock. If the reduced sale price of the livestock is greater than the national payment rate, the producer will not receive a payment for that livestock.

The definitions in § 1416.302 for beefalo, buffalo, and bison are amended to be consistent with changes made to ELAP and LFP. This rule clarifies the existing definitions of ''Commercial use,'' ''Eligible adverse weather event,'' and ''Winter storm.'' To clarify existing regulations, this rule adds definitions of ''acceptable animal husbandry,'' ''blizzard,'' ''eligible attack,'' ''eligible disease,'' ''eligible loss condition,'' ''livestock unit,'' and ''newborn livestock.'' This rule removes

definitions of ''CCC,'' ''Deputy Administrator,'' ''Secretary,'' ''State committee, State office, county committee, or county office'' and ''United States'' because these definitions are included at 7 CFR part 718, which applies to the programs in part 1416.

In § 1416.303, the eligibility of livestock owners and contract growers is clarified. This rule adds the provision at § 1416.303(c) to specify that a livestock owner's interest must be summarized by livestock unit for a county when determining payment eligibility. It amends § 1416.304 to clarify that ostriches are included as eligible livestock. It amends the time period in § 1416.304(c) during which an animal must have died due to an eligible adverse weather event or attack, from 60 days to 30 days, and within 7 days for newborn animals. The provisions in § 1416.304 regarding commercial use and categories for beefalo, buffalo, bison, and poultry are clarified. This rules updates applicable program years and notice of loss and application requirements in § 1416.305, including changes to extend the 2017 application period, to change the deadline for filing an application for payment and livestock inventory reports to 60 calendar days after the end of the calendar year, and to allow a licensed veterinarian to provide a certification of livestock deaths due to disease in cases where reliable beginning inventory data is available and the veterinarian personally observed the animals, had knowledge of how the deaths due to disease were caused or exacerbated by an eligible adverse weather event and were not avoidable or preventable by using good animal husbandry and management practices.

Specific Provisions for TAP

In additional to removing the TAP payment limitation of $125,000 per year, BBA required increases in the number of acres for which a producer can receive payment from 500 to 1,000 acres per year, which is being implemented by this final rule in § 1416.406(j). Growers who previously received TAP benefits for the 2017 or 2018 program years that were limited to only 500 acres may receive benefits on additional acres, up to 1,000 acres. If those growers already filed applications for their entire stand and received an administrative decision for that stand, there is no need to re-file those applications because the extent of eligibility decisions were all based on the entire stand. To the extent that payments were limited merely because the acreage limitation was reached, the previously limited payments will automatically issue without any action required by the participant.

The provisions of the Consolidated Appropriations Act of 2018 are being implemented to expand coverage under TAP by providing $15 million for 2017 pecan tree losses for growers who suffered a pecan stand mortality loss that exceeds 7.5 percent (rather than a mortality loss that exceeds 15 percent) due to an eligible natural disaster. The provisions only apply to producers with mortality losses that exceed 7.5 percent. Pecan growers who had more than a 15 percent mortality loss are already eligible under regular 2017 TAP provisions and are not affected by this change. Accordingly, this rule only changes the eligibility provisions to allow pecan growers with lower stand mortality losses that exceed 7.5 percent to be eligible; it does not change the payment calculation for TAP benefits. If TAP applications for these losses exceed the available $15 million, FSA may factor payments. Pecan growers who suffered eligible 2017 losses can apply for these benefits through December 3, 2018.

TAP provisions are revised to make technical corrections and clarifications in the rule. The 2014 Farm Bill established a qualifying loss threshold of greater than 15 percent mortality; a person or legal entity who is otherwise eligible for payment qualifies for TAP only if the tree, bush, or vine mortality of the eligible orchardist or nursery tree grower, as a result of damaging weather or related condition, exceeds 15 percent (adjusted for normal mortality). Growers may receive payment for damage losses in excess of 15 percent (adjusted for normal damage) only if they meet the qualifying loss threshold of 15 percent mortality. This rule amends §§ 1416.403, 1416.404, and 1416.406 to correct and clarify the qualifying mortality loss threshold. Growers who only sustain damage, and no mortality in excess of the requisite 15 percent loss threshold for mortality, adjusted for normal mortality, are not eligible. In § 1416.406(d)(3), this rule also clarifies that if someone other than the orchardist or nursery tree grower bore or incurred costs or expenses, or the orchardist or nursery tree grower was reimbursed for expenses under another program, those expenses are not eligible for cost share under TAP.

In addition, the terms of ''individual stand'' and ''eligible stand'' have been changed to ''stand'' in §§ 1416.403 and 1416.406(h). This change was made for clarity and consistency to use the defined term ''stand'' because ''individual stand'' and ''eligible stand'' are not defined in the rule. The definitions in §§ 1416.402 of ''county committee,'' ''Deputy Administrator,'' and ''State committee'' are being removed because those definitions are included in 7 CFR part 718, which applies to the programs in part 1416.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. The regulations to implement the provisions of Title I and the administration of Title I of the 2014 Farm Bill are exempt from the notice and comment provisions of 5 U.S.C. 553 and the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2014 Farm Bill.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. This rule does not rise to the level required

to comply with Executive Order 13771; however, the cost savings will be accounted for through the USDA regulatory reform initiative and will be banked to be used as needed for future offsetting costs.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553). This rule is not subject to the Regulatory Flexibility Act since FSA is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). This rule change is a technical amendment and is solely administrative in nature. Accordingly, this action is covered by the Categorical Exclusion, found at 7 CFR part 799.31(b)(3)(i), that applies to the issuance of minor technical corrections to regulations. No Extraordinary Circumstances (§ 799.33) exist. As such, the implementation of the technical corrections provided in this rule does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action and this rule serves as documentation of the programmatic environmental compliance decision for this federal action.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule would not preempt State and or local laws, and regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, appeal provisions of 7 CFR parts 11 and 780 must be exhausted. This rule would not preempt a State or tribal government law, including any State or tribal government liability law.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The Executive Order 13175 requires to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments proposed legislation, and other policy statements or actions that have substantial direct effects 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.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that required tribal consultation under Executive Order 13175. If a tribe requests consultation, FSA will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

SBREFA

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, SBREFA). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review and this rule is effective on the date of publication in the **Federal Register**. Therefore, the rule is effective when published in the **Federal Register**, as discussed above.

Federal Assistance Programs

The titles and numbers of the Federal assistance programs as found in the Catalog of Federal Domestic Assistance to which this rule applies are:

10.088—Livestock Indemnity Program
10.089—Livestock Forage Disaster Program
10.091—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program
10.092—Tree Assistance Program

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c) of the 2014 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects

7 CFR Part 1400

Agriculture, Loan programs—agriculture, Conservation, Price support programs.

7 CFR Part 1416

Dairy products, Indemnity payments, Pesticide and pests, Reporting and recordkeeping requirements.

For the reasons discussed above, CCC amends 7 CFR parts 1400 and 1416 as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

■ 1. The authority citation for part 1400 is revised to read as follows:

Authority: 7 U.S.C. 1308, 1308–1, 1308–2, 1308–3, 1308–3a, 1308–4, and 1308–5; and Title I, Pub. L. 115–123.

■ 2. In § 1400.1, revise the table in paragraph (f) to read as follow:

§ 1400.1 Applicability.

(f) * * *

Payment or benefit	Limitation per person or legal entity, per crop, program, or fiscal year
(1) Price Loss Coverage, Agricultural Risk Coverage, Loan Deficiency Program, and Marketing Loan Gain payments (other than Peanuts)	$125,000
(2) Price Loss Coverage, Agricultural Risk Coverage, Loan Deficiency Program, and Marketing Loan Gain payments for Peanuts	125,000
(3) Transition Assistance for Producers of Upland Cotton [1]	40,000
(4) CRP annual rental payments [2]	50,000
(5) NAP payments	125,000
(6) TAP [3]	125,000
(7) LIP, LFP, and ELAP [4]	125,000
(8) CSP [5]	200,000
(9) EQIP [6]	450,000
(10) AMA program [7]	50,000

[1] Transition Assistance for Producers of Upland Cotton is only available in the 2014 and 2015 program years.
[2] CRP contracts approved prior to October 1, 2008 may exceed the limitation, subject to payment limitation rules in effect on the date of contract approval.
[3] A separate limitation applies to TAP payments for 2011 through 2016 program years. Lastly, there is no program payment limitation for either LIP or TAP in 2017 and subsequent program years.
[4] Total payments received through LIP, LFP, and ELAP may not exceed $125,000 for each of the 2011 through 2016 program years. For the 2017 and subsequent program years, LIP is no longer included in the combined program limitation.
[5] The $200,000 limit is the total limit under all CSP contracts entered into subsequent to enactment of the 2014 Farm Bill during fiscal years 2014 through 2018.
[6] The $450,000 limit is the total limit under all EQIP contracts entered into subsequent to enactment of the 2014 Farm Bill during fiscal years 2014 through 2018.
[7] The $50,000 limit is the total limit that a participant may receive under the AMA program in any fiscal year.

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

■ 3. The authority citation for part 1416 is revised to read as follows:

Authority: Title I, Pub. L. 113–79, 128 Stat. 649; Title I, Pub. L. 115–123; Title VII, Pub. L. 115–141.

Subpart A—General Provisions for Supplemental Agricultural Disaster Assistance Programs

■ 4. In § 1416.2, add paragraph (f) to read as follows:

§ 1416.2 Administration of ELAP, LFP, LIP, and TAP.

* * * * *

(f) Payments issued under this part are subject to the availability of funds under Federal law. Within whatever funding limitation that may exist under law, the only funds that will be considered available to pay eligible losses will be that amount approved by the Secretary. If funds are limited, for a particular program year payments may be delayed until the time for applying for the payment for that program year has passed. In the event that, within the limits of the funding made available by the Secretary, approval of eligible applications would result in expenditures in excess of the amount available, FSA will prorate the available funds by a national factor to reduce the total expected payments to the amount made available by the Secretary. FSA will make payments based on the factor for the national rate determined by FSA. FSA will prorate the payments in such manner as it determines necessary and appropriate and reasonable. Applications for payment that are unpaid or prorated for a program year for any reason will not be carried forward for payment under other funds for later years or otherwise, but will be considered, as to any unpaid amount, void and nonpayable.

■ 5. In § 1416.3, revise paragraphs (a), (b) introductory text, and (b)(4) to read as follows:

§ 1416.3 Eligible Producer.

(a) *Eligible producer* means, in addition to other requirements as may apply, an individual or legal entity who is an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop or livestock and who is entitled to share in the crop or livestock available for marketing from the farm, or would have shared had the crop or livestock been produced, and who also meets the requirements of paragraph (b) of this section. The term eligible producer can include a livestock owner or contract grower who satisfies other requirements of this part.

(b) An individual or legal entity seeking to be an eligible producer under this part must submit a farm operating plan in accordance with part 1400 of this chapter and be a:

* * * * *

(4) Corporation, limited liability company, or other organizational structure organized under State law.

■ 6. Revise § 1416.6 to read as follows:

§ 1416.6 Payment eligibility and limitation.

(a) For 2017 and subsequent program years, a person or legal entity, excluding a joint venture or general partnership, as determined in part 1400 of this chapter,

must not receive ELAP and LFP payments combined, directly or indirectly, in excess of $125,000 per program year.

(b) The Deputy Administrator may take such actions as needed to avoid a duplication of benefits under the programs provided for in this part, or duplication of benefits received in other programs, and may impose such cross-program payment limitations as may be consistent with the intent of this part in order to help prevent a person or legal entity being paid more than the total value of their loss.

(c) For losses incurred beginning on October 1, 2011, and for the purposes of administering LIP, LFP, ELAP, and TAP, the average adjusted gross income (AGI) limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply under this subpart and will apply to each applicant for ELAP, LFP, LIP, and TAP. Specifically, a person or legal entity with an average AGI that exceeds $900,000 will not be eligible to receive benefits under this part.

(d) The direct attribution provisions in part 1400 of this chapter apply to ELAP, LFP, LIP, and TAP.

■ 7. Revise § 1416.7 to read as follows:

§ 1416.7 Misrepresentation.

(a) A person or legal entity who is determined to have deliberately misrepresented any fact affecting a program determination made in accordance with this part, or any other part that is applicable to this part, to receive benefits for which that person or legal entity would not otherwise be entitled, is ineligible for program payments under this part and must refund all such payments received, plus interest as determined in accordance with part 1403 of this chapter. The person or legal entity is ineligible and will be denied program benefits under this part for the immediately subsequent period of at least 2 crop years, and up to 5 crop years. Interest will run from the date of the original disbursement by CCC.

(b) For each year of ineligibility determined according to paragraph (a) of this section, a person or legal entity will refund to CCC all program payments, in accordance with § 1416.11, received by such person or legal entity with respect to all applications under this part, as may be applicable, if the person or legal entity is determined to have knowingly misrepresented any fact affecting a program determination.

§ 1416.9 [Amended]

■ 8. Amend § 1416.9 as follows:

■ a. In paragraph (a), remove the words ''to any participant'', and

■ b. In paragraph (b), remove the words ''Any participant entitled to any payment'' and add the words ''A participant'' in their place, and add the words ''under this part'' immediately before the words ''in accordance''.

■ 9. Revise § 1416.13 to read as follows:

§ 1416.13 Deceased individuals or dissolved entities.

(a) The provisions of part 707 of this chapter apply to the programs of this part.

(b) [Reserved].

§ 1416.14 [Amended]

■ 10. In § 1416.14, in paragraph (a), remove ''to receive benefits'' and add ''of payment eligibility'' in its place, and remove ''from receiving benefits'' and add the word ''from receiving payments'' in its place.

Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

■ 11. Amend § 1416.102 as follows:

■ a. Remove the definitions of ''Adult buffalo and beefalo bull'' and ''Adult buffalo and beefalo cow'';

■ b. Add definitions for ''Adult beefalo bull'', ''Adult beefalo cow'', ''Adult buffalo or bison bull'', ''Adult buffalo or bison cow'', and ''Blizzard'' in alphabetical order;

■ c. In the definition of ''Commercial use'', remove ''by the eligible producer'';

■ d. Remove the definition of ''Deputy Administrator or DAFP'';

■ e. In the definition of ''eligible adverse weather'', remove '' extreme or'' and add ''extreme and'' in its place;

■ f. Add a definition for ''Grazing animals'' in alphabetical order;

■ g. Revise the definition of ''Livestock owner'';

■ h. Add a definition for ''Newborn livestock'' in alphabetical order;

■ i. In the definition of ''Non-adult beef cattle'', remove ''at the time they died'' and add ''on or before the beginning date of the eligible adverse weather or eligible loss condition that caused death'' in its place;

■ j. Remove the definition of ''Non-adult buffalo or beefalo'';

■ k. Add definitions for ''Non-adult beefalo'' and ''Non-adult buffalo or bison'' in alphabetical order;

■ l. In the definition of ''Non-adult dairy cattle'', remove ''at the time they died'' and add ''on or before the beginning date of the eligible adverse weather or eligible loss condition that caused death'' in its place; and

■ m. Revise the definition of ''Normal grazing period''.

The revisions and additions read as follows:

§ 1416.102 Definitions.

* * * * *

Adult beefalo bull means a male hybrid of beef and bison that was used for breeding purposes and was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

Adult beefalo cow means a female hybrid of beef and bison that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred beefalo heifer is also considered an adult beefalo cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

Adult buffalo or bison bull means a male animal of those breeds that was used for breeding purposes and was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

Adult buffalo or bison cow means a female animal of those breeds that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred buffalo or bison heifer is also considered an adult buffalo or bison cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

* * * * *

Blizzard means, as defined by the National Weather Service, a storm which contains large amounts of snow or blowing snow with winds in excess of 35 miles per hour and visibility of less than one-fourth of a mile for an extended period of time.

* * * * *

Grazing animals mean those species of livestock that, from a nutritional and physiological perspective, satisfy more than 50 percent of their net energy requirement through the consumption of growing forage grasses and legumes. Species of livestock for which more than 50 percent of their net energy requirements are not recommended to be met from consumption of forage grasses and legumes, such as poultry and swine, are excluded regardless of whether those species are grazing or are present on grazing land or pastureland.

* * * * *

Livestock owner means one having legal ownership of the livestock for which benefits are being requested on the day of the eligible adverse weather or eligible loss condition.

* * * * *

Newborn livestock means livestock that are within 10 calendar days of the date of birth.

* * * * *

Non-adult beefalo means a hybrid of beef and bison that does not meet the definition of adult beefalo cow or bull. Non-adult beefalo are further delineated by weight categories of either less than 400 pounds or 400 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition that caused death. For a loss other than death, means an animal of those breeds that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

Non-adult buffalo or bison means an animal of those breeds that does not meet the definition of adult buffalo or adult bison cow or bull. Non-adult buffalo or bison are further delineated by weight categories of either less than 400 pounds or 400 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition that caused death. For a loss other than death, means an animal of those breeds that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

* * * * *

Normal grazing period means, as determined by FSA, with respect to a specific type of grazing land or pastureland in the county, the period during the calendar year when grazing animals receive daily nutrients and satisfy net energy requirements without supplemental feed.

* * * * *

■ 12. In § 1416.103, revise paragraphs (a) and (c) to read as follows:

§ 1416.103 Eligible losses, adverse weather, and other loss conditions.

(a) An eligible loss covered under this subpart is a loss that an eligible producer, livestock owner, or contract grower of livestock, or eligible producer of honeybees or farm-raised fish incurs due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator.

* * * * *

(c) To be an eligible loss in a program year, the loss must have been apparent to the person or legal entity providing the notice and to FSA in the program year for which payment is being requested.

* * * * *

■ 13. In § 1416.104, revise paragraphs (a) through (f) to read as follows:

§ 1416.104 Eligible livestock, honeybees, and farm-raised fish.

(a) To be considered eligible livestock for livestock grazing and feed, losses resulting from transporting water, and gathering livestock to treat for cattle tick fever, livestock must meet all the following conditions:

(1) Be grazing animals such as alpacas, adult or non-adult dairy cattle, adult or non-adult beef cattle, adult or non-adult beefalo, adult or non-adult buffalo or bison, deer, elk, emus, equine, goats, llamas, reindeer, or sheep;

(2) Except for livestock losses resulting from gathering livestock to treat cattle tick fever, be livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county where the eligible adverse weather or eligible loss condition occurred;

(3) Be livestock that is owned, cash-leased, purchased, under contract for purchase, or been raised by a contract grower or an eligible livestock owner, for not less than 60 days before the beginning date of the eligible adverse weather or eligible loss condition;

(4) Be livestock produced or maintained for commercial use or be livestock that is produced or maintained for producing livestock products for commercial use, such as milk from dairy, as part of the contract grower's or livestock owner's farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Be livestock that was not in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by the Deputy Administrator.

(b) The eligible livestock types for grazing and feed losses, losses resulting from transporting water, and gathering livestock to treat for cattle tick fever, are:

(1) Adult beef cows or bulls,
(2) Adult beefalo cows or bulls,
(3) Adult buffalo or bison cows or bulls,
(4) Adult dairy cows or bulls,
(5) Alpacas,
(6) Deer,
(7) Elk,
(8) Emus,
(9) Equine,
(10) Goats,
(11) Llamas,
(12) Non-adult beef cattle,
(13) Non-adult beefalo,
(14) Non-adult buffalo or bison,
(15) Non-adult dairy cattle,
(16) Reindeer, and
(17) Sheep.

(c) Ineligible livestock for grazing and feed losses, and losses resulting from transporting water, include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by FSA;

(2) Animals that are not grazing animals;
(3) Yaks;
(4) Ostriches;
(5) Poultry;
(6) Swine;
(7) All beef and dairy cattle, and buffalo or bison and beefalo that weighed less than 500 pounds on the beginning date of the eligible adverse weather or eligible loss condition;
(8) Any wild free roaming livestock, including horses and deer; and
(9) Livestock that are not produced for commercial use or those that are not produced or maintained in a commercial operation for livestock products, such as milk from dairy, including, but not limited to, livestock produced or maintained exclusively for recreational purposes, such as:
(i) Roping,
(ii) Hunting,
(iii) Show,
(iv) Pleasure,
(v) Use as pets, or
(vi) Consumption by owner.

(d) For death losses, the livestock must meet all of the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, beef cattle, beefalo, buffalo or bison, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine, and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each producer with respect to each category:
(i) Adult beef bulls;
(ii) Adult beef cows;
(iii) Adult beefalo bulls;
(iv) Adult beefalo cows;
(v) Adult buffalo or bison bulls;
(vi) Adult buffalo or bison cows;
(vii) Adult dairy bulls;
(viii) Adult dairy cows;
(ix) Alpacas;
(x) Chickens, broilers, pullets (regular size);
(xi) Chickens, chicks;
(xii) Chickens, layers;
(xiii) Chickens, pullets or Cornish hens (small size);
(xiv) Deer;

(xv) Ducks;
(xvi) Ducks, ducklings;
(xvii) Elk;
(xviii) Emus;
(xix) Equine;
(xx) Geese, goose;
(xi) Geese, gosling;
(xii) Goats, bucks;
(xxiii) Goats, nannies;
(xxiv) Goats, kids;
(xxv) Llamas;
(xxvi) Non-adult beef cattle;
(xxvii) Non-adult beefalo;
(xxviii) Non-adult buffalo or bison;
(xxix) Non-adult dairy cattle;
(xxx) Reindeer;
(xxxi) Sheep, ewes;
(xxxii) Sheep, lambs;
(xxxiii) Sheep, rams;
(xxxiv) Swine, feeder pigs under 50 pounds;
(xxxv) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
(xxxvi) Swine, sows, boars, barrows, gilts over 150 pounds;
(xxxvii) Turkeys, poults; and
(xxxviii) Turkeys, toms, fryers, and roasters.

(e) Under ELAP, ''contract growers'' only includes producers of livestock, other than feedlots, whose income is dependent on the survival of the livestock and any of the following: Actual weight gain of the livestock, number of offspring produced from the livestock, or quantity of products (eggs, milk, etc.) produced from the livestock. For death losses for contract growers to be eligible, the livestock must meet all of the following conditions:

(1) Be poultry or swine and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each contract grower with respect to each category:

(i) Chickens, broilers, pullets (regular size);
(ii) Chickens, layers;
(iii) Chickens, pullets or Cornish hens (small size);
(iv) Geese, goose;
(v) Swine, boars, sows;
(vi) Swine, feeder pigs;
(vii) Swine, lightweight barrows, gilts;
(viii) Swine, sows, boars, barrows, gilts; and
(ix) Turkeys, toms, fryers, and roasters.

(f) For livestock death losses in the 2017 and subsequent program years, livestock must meet all of the following conditions:

(1) They must have died:

(i) On or after the beginning date of the eligible loss condition; and

(ii) Within 30 calendar days from the ending date of the eligible loss condition, or for newborn livestock within 7 calendar days from the ending date of the eligible loss condition; and

(iii) As a direct result of an eligible loss condition.

(2) Been produced for commercial use or maintained in a commercial operation for producing livestock products, such as milk from dairy or eggs from poultry, on the day of the eligible adverse weather or eligible loss condition that caused the livestock to die; and

(3) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, such non-eligible uses being understood to include, but not be limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

* * * * *

§ 1416.105 [Amended]

■ 14. In § 1416.105, in paragraphs (a)(1) and (b)(1), remove the words ''during the 60 days prior to'' and add the words ''for not less than 60 days before'' in their places.

§ 1416.106 [Amended]

■ 15. Amend § 1416.106 as follows:

■ a. In paragraph (b) introductory text, remove the first sentence, and remove ''2015'' and add ''2017'' in its place;

■ b. In paragraph (e), remove ''2015'' and add ''2017'' in its place;

■ c. Remove paragraph (f); and

■ d. Redesignate paragraph (g) as paragraph (f).

■ 16. Revise § 1416.107 to read as follows:

§ 1416.107 Notice of loss and application period.

(a) Notices of loss and applications for payment that had been filed under the regulations in effect at the time of filing and which had been issued an administrative decision for either a 2017 or 2018 program year loss are not eligible for consideration under paragraphs (b) and (c) of this section, unless the decision was based only on failure to submit the notice of loss or application for payment by the prior applicable deadline.

(b) In addition to submitting an application for payment at the appropriate time, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses that create or could create a claim for benefits must:

(1) For losses in the 2017 and subsequent program years, provide a notice of loss to FSA by the later of 30 calendar days of when the loss of livestock is first apparent or December 3, 2018;

(2) Submit the notice of loss required in paragraph (b) of this section to the administrative FSA county office, unless additional options are otherwise provided for by the Deputy Administrator.

(c) In addition to the notices of loss required in paragraph (b) of this section, a participant must also submit a completed application for payment by the later of November 1 following the program year for which benefits are being requested or December 3, 2018.

§ 1416.108 [Removed and Reserved]

■ 17. Remove and reserve § 1416.108.

Subpart C—Livestock Forage Disaster Program

■ 18. Amend § 1416.202 as follows:

■ a. Remove the definitions of ''Adult buffalo and beefalo bull'' and ''Adult buffalo and beefalo cow'';

■ b. Add definitions for ''Adult beefalo bull'', ''Adult beefalo cow'', ''Adult buffalo or bison bull'', ''Adult buffalo or bison cow'', and ''Contract grower'' in alphabetical order;

■ c. In the definition of ''Covered livestock'', remove the words and punctuation ''for ''contract growers'' '' from the third sentence and remove the last sentence;

■ d. In the definition of ''Federal Agency'', add a comma after ''U.S. Department of the Interior (DOI)'' and remove the acronym ''DOI'' before the words ''Bureau of Land Management'';

■ e. Add a definition for ''Grazing animals'' in alphabetical order;

■ f. Remove the definition of ''Non-adult buffalo or beefalo'';

■ g. Add definitions for ''Non-adult beefalo'' and ''Non-adult buffalo or bison'' in alphabetical order; and

■ h. Revise the definition of ''Normal grazing period''.

The additions and revision read as follows:

§ 1416.202 Definitions.

* * * * *

Adult beefalo bull means a male hybrid of beef and bison that was used for breeding purposes and was at least 2 years old before the beginning date of the qualifying drought or fire.

Adult beefalo cow means a female hybrid of beef and bison that had delivered one or more offspring before the beginning date of the qualifying drought or fire. A first-time bred beefalo heifer is also considered an adult beefalo cow if it was pregnant by the beginning date of the qualifying drought or fire.

Adult buffalo or bison bull means a male animal of those breeds that was used for breeding purposes and was at least 2 years old before the beginning date of the qualifying drought or fire.

Adult buffalo or bison cow means a female animal of those breeds that had delivered one or more offspring before the beginning date of the qualifying drought or fire. A first-time bred buffalo or bison heifer is also considered an adult buffalo or bison cow if it was pregnant by the beginning date of the qualifying drought or fire.

* * * * *

Contract grower means a person or legal entity, other than a feedlot, that was engaged in a farming operation not as an owner of covered livestock but in a business whose income is dependent on the survival of the livestock and either the actual weight gain of the livestock or number of offspring produced from the livestock.

* * * * *

Grazing animals mean those species of livestock that, from a nutritional and physiological perspective, satisfy more than 50 percent of their net energy requirement through the consumption of growing forage grasses and legumes. Species of livestock for which more than 50 percent of their net energy requirements are not recommended to be met from consumption of forage grasses and legumes, such as poultry and swine, are excluded regardless of whether those species are present on grazing land or pastureland.

* * * * *

Non-adult beefalo means a hybrid of beef and bison that weighed 500 pounds or more on or before the beginning date of the qualifying drought or fire, but does not meet the definition of adult beefalo cow or bull.

Non-adult buffalo or bison means an animal of those breeds that weighed 500 pounds or more on or before the beginning date of beginning date of the qualifying drought or fire, but does not meet the definition of adult buffalo or bison cow or bull.

* * * * *

Normal grazing period means, as determined by FSA, with respect to a specific type of grazing land or pastureland in the county, the period during the calendar year when grazing animals receive daily nutrients and satisfy net energy requirements without supplemental feed.

* * * * *

■ 19. In § 1416.203, revise the section heading and paragraph (a) introductory text to read as follows:

§ 1416.203 Eligibility.

(a) In addition to meeting all other requirements, to be eligible for benefits under this subpart, an individual or legal entity with an eligible producer interest in grazing land acreage who is either an owner or contract grower of grazing animals, must:

* * * * *

■ 20. In § 1416.204, revise paragraphs (a)(1), (a)(4), (b), and (c)(2) through (6) and add paragraphs (c)(7) through (9) to read as follows:

§ 1416.204 Covered livestock.

(a) * * *

(1) Be grazing animals such as adult or non-adult beef cattle, adult or non-adult beefalo, adult or non-adult buffalo or bison, adult or non-adult dairy cattle, alpacas, deer, elk, emus, equine, goats, llamas, reindeer, or sheep;

* * * * *

(4) Been livestock produced or maintained for commercial use or be livestock that is produced and maintained for producing livestock products for commercial use, such as milk from dairy, as part of the contract grower's or livestock owner's farming operation on the beginning date of the qualifying drought or fire;

* * * * *

(b) The covered livestock categories are:

(1) Adult beef cows or bulls,

(2) Adult beefalo cows or bulls,

(3) Adult buffalo or bison cows or bulls,

(3) Adult dairy cows or bulls,

(4) Alpacas,

(5) Deer,

(6) Elk,

(7) Emu,

(8) Equine,

(9) Goats,

(10) Llamas,

(11) Non-adult beef cattle,

(12) Non-adult beefalo,

(13) Non-adult buffalo or bison,

(14) Non-adult dairy cattle,

(15) Reindeer, and

(16) Sheep.

(c) * * *

(2) Animals that are not grazing animals;

(3) Yaks;

(4) Ostriches;

(5) Poultry;

(6) Swine;

(7) All beef and dairy cattle, beefalo, buffalo and bison that weighed less than 500 pounds on the beginning date of the qualifying drought or fire;

(8) Any wild free roaming livestock, including horses and deer; and

(9) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

§ 1416.205 [Amended]

■ 21. In the first § 1416.205, entitled ''Eligible grazing losses,'' in paragraph (a)(2), remove ''sorghum or small grains,'' and add '' sorghum, small grains, annual planted ryegrass, or annual planted crabgrass,'' in their place.

§ 1416.205 [Redesignated as § 1416.206]

■ 22. Redesignate the second § 1416.205, entitled ''Application for payment'' as § 1416.206.

■ 23. Amend newly redesignated § 1416.206 as follows:

■ a. Redesignate paragraphs (a), (b), and (c) as (b), (c), and (d), respectively;

■ b. Add new paragraph (a);

■ c. Revise newly redesignated paragraphs (b)(1) and (2);

■ d. In newly redesignated paragraph (c)(5)(ii)(B), add the word ''and'' at the end;

■ e. Remove newly redesignated paragraph (c)(5)(iii); and

■ f. Redesignate paragraph (c)(5)(iv) as (c)(5)(iii) and remove ''calendar'' and add ''program'' in its place.

The addition and revisions read as follows:

§ 1416.206 Application for payment.

(a) A completed application for payment that had been filed under the regulations that were in effect at the actual time of the filing of that application and which had been issued an administrative decision for either a 2017 or 2018 program year loss is not eligible for consideration under paragraph (b) of this section, unless the decision was based only on failure to submit the application for payment by the prior applicable deadline.

(b) * * *

(1) For the 2017 program year, must submit a completed application for payment and required supporting documentation as specified in this part, including some supporting documentation such as an acreage report that may have been required at an earlier date as determined by FSA, to the administrative FSA county office by December 3, 2018; or

(2) For the 2018 and subsequent program years, must submit a completed application for payment and required

supporting documentation, including some supporting documentation such as an acreage report that may have been required at an earlier date, to the administrative FSA county office no later than 30 calendar days after the end of the calendar year in which the grazing loss occurred.

* * * * *

§ 1416.207 [Amended]

■ 24. Amend § 1416.207 as follows:

■ a. In paragraph (a), remove the reference to ''paragraphs (e) or (f)'' and add the reference to ''paragraphs (f) or (h)'' in its place;

■ b. In paragraph (f) introductory text, remove the reference to ''paragraph (g)'' and add the reference to ''paragraph (h)'' in its place;

■ c. In paragraph (f)(1), remove the reference ''paragraph (h)'' and add the reference ''paragraph (i)'' in its place;

■ d. In paragraph (f)(2), remove the reference ''paragraph (j)'' and add the reference ''paragraph (l)'' in its place;

■ e. In paragraph (i)(2), remove ''referred to in paragraph (h) of this section as'' and add ''of'' in its place, and remove ''under paragraph (h)'' and add ''under paragraph (j)'' in its place;

■ f. In paragraph (i)(3), remove the reference ''paragraph (i)'' and add the reference ''paragraph (k)'' in its place;

■ g. In paragraph (l)(3), remove the reference ''paragraph (i)'' and add the reference ''paragraph (k)'' in its place;

■ h. In paragraph (m)(1) introductory text, remove the words and punctuation '', subject to paragraph (l)(2) of this section''; and

■ i. In paragraph (m)(3), remove the reference ''§ 1416.208(i)'' and add ''paragraph (i) of this section'' in its place.

Subpart D—Livestock Indemnity Program

■ 25. Revise § 1416.301 to read as follows:

§ 1416.301 Applicability.

(a) This subpart establishes the terms and conditions under which the Livestock Indemnity Program (LIP) is administered under Title I of the 2014 Farm Bill (Pub. L. 113–79), as amended by the Bipartisan Budget Act of 2018 (Pub. L. 115–123).

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 1416.306 for eligible livestock deaths in excess of normal mortality, or livestock owners will be compensated for sales of injured livestock for a reduced price, if either the death or injury that results in sale at a reduced price occurred as a direct result of an eligible cause of loss. The eligible cause of loss is one, as determined by FSA, that directly results in the death of livestock or injury and sale of livestock at a reduced price, despite the livestock owner's or contract grower's performance of expected and normal preventative or corrective measures and acceptable animal husbandry practices.

■ 26. Amend § 1416.302 as follows:

■ a. Add a definition for ''Acceptable animal husbandry'' in alphabetical order,

■ b. In the definition of ''Adult beef bull'', remove the words ''before it died'';

■ c. In the definition of ''Adult beef cow'', remove the words ''before dying'' and in the last sentence, after the word ''died'', add the words ''or was sold at a reduced price'';

■ d. Remove the definitions of ''Adult buffalo and beefalo bull'' and ''Adult buffalo and beefalo cow'';

■ e. Add definitions for ''Adult beefalo bull'', ''Adult beefalo cow''; ''Adult buffalo or bison bull''; and ''Adult buffalo or bison cow'' in alphabetical order;

■ f. In the definition of ''Adult dairy bull'', remove the words ''before it died'';

■ g. In the definition of ''Adult dairy cow'', remove the words ''before dying'' and in the last sentence, after the word ''died'', add the words ''or was injured and sold at a reduced price'';

■ h. Add a definition for ''Blizzard'' in alphabetical order;

■ i. Remove the definition of ''CCC'';

■ j. In the definition of ''Commercial use'', remove the words ''by the eligible producer'';

■ k. Remove the definition of ''Deputy Administrator or DAFP'';

■ l. Revise the definition of ''Eligible adverse weather event'';

■ m. Add definitions for ''Eligible attack'', ''Eligible disease'', and ''Eligible loss condition'' in alphabetical order;

■ n. In the definition of ''Livestock owner'', add the words ''or were sold at a reduced sale price'' at the end;

■ n. Add definitions for ''Livestock unit'' and ''Newborn livestock'' in alphabetical order;

■ o. In the definition of ''Non-adult beef cattle'', add the words ''or were sold at a reduced price'' at the end;

■ o. Remove the definition of ''Non-adult buffalo or beefalo'';

■ p. Add definitions for ''Non-adult beefalo'' and ''Non-adult buffalo or bison'' in alphabetical order;

■ q. In the definition of ''Non-adult dairy cattle'', add the words ''or were sold at a reduced price'' at the end;

■ r. Remove the definitions of ''Secretary'' and ''State committee, State office, county committee, or county office'';

■ s. Add a definition for ''State office or county office'' in alphabetical order;

■ t. Remove the definition of ''United States''; and

■ u. Revise the definition of ''Winter storm''.

The additions and revisions read as follows:

§ 1416.302 Definitions.

* * * * *

Acceptable animal husbandry means animals raised and cared for to produce offspring, meat, fiber, milk, eggs, or other products. Includes day-to-day care and selective breeding and raising of livestock. The practices are those that are generally recognized by the commercial livestock industry.

* * * * *

Adult beefalo bull means a male hybrid of beef and bison that was at least 2 years old and used for breeding purposes.

Adult beefalo cow means a female hybrid of beef and bison that had delivered one or more offspring before dying or being injured and sold at a reduced price. A first-time bred beefalo heifer is also considered an adult beefalo cow if it is pregnant at the time it died or was sold at a reduced price.

Adult buffalo or bison bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes.

Adult buffalo or bison cow means a female animal of those breeds that had delivered one or more offspring before it died or was injured and sold at a reduced price. A first-time bred buffalo or bison heifer is also considered an adult buffalo or bison cow if it was pregnant at the time it died or was sold at a reduced price.

* * * * *

Blizzard means, as defined by the National Weather Service, a storm which contains large amounts of snow or blowing snow with winds in excess of 35 miles per hour and visibility of less than one-fourth of a mile for an extended period of time.

* * * * *

Eligible adverse weather event means extreme and abnormal damaging weather in the calendar year for which benefits are being requested that is not expected to occur during the loss period for which it occurred, which directly results in eligible livestock death losses in excess of normal mortality or injury and sale of livestock at a reduced price. Eligible adverse weather events include,

but are not limited to, as determined by the Deputy Administrator or designee, earthquake; hail; lightning; tornado; tropical storm; typhoon; vog if directly related to a volcanic eruption; winter storm if the winter storm meets the definition provided in this section; hurricanes; floods; blizzards; wildfires; extreme heat; extreme cold; and straight-line wind. Drought is not an eligible adverse weather event except when associated with anthrax, a condition that occurs because of drought and results in the death of eligible livestock.

Eligible attack means an attack by animals reintroduced into the wild by the Federal government or protected by Federal law, including wolves and avian predators, that directly results in the death of eligible livestock in excess of normal mortality or injury and sale of eligible livestock at reduced price. Eligible livestock owners or contract growers are responsible for showing to FSA's satisfaction that eligible attacks are substantiated according to § 1416.305 in order to be considered eligible for payment.

Eligible disease means a disease that, as determined by the Deputy Administrator, is exacerbated by an eligible adverse weather event that directly results in the death of eligible livestock in excess of normal mortality, including, but not limited to anthrax, cyanobacteria, and larkspur poisoning. Eligible diseases are not an eligible cause of loss for benefits based on injury and sales of eligible livestock at reduced price.

Eligible loss condition means any of the following that occur in the calendar year for which benefits are requested: Eligible adverse weather event, eligible attack, and eligible disease. Eligible disease is not an eligible loss condition for injured livestock.

* * * * *

Livestock unit means all eligible livestock in the physical location county where the livestock losses occurred for the program year:

(1) In which a person or legal entity has 100 percent share interest; or

(2) Which is owned individually by more than one person or legal entity on a shared basis.

* * * * *

Newborn livestock means livestock that are within 10 calendar days of date of birth.

* * * * *

Non-adult beefalo means a hybrid of beef and bison that does not meet the definition of adult beefalo cow or bull. Non-adult beefalo are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died or were sold at a reduced price.

Non-adult buffalo or bison means an animal of those breeds that does not meet the definition of adult buffalo or bison cow or bull. Non-adult buffalo or bison are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died or were sold at a reduced price.

* * * * *

State office or county office means the respective FSA office.

* * * * *

Winter storm means, for an eligible adverse weather event, an event that so severe as to directly cause injury to livestock and lasts in duration for at least 3 consecutive days and includes a combination of high winds, freezing rain or sleet, heavy snowfall, and extremely cold temperatures. For a determination of winter storm, the wind, precipitation, and extremely cold temperatures must occur with the 3-day period, with wind and extremely cold temperatures occurring in each of the 3 days.

■ 27. In § 1416.303, revise paragraphs (a)(1) and (b) and add paragraphs (c) and (d) to read as follows:

§ 1416.303 Eligible owners and contract growers.

(a) * * *

(1) Livestock owner for benefits with respect to the death of an animal or sale of an injured animal at a reduced price under this subpart, the applicant must have had legal ownership of the eligible livestock on the day the livestock died or was injured and sold at a reduced price and under conditions in which no contract grower could have been eligible for benefits with respect to the animal. Eligible types of animal categories for which losses can be calculated for an owner are specified in § 1416.304(a).

* * * * *

(b) A livestock owner or contract grower seeking payment must be an eligible producer as defined in subpart A of this part and other applicable USDA regulations.

(c) All of an eligible livestock owner's or contract grower's interest in livestock in a physical location county must be taken into account and summarized by livestock unit when determining the extent of payment eligibility.

(d) Livestock owners are eligible for benefits for injured animals sold at reduced price only when those animals are not in a contract grower's inventory for which a contract grower seeks benefits for death losses. Contract growers are not eligible for benefits for injured animals sold at a reduced price.

■ 28. Revise § 1416.304 to read as follows:

§ 1416.304 Eligible livestock.

(a) To be considered eligible livestock for livestock owners, the kind of livestock must be alpacas, adult or non-adult dairy cattle, beef cattle, beefalo, bison, buffalo, elk, emus, equine, llamas, sheep, goats, swine, poultry, deer, ostriches, or reindeer and meet all the conditions in paragraph (c) of this section.

(b) To be considered eligible livestock for contract growers, the kind of livestock must be poultry or swine and meet all the conditions in paragraph (c) of this section.

(c) To be considered eligible livestock for the purpose of generating payments under this subpart, livestock must have:

(1) Died as a direct result of an eligible loss condition:

(i) With the eligible loss condition occurring in the program year for which benefits are sought;

(ii) No later than 30 calendar days for livestock, or 7 calendar days for newborn livestock, from the ending date of the eligible adverse weather event or the date of the attack by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators; or

(2) Been injured and sold at a reduced price as a direct result of an eligible adverse weather event or attack by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators:

(i) On or after January 1, 2017;

(ii) No later than 30 calendar days for livestock, or 7 calendar days for newborn livestock, from the ending date of the eligible adverse weather event or the date of the attack by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators;

(3) Been maintained for commercial use for livestock sale or for the production of livestock products such as milk or eggs as part of a farming operation on the day they died or until the event that resulted in their sale at a reduced price; and

(4) Not be produced or maintained for reasons other than commercial use for livestock sale or for the production of livestock products such as milk or eggs. Livestock excluded from being eligible include, but are not limited to, wild free roaming animals and animals maintained for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

(d) The following categories of animals owned by a livestock owner are eligible livestock and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

(1) Adult beef bulls;
(2) Adult beef cows;
(3) Adult beefalo bulls;
(4) Adult beefalo cows;
(5) Adult buffalo or bison bulls;
(6) Adult buffalo or bison cows;
(7) Adult dairy bulls;
(8) Adult dairy cows;
(9) Alpacas;
(10) Chickens, broilers, pullets (regular size);
(11) Chickens, chicks;
(12) Chickens, layers;
(13) Chickens, pullets or Cornish hens (small size);
(14) Deer;
(15) Ducks;
(16) Ducks, ducklings;
(17) Elk;
(18) Emus;
(19) Equine;
(20) Geese, goose;
(21) Geese, gosling;
(22) Goats, bucks;
(23) Goats, nannies;
(24) Goats, kids;
(25) Llamas;
(26) Non-adult beef cattle;
(27) Non-adult beefalo;
(28) Non-adult buffalo or bison;
(29) Non-adult dairy cattle;
(30) Reindeer;
(31) Sheep, ewes;
(32) Sheep, lambs;
(33) Sheep, rams;
(34) Swine, feeder pigs under 50 pounds;
(35) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
(36) Swine, sows, boars, barrows, gilts over 150 pounds;
(37) Turkeys, poults;
(38) Turkeys, toms, fryers, and roasters; and
(39) Ostriches.

(e) The following categories of animals are eligible livestock for contract growers and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

(1) Chickens, broilers, pullets (regular size);
(2) Chickens, layers;
(3) Chickens, pullets or Cornish hens (small size);
(4) Geese, goose;
(5) Swine, boars, sows;
(6) Swine, feeder pigs;
(7) Swine, lightweight barrows, gilts;
(8) Swine, sows, boars, barrows, gilts; and
(9) Turkeys, toms, fryers, and roasters.

(f) Ineligible livestock for the purpose of generating payments under this subpart include those livestock that died due to disease that is not an eligible disease; eligible livestock suffering injury due to disease or eligible disease which are sold for reduced price; and any eligible livestock that died or were injured by anything other than an eligible cause of loss.

■ 29. Amend § 1416.305 as follows:
■ a. Redesignate paragraphs (a) through (e), (f) and (g), and (h) as paragraphs (b) through (f), (h) and (i), and (k), respectively;
■ b. Add new paragraph (a);
■ c. Revise newly redesignated paragraphs (b) through (f);
■ d. Add new paragraph (g);
■ e. Revise newly redesignated paragraphs (h) introductory text and (i)(1) introductory text; and
■ f. Add paragraph (j).

The additions and revisions read as follows:

§ 1416.305 Application process.

(a) Notices of loss and applications for payment that had been filed under the regulations in effect at the time of filing and which had been issued an administrative decision for either a 2017 or 2018 program year loss are not eligible for consideration under paragraph (b) of this section, unless the administrative decision was based only on a failure to submit the notice of loss or application for payment by the prior applicable deadline. In that instance, the owner or contract grower must file a notice under paragraph (b) to receive a new decision.

(b) A livestock owner or contract grower that suffered livestock losses must:

(1) For 2017 and subsequent program years, provide a notice of loss, by livestock unit, to FSA by the later of 30 calendar days of when the loss of livestock is first apparent to the livestock owner or contract grower or December 3, 2018.

(2) Submit the notice of loss required in paragraph (b)(1) of this section to the FSA county office responsible for servicing the physical location county where the loss occurred.

(c) In addition to the notice of loss required in paragraph (b) of this section, a participant must also submit a completed application for payment, by livestock unit:

(1) For losses apparent in 2017, by December 3, 2018.

(2) For losses apparent in 2018 and subsequent years, by no later than 60 calendar days after the end of the calendar year in which the eligible loss condition occurred.

(d) A participant must provide other supporting documents required for determining eligibility as an applicant at the time the participant submits the completed application for payment. Supporting documents must include:

(1) Evidence of loss,
(2) Current physical location of livestock in inventory,
(3) Physical location of claimed livestock at the time of death or injury,
(4) Inventory numbers for the livestock unit and other inventory information necessary to establish actual mortality as required by FSA,
(5) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office,
(6) Documentation of the adverse weather event from an official weather reporting data source that is determined by FSA to be reputable and available in the public domain such as, but not limited to, NOAA, from which State and County FSA Offices can validate the adverse weather event occurred,
(7) Documentation to substantiate eligible attacks obtained from a source such as, but not limited to, the following:
(i) APHIS,
(ii) State level Department of Natural Resources, or
(iii) Other sources or documentation, such as third parties, as determined by the Deputy Administrator, and
(8) If livestock are injured and sold at a reduced price.
(i) Documentation of injured livestock's gross price, and
(ii) Documentation to substantiate injury of livestock due to an eligible adverse weather event or eligible attack.
(9) The livestock producer may supplement additional documentation to support the eligible loss condition, as determined by the Deputy Administrator.
(10) In addition, contract growers must provide a copy of the grower contract.

(e) For death losses or losses resulting from injured livestock sold at a reduced price, the participant must provide adequate proof that the death or injury of the eligible livestock occurred as a direct result of an eligible loss condition, as opposed to any other possible or potential cause of loss. The quantity and kind of livestock that died as a direct result of the eligible loss condition may be documented by: Purchase records; veterinarian records; bank or other loan papers; rendering-plant truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records;

private insurance documents; and other similar verifiable documents as determined by FSA. The quantity and kind of livestock that died or has been injured and sold at a reduced price as a direct result of an eligible attack must be substantiated by documentation of confirmed kills observed by an acceptable source as specified in paragraphs (d)(7) and (g) of this section.

(f) If adequate verifiable proof of death or injury documentation is not available, the participant may provide reliable records, in conjunction with verifiable beginning and ending inventory records, as proof of death or injury. Reliable records may include contemporaneous producer records, dairy herd improvement records, brand inspection records, vaccination records, dated pictures, and other similar reliable documents as determined by FSA.

(g) For 2018 and subsequent calendar years, for livestock death losses due to disease, a licensed veterinarian's certification of livestock deaths may be accepted as verifiable proof of death, if reliable beginning inventory data is available, only if the veterinarian provides a written statement containing all of the following:

(1) Veterinarian's personal observation of the animals and knowledge of how the deaths of the livestock were because of disease caused or exacerbated by an eligible adverse weather event;

(2) Livestock deaths were not otherwise avoidable and preventable using good animal husbandry and management protocols and practices by the livestock producer; and

(3) Other information required by FSA to determine the certification acceptable.

(4) Information furnished by the participant and the veterinarian will be used to determine eligibility for program benefits. Furnishing the information is voluntary; however, without all required information program benefits will not be approved or provided.

(h) Certification of livestock deaths or injuries by third parties may be accepted if verifiable beginning and ending inventory data is available only if proof of death records in conjunction with verifiable beginning and ending inventory records are not available and both of the following conditions are met:

* * * * *

(i) * * *

(1) For 2017 and subsequent calendar years, livestock inventory reports by livestock unit must be provided to the local county FSA office by the later of December 3, 2018 or 60 calendar days after the end of the calendar year of the eligible adverse weather event. The STC may approve a waiver of the reporting deadline if a participant has not previously received benefits under this method.

* * * * *

(j) When an eligible owner claims eligible livestock were injured by an eligible loss condition and were sold for a reduced price, the owner must provide verifiable evidence of the gross sale price of the livestock. The injured livestock must be sold through an independent third party (sale barn, slaughter facility, or rendering facility). Only verifiable proof of sale with price is acceptable. The gross sale price of the livestock is the amount received for the injured livestock before any reductions, such as sale yard fees. The owner must provide verifiable evidence of livestock sold at a reduced price. Documents that may satisfy this requirement include but are not limited to, any or a combination of the following: Sales receipt from a livestock auction, sale barn, or other similar livestock sales facility; bona-fide commercial sales receipts; private insurance documents; and processing plant receipts.

* * * * *

■ 30. In § 1416.306, revise paragraphs (a) and (c) and add paragraph (e) to read as follows:

§ 1416.306 Payment calculation.

(a) Under this subpart, separate payment rates for eligible livestock owners and eligible livestock contract growers are specified in paragraphs (b) and (c) of this section, respectively. Payments for death losses are calculated by multiplying the national payment rate for each livestock category by the number of eligible livestock in excess of normal mortality in each category that died as a result of an eligible loss condition. Normal mortality for each livestock category will be determined by FSA on a State-by-State basis using local data sources including, but not limited to, State livestock organizations and the Cooperative Extension Service for the State. Adjustments will be applied as specified in paragraph (d) of this section.

* * * * *

(c) The LIP national payment rate for eligible livestock contract growers is based on 75 percent of the average income loss sustained by the contract grower with respect to the dead livestock. The rate that applies is based on the type, class, and weight of the animal at the time of the eligible loss condition and death.

* * * * *

(e) Payments to livestock owners for losses due to sale of livestock at a reduced price because of injury from an eligible loss condition are calculated by multiplying the national payment rate for each livestock category by the number of eligible livestock sold at a reduced price as a result of an eligible loss condition, minus the gross amount the eligible livestock owner received for the livestock up to the applicable national payment rate. In the event livestock sells for a reduced price that is in excess of the national payment rate, the national payment rate will be subtracted resulting in no payment for that livestock.

Subpart E—Tree Assistance Program

■ 31. Amend § 1416.400 as follows:

■ a. In paragraph (a), add the words and punctuation ‘‘, as amended by the Bipartisan Budget Act of 2018 (Pub. L. 115–123), and the Consolidated Appropriations Act, 2018 (Pub. L. 115–141)’’ at end of the paragraph; and

■ b. Add paragraph (c).

The addition reads as follows:

§ 1416.400 Applicability.

* * * * *

(c) Eligible pecan tree losses incurred in the 2017 calendar year not meeting the mortality loss threshold of paragraph (b) of this section with a tree mortality loss in excess of 7.5 percent (adjusted for normal mortality) will be compensated for eligible losses as specified in § 1416.406, up to a maximum of $15,000,000.

§ 1416.402 [Amended]

■ 32. Amend § 1416.402 as follows:

■ a. Remove the definitions of ‘‘County committee’’ and ‘‘Deputy Administrator or DAFP’’;

■ b. In the definitions of ‘‘normal damage’’ and ‘‘normal mortality’’, remove the word ‘‘individual’’; and

■ c. Remove the definition of ‘‘State committee’’.

■ 33. Revise § 1416.403 to read as follows:

§ 1416.403 Eligible losses.

(a) To qualify for any assistance under this subpart, except for assistance under § 1416.400(c), the eligible orchardist or nursery tree grower must first have suffered more than a 15 percent tree, bush, or vine mortality loss on a stand (adjusted for normal mortality) as a result of natural disaster as determined by the Deputy Administrator. For assistance for losses to pecan trees

under § 1416.400(c), the eligible orchardist or nursery tree grower must first have suffered a mortality loss of more than 7.5 percent (adjusted for normal mortality) on a stand as a result of natural disaster as determined by the Deputy Administrator.

(b) The qualifying loss of a stand of trees, bushes, or vines specified in paragraph (a) of this section will be determined based on:

(1) Each eligible disaster event, except for losses due to plant disease;

(2) For plant disease, the time period, as determined by the Deputy Administrator, for which the stand is infected.

(c) Mortality or damage loss not eligible for inclusion as a qualifying loss under this section or for payment under § 1416.406 includes those losses where:

(1) The loss or damage could have been prevented through reasonable and available measures; and

(2) The trees, bushes, or vines, in the absence of a natural disaster, would normally have required rehabilitation or replanting within the 12-month period following the loss.

(d) The damage or loss must be visible and obvious to the county committee representative. If the damage is no longer visible, the county committee may accept other evidence of the loss as it determines is reasonable.

(e) The county committee may require information from a qualified expert, as determined by the county committee, to determine extent of loss in the case of plant disease or insect infestation.

(f) The Deputy Administrator will determine the types of trees, bushes, and vines that are eligible.

(g) A stand that did not suffer a qualifying mortality loss as specified in paragraph (a) of this section is not eligible for payment.

§ 1416.404 [Amended]

■ 34. In § 1416.404, in paragraph (a), remove ''To'' and add ''Once the requisite qualifying eligible mortality loss is determined according to § 1416.403, to''.

■ 35. Amend § 1416.405 as follows:

■ a. Redesignate paragraphs (a) through (d) as paragraphs (b) and (e);

■ b. Add new paragraph (a); and

■ c. Revise newly redesignated paragraph (b).

The addition and revision read as follows:

§ 1416.405 Application.

(a) Applications for payment that had been filed under the regulations in effect at the time of filing and which were issued an administrative decision for either a 2017 or 2018 program year loss are not eligible for consideration under paragraph (b) of this section, unless the decision was based only on failure to submit the application for payment by the prior applicable deadline,

(b) To apply for TAP, a producer that suffered eligible tree, bush, or vine losses that occurred during the 2017 and subsequent calendar years must provide an application for payment and supporting documentation to FSA by the later of December 3, 2018 or within 90 calendar days of the disaster event or date when the loss of trees, bushes, or vines is apparent to the producer.

* * * * *

■ 36. Amend § 1416.406 as follows:

■ a. In paragraph (a) introductory text, remove ''Payment'' and add ''Once the loss threshold in § 1416.403(a) is satisfied, payment'' in its place;

■ b. In paragraph (b), remove the words ''damage or'' in both places where they appear;

■ c. Add paragraph (d)(3);

■ d. In paragraph (h), remove ''eligible'' before the word ''stand''; and

■ e. In paragraph (j), remove the number ''500'' and add the number ''1,000'' in its place.

The addition reads as follows:

§ 1416.406 Payment Calculation.

* * * * *

(d) * * *

(3) Costs or expenses that the eligible orchardist or nursery tree grower did not actually bear or incur because someone or some other entity bore or incurred those costs or expenses, or the costs were reimbursed under another program. For example, if under any other program the expenses are paid for on behalf of the eligible orchardist or nursery tree grower, those expenses are not eligible for cost share under this subpart.

* * * * *

Richard Fordyce,

Administrator, Farm Service Agency.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2018–21257 Filed 10–1–18; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R–1623]

RIN 7100–AF 17

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

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

DATES: *Effective date:* The amendments to part 201 (Regulation A) are effective October 2, 2018.

Applicability date: The rate changes for primary and secondary credit were applicable on September 27, 2018.

FOR FURTHER INFORMATION CONTACT: Sophia Allison, Senior Special Counsel (202–452–3565), Legal Division, or Lyle Kumasaka, Lead Financial Institution & Policy Analyst (202–452–2382), or Kristen Payne, Senior Financial Institution & Policy Analyst (202–452–2872), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

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

On September 26, 2018, the Board voted to approve a ¼ percentage point increase in the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 2.50 percent to 2.75 percent the rate that each Reserve Bank charges for extensions of primary credit. In addition, the Board had previously approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate in effect at each of the twelve Federal Reserve Banks increased by ¼ percentage point as a result of the Board's primary credit rate action, thereby increasing from 3.00 percent to 3.25 percent the rate that each Reserve Bank charges for extensions of

secondary credit. The amendments to Regulation A reflect these rate changes.

The ¼ percentage point increase in the primary credit rate was associated with an increase in the target range for the federal funds rate (from a target range of 1¾ to 2 percent to a target range of 2 to 2¼ percent) announced by the Federal Open Market Committee on September 26, 2018, as described in the Board's amendment of its Regulation D regulations published elsewhere in this issue of the **Federal Register**.

Administrative Procedure Act

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

Regulation A establishes the interest rates that the twelve Reserve Banks charge for extensions of primary credit and secondary credit. The Board has determined that the notice, public comment, and delayed effective date requirements of the APA do not apply to these final amendments to Regulation A for several reasons. The amendments involve a matter relating to loans and are therefore exempt under the terms of the APA. In addition, the Board has determined that notice, public comment, and delayed effective date would be unnecessary and contrary to the public interest because delay in implementation of changes to the rates charged on primary credit and secondary credit would permit insured depository institutions to profit improperly from the difference in the current rate and the announced increased rate. Finally, because delay would undermine the Board's action in responding to economic data and conditions, the Board has determined that ''good cause'' exists within the meaning of the APA to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation A.

Regulatory Flexibility Analysis

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

Paperwork Reduction Act

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

List of Subjects in 12 CFR Part 201

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

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR part 201 to read as follows:

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

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

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

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

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

(a) *Primary credit.* The interest rate at each Federal Reserve Bank for primary credit provided to depository institutions under § 201.4(a) is 2.75 percent.

(b) *Secondary credit.* The interest rate at each Federal Reserve Bank for secondary credit provided to depository institutions under § 201.4(b) is 3.25 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 27, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–21436 Filed 10–1–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1624]

RIN 7100–AF 18

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') is amending Regulation D (Reserve Requirements of Depository Institutions) to revise the rate of interest paid on balances maintained to satisfy reserve balance requirements (''IORR'') and the rate of interest paid on excess balances (''IOER'') maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORR is 2.20 percent and IOER is 2.20 percent, a 0.25 percentage point increase from their prior levels. The amendments are intended to enhance the role of such rates of interest in moving the Federal funds rate into the target range established by the Federal Open Market Committee (''FOMC'' or ''Committee'').

DATES: *Effective date:* The amendments to part 204 (Regulation D) are effective October 2, 2018.

Applicability date: The IORR and IOER rate changes were applicable on September 27, 2018.

FOR FURTHER INFORMATION CONTACT: Sophia Allison, Senior Special Counsel

[1] 5 U.S.C. 551 *et seq.*

[2] 5 U.S.C. 553(b)(3)(A).

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

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

[5] 5 U.S.C. 603, 604.

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

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

(202–452–3565), Legal Division, or Kristen Payne, Senior Financial Institution & Policy Analyst (202–452–2872), or Mary-Frances Styczynski, Section Chief (202–452–3303), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''the Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions.[1] Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (''Reserve Bank'').[2] Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates.[3] Institutions that are eligible to receive earnings on their balances held at Reserve Banks (''eligible institutions'') include depository institutions and certain other institutions.[4] Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.[5] Prior to these amendments, Regulation D specified a rate of 1.95 percent for both IORR and IOER.[6]

II. Amendments to IORR and IOER

The Board is amending § 204.10(b)(5) of Regulation D to specify that IORR is 2.20 percent and IOER is 2.20 percent. This 0.25 percentage point increase in the IORR and IOER was associated with an increase in the target range for the federal funds rate, from a target range of 1¾ to 2 percent to a target range of 2 to 2¼ percent, announced by the FOMC on September 26, 2018, with an effective date of September 27, 2018. The FOMC's press release on the same day as the announcement noted that:

> Information received since the Federal Open Market Committee met in August indicates that the labor market has continued to strengthen and that economic activity has been rising at a strong rate. Job gains have been strong, on average, in recent months, and the unemployment rate has stayed low. Household spending and business fixed investment have grown strongly. On a 12-month basis, both overall inflation and inflation for items other than food and energy remain near 2 percent. Indicators of longer-term inflation expectations are little changed, on balance.
>
> Consistent with its statutory mandate, the Committee seeks to foster maximum employment and price stability. The Committee expects that further gradual increases in the target range for the federal funds rate will be consistent with sustained expansion of economic activity, strong labor market conditions, and inflation near the Committee's symmetric 2 percent objective over the medium term. Risks to the economic outlook appear roughly balanced.
>
> In view of realized and expected labor market conditions and inflation, the Committee decided to raise the target range for the federal funds rate to 2 to 2¼ percent.

A Federal Reserve Implementation note released simultaneously with the announcement stated that the Board ''voted unanimously to raise the interest rate paid on required and excess reserve balances to 2.20 percent, effective September 27, 2018.''

As a result, the Board is amending § 204.10(b)(5) of Regulation D to change IORR to 2.20 percent and IOER to 2.20 percent.

III. Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'')[7] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to congressionally delegated authority): (1) Publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.''[8] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[9]

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to these final amendments to Regulation D. The rate increases for IORR and IOER that are reflected in the final amendments to Regulation D were made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. Notice and public comment would prevent the Board's action from being effective as promptly as necessary in the public interest and would not otherwise serve any useful purpose. Notice, public comment, and a delayed effective date would create uncertainty about the finality and effectiveness of the Board's action and undermine the effectiveness of that action. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to these final amendments to Regulation D.

IV. Regulatory Flexibility Analysis

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

V. Paperwork Reduction Act

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

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

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

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

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

[1] 12 U.S.C. 461(b).

[2] 12 CFR 204.5(a)(1).

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

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

[5] See 12 U.S.C. 461(b)(12)(B).

[6] See 12 CFR 204.10(b)(5).

[7] 5 U.S.C. 551 *et seq.*

[8] 5 U.S.C. 553(b)(3)(A).

[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 603, 604.

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

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

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

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(5) The rates for IORR and IOER are:

	Rate (percent)
IORR	2.20
IOER	2.20

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 27, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–21435 Filed 10–1–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0804; Product Identifier 2018–NM–129–AD; Amendment 39–19442; AD 2018–20–08]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2018–02–18, which applied to certain Airbus SAS Model A318, A319, and A320 series airplanes and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2018–02–18 required revising the airplane flight manual (AFM) to provide guidance to the flightcrew for certain emergency procedures. This new AD requires revising the AFM, and for certain airplanes, removing a certain AFM revision. This AD also adds airplanes to the applicability. This AD was prompted by a determination that, when two angle of attack (AoA) sensors are adversely affected by icing conditions at the same time, data displayed on the back up speed scale (BUSS) could be erroneous. This AD was also prompted by a determination that the AFM needs to be revised for certain additional airplanes, and that the AFM may have been erroneously revised on certain airplanes not equipped with a BUSS function. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 17, 2018.

We must receive comments on this AD by November 16, 2018.

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

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

For service information identified in this final rule, 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 referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0804.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0804; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98351; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

We issued AD 2018–02–18, Amendment 39–19171 (83 FR 5182, February 6, 2018) (''AD 2018–02–18''), which applied to certain Airbus SAS Model A318, A319, and A320 series airplanes and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2018–02–18 was prompted by a determination that when two AoA sensors are adversely affected by icing conditions at the same time, data displayed on the BUSS could be erroneous. AD 2018–02–18 required revising the AFM to provide guidance to the flightcrew for emergency procedures when erroneous airspeed indications are displayed on the BUSS. We issued AD 2018–02–18 to address erroneous airspeed data displays, which could lead to an increased flightcrew workload, possibly resulting in reduced control of the airplane.

Since we issued AD 2018–02–18, we have determined that airplanes on which Airbus Service Bulletin A320–34–1543 was embodied in service are also subject to the unsafe condition, and that the AFM may have been erroneously revised on certain airplanes not equipped with a BUSS function.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0189, dated August 30, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318, A319, and A320 series airplanes and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

> In extreme icing conditions, pitot probes may induce erroneous airspeed indications. To provide flight crews with reliable information on airspeed, Airbus developed a Back-up Speed Scale (BUSS and reversible BUSS, based on angle of attack (AoA) value) displayed on the Primary Flight Display (PFD), together with a PFD Back-Up Altitude Scale based on Global Positioning System (GPS) altitude. This BUSS function is intended to be used below flight level (FL) 250 only. Following new investigation related to AoA probes blockages, it was identified that, when two AoA sensors are adversely affected by icing conditions at the same time, data displayed on the BUSS could be erroneous.
>
> This condition, if not corrected, could lead to an increased flight crew workload, possibly resulting in reduced control of the aeroplane.

To address this potential unsafe condition, Airbus established specific operational instructions to be applied by the flight crew under certain defined conditions. The relevant procedure was incorporated into the applicable A320 family AFM [airplane flight manual] since 07 March 2017 (publication date). Consequently, EASA issued AD 2017–0257 (later revised) to require a one-time AFM amendment to introduce the additional operational procedure.

Since EASA AD 2017–0257R1 [which corresponds to FAA AD 2018–02–18] was issued, it was determined that aeroplanes on which Airbus SB [service bulletin] A320–34–1543 (mod 154033) was embodied in service were inadvertently missing from the Applicability of the [EASA] AD.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2017–0257R1, which is superseded, and extends the Applicability to aeroplanes that embody Airbus SB A320–34–1543. This AD also requires removal of the AFM amendment, where it was mistakenly inserted in the AFM of an aeroplane not equipped with the BUSS function, prompted by the Applicability definition and requirements of EASA AD 2017–0257 at original issue.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0804.

FAA's Determination and Requirements of This AD

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

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because when two AoA sensors are adversely affected by icing conditions at the same time, data displayed on the BUSS could be erroneous, leading to an increased flightcrew workload that could ultimately result in reduced control of the airplane. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason(s) stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0804; Product Identifier 2018–NM–129–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 1,250 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$106,250

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2018–02–18, Amendment 39–19171 (83 FR 5182, February 6, 2018), and adding the following new AD:

2018–20–08 Airbus SAS: Amendment 39–19442; Docket No. FAA–2018–0804; Product Identifier 2018–NM–129–AD.

(a) Effective Date

This AD is effective October 17, 2018.

(b) Affected ADs

This AD replaces AD 2018–02–18, Amendment 39–19171 (83 FR 5182, February 6, 2018) (''AD 2018–02–18'').

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

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

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

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

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

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a determination that, when two angle of attack (AoA) sensors are adversely affected by icing conditions at the same time, data displayed on the back-up speed scale (BUSS) could be erroneous. We are issuing this AD to address erroneous airspeed data displays, which could lead to an increased flightcrew workload, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Definitions

(1) Group 1 airplanes are those on which Airbus modification 35871 has been embodied in production, or Airbus Service Bulletin A320–34–1397 or Airbus Service Bulletin A320–34–1543 has been embodied in service (introducing air data monitoring and BUSS function), except airplanes on which Airbus modification 159281 has also been embodied in production, or Airbus Service Bulletin A320–34–1658 or Airbus Service Bulletin A320–34–1659 has also been embodied in service (installing reversible BUSS function).

(2) Group 2 airplanes are those that are not in Group 1 and that have amended the AFM as previously specified in EASA AD 2017–0257, dated December 22, 2017.

(h) AFM Revision

(1) For Group 1 airplanes, except for airplanes identified in paragraph (i) of this AD: Within 30 days after the effective date of this AD, revise the AFM to incorporate the procedure specified in figure 1 to paragraphs (h) and (i) of this AD.

(2) For Group 2 airplanes: Within 30 days after the effective date of this AD, revise the AFM by removing the procedure specified in figure 1 to paragraphs (h) and (i) of this AD from the AFM.++

Billing Code 4910–13–P

Figure 1 to paragraphs (h) and (i) of this AD – *AFM procedure*

AIRBUS A318/A319/A320/A321 AIRPLANE FLIGHT MANUAL	EMERGENCY PROCEDURES NAVIGATION

NAV - ADR 1+2+3 FAULT

Ident.: **EMER-34-00007047.0001001 / 02 MAR 17** **APPROVED**
Criteria: (SA and (154033 or 35871))
Impacted by TDU: 00014228 NAV - ADR 1+2+3 FAULT

1 *Note:* *Flight controls are in alternate law.* *Refer to ABN-27 F/CTL - ALTN LAW (PROT LOST).*

Disconnect autopilot.
Turn off flight directors.
Disconnect autothrust.
Turn off all ADRs.
Fly the green area of the speed scale.

Note:
1. *Standby instruments may be unreliable.*
2. *The altitude displayed on the PFD is a GPS altitude.*
3. *Automatic cabin pressurization system is inoperative.* *Refer to ABN-21 CAB PR - SYS 1 + 2 FAULT.*
4. *Rudder travel limiter is inoperative.* *Refer to ABN-22-AUTOFLT AUTO FLT - RUD TRV LIM SYS.*
5. *If the BUSS does not react to longitudinal stick input when flying the green area of the speed scale, the flight crew must disregard the BUSS and adjust pitch attitude and thrust regarding flight phase and aircraft configuration to obtain and maintain target.*

Do not use speed brakes.
Maneuver with care.

- **When FLAPS 2:**

  Extend landing gear by gravity. *Refer to ABN-32 L/G GRAVITY EXTENSION.*

Approach speed: fly the bug.
Apply necessary landing performance corrections.

Figure 1 to paragraphs (h) and (i) of this AD – *AFM procedure continued*

AIRBUS A318/A319/A320/A321 AIRPLANE FLIGHT MANUAL	EMERGENCY PROCEDURES NAVIGATION

NAV - ADR 1+2+3 FAULT

Ident.: **EMER-34-00007047.0005001 / 02 MAR 17** **APPROVED**
Criteria: (SA and ((154033 or 35871) and 151269))
Impacted by TDU: 00014228 NAV - ADR 1+2+3 FAULT

2

Note: *Flight controls are in alternate law. Refer to ABN-27 F/CTL - ALTN LAW (PROT LOST).*

Disconnect autopilot.
Turn off flight directors.
Disconnect autothrust.
Turn on probe and window heat.
Turn off all ADRs.
Fly the green area of the speed scale.

Note:
1. *Standby instruments may be unreliable.*
2. *The altitude displayed on the PFD is a GPS altitude.*
3. *Automatic cabin pressurization system is inoperative. Refer to ABN-21 CAB PR - SYS 1 + 2 FAULT.*
4. *Rudder travel limiter is inoperative. Refer to ABN-22-AUTOFLT AUTO FLT - RUD TRV LIM SYS.*
5. *If the BUSS does not react to longitudinal stick input when flying the green area of the speed scale, the flight crew must disregard the BUSS and adjust pitch attitude and thrust regarding flight phase and aircraft configuration to obtain and maintain target.*

Do not use speed brakes.
Maneuver with care.

- **When FLAPS 2:**

  Extend landing gear by gravity. *Refer to ABN-32 L/G GRAVITY EXTENSION.*

Approach speed: fly the bug.
Apply necessary landing performance corrections.

Figure 1 to paragraphs (h) and (i) of this AD – *AFM procedure continued*

AIRBUS A318/A319/A320/A321 AIRPLANE FLIGHT MANUAL	EMERGENCY PROCEDURES NAVIGATION

NAV - ADR 1+2+3 FAULT

Ident.: **EMER-34-00007047.0003001 / 02 MAR 17** APPROVED
Criteria: (SA and ((154033 or 35871) and 38298))
Impacted by TDU: 00014228 NAV - ADR 1+2+3 FAULT

3

Note: *Flight controls are in alternate law. Refer to ABN-27 F/CTL - ALTN LAW (PROT LOST).*

Disconnect autopilot.
Turn off flight directors.
Disconnect autothrust.
Turn off all ADRs.
Fly the green area of the speed scale.

Note:
1. *When FLAPS 0, flight controls are in direct law. Refer to ABN-27 F/CTL - DIRECT LAW (PROT LOST).*
2. *Standby instruments may be unreliable.*
3. *The altitude displayed on the PFD is a GPS altitude.*
4. *Automatic cabin pressurization system is inoperative. Refer to ABN-21 CAB PR - SYS 1 + 2 FAULT.*
5. *Rudder travel limiter is inoperative. Refer to ABN-22-AUTOFLT AUTO FLT - RUD TRV LIM SYS.*
6. *If the BUSS does not react to longitudinal stick input when flying the green area of the speed scale, the flight crew must disregard the BUSS and adjust pitch attitude and thrust regarding flight phase and aircraft configuration to obtain and maintain target.*

Do not use speed brakes.
Maneuver with care.

- **When FLAPS 2:**

  Extend landing gear by gravity. *Refer to ABN-32 L/G GRAVITY EXTENSION.*

Approach speed: fly the bug.
Apply necessary landing performance corrections.

Figure 1 to paragraphs (h) and (i) of this AD – *AFM procedure continued*

AIRBUS A318/A319/A320/A321 AIRPLANE FLIGHT MANUAL	EMERGENCY PROCEDURES NAVIGATION

NAV - ADR 1+2+3 FAULT

Ident.: **EMER-34-00007047.0006001 / 02 MAR 17** **APPROVED**
Criteria: ((SA and ((154033 or 35871) and 38298 and 151269)) or 320-200N)
Impacted by TDU: 00014228 NAV - ADR 1+2+3 FAULT

4

Note: *Flight controls are in alternate law.* *Refer to ABN-27 F/CTL - ALTN LAW (PROT LOST).*

Disconnect autopilot.
Turn off flight directors.
Disconnect autothrust.
Turn on probe and window heat.
Turn off all ADRs.
Fly the green area of the speed scale.

Note:
1. *When FLAPS 0, flight controls are in direct law.* *Refer to ABN-27 F/CTL - DIRECT LAW (PROT LOST).*
2. *Standby instruments may be unreliable.*
3. *The altitude displayed on the PFD is a GPS altitude.*
4. *Automatic cabin pressurization system is inoperative.* *Refer to ABN-21 CAB PR - SYS 1 + 2 FAULT.*
5. *Rudder travel limiter is inoperative.* *Refer to ABN-22-AUTOFLT AUTO FLT - RUD TRV LIM SYS.*
6. *If the BUSS does not react to longitudinal stick input when flying the green area of the speed scale, the flight crew must disregard the BUSS and adjust pitch attitude and thrust regarding flight phase and aircraft configuration to obtain and maintain target.*

Do not use speed brakes.
Maneuver with care.

- **When FLAPS 2:**

  Extend landing gear by gravity. *Refer to ABN-32 L/G GRAVITY EXTENSION.*

Approach speed: fly the bug.
Apply necessary landing performance corrections.

Billing Code 4910–13–C

(i) Optional Method of Compliance

Airplanes operated with an AFM having the NAV–ADR 1+2+3 FAULT procedure identical to the procedure specified in figure 1 to paragraphs (h) and (i) of this AD, with an approval date on or after March 2, 2017, are compliant with the requirements of this AD, provided that the procedure is not removed from the AFM.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0189, dated August 30, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0804.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98351; telephone and fax 206–231–3223.

(l) Material Incorporated by Reference

None.

Issued in Des Moines, Washington, on September 20, 2018.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–21347 Filed 10–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0954; Airspace Docket No. 17–AEA–16]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Beaver Falls, PA; and Zelienople, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet or more above the surface at Beaver County Airport Beaver Falls, PA, as the University of Pittsburg Medical Center Beaver Valley Heliport has closed, and controlled airspace is no longer required. The geographic coordinates of the Ellwood City VOR/DME, (incorrectly identified as VORTAC), is amended in the associated Class E airspace. Also, the term Airport Facility Directory is replaced with Chart Supplement. This action also amends Class E airspace extending upward from 700 feet or more above the surface at Zelienople Municipal Airport (formerly Zelienople Airport), PA, by recognizing the airport's name change and updating the airport's geographic coordinates. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at these airports.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 13708, March 30, 2018) for Docket No. FAA–2017–0954 to amend Class D airspace, Class E airspace designated as an extension to Class D or E surface area, and Class E airspace extending upward from 700 feet or more above the surface at Beaver County Airport, Beaver Falls, PA, and Zelienople Municipal Airport, Zelienople, PA.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, the FAA found the navaid incorrectly listed as a VORTAC, instead of as a VOR/DME (VHF omnidirectional range/distance measuring equipment), and the navaid longitude coordinate was incorrect in the Beaver Falls, PA, designation, and is corrected in this rule.

Class D and E airspace designations are published in paragraph 5000, 6004, and 6005, respectively, of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet or more above the surface at Beaver Falls, PA, by removing University of Pittsburg Medical Center Beaver Valley Heliport, contained within the Beaver County Airport airspace description, as the heliport has closed.

The Ellwood City navaid name is corrected to VOR/DME from VORTAC.

The geographic coordinates of the Ellwood City VOR/DME are amended in the associated Class E airspace to be in concert with the FAA's aeronautical database. Also, an editorial change is made to the associated Class E airspace legal descriptions replacing Airport Facility Directory with Chart Supplement. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at these airports.

Additionally, the airport name is changed to Zelienople Municipal Airport, Zelienople, PA, from Zelienople Airport, and the geographic coordinates of this airport are adjusted to coincide with the FAA's aeronautical database.

Finally, the exclusionary language is removed from the airspace descriptions of both airports, as it is not needed to describe the boundaries.

Class D and E airspace designations are published in Paragraphs 5000, 6004, and 6005, respectively, of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, effective September 15, 2018, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA PA D Beaver Falls, PA [Amended]

Beaver County Airport, PA
(Lat. 40°46′21″ N, long. 80°23′29″ W)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 3.9-mile radius of Beaver County Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Designated as an Extension to Class D or E Surface Area.

* * * * *

AEA PA E4 Beaver Falls, PA [Amended]

Beaver County Airport, PA
(Lat. 40°46′21″ N, long. 80°23′29″ W)
Ellwood City VOR/DME
(Lat. 40°49′30″ N, long. 80°12′42″ W)

That airspace extending upward from the surface within 1.3 miles each side of the Ellwood City VOR/DME 248° radial extending from the 3.9-mile radius of Beaver County Airport to 1.3 miles west of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AEA PA E5 Beaver Falls, PA [Amended]

Beaver County Airport, PA
(Lat. 40°46′21″ N, long. 80°23′29″ W)
Ellwood City VOR/DME
(Lat. 40°49′30″ N, long. 80°12′42″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Beaver County Airport, and within 1.8-miles each side of Ellwood City VOR/DME 248° radial extending from the 6.4-mile radius to the VOR/DME.

* * * * *

AEA PA E5 Zelienople, PA [Amended]

Zelienople Municipal Airport, PA
(Lat. 40°48′07″ N, long. 80°09′39″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Zelienople Municipal Airport.

Issued in College Park, Georgia, on September 24, 2018.

Ryan W. Almasy,

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

[FR Doc. 2018–21305 Filed 10–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–1214; Airspace Docket No. 17–ASO–24]

RIN 2120–AA66

Amendment of Class E Airspace, Knoxville, TN; and Establishment of Class E Airspace, Madisonville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E surface airspace at Knoxville Downtown Island Airport, Knoxville, TN, by adding to the airspace description the exclusion of a 1-mile radius around University of Tennessee Medical Center Heliport, to allow helicopters departing from the heliport to no longer require a clearance. Also, the Benfi non-directional radio beacon (NDB) has been decommissioned, requiring redesign of Class E airspace extending upward from 700 feet above the surface at McGhee-Tyson Airport, and Monroe County Airport, Madisonville, TN, is moved to stand-alone airspace with its own designation. This action is necessary to further the safety and management of Instrument Flight Rules (IFR) operations at these airports. This action also updates the geographic coordinates of Knoxville Downtown Island Airport, McGhee Tyson Airport, and Gatlinburg-Pigeon Forge Airport in the associated

Class E airspace areas to coincide with the FAA's aeronautical database.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E surface airspace at Knoxville Downtown Island Airport, Knoxville, TN, and amends Class E airspace extending upward from 700 feet above the surface by removing Monroe County Airport, Madisonville, TN, from in the legal description for McGhee-Tyson Airport, and establishing it under its own designation of Madisonville, TN, to support IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 19474, May 3, 2018) for Docket No. FAA–2017–1214 to amend Class E surface airspace at Knoxville Downtown Island Airport, Knoxville, TN, by adding to the airspace description the exclusion of a 1-mile radius around University of Tennessee Medical Center Heliport, and to amend Class E airspace extending upward from 700 feet above the surface at McGhee–Tyson Airport, Kenansville, NC, due to the decommissioning of the Kenan NDB, and cancellation of the NDB approach. The FAA published a supplemental notice of proposed rulemaking in the **Federal Register** (83 FR 39386, August 9, 2018) for Docket No. FAA–2017–1214 to amend Class E airspace extending upward from 700 feet above the surface by removing Monroe County Airport, Madisonville, TN, from in the legal description for McGhee-Tyson Airport, and establishing it under its own designation of Madisonville, TN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) amends part 71 by:

Amending Class E surface airspace at Knoxville Downtown Island Airport, Knoxville, TN, by adding to the airspace description the exclusion of a 1-mile radius around University of Tennessee Medical Center Heliport;

Amending Class E airspace extending upward from 700 feet above the surface to within a 15.4-mile (from a 10-mile) radius of McGhee–Tyson Airport, Kenansville, NC, due to the decommissioning of the Kenan NDB, and cancellation of the NDB approach;

Adjusting of the geographic coordinates of Knoxville Downtown Island Airport, McGhee Tyson Airport, and Gatlinburg-Pigeon Forge Airport, to be in concert with the FAA's aeronautical database;

Removing Monroe County Airport, Madisonville, TN, from the Knoxville, TN, McGhee-Tyson Airport designation, and establishing it as stand-alone airspace with its own designation.

Class E airspace designations are published in Paragraphs 6002 and 6005, respectively, of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ASO TN E2 Knoxville, TN [Amended]

Knoxville Downtown Island Airport, TN
(Lat. 35°57′50″ N, long. 83°52′25″ W)
University of Tennessee Medical Center Heliport, TN
(Lat. 35°56′30″ N, long. 83°56′38″ W)

Within a 4.5-mile radius of Knoxville Downtown Island Airport, excluding that airspace within a 1.0-mile radius of University of Tennessee Medical Center Heliport.

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

* * * * *

ASO TN E5 Knoxville, TN [Amended]

McGhee-Tyson Airport, TN
(Lat. 35°48′34″ N, long. 83°59′43″ W)
Gatlinburg-Pigeon Forge Airport, TN
(Lat. 35°51′28″ N, long. 83°31′43″ W)
Knoxville Downtown Island Airport, TN
(Lat. 35°57′50″ N, long. 83°52′25″ W)

That airspace extending upward from 700 feet above the surface within a 15.4-mile radius of McGhee-Tyson Airport, and within a 13-mile radius of Gatlinburg-Pigeon Forge Airport, and from the 080° bearing from Gatlinburg-Pigeon Forge Airport clockwise to the 210° bearing extending from the 13-mile radius southeast to the 33-mile radius centered on Gatlinburg-Pigeon Forge Airport, and within an 8-mile radius of Knoxville Downtown Island Airport.

ASO TN E5 Madisonville, TN [New]

Monroe County Airport, TN,
(Lat. 35°32′43″ N, long. 84°22′49″ W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Monroe County Airport.

Issued in College Park, Georgia, on September 24, 2018.

Ryan W. Almasy,

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

[FR Doc. 2018–21316 Filed 10–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket Nos. FDA–2013–F–1540 and FDA–2014–F–0296]

Food Additives Permitted in Feed and Drinking Water of Animals; 25-Hydroxyvitamin D_3

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, we, or the Agency) is amending the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of 25-hydroxyvitamin D_3 as a source of vitamin D_3 activity for layer and breeder chickens and turkeys. This action is in response to two food additive petitions filed by DSM Nutritional Products.

DATES: This rule is effective October 2, 2018. See section V of this document for further information on the filing of objections. Submit either electronic or written objections and requests for a hearing on the final rule by November 1, 2018.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. Electronic objections must be submitted on or before November 1, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 1, 2018. Objections 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 objections in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting objections. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection 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 objection, that information will be posted on *https://www.regulations.gov.*

• If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection 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 objections submitted to the Dockets Management Staff, FDA will post your objection, 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–2013–F–1540 (for submissions related to FAP 2277) or FDA–2014–F–0296 (for submissions related to FAP 2279) for ''Food Additives Permitted in Feed and Drinking Water of Animals; 25-hydroxyvitamin D_3.'' Received objections, 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 an objection with confidential information that you do not wish to be made publicly available, submit your objections only as a written/paper submission. You should submit two copies in 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 objections. 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 objections and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper objections received, go to *https://www.regulations.gov* and insert the appropriate 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:

Carissa Doody, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl. (HFV–228), Rockville, MD 20855, 240–402–6283, *carissa.doody@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In documents published in the **Federal Register** of December 23, 2013 (78 FR 77384) and March 26, 2014 (79 FR 16698), FDA announced that we had filed two food additive petitions (animal use) (FAPs 2277 and 2279) submitted by DSM Nutritional Products, 45 Waterview Blvd., Parsippany, NJ 07054. The petitions proposed that the regulations for food additives permitted in feed and drinking water of animals be amended to provide for the safe use of 25-hydroxyvitamin D_3 as a source of vitamin D_3 activity for layer and breeder chickens (FAP 2277) and turkeys (FAP 2279).

II. Conclusion

FDA concludes that the data establish the safety and utility of 25-hydroxyvitamin D_3 as a source of vitamin D_3 activity for layer and breeder chickens and turkeys and that the food additive regulations should be amended as set forth in this document. This is not a significant regulatory action subject to Executive Order 12866.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petitions and documents we considered and relied upon in reaching our decision to approve the petitions will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 571.1(h), we will delete from the documents any materials that are not available for public disclosure.

IV. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provision of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. Add § 573.550 to subpart B to read as follows:

§ 573.550 25-hydroxyvitamin D_3

The food additive, 25-hydroxyvitamin D_3, may be safely used in accordance with the following prescribed conditions:

(a) The additive is used or intended for use as a source of vitamin D_3 activity in animal feed or drinking water in accordance with good manufacturing and feeding practices as follows:

(1) In feed or drinking water of layer and breeder chickens not to exceed 69 parts per billion (ppb) in feed or 34.5 ppb in drinking water.

(2) In feed or drinking water of turkeys not to exceed:

(i) 92 ppb in feed; or

(ii) In drinking water, 25 ppb for turkeys up to 3 weeks of age, 36 ppb for turkeys from 4 to 11 weeks of age, or 45 ppb for turkeys over 11 weeks of age.

(b) The additive consists of not less than 94 percent 25-hydroxyvitamin D_3 (9,10-secocholesta-5,7,10(19)-triene-3β, 25-diol).

(c) The additive meets the following specifications:

(1) Not more than 1 percent of any individual sterol.

(2) Not more than 5 percent water.

(3) Not more than 20 parts per million (ppm) lead.

(4) Not more than 20 ppm aluminum.

(5) Not more than 1.0 percent solvents and non-detectable levels of 2′, 4′, 5′, 7′ tetraiodofluorescin.

(6) Not more than 1 ppb 1, 25-dihydroxycholecalciferol.

(d) To assure safe use of the additive, in addition to the other information required by the Federal Food, Drug, and Cosmetic Act, the label and labeling shall contain:

(1) The name of the additive.

(2) A statement to indicate the maximum use level of 25-hydroxyvitamin D_3 must not exceed 69 ppb in feed or 34.5 ppb in drinking water for layer and breeder chickens.

(3) A statement to indicate for turkeys the maximum use level of 25-hydroxyvitamin D_3 must not exceed 92 ppb in feed; or in drinking water, 25 ppb for turkeys up to 3 weeks of age, 36 ppb for turkeys from 4 to 11 weeks of age, or 45 ppb for turkeys over 11 weeks of age.

(4) Adequate use directions to ensure that 25-hydroxyvitamin D_3 (and all premixes) is uniformly blended throughout the feed or drinking water.

(5) An expiration date on all premix labeling.

(6) A statement on all premix labeling (feed and drinking water forms) that 25-

hydroxyvitamin D_3 cannot be used simultaneously in both feed and water.

Dated: September 26, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21396 Filed 10–1–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–2018–0035]

RIN 2125–AF81

Truck Size and Weight

AGENCY: Federal Highway Administration (FHWA), U. S. Department of Transportation (DOT).

ACTION: Final rule; technical correction.

SUMMARY: This rule makes a technical correction to the regulations that govern Longer Combination Vehicles (LCV) for the Commonwealth of Pennsylvania and the State of Ohio. The amendments contained herein make no substantive changes to FHWA regulations, policies, or procedures.

DATES: This rule is effective November 1, 2018.

FOR FURTHER INFORMATION CONTACT: John Berg, Truck Size and Weight Program Manager, Office of Freight Management and Operations, (202) 740–4602; or William Winne, Office of the Chief Counsel, (202) 366–1397. Both are located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov* or the Government Publishing Office's web page at: *http://www.gpoaccess.gov/nara*.

Background

This rulemaking makes technical corrections to the regulations in appendix C of 23 CFR part 658 that govern length and weight of trailers in Pennsylvania and Ohio. The regulations on LCV's were frozen as of July 1, 1991, in accordance with Section 1023 of the Intermodal Surface Transportation Efficiency Act (ISTEA).[1]

A procedure to ''review and correct'' the accuracy of the list mandated in 23 U.S.C. 127(d)(3)(D) is provided under 23 U.S.C. 127(d)(3)(E), and implemented under 23 CFR 658.23(f). This provision requires the FHWA Administrator to review petitions to correct any errors in Appendix C. The Commonwealth of Pennsylvania and State of Ohio have petitioned the Federal Highway Administrator to make corrections to items they found to be incorrect in accordance with 23 CFR 658.23(f), and certified those provisions were in effect as of July 1, 1991.

The Pennsylvania Department of Transportation petitioned FHWA seeking to invoke the ''grandfather'' provisions of 23 U.S.C. 127(a)(4) to allow the operation on the Pennsylvania Turnpike of vehicles or loads with weight limitations exceeding the Federal maximums mandated in 23 U.S.C. 127(a). Pennsylvania's claim to grandfather rights is based on State statute or enforceable regulation authorizing weight limitations exceeding the Federal maximum in existence on or before July 1, 1956. The Commonwealth seeks to correct a reporting mistake under 23 U.S.C. 127(d)(3)(A) regarding the actual lawful operation on the Turnpike of LCVs up to 100,000 pounds and no longer than 28 ½ feet for each trailer on or before, June 1, 1991. These provisions will be added to Appendix C and bring it into conformance with the Pennsylvania statutes of that time.

The Ohio Department of Transportation (ODOT) petitioned FHWA seeking to invoke the ''grandfather'' provisions of 23 U.S.C. 127(a)(4) to reflect that triple-trailers can operate on any ''turnpike project'' as defined in Ohio Revised Code (ORC) section 5537.01 and permitted by the Ohio Turnpike and Infrastructure Commission under the program authorized in ORC 5537.16 (The Ohio Turnpike Act of 1949 and as amended and effective prior to June 1, 1991). In addition, under ORC 4513.34, ODOT and local authorities are authorized to issue special permits for oversized vehicles (effective prior to June 1, 1991). These provisions will be added to Appendix C and bring it into conformance with the Ohio's statutes of that time.

Rulemaking Analyses and Notice

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The FHWA finds that notice and comment for this rule is unnecessary and contrary to the public interest because it will have no substantive impact and is technical in nature. The amendments to the rule are based upon the explicit language of statutes that were enacted subsequent to the promulgation of the rule. The FHWA does not anticipate receiving meaningful comments. States, local governments, motor carriers, and other transportation stakeholders rely upon the regulations corrected by this action. These corrections will reduce confusion for these entities and should not be unnecessarily delayed. Accordingly, for the reasons listed above, the agencies find good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs), and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866 or significant within the meaning of DOT regulatory policies and procedures. This action complies with E.O.s 12866 and 13563 to improve regulation. It is anticipated that the economic impact of this rulemaking will be minimal. This rule only makes minor corrections that will not in any way alter the regulatory effect of 23 CFR part 658. Thus, this final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This action complies with E.O.s 12866, 13563, and 13771 to improve regulation. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) FHWA has evaluated the effects of this action on small entities and has determined that the action will not have a significant economic impact on a substantial number of small entities. This final rule will not make any substantive changes to our regulations or in the way that our regulations affect small entities; it merely corrects technical errors. For this reason, FHWA certifies that this action

[1] Public Law 105–240, 105 Stat. 1914, 1951 (Dec. 18, 1991) (codified at 23 U.S.C. 127(d)).

will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does 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 does not impose any requirements on State, local, or Tribal governments, or the private sector and, thus, will not require those entities to expend any funds.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in E.O. 13132, and FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

Paperwork Reduction Act

This action does not create any new information collection requirements for which a Paperwork Reduction Act submission to the Office of Management and Budget would be needed under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under E.O. 13175, dated November 6, 2000, and concluded that this rule will not have substantial direct effects on one or more Indian Tribes; will not impose substantial direct compliance costs on Indian Tribal government; and will not preempt Tribal law. There are no requirements set forth in this rule that directly affect one or more Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burdens.

Executive Order 13045 (Protection of Children)

Under E.O. 13045, Protection of Children from Environmental Health and Safety Risks, this final rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionally affect children.

Executive Order 12630 (Taking of Private Property)

This final rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

This final rule has been analyzed under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not a significant regulatory action under E.O. 12866 and this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification 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 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carriers.

Issued on: September 24, 2018.

Brandye L. Hendrickson,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, 23 CFR part 658 is amended as set forth below.

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

■ 1. The authority citation for part 658 continues to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; sec. 347, Pub. L. 108–7, 117 Stat. 419; sec. 756, Pub L. 109–59, 119 Stat. 1219; sec. 115, Pub. L. 109–115, 119 Stat. 2408; 49 CFR 1.48(b)(19) and (c)(19).

■ 2. Amend appendix C to part 658 by:

■ a. Revising the entry for ''State: Ohio, Combination: Truck tractor and 3 trailing units—LVC''; and

■ b. Adding an entry in alphabetical order for State: Pennsylvania, Combination: Truck tractor and 2 trailing units''.

The revision and addition read as follows:

Appendix C to Part 658—Trucks Over 80,000 Pounds on the Interstate System and Trucks Over STAA Lengths on the National Network

* * * * *

STATE: OHIO

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO–CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 115,000 pounds

OPERATIONAL CONDITIONS: Same as the OH–TT2 combination, except as follows below, and triple trailer units may operate on any ''turnpike project'' as defined in Ohio Revised Code (ORC) section 5537.01 and permitted by the Ohio Turnpike and Infrastructure Commission under the program authorized in ORC 5537.16 (The Ohio Turnpike Act of 1949 and as amendedand effective prior to June 1, 1991).

WEIGHT: Gross weight for triples with an overall length greater than 90 feet but not over 105 feet in length = 115,000 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement, be over 26 years of age, in good health, and shall have not less than 5 years of experience driving double trailer combination units. Such driving experience shall include experience throughout the four seasons. Each driver must have special training on triple combinations to be provided by the Permittee.

VEHICLE: Triple trailer combination vehicles are allowed to operate on the Turnpike provided the combination vehicle is at least 90 feet long but less than 105 feet long and each trailer is not more than 28.5 feet in length. The minimum number of axles on the triple shall be seven and the maximum is nine.

PERMIT: A triple trailer permit to operate on the Turnpike is required for triple trailer combinations in excess of 90 feet in length. There is an annual fee for the permit. Class A and B explosives; Class A poisons; and Class 1, 2, and 3 radioactive material cannot be transported in triple trailer combinations. Other hazardous materials may be transported in two trailers of a triple. The hazardous materials should be placed in the front two trailers unless doing so will result

in the third trailer weighing more than either one of the lead trailers. In addition, under ORC 4513 .34, ODOT and local authorities are authorized to issue special permits for oversized vehicles.

ACCESS: With two exceptions, triple trailer units shall not leave the Turnpike Project. The first exception is that triple trailer combinations are allowed on State Route 21 from I–80 Exit 11 (Ohio Turnpike) to a terminal located approximately 500 feet to the north in the town of Richfield. The second exception is for a segment of State Route 7 from Ohio Turnpike Exit 16 to 1 mile south. Triple trailer units shall not leave the Turnpike project. Section 5537.01, as discussed above defines ''turnpike project'' as: ''(B) ''Project'' or ''turnpike project'' means . . . interchanges, entrance plazas, approaches, those portions of connecting public roads that serve interchanges and are determined by the commission and the director of transportation to be necessary for the safe merging of traffic between the turnpike project and those public roads, . . .''

ROUTES

	From	To
I–76 Ohio Turnpike	Turnpike Exit 15	Pennsylvania.
I–80 Ohio Turnpike	Turnpike Exit 8A	Turnpike Exit 15.
I–80/90 Ohio Turnpike	Indiana	Turnpike Exit 8A.
OH–7	Turnpike Exit 16	Extending 1 mile south.

LEGAL CITATIONS: Same as the OH–TT2 combination.

* * * * *

STATE: PENNSYLVANIA

COMBINATION: Truck tractor and 2 trailing units

LENGTH OF THE CARGO–CARRYING UNITS: 57 feet

OPERATIONAL CONDITIONS:

WEIGHT: The maximum gross weight is 100,000 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: A semitrailer, or the trailer of a tandem trailer combination, may not be longer than 28½ feet. A tandem combination—including the truck tractor, semitrailer and trailer—which exceeds 85 feet in length is considered a Class 9 vehicle which requires a special permit to travel on the Turnpike System. In tandem combinations, the heaviest trailer shall be towed next to the truck tractor.

PERMIT: None required except for a Class 9 vehicle.

ROUTES

	From	To
I–76 Pennsylvania Turnpike Mainline	Ohio	Turnpike Exit 75.
I–76/1–70 Pennsylvania Turnpike Mainline	Turnpike Exit 75	Turnpike Exit 161.
I–76 Pennsylvania Turnpike Mainline	Turnpike Exit 161	Turnpike Exit 326.
1–276 Pennsylvania Turnpike Mainline	Turnpike Exit 326	I–95 Interchange.
I–95 interchange Pennsylvania Turnpike Mainline	I–95 Interchange	New Jersey.
I–476 Pennsylvania Turnpike Northeastern Extension	Turnpike Exit 20	Turnpike Exit 131.
I–376 Pennsylvania Turnpike Beaver Valley Expressway	Turnpike Exit 15	Turnpike Exit 31.
Pennsylvania Turnpike 66 Greensburg Bypass	Turnpike Exit 0	Turnpike Exit 14.
Pennsylvania Turnpike 43 Mon/Fayette Expressway (I–68 to Route 43)	West Virginia	Turnpike Exit M8.
Pennsylvania Turnpike 43 Mon/Fayette Expressway (Uniontown to Brownsville)	Turnpike Exit M 15	Turnpike Exit M28.
Pennsylvania Turnpike 43 Mon/Fayette Expressway (US–40 to PA–51)	Turnpike Exit M30	Turnpike Exit M54.
Pennsylvania Turnpike 43 Mon/Fayette Expressway (PA–51 to I–376/Monroeville)	Turnpike Exit M54	I–376/Monroeville.
Pennsylvania Turnpike 576 Southern Beltway (I–376 to US–22)	Turnpike Exit S1	Turnpike Exit S6.
Pennsylvania Turnpike 576 Southern Beltway (US–22 to I–79)	Turnpike Exit S6	I–79.
Pennsylvania Turnpike 576 Southern Beltway (I–79 to Mon/Fayette Expressway)	I–79	Pennsylvania Turnpike 43 Mon/Fayette Expressway.

LEGAL CITATIONS: Pennsylvania Vehicle Code, 75 Pa.C.S. § 6110(a); Pennsylvania Code, 67 Pa. Code, Chapter 601.

* * * * *

[FR Doc. 2018–21341 Filed 10–1–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0225]

RIN 1625–AA08

Special Local Regulation; Breton Bay, Leonardtown, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for certain waters of the Breton Bay. This action is necessary to provide for the safety of life on these navigable waters of Breton Bay, at Leonardtown, MD, on October 6, 2018, and October 7, 2018. This regulation prohibits persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander.

DATES: This rule is effective from 7:30 a.m. on October 6, 2018 to 5:30 p.m. on October 7, 2018. It will be enforced from 7:30 a.m. to 5:30 p.m. on each of those days.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0225 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Dane Grulkey, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2570, email *Dane.M.Grulkey@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On January 22, 2018, the Southern Maryland Boat Club notified the Coast Guard that it will be conducting the club's fall regatta from 8 a.m. to 5 p.m. on October 6, 2018, and October 7, 2018. The regatta consists of approximately 40 boats participating in an exhibition of vintage outboard racing V-hull boats. The regatta is not a competition but rather a demonstration of the vintage race craft. Vessels may reach speeds of 90 mph. Hazards include risks of injury or death resulting from near or actual contact among participant vessels and spectator vessels or waterway users if normal vessel traffic were to interfere with the event.

In response, on August 17, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Special Local Regulation; Breton Bay, Leonardtown, MD'' (83 FR 41032). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this high-speed power boat racing event. During the comment period that ended September 17, 2018, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the regatta.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the regatta will be a safety concern for anyone intending to participate in this event or for vessels that operate within specified waters of Breton Bay at Leonardtown, MD. The purpose of this rule is to protect marine event participants, spectators and transiting vessels on specified waters of Breton Bay before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published August 17, 2018. There are no substantive changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary special local regulation to be enforced from 7:30 a.m. to 5:30 p.m. on October 6, 2018 and from 7:30 a.m. to 5:30 p.m. on October 7, 2018. The regulated area covers all navigable waters within Breton Bay, from shoreline to shoreline, within an area bound by a line drawn along latitude 38°16′43″ N; and bounded to the west by a line drawn along longitude 076°38′29.5″ W, located at Leonardtown, MD. This rule provides additional information about designated areas within the regulated area, including ''Race Area'', ''Buffer Zone'' and ''Spectator Area(s).'' The duration of the regulated area is intended to ensure the safety of event participants and vessels within the specified navigable waters before, during, and after the regatta, scheduled to occur between 8 a.m. to 5 p.m. each day of the event. Except for participants, no vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or the Coast Guard Patrol Commander.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of Breton Bay during October 6–7, 2018, for a total of 20 enforcement-hours. The Coast Guard will issue a Broadcast Notice to Mariners via marine band radio VHF–FM channel 16 about the status of the regulated area. Moreover, the rule will allow vessel operators to request permission to enter the regulated area for the purpose of safely transiting the regulated area if deemed safe to do so by the Coast Guard Patrol Commander.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation to be enforced a total of 20 hours over two days. This category of marine event water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Memorandum for Record for Categorically Excluded Actions supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.501T05–0225 to read as follows:

§ 100.501T05–0225 Special Local Regulation; Breton Bay, Leonardtown, MD.

(a) *Definitions*—(1) *Captain of the Port Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or a Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

(3) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Spectator* means any person or vessel not registered with the event sponsor as a participant or an official patrol vessel.

(5) *Participant* means any person or vessel participating in the Southern Maryland Boat Club Fall Regatta event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Maryland-National Capital Region.

(b) *Regulated area.* All coordinates reference Datum NAD 1983.

(1) *Coordinates.* The following location is a regulated area: all navigable waters within Breton Bay, MD, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16′43″ N and bounded to the west by a line drawn along longitude 076°38′29.5″ W, located at Leonardtown, MD.

(2) *Race area.* Located within the waters of Breton Bay, MD in an area bound by a line commencing at position latitude 38°17′07.2″ N, longitude 076°38′17.3″ W, thence southeast to latitude 38°16′55.3″ N, longitude 076°37′48″ W, thence southwest to latitude 38°16′50.1″ N, longitude 076°37′51.3″ W, thence northwest to latitude 38°17′01.9″ N, longitude 076°38′21″ W, thence northeast to point of origin.

(3) *Buffer zone.* Located within the waters of Breton Bay, MD. The area surrounds the entire race area described in the preceding paragraph of this section. This area is rectangular in shape and provides a buffer of approximately 125 yards around the perimeter of the race area. The area is bounded by a line commencing at position latitude 38°17′12″ N, longitude 076°38′19.6″ W; thence southeast to latitude 38°16′57″ N, longitude 076°37′40.5″ W; thence southwest to latitude 38°16′44.8″ N, longitude 076°37′48.2″ W; thence northwest to latitude 38°17′00.2″ N, longitude 076°38′27.8″ W; thence northeast to point of origin.

(4) *Spectator areas*—(i) *Spectator area A.* The area is bounded by a line

commencing at position latitude 38°16′52.1″ N, longitude 076°38′14.2″ W; thence northeast to latitude 38°16′54″ N, longitude 076°38′12.5″ W; thence southeast to latitude 38°16′48.6″ N, longitude 076°37′59.3″ W; thence south to latitude 38°16′47.4″ N, longitude 076°37′59.3″ W; thence northwest along the shoreline to point of origin.

(ii) *Spectator area B.* The area is bounded by a line commencing at position latitude 38°16′59.1″ N, longitude 076°37′45.6″ W; thence southeast to latitude 38°16′57.1″ N, longitude 076°37′40.2″ W; thence southwest to latitude 38°16′54.3″ N, longitude 076°37′41.9″ W; thence southeast to latitude 38°16′51.8″ N, longitude 076°37′36.4″ W; thence northeast to latitude 38°16′55.2″ N, longitude 076°37′34.2″ W; thence northwest to latitude 38°16′59.2″ N, longitude 076°37′37.2″ W; thence west to latitude 38°17′01.7″ N, longitude 076°37′43.7″ W; thence south to point of origin.

(iii) *Spectator area C.* The area is bounded by a line commencing at position latitude 38°16′47.2″ N, longitude 076°37′54.8″ W; thence south to latitude 38°16′43.3″ N, longitude 076°37′55.2″ W; thence east to latitude 38°16′43.2″ N, longitude 076°37′47.8″ W; thence north to latitude 38°16′44.7″ N, longitude 076°37′48.5″ W; thence northwest to point of origin.

(c) *Special local regulations.* (1) The Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(3) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant, at any time it is deemed necessary for the protection of life or property.

(4) The Race Area is an area described by a line bounded by coordinates provided in latitude and longitude that outlines the boundary of a Race Area within the regulated area defined in paragraph (b)(2) of this section. The actual placement of the race course will be determined by the marine event sponsor but must be located within the designated boundaries of the Race Area. Only participants and official patrol vessels are allowed to enter the Race Area.

(5) The Buffer Zone is an area that surrounds the perimeter of the Race Area within the regulated area defined in paragraph (b)(3) of this section. The purpose of a Buffer Zone is to minimize potential collision conflicts with participants and spectators or nearby transiting vessels. This area provides separation between the Race Area and Spectator Area or other vessels that are operating in the vicinity of the regulated area defined in paragraph (b)(1) of this section. Only participants and official patrol vessels are allowed to enter the Buffer Zone.

(6) The Spectator Area is an area described by a line bounded by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined in paragraph (b)(4) of this section. Spectators are only allowed inside the regulated area if they remain within the Spectator Area. All spectator vessels shall be anchored or operate at a no-wake speed while transiting within the Spectator Area. Spectators may contact the Coast Guard Patrol Commander to request permission to either enter the Spectator Area or pass through the regulated area. If permission is granted, spectators must enter the Spectator Area or pass directly through the regulated area as instructed at safe speed and without loitering.

(7) The Coast Guard Patrol Commander and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). Persons and vessels desiring to transit, moor, or anchor within the regulated area must obtain authorization from Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. The Captain of the Port Maryland-National Capital Region can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard Patrol Commander can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(8) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio.

(d) *Enforcement periods.* This section will be enforced from 7:30 a.m. to 5:30 p.m. on October 6, 2018, and from 7:30 a.m. to 5:30 p.m. on October 7, 2018.

Dated: September 26, 2018.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2018–21350 Filed 10–1–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2018–0422; FRL–9984–81—Region 2]

Approval and Promulgation of Air Quality Implementation Plans; New York; Determination of Attainment of the 2008 8-Hour Ozone National Ambient Air Quality Standard for the Jamestown, New York Marginal Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a determination that the Jamestown, New York Marginal Nonattainment Area (Jamestown Area or Area) has attained the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured, and certified ambient air monitoring data that shows the Area has monitored attainment of the 2008 8-hour ozone NAAQS for both the 2012–2014 and 2015–2017 monitoring periods. This action does not constitute a redesignation to attainment. The Jamestown Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA determines that the Jamestown Area meets the Clean Air Act (CAA) requirements for redesignation to attainment, including an approved maintenance plan. This action is being taken under the CAA.

DATES: This final rule is effective on November 1, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2018–0422. 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: Kirk J. Wieber, (212) 637–3381, or by email at *wieber.kirk@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over three years) to provide increased protection of public health and the environment. 73 FR 16436 (March 27, 2008).[1] The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. On May 21, 2012 (77 FR 30088), effective July 20, 2012, EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air monitoring data. The Jamestown Area (specifically, Chautauqua County) was designated as a marginal ozone nonattainment area. *See* 40 CFR 81.333.

Marginal areas designated in the May 21, 2012 rule are required to attain the 2008 8-hour ozone NAAQS by the applicable deadline of July 20, 2015. *See* 40 CFR 51.903. On May 4, 2016, EPA determined that complete, quality-assured, and certified air quality monitoring data from the 2012–2014 monitoring period indicated that the Jamestown Area attained the 2008 8-hour ozone NAAQS by that attainment date. *See* 81 FR 26697.

Under the provisions of EPA's ozone implementation rule (40 CFR 51.918), if EPA also issues a determination (as it is doing here) that an area is attaining the relevant standard through a rulemaking that includes public notice and comment (known informally as a Clean Data Determination), the requirements for a State to submit certain required planning SIPs related to attainment of the eight-hour NAAQS, such as attainment demonstrations, reasonable further progress plans and contingency measures, shall be suspended. EPA's action only suspends the requirements to submit the SIP revisions discussed above.[2]

This suspension remains in effect until such time, if ever, that EPA (i) redesignates the area to attainment, at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 2008 8-hour ozone NAAQS. Although these requirements are suspended, if the State provides these submissions to EPA for review and approval at any time, EPA is not precluded from acting upon them.

II. EPA's Evaluation

An area may be considered to be attaining the 2008 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR part 50, based on three complete, consecutive calendar years of quality-assured ambient air monitoring data. Under EPA regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.075 ppm. *See* 40 CFR part 50, appendix P. This 3-year average is referred to as the design value. When the design value is less than or equal to 0.075 ppm at each monitor within the area, then the area is attaining the NAAQS. Also, the data meets the regulatory completeness requirement when the average percent of days with valid ambient monitoring data is greater than or equal to 90 percent (%), and no single year has less than 75% data completeness as determined in appendix P of 40 CFR part 50. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS).

As was discussed in EPA's July 20, 2018 (83 FR 34506) proposal, EPA has reviewed the complete, quality-assured, and certified ozone ambient air monitoring data for the monitoring periods for both 2012–2014 and 2015–2017 for the Jamestown Area. For both monitoring periods, the design values for the Jamestown monitor in Chautauqua County are less than or equal to 0.075 ppm, and the monitor meets the data completeness requirements. Based on the 2012–2014 data from the AQS database and consistent with the requirements contained in 40 CFR part 50, EPA has concluded that this Area attained the 2008 8-hour ozone NAAQS. In addition, complete, quality-assured, and certified data through the 2017 ozone season demonstrate that the area continues to attain the standard.

III. Comments Received in Response to EPA's Proposed Action

On July 20, 2018 (83 FR 34506), EPA proposed to make a determination that the Jamestown Area has attained the 2008 8-hour ozone NAAQS. In response to EPA's July 20, 2018 proposed determination for the Jamestown Area, EPA received several comments from the public during the 30-day public comment period. After reviewing the comments, EPA has determined that most of the comments are outside the scope of our proposed action or fail to identify any material issue necessitating a response. The comments do not raise issues germane to EPA's proposed action. For this reason, EPA will not provide a specific response to those comments. Those comments may be viewed under Docket ID Number EPA–R02–OAR–2018–0422 on the *http://www.regulations.gov* website. EPA did however receive one comment that is germane to EPA's proposed action.

Comment: Please consider keeping plans in place to monitor and follow up with the ozone level in Jamestown. Keeping a close eye on data and holding people accountable for meeting a standard of 0.075 ppm ozone may be more likely to continue the downward trend in ozone than if we just stop communicating with local leadership on this issue.

Response: This determination of attainment is not equivalent to a redesignation under section 107(d)(3) of the CAA. The designation status of the Jamestown Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan. While this determination of attainment for the Jamestown Area suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the CAA, it does not suspend or rescind the requirements of CAA sections 110(a)(2)(B) and (I) for monitoring and implementing the various ozone related emissions reduction control strategies that have been adopted by New York State and approved by EPA over the years. Therefore, the New York State

[1] For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, appendix I.

[2] For more information on the EPA's Clean Data Policy, see *https://www.epa.gov/ozone-pollution/redesignation-and-clean-data-policy-cdp* for documents such as the Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (May 10, 1995).

Department of Environmental Conservation (NYSDEC) and EPA will continue to assess the ozone ambient air monitoring data for the Jamestown monitor in Chautauqua County. If certified air quality data indicates issues with continuing attainment of the 2008 ozone NAAQS, the EPA will, to the extent necessary, work with NYSDEC and use appropriate CAA authorities to address those air quality issues.

IV. Final Action

EPA is finalizing a determination that the Jamestown Area has attained the 2008 8-hour ozone NAAQS. This determination (informally known as a Clean Data Determination) is based upon complete, quality assured, and certified ambient air monitoring data that show the Jamestown Area has monitored attainment of the 2008 8-hour ozone NAAQS for the 2012–2014 and 2015–2017 monitoring periods. Complete and quality assured and certified data for these periods demonstrate that the area continues to attain the standard during both time periods. As provided in 40 CFR 51.918, EPA's determination that this area has attained the 8-hour ozone standard suspends the requirements under CAA section 182(b)(1) for submission of a reasonable further progress plan and ozone attainment demonstration. In addition, this final determination means the requirements of CAA section 172(c)(9) concerning submission of contingency measures and any other planning SIP relating to attainment of the 2008 8-hour ozone NAAQS shall be suspended for so long as the Jamestown Area continues to attain the 2008 8-hour ozone NAAQS. Although these requirements would be suspended, EPA would not be precluded from acting upon these elements at any time if submitted to EPA for review and approval.

Finalizing this determination does not constitute a redesignation of the Jamestown Area to attainment for the 2008 8-hour ozone NAAQS under CAA section 107(d)(3). This determination of attainment also does not involve approving any maintenance plan for the Jamestown Area and does not determine that the Jamestown Area has met all the requirements for redesignation under the CAA, including that the attainment be due to permanent and enforceable measures. Therefore, the designation status of the Jamestown Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA takes final rulemaking action to determine that such Area meets the CAA requirements for redesignation to attainment.

V. Statutory and Executive Order Reviews

This action finalizes an attainment determination based on air quality data, resulting in the suspension of certain Federal requirements. The action would not impose any additional requirements. 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 this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 attainment determination does not 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).

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 3, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 19, 2018.

Peter D. Lopez,

Regional Administrator, Region 2.

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 HH—New York

■ 2. In § 52.1683, add paragraph (q) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(q) EPA is determining that the Jamestown marginal nonattainment area

(consisting of Chautauqua County) has attained the 2008 8-hour ozone national ambient air quality standard (NAAQS). This determination (informally known as a Clean Data Determination) is based upon complete, quality assured, and certified ambient air monitoring data that show the Jamestown Area has monitored attainment of the 2008 8-hour ozone NAAQS for the 2012–2014 and 2015–2017 monitoring periods. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), this determination suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act for this area as long as the area does not monitor any violations of the 8-hour ozone standard. If a violation of the ozone NAAQS is monitored in this area, this determination shall no longer apply.

[FR Doc. 2018–21329 Filed 10–1–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 180810748–8814–01]

RIN 0648–BI43

Pacific Island Fisheries; Hawaii Shallow-Set Pelagic Longline Fishery; Court Order

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

ACTION: Final rule.

SUMMARY: This final rule revises from 34 to 17 the annual number of allowable incidental interactions that may occur between the Hawaii shallow-set pelagic longline fishery and North Pacific loggerhead sea turtles, in compliance with an order of the U.S. District Court, District of Hawaii.

DATES: Effective January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS Pacific Islands Regional Office, 808–725–5170.

SUPPLEMENTARY INFORMATION: On January 30, 2012, NMFS completed a biological opinion (2012 BiOp) on the effects of the Hawaii shallow-set longline fishery on marine species listed as threatened or endangered under the Endangered Species Act (ESA). The 2012 BiOp superseded a February 23, 2004, BiOp on the effects of Pacific Island pelagic fisheries, including shallow-set longline fishing, on ESA-listed marine species (2004 BiOp). In the 2012 BiOp, NMFS concluded that the continued operation of the Hawaii shallow-set fishery, as managed under the regulatory framework of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP), was not likely to jeopardize the continued existence of any ESA-listed species or result in destruction or adverse modification of designated critical habitat.

The 2012 BiOp established an annual incidental take statement authorizing the fishery to interact with up to 26 leatherback sea turtles and 34 North Pacific loggerhead sea turtles. Consistent with the 2012 BiOp, NMFS revised the annual limits on allowable incidental interactions between the fishery and leatherback and North Pacific loggerhead sea turtles (77 FR 60637, October 4, 2012, codified at 50 CFR 665.813). If the fishery reaches either of the interaction limits in a given year, the regulations require NMFS to close the fishery for the remainder of the calendar year.

In the U.S. District Court, District of Hawaii, several plaintiffs challenged the NMFS final rule that revised the annual sea turtle interaction limits, among other things, and the Court ruled in favor of NMFS on all claims (see *Turtle Island Restoration Network, et al.* v. *U.S. Dept. of Commerce, et al., (U.S.D.C. 2013), Civil No. 12–00594).* Plaintiffs appealed the Court's decision and, on December 27, 2017, a U.S. Ninth Circuit Court of Appeals panel issued a split decision affirming the 2012 BiOp regarding leatherback sea turtles, but holding that NMFS was arbitrary and capricious in its no-jeopardy determination for North Pacific loggerhead turtles (see *Turtle Island Restoration Network, et al.* v. *U.S. Dept. of Commerce, et al., 878 F.3d 725 (9th Cir. 2017)).*

All parties agreed to settle the case pursuant to the terms outlined in a May 4, 2018, Stipulated Settlement Agreement and Court Order (Court Order). As part of the agreement, the U.S. District Court, District of Hawaii, ordered NMFS to close the fishery for the remainder of the 2018 fishing year. On May 11, 2018, NMFS published a temporary rule closing the shallow-set longline fishery until December 31, 2018 (83 FR 21939).

The Court Order also required NMFS to implement a new regulation that establishes the annual interaction limit for North Pacific loggerhead sea turtle at 17, effective on January 1, 2019. The revised limit is consistent with the incidental take statement from the previous 2004 BiOp. This rule implements the Court Order by revising the annual limit for North Pacific loggerhead sea turtles from 34 to 17. In addition, as accounted for in the Court Order, NMFS is consulting on the potential effects of the fishery on sea turtles, and may issue a revised regulation in the future that adopts different interaction limits or takes a different approach to interactions after that consultation is concluded.

If the fishery reaches the interaction limit for either leatherback sea turtles or North Pacific loggerhead sea turtles, NMFS will close the fishery for the remainder of the calendar year. All other provisions applicable to the fishery remain unchanged.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the Court order, the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act, and other applicable laws.

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

NMFS has good cause to waive the prior notice and comment requirement under the Administrative Procedure Act (APA, 5 U.S.C. 553(b)(B)). The Court Order, in relevant parts, vacates the portion of the 2012 Biological Opinion that relates to North Pacific loggerhead sea turtles, and requires NMFS to revise the interaction limit for those turtles to 17. Under the ESA, NMFS may not continue to authorize the shallow-set longline fishery until the consultation requirements of ESA section 7(a)(2) have been satisfied, and a new biological opinion and incidental take statement are prepared. Because NMFS has no discretion to revise and implement the loggerhead sea turtle interaction limit under the Court Order, no meaningful purpose will be served by public comment, and so providing prior notice and comment of this rule would be impracticable and contrary to public interest. The 30-day delayed effective date requirement under the APA (5 U.S.C. 553(d)) is not waived.

Additionally, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 603–605) do not apply to this rule. Furthermore, because the changes identified in this rule are required by the Court Order and are not discretionary, the National Environmental Policy Act does not apply to this rule.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, Fisheries, Fishing, Hawaii, Sea turtles.

Dated: September 26, 2018.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 665 is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.813, revise paragraph (b)(1) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

* * * * *

(b) * * *

(1) Maximum annual limits are established on the number of physical interactions that occur each calendar year between leatherback and North Pacific loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-set fishing. The annual limit for leatherback sea turtles (*Dermochelys coriacea*) is 26, and the annual limit for North Pacific loggerhead sea turtles (*Caretta caretta*) is 17.

* * * * *

[FR Doc. 2018–21349 Filed 10–1–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG509

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area. This action is necessary to fully use the 2018 total allowable catch of Pacific ocean perch specified for the Bering Sea subarea of the Bering Sea and Aleutian Islands management area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 2018, through 1200 hrs, A.l.t., December 31, 2018. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 17, 2018.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2017–0108, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov/docket?D=NOAA-NMFS-2017-0108,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record 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: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands management area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific ocean perch (POP) in the Bering Sea subarea of the BSAI under § 679.20(d)(1)(iii) (83 FR 8365, February 27, 2018).

NMFS has determined that approximately 5,200 metric tons of POP remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2018 total allowable catch of POP in the Bering Sea subarea of the BSAI, NMFS is terminating the previous closure and is opening directed fishing for POP in Bering Sea subarea of the BSAI, effective 1200 hrs, A.l.t., October 1, 2018, through 1200 hrs, A.l.t., December 31, 2018. This will enhance the socioeconomic well-being of harvesters dependent on POP in this area.

The Administrator, Alaska Region considered the following factors in reaching this decision: (1) The current catch of POP in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of POP directed fishing in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 26, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for POP in the Bering Sea subarea of the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 17, 2018.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 27, 2018.

Alan D. Risenhoover,

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

[FR Doc. 2018–21409 Filed 10–1–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG510

Fisheries of the Exclusive Economic Zone Off Alaska; ''Other Rockfish'' in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of ''other rockfish'' in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2018 ''other rockfish'' total allowable catch (TAC) in the Aleutian Islands subarea of the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 27, 2018, through 2400 hrs, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2018 ''other rockfish'' TAC in the Aleutian Islands subarea of the BSAI is 570 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018). In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2018 ''other rockfish'' TAC in the Bering Sea subarea of the BSAI has been reached. Therefore, NMFS is requiring that ''other rockfish'' in the Aleutian Islands subarea of the BSAI be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting retention of ''other rockfish'' in the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as September 26, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by §§ 679.20 and 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 27, 2018.

Alan D. Risenhoover,

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

[FR Doc. 2018–21400 Filed 9–27–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 191
Tuesday, October 2, 2018

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

[Doc. No. AMS–FGIS–18–0053]

7 CFR Part 810

United States Standards for Canola

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for comments from the public; reopening of comment period.

SUMMARY: The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is reopening the comment period for its request for comments from the public regarding the United States (U.S.) Standards for Canola under the United States Grain Standards Act (USGSA).

DATES: *The comment period for the document published June 29, 2018 at 83 FR 30590 is reopened.* We will consider comments we receive by December 3, 2018.

ADDRESSES: Submit comments by any of the following methods:

- *Postal Mail:* Please send your comment addressed to Kendra Kline, AMS, USDA, 1400 Independence Avenue SW, Room 2043–S, Washington, DC 20250–3614.
- *Hand Delivery or Courier:* Kendra Kline, AMS, USDA, 1400 Independence Avenue SW, Room 2043–S, Washington, DC 20250–3614.
- *Internet:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey, USDA, AMS; Telephone: (816) 659–8403; Email: *Patrick.J.McCluskey@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: On June 29, 2018, AMS published its request for comments from the public in the **Federal Register** (83 FR 30590) regarding the United States (U.S.) Standards for Canola under the United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k). The comment period for the request for comments ended August 28, 2018. In response to requests from interested stakeholders, AMS is reopening the comment period an additional 60-days.

The realignment of offices within the U.S. Department of Agriculture authorized by the Secretary's Memorandum dated November 14, 2017, eliminates the Grain Inspection, Packers and Stockyards Administration (GIPSA) as a standalone agency. The grain inspection activities formerly part of GIPSA are now organized under AMS.

Authority: 7 U.S.C. 71–87k.

Dated: September 27, 2018.

Greg Ibach,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 2018–21426 Filed 10–1–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

[Doc. No. AMS–FGIS–18–0054]

7 CFR Part 810

United States Standards for Soybeans

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for comments from the public; reopening of comment period.

SUMMARY: The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is reopening the comment period for its request for comments from the public regarding the United States (U.S.) Standards for Soybeans under the United States Grain Standards Act (USGSA).

DATES: We will consider comments we receive by December 3, 2018.

ADDRESSES: Submit comments by any of the following methods:

- *Postal Mail:* Please send your comment addressed to Kendra Kline, AMS, USDA, 1400 Independence Avenue SW, Room 2043–S, Washington, DC 20250–3614.
- *Hand Delivery or Courier:* Kendra Kline, AMS, USDA, 1400 Independence Avenue SW, Room 2043–S, Washington, DC 20250–3614.
- *Internet:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey, USDA, AMS; Telephone: (816) 659–8403; Email: *Patrick.J.McCluskey@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: On June 29, 2018, AMS published its request for comments from the public in the **Federal Register** (83 FR 30592) regarding the United States (U.S.) Standards for Soybeans under the United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k). The comment period for the request for comments ended August 28, 2018. In response to requests from interested stakeholders, AMS is reopening the comment period an additional 60-days.

The realignment of offices within the U.S. Department of Agriculture authorized by the Secretary's Memorandum dated November 14, 2017, eliminates the Grain Inspection, Packers and Stockyards Administration (GIPSA) as a standalone agency. The grain inspection activities formerly part of GIPSA are now organized under AMS.

Authority: 7 U.S.C. 71–87k.

Dated: September 27, 2018.

Greg Ibach,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 2018–21425 Filed 10–1–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

[Doc. No. AMS–FGIS–18–0052]

7 CFR Part 810

United States Standards for Corn

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for comments from the public; reopening of comment period.

SUMMARY: The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is reopening the comment period for its request for comments from the public regarding the United States (U.S.) Standards for Corn under the United States Grain Standards Act (USGSA).

DATES: *The comment period for the document published June 29, 2018 at 83 FR 30591 is reopened.* We will consider comments we receive by December 3, 2018.

ADDRESSES: Submit comments by any of the following methods:

- *Postal Mail:* Please send your comment addressed to Kendra Kline,

AMS, USDA, 1400 Independence Avenue SW, Room 2043–S, Washington, DC 20250–3614.

• *Hand Delivery or Courier:* Kendra Kline, AMS, USDA, 1400 Independence Avenue SW, Room 2043–S, Washington, DC 20250–3614.

• *Internet:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey, USDA, AMS; Telephone: (816) 659–8403; Email: *Patrick.J.McCluskey@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: On June 29, 2018, AMS published its request for comments from the public in the **Federal Register** (83 FR 30591) regarding the United States (U.S.) Standards for Corn under the United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k). The comment period for the request for comments ended August 28, 2018. In response to requests from interested stakeholders, AMS is reopening the comment period an additional 60-days.

The realignment of offices within the U.S. Department of Agriculture authorized by the Secretary's Memorandum dated November 14, 2017, eliminates the Grain Inspection, Packers and Stockyards Administration (GIPSA) as a standalone agency. The grain inspection activities formerly part of GIPSA are now organized under AMS.

Authority: 7 U.S.C. 71–87k.

Dated: September 27, 2018.

Greg Ibach,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 2018–21427 Filed 10–1–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS–SC–18–0065; SC18–905–4 PR]

Oranges, Grapefruit, Tangerines, and Pummelos Grown in Florida; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Citrus Administrative Committee (Committee) to decrease the assessment rate established for the 2018–19 and subsequent fiscal periods. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 1, 2018.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *http://www.regulations.gov*. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Abigail.Campos@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida. Part 905 (referred to as ''the Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of growers and handlers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable citrus for the 2018–19 crop year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

This proposed rule would decrease the assessment rate from $0.02, the rate that was established for the 2017–18 and subsequent fiscal periods, to $0.015 per 4/5-bushel cartons of citrus for the 2018–19 and subsequent fiscal periods. Shipments from last season exceeded initial projections after Hurricane Irma, allowing the Committee to maintain their financial reserve. As the industry continues to recover from Hurricane Irma, the Committee estimates that the 2018–19 Florida citrus crop will be around 8,250,000 regulated cartons, an increase of nearly one million cartons from last season. The anticipated increase in production prompted the Committee to recommend the reduction in the assessment rate.

The Committee met on July 17, 2018, and unanimously recommended 2018–19 expenditures of $130,260 and an assessment rate of $0.015 per 4/5-bushel cartons of citrus. The major expenditures recommended by the Committee for the 2018–19 year include $113,260 for management, $9,000 for auditing, and $4,000 for travel. Budgeted expenses for these items in 2017–18 were $75,000, $9,000, and $4,200, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of 8.25 million 4/5-bushel cartons, and the amount of funds available in the authorized reserve. Income derived from handler assessments calculated at $123,750 (8.25 million × $0.015), along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses of $130,260. Funds in the reserve are estimated to be at $147,500 and would be kept within the maximum permitted by the Order. As stated in § 905.42, the amount of the reserve is not to exceed two fiscal periods' expenses.

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA based upon recommendation and information submitted by the Committee or other available information.

Although the proposed assessment rate would be effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2018–19 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 500 producers of Florida citrus in the production area and approximately 20 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to data from the National Agricultural Statistics Service (NASS), the industry, and the Committee, the weighted average f.o.b. price for Florida citrus for the 2016–17 season was approximately $15.20 per carton with total shipments of around 12.6 million cartons. Using the number of handlers, and assuming a normal distribution, the majority of handlers have average annual receipts of more than $7,500,000 ($15.20 times 12.6 million equals $191,520,000 divided by 20 handlers equals $9,576,000 per handler).

In addition, based on the NASS data, the weighted average grower price for the 2016–17 season was around $8.30 per carton of citrus. Based on grower price, shipment data, and the total number of Florida citrus growers, and assuming a normal distribution, the average annual grower revenue is below $750,000 ($8.30 times 12.6 million cartons equals $104,580,000 divided by 500 growers equals $209,160 per grower). Thus, the majority of Florida citrus handlers may be classified as large entities, while the majority of growers may be classified as small entities.

This proposal would decrease the assessment rate collected from handlers for the 2018–19 and subsequent fiscal periods from $0.02 to $0.015 per 4/5-bushel cartons of citrus. The Committee unanimously recommended 2018–19 expenditures of $130,260 and an assessment rate of $0.015 per 4/5-bushel cartons. The proposed assessment rate of $0.015 is $0.005 lower than the 2017–18 rate. The quantity of assessable citrus for the 2018–19 fiscal period is estimated at 8.25 million 4/5-bushel cartons. Thus, the $0.015 rate should provide $123,750 in assessment income (8.25 million × $0.015). Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve (currently $147,500), would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2018–19 fiscal year include $113,260 for management, $9,000 for auditing, and $4,000 for travel. Budgeted expenses for these items in 2017–18 were $75,000, $9,000, and $4,200, respectively.

Shipments from last season exceeded initial projections after Hurricane Irma, allowing the Committee to maintain its financial reserve. The Committee estimates the 2018–19 Florida citrus crop will be around 8,250,000 regulated cartons, an increase of nearly one million cartons from last season. The Committee recommended the reduction in the assessment rate based on the anticipated increase in production.

Prior to arriving at this budget and assessment rate, the Committee considered information from the Executive Committee. Alternative expenditure levels and assessment rates were discussed by the Executive Committee, based upon the relative value of various activities to the citrus industry. The Committee determined that all program activities were adequately funded and essential to the functionality of the Order, thus no alternate expenditure levels were deemed appropriate.

Based on these discussions and estimated shipments, the recommended assessment rate of $0.015 would provide $123,750 in assessment income. The Committee determined that assessment revenue, along with funds from reserves and interest income, would be adequate to cover budgeted expenses for the 2018–19 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates

that the average grower price for the 2018–19 season should be approximately $8.30 per 4/5-bushel cartons of citrus. Therefore, the estimated assessment revenue for the 2018–19 crop year as a percentage of total grower revenue would be about 0.2 percent.

This proposed rule would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may also reduce the burden on producers.

The Committee's meeting was widely publicized throughout the Florida citrus industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 17, 2018, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

Based on its evaluation of the Committee recommendation and other available information, USDA has determined that a modification of the assessment rate for the 2018–19 Florida citrus fiscal period would be appropriate. Therefore, USDA issues this proposed rule.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Pummelos, Reporting and recordkeeping requirements, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.235 is revised to read as follows:

§ 905.235 Assessment rate.

On and after August 1, 2018, an assessment rate of $0.015 per 4/5-bushel carton or equivalent is established for Florida citrus covered under the Order.

Dated: September 27, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–21424 Filed 10–1–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2017–BT–TP–0031]

Energy Conservation Program: Test Procedure for Three-Phase Commercial Air-Cooled Air Conditioners and Heat Pumps With a Certified Cooling Capacity of Less Than 65,000 Btu/h

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 its test procedure for three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 British thermal units per hour (''Btu/h''). To inform interested parties and to facilitate this process, DOE has gathered data, identifying several issues associated with the currently applicable test procedures on which DOE is interested in receiving comment. The issues outlined in this document mainly concern three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h and whether the test procedure and certification and compliance provisions for this equipment should align with those provisions that apply to single-phase central air conditioners and heat pumps with rated cooling capacities of less than 65,000 Btu/h; and any additional topics that may inform DOE's decisions in a future test procedure rulemaking, including methods to reduce regulatory burden while ensuring the procedure's accuracy. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this RFI).

DATES: Written comments and information are requested and will be accepted on or before December 3, 2018.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–201X–BT–TP–0031, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: AirCooledACHP2017TP0031@ee.doe.gov.* Include EERE–2017–BT–TP–0031 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, portable document format (PDF), or American Standard Code for Information Interchange (ASCII) file format, and avoid the use of special characters or any form of encryption.

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. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S.

Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. 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 *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *https://www.regulations.gov/docketBrowser?rpp=25&po=0&D=EERE-2017-BT-TP-0031.* The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See Section III for further information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Antonio Bouza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–4563. Email: *Antonio.Bouza@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–8145. Email: *Michael.Kido@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:

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I. Introduction

Three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B)) DOE's test procedure for three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h is prescribed at 10 CFR 431.96. The following sections discuss DOE's authority to establish and amend the test procedure for three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h, as well as relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority and Background

The Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''),[1] Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part C[2] of EPCA, added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes small commercial package air conditioning and heating equipment—which includes three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h, the subject of this RFI. (42 U.S.C. 6311(1)(B); 42 U.S.C. 6311(8)(B))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of the Act include definitions (42 U.S.C. 6311), energy efficiency standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant a Federal preemption waiver to a State for a standard prescribed or established under 42 U.S.C. 6313(a)—which details DOE's authority for setting standards applying to commercial package air conditioning and heating equipment—in accordance with specific criteria. See 42 U.S.C. 6316(b)(2)(D).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE follows when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must (1) be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of a covered equipment during a representative average use cycle or period of use and (2) not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)).

As a category of commercial package air conditioning and heating equipment, EPCA requires that the test procedures for this equipment—including three-phase systems with capacities of less than 65,000 Btu/h—be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE''), as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE Standard 90.1''). (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear

[1] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015 (EEIA 2015), Public Law 114–11 (April 30, 2015).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

In addition, if DOE determines that a test procedure amendment is appropriate, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including those at issue here, to determine whether an amended test procedure would more accurately or fully comply with the requirements that the procedure not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)) In addition, 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. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

DOE is publishing this RFI to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking History

DOE's test procedure for three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h is codified at 10 CFR 431.96. The test procedure was last amended on May 16, 2012, to incorporate by reference ANSI/AHRI Standard 210/240–2008, ''2008 Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,'' approved by ANSI on October 27, 2011, and updated by addendum 1 in June 2011 and addendum 2 in March 2012 (''AHRI 210/240–2008''). 77 FR 28928 (May 16, 2012). The May 2012 final rule also established additional testing requirements at 10 CFR 431.96(c) and (e), applicable to measuring seasonal energy efficiency ratio (''SEER'') and heating seasonal performance factor (''HSPF'') for this equipment. *Id.* ASHRAE Standard 90.1 was updated on October 26, 2016,[3] but did not revise the test procedures for three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h. In late 2017, AHRI published an updated version of its standard, AHRI 210/240–2017. As outlined further in this document, that updated standard made a number of changes that are of relevance to DOE's current procedure.

II. Request for Information

In the following sections, DOE has identified a variety of issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether to amend the test procedures for three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h. Specifically, DOE is requesting comment on opportunities to streamline and simplify the testing requirements for this equipment.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this process that may not specifically be identified in this document. 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. See 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 the equipment at issue in a manner consistent with the requirements of EPCA.

A. Scope and Definition

Three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h are a category of small commercial package air conditioning and heating equipment. Commercial package air-conditioning and heating equipment may be air-cooled, water-cooled, evaporatively-cooled, or water sourced (not including ground water source), and are electrically-operated, unitary central air conditioners or central air-conditioning heat pumps that are used for commercial applications. 10 CFR 431.92.

Three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h are further disaggregated into four equipment classes: Three-phase air-cooled single-package air conditioners, three-phase air-cooled single-package heat pumps, three-phase air-cooled split-system air conditioners, and three-phase air-cooled split-system heat pumps. This RFI seeks comment on the test procedure applicable to all four equipment classes.

B. Test Procedure

1. Industry Standard

As noted, the current DOE test procedure at 10 CFR 431.96 for three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h incorporates by reference AHRI 210/240–2008 (except section 6.5), which is also referenced in the current version of ASHRAE Standard 90.1 (*i.e.,* ''ASHRAE 90.1–2016''). AHRI 210/240–2008 includes as normative appendix C the entirety of 10 CFR part 430, subpart B, appendix M (''Appendix M'') as amended by a final rule published on October 22, 2007. (72 FR 59906) Appendix M provides the test procedure for determining the efficiency of single-phase central air conditioners and heat pumps with rated cooling capacities of less than 65,000 Btu/h, a consumer product covered under 10 CFR part 430.

In late 2017, AHRI updated the incorporated industry standard, releasing AHRI 210/240–2017. Many of the revisions in the update attempted to harmonize AHRI 210/240–2017 with the updated federal test method for single-phase central air conditioners and heat pumps with rated cooling capacities of less than 65,000 Btu/h. AHRI 210/240–2017 no longer includes any version of Appendix M as a normative appendix, but has integrated requirements consistent with Appendix M throughout the standard.[4] AHRI 210/240–2017 also includes additional updates beyond integrating the revised Appendix M. DOE understands that these changes, if adopted, would not conflict with Appendix M and would be highly unlikely to impact the measured efficiency of the subject equipment during a representative average use cycle as compared to conducting a test relying on the provisions already contained in Appendix M.[5]

[3] There is no publication date printed on ASHRAE Standard 90.1–2016, but ASHRAE issued a press release on October 26, 2016, which can be found at *https://www.ashrae.org/news/2016/ashraeies-publish-2016-energy-efficiency-standard.*

[4] The inclusion of Appendix M as a normative appendix indicated that Appendix M was required to be followed when testing in accordance with AHRI 210/240–2008. As a result, AHRI's direct integration of Appendix M's provisions into AHRI 210/240–2017 achieves the same objective without the need for the previous normative appendix.

[5] For example, AHRI 210/240–2017 has stricter requirements for heat balance than does Appendix M, which also would be acceptable under Appendix M (*i.e.,* they are not less strict requirements).

2. Updates to the Federal Test Method

On June 8, 2016, subsequent to the incorporation of Appendix M into AHRI 210/240–2008, DOE published a test procedure final rule that amended Appendix M. 81 FR 36992 (''June 2016 final rule'').[6] DOE further amended Appendix M in a final rule published on January 5, 2017, to improve test repeatability, reduce testing burden, and improve the accuracy of field representativeness of the testing values without impacting the measured energy consumption. 82 FR 1426 (''January 2017 final rule''). The January 2017 final rule also established Appendix M1, which specifies new efficiency metrics SEER2, EER2, and HSPF2 that, while based on the efficiency metrics in Appendix M for cooling and heating performance, generally have different numerical values than the metrics used in Appendix M. 10 CFR part 430, subpart B, appendix M1 (''Appendix M1''). These new metrics were developed to avoid confusion with the metrics that are currently in use under Appendix M. See 82 FR 1437 (explaining DOE's decision to adopt new metrics SEER2, EER2, and HSPF2). Beginning on January 1, 2023, efficiency representations for single-phase central air conditioners and heat pumps with rated cooling capacities of less than 65,000 Btu/h must be based on the test procedure in Appendix M1. Both Appendix M and Appendix M1 reference AHRI 210/240–2008, sections 6.1.3.2, 6.1.3.4, 6.1.3.5 and figures D1, D2, D4, along with sections of AHRI 1230–2010, ASHRAE 23.1–2010, ASHRAE 37–2009, ASHRAE 41.1–2013, ASHRAE 41.2–1987 (RA 1992), ASHRAE 41.6–2014, ASHRAE 41.9–2011, ASHRAE 116–2010, and AMCA 210–2007.

Additionally, both the June 2016 and the January 2017 final rules adopted amendments related to the certification, compliance, and enforcement of single-phase central air conditioners and heat pumps with rated cooling capacities of less than 65,000 Btu/h, codified in 10 CFR part 429. The amendments included revisions to the basic model definition, clarifying definitions, revisions to the testing and other requirements for determining represented values, additional certification reporting requirements, and additional product-specific enforcement provisions.

[6] A correction was issued on August 18, 2016, correcting a number of editorial errors. 81 FR 55111.

3. Harmonization

DOE understands that the equipment at issue are often nearly identical to single-phase central air conditioners and heat pumps with rated cooling capacities of less than 65,000 Btu/h. Specifically, DOE understands that three-phase equipment models generally are manufactured on the same production lines and are physically identical to their corresponding single-phase central air conditioner and heat pump models—with the exception generally being that the former have three-phase electrical systems—and use components—primarily compressors—that are designed for three-phase power input. Other key operational components, such as heat exchangers and fans, are typically identical for three-phase and single-phase designs of a given model family. In addition, DOE found that most manufacturers' model numbers for single-phase products and three-phase equipment are interchangeable and that there is consistency in energy efficiency ratings between them, *i.e.*, three-phase and single-phase models of the same unit have the same efficiency. See, *e.g.,* 80 FR 42614, 42622 (July 17, 2015).

In light of these facts, DOE is considering whether to harmonize the test procedures for three-phase commercial air-cooled air conditioners and heat pumps with capacities of less than 65,000 Btu/h with those used to test single-phase central air conditioners and heat pumps with capacities of less than 65,000 Btu/h.[7] Having the same test procedure for essentially identical equipment may reduce manufacturer burden as compared to having to follow two separate test procedures. Furthermore, reliance on the current version of Appendix M (or Appendix M1 [8]), as opposed to the prior version referenced in AHRI 210/240–2008, would capture the amendments DOE has made to improve test repeatability and reduce burden, which may lead to improved manufacturer and consumer confidence in ratings. Additionally, harmonization of the test procedures would provide for more comparable information between the three-phase equipment and the single-phase products. Commercial customers considering either single-phase or three-phase equipment would have ratings for both that are based on identical testing requirements when evaluating product options. For these reasons, DOE is weighing whether to modify its procedure for the equipment at issue by referencing the most recently updated version of the test procedure applicable to single-phase central air conditioners (*i.e.*, Appendix M or Appendix M1), as opposed to AHRI 210/240. DOE is also considering referencing the updated AHRI 210/240–2017, which reflects the latest amendments made in the updated version of Appendix M. DOE seeks comment on the merits of adopting AHRI 210/240–2017 as compared to adopting the updated version of Appendix M.

DOE seeks comment on a number of key issues related to whether, and if so how, it should amend its test procedures for three-phase commercial air-cooled air conditioners and heat pumps.

(1) DOE requests comment on whether it should align its test procedure for three-phase commercial air-cooled air conditioners and heat pumps with cooling capacities of less than 65,000 Btu/h with the test procedure for single-phase air-cooled air conditioners and heat pumps with cooling capacities of less than 65,000 Btu/h. DOE requests comments and information on the merits of referencing the current version of Appendix M of 10 CFR part 430, subpart B, or some portion thereof, for the three-phase systems at issue versus the merits of referencing the updated AHRI 210/240–2017, which reflects the updated Appendix M. DOE requests information on the extent that either such amendment would impact a manufacturer's test burden as well as the relative merits of each approach.

As noted, beginning January 1, 2023, single-phase air-cooled air conditioners and heat pumps must be tested according to Appendix M1. DOE recognizes that testing of three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h under Appendix M1 may impact the measured energy efficiency of the tested units. AHRI 210/240–2017 does not contain updates to account for the more recent changes contained in Appendix M1; DOE understands that AHRI intends to address Appendix M1 in a separate revision at a later date. DOE requests comment on the appropriateness of testing three-phase commercial air-cooled air conditioners and heat pumps according to Appendix M1, or some part

[7] The current standards in effect for the three-phase systems and the single-phase systems are presently harmonized. (See Tables 3 and 4 to 10 CFR 431.97 and 10 CFR 430.32(c)(1).)

[8] Beginning January 1, 2023, manufacturers will be required to test and certify single-phase central air conditioner and heat pumps to the test procedure in Appendix M1. The changes in Appendix M1 likely will impact the measured energy efficiency of tested units, and such impacts are reflected in the amended energy conservation standards that apply to these products beginning January 1, 2023. 82 FR 1786 (January 6, 2017).

thereof. DOE requests any information and data on testing manufacturers may have performed with three-phase systems using the procedure in Appendix M1. DOE requests comment and information on the impact to a manufacturer's test burden that would be expected if the equipment at issue were subject to testing under Appendix M1.

(2) DOE also requests comment on whether the general structure and language related to its certification, compliance, and enforcement requirements for three-phase systems in 10 CFR part 429 should mirror the structure, language, and certification, compliance, and enforcement requirements for single-phase systems already found in 10 CFR part 429. DOE notes that AHRI 210/240–2017 includes many updates to mirror these requirements, regardless of the phase of the equipment. If DOE were to adopt such an approach, what would be the advantages and disadvantages in doing so? DOE is also particularly interested in information on the extent that such an amendment would impact a manufacturer's certification and reporting test burden.

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 procedures for three-phase commercial air-cooled air conditioners and heat pumps with cooling capacity of less than 65,000 Btu/h not already addressed by the specific areas identified in this document. DOE particularly seeks information that would improve the repeatability, reproducibility, and consumer representativeness of the test procedures. DOE also requests information that would help DOE create a procedure that would limit manufacturer test burden through streamlining or simplifying testing requirements. Comments regarding the repeatability and reproducibility are also welcome.

DOE also requests feedback on any potential amendments to the existing test procedure that could be considered to address impacts on manufacturers, including small businesses. Regarding the Federal test method, DOE seeks comment on the degree to which the DOE test procedure should consider and be harmonized with the most recent relevant industry standards for three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h and whether there are any changes to the DOE test method that would provide additional benefits to the public. DOE also requests comment on the benefits and burdens of adopting any industry/voluntary consensus-based or other appropriate test procedure, without modification. As discussed, the current test procedure for three-phase commercial air-cooled air conditioners and heat pumps with cooling capacity of less than 65,000 Btu/h references AHRI 210/240–2008, and also establishes additional specifications necessary to address an optional break-in period and set-up of the units to be tested. 10 CFR 431.96(c) and (e). AHRI 210/240–2008 incorporates a version of the DOE test procedure for single-phase air-cooled air conditioners and heat-pumps that has since become outdated. The updated version of the industry standard, AHRI 210/240–2017, has been revised to reflect subsequent amendments to that DOE test procedure that were made to improve the repeatability and reproducibility of the test procedure, as well as to provide clarifying revisions.

Additionally, DOE requests comment on whether the existing test procedures limit a manufacturer's ability to provide additional features to commercial consumers on three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h. DOE particularly seeks information on how the test procedures could be amended to reduce the cost of new or additional features and make it more likely that such features are included on three-phase commercial air-cooled air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h.

Finally, DOE requests comment on whether there are models currently on the market that have unique characteristics preventing them from being tested by the current DOE test procedure or for which the test procedure is unrepresentative. If so, DOE requests information on modifications that could be made to the test procedure to accommodate such models.

III. Submission of Comments

DOE invites all interested parties to submit in writing by December 3, 2018, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of whether and how to amend the test procedure for three-phase commercial air-cooled air conditioners and heat pumps with cooling capacity of less than 65,000 Btu/h. These comments and information will aid in the development of a test procedure notice of proposed rulemaking for three-phase commercial air-cooled air conditioners and heat pumps with cooling capacity of less than 65,000 Btu/h if DOE determines that amended test procedures may be appropriate for this equipment.

Submitting comments via *http://www.regulations.gov.* The *http://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 *http://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 *http://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 *http://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 *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to

http://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 mail or hand delivery, 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 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.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

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 *ApplianceStandardsQuestions@ee.doe.gov.*

Signed in Washington, DC, on September 26, 2018.

Kathleen B. Hogan,

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

[FR Doc. 2018–21401 Filed 10–1–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0485; Airspace Docket No. 18–ASO–10]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Leitchfield, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Leitchfield-Grayson County Airport, Leitchfield, KY, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before November 16, 2018.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Rm. W12–140, Washington, DC 20590; Telephone: 1–800–647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2018–0485; Airspace Docket No. 18–ASO–10, at the beginning of your comments. You may also submit and review received comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would establish Class E airspace extending upward from 700 feet above the surface at Leitchfield-Grayson County Airport, Leitchfield, KY, to support standard instrument approach procedures for IFR operations at this airport.

Comments Invited

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

Communications should identify both docket numbers (Docket No. FAA–2018–0485 and Airspace Docket No. 18–ASO–10) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number.) You may also submit comments through the internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2018–0485; Airspace Docket No. 18–ASO–10.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Leitchfield-Grayson County Airport, Leitchfield, KY, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at this airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

* * * * *

ASO KY E5 Leitchfield, KY [New]

Leitchfield-Grayson County Airport, KY
(Lat. 37°23′59″ N, long. 86°15′41″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Leitchfield-Grayson County Airport.

Issued in College Park, Georgia, on September 24, 2018.

Ryan W. Almasy,

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

[FR Doc. 2018–21318 Filed 10–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2018–F–3347]

Kemin Industries, Inc.; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; petition for rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kemin Industries, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of chromium propionate as a source of supplemental chromium in horse feed.

DATES: Submit either electronic or written comments on the petitioner's environmental assessment by November 1, 2018.

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 November 1, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of November 1, 2018. 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 comment, 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–F–3347 for ''Food Additives Permitted in Feed and Drinking Water of Animals; chromium propionate.'' 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 comment only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Chelsea Trull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729, *chelsea.trull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2306) has been filed by Kemin Industries, Inc., 1900 Scott Ave., Des Moines, IA 50317. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of chromium propionate (21 CFR 573.304) as a source of supplemental chromium in horse feed.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the Agency is placing the environmental assessment (EA) submitted with the petition that is the subject of this notice on public display at the Dockets Management Staff for public review and comment (see **DATES** and **ADDRESSES**). FDA will also place on public display any amendments to, or comments on, the petitioner's EA without further announcement in the **Federal Register**.

If, based on its review, the Agency finds that an environmental impact statement is not required and this petition results in a regulation, the

notice of availability of the Agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: September 26, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21395 Filed 10–1–18; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2018–0642; FRL–9983–78—Region 7]

Air Plan Approval; Iowa; State Implementation Plan and Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Iowa State Implementation Plan (SIP) and the Operating Permits Program. The revisions include updating definitions, clarifying permit rule exemptions and permit-by-rule regulations, revising methods and procedures for performance test/stack test and continuous monitoring systems, and updating the Prevention of Significant Deterioration (PSD) regulations and Operating Permits Program. In addition, the State has removed its rules that implement the Clean Air Interstate Rule (CAIR) and revised their acid rain rules. These revisions will not impact air quality and will ensure consistency between the state and Federally approved rules.

DATES: Comments must be received on or before November 1, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2018–0642 to *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Stephanie Doolan, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7719, or by email at *Doolan.Stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. What SIP revisions are being proposed by EPA?
III. What Operating Permit Plan revisions are being proposed by EPA?
IV. Have the requirements for approval of a SIP and the Operating Permits Program revisions been met?
V. What actions are proposed?
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews

I. What is being addressed in this document?

EPA is proposing to approve a submission from the State of Iowa to revise the Iowa SIP and the Operating Permits Program. The revisions to the Iowa SIP revise the definition for EPA reference method and volatile organic compounds (VOCs), clarifies permit rule exemptions and the State's permit-by-rule regulation, and revises methods and procedures for performance test/stack test and continuous monitoring systems. In addition, the State has removed its rules that implement the CAIR. The State has also revised their Prevention of Significant Deterioration (PSD) regulations to incorporate the most recent Federal requirements. Iowa has also revised their Operating Permits Program by revising the definition for EPA Reference Method, clarifying insignificant activities as applied to internal combustion engines, revising forms used to submit emission inventories and due dates as well as revising the public participation rules. In addition, the State revised their acid rain rules to include the most recent EPA Reference Method.

EPA is not acting on Chapter 25.2—Continuous emission monitoring under the acid rain program, as these provisions are not approved in the operating permits program. EPA is also not acting on the New Source Performance Standards, emission standards for hazardous air pollutants, emission standards for hazardous air pollutants for source categories, and emission guidelines that were submitted in this SIP revision. These will be addressed separately.

II. What SIP revisions are being proposed by EPA?

EPA is proposing the following revisions to the Iowa SIP:

Chapter 20—Scope of Title-Definitions: The State revised the definition of ''EPA reference method,'' to adopt the most current EPA methods for measuring air pollutant emissions (stack testing and continuous monitoring). EPA revised the reference methods in 40 CFR parts 51, 60, 61 and 63 on August 30, 2016. These updates will ensure that state reference methods are equivalent to Federal reference methods and are no more stringent than Federal methods.

The State revised the definition of ''volatile organic compounds'' (VOC) to reflect changes made to the Federal definition of VOC on August 1, 2016. EPA finalized a regulation on August 1, 2016, to exclude the compound 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy) Ethane (HFE–347pcf2) from the Federal definition because this compound makes a negligible contribution to tropospheric ozone formation. This revision to the VOC definition ensures consistency with the Federal definition.

Chapter 22—Controlling Pollution: The State made three revisions under Chapter 22, ''Permits required for new or existing stationary sources,'' subrule 22.1(2), ''Permitting exemptions.'' The revisions to permitting exemptions do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements.

The introductory paragraph to 22.1(2) ''i'', ''Initiation of construction, installation, reconstruction, or alteration (modification) to equipment,'' now cross-refers to subrule 31.3(1) in the Iowa SIP as the previous reference no longer exists. Subrule 31.3(1) refers to definitions for nonattainment new source review requirements for areas designated nonattainment on or after May 18, 1998.

Subparagraph 22.1(2) ''r'', applies to the exemption for an internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft. The added

language (underlined below) clarifies that the owner or operator of an engine that was manufactured, ordered, modified or reconstructed after March 18, 2009, may use this exemption only if the owner or operator, prior to installing, modifying or reconstructing the engine, submits to the department a completed registration on forms provided by the department (*unless the engine is exempted from registration, as specified in this paragraph or on the registration form*). This revision clarifies that an engine that meets the definition of nonroad engine as specified in 40 CFR 1068.30,[1] is exempt from registration requirements. The engine must be in compliance with New Source Performance Standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR part 60, subpart IIII); NSPS for stationary spark ignition internal combustion engines (40 CFR part 60, subpart JJJJ), and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (40 CFR part 63, subpart ZZZZ). The State also corrected punctuation errors in this subparagraph.

Subparagraph 22.1(2)''w''(1) applies to ''small unit'' exemptions from construction permitting. The SIP-approved list of criteria has the word ''or'' between the last two items in the list, which could lead affected owners and operators to conclude that an emission unit does not need to meet all the criteria in the list. This proposed revision changes the word ''or'' to ''and'' between the provision for ''$PM_{2.5}$'' and the one for ''hazardous air pollutants'' in the list of air pollutants. A spelling error will also be corrected with this proposed revision.

The revisions to subrule 22.8(1) ''a'', ''Permit by Rule,'' allow powder coat material to be used in paint booths without being considered ''sprayed material,'' provided the powder coating is applied in an indoor-vented spray booth equipped with filters or an overspray powder recovery system. Included in this docket are justification materials from the state that evaluates that particulate emissions from powder coatings specified under the conditions in permit by rule, would not contribute to the exceedances of the ambient air quality standards for particulate matter. The justification was previously provided in support of the exemption for powder coatings for construction permits (22.1(2)''bb''). Owners and/or operators using the permit by rule must send a notification letter to the Department and complete applicability questions for the facility. Facilities not eligible for permit by rule are required to apply for a construction permit as specified under 567 IAC subrules 22.1(1) and 22.1(3).

Chapter 25—Measurement of Emissions: The State revised subrule 25.1(9), ''Methods and Procedures,'' to adopt the most current EPA reference methods for measuring air pollutant emissions (performance test/stack test, 25.1(9)a, and continuous monitoring systems, 25.1(9)b). EPA revised the reference methods in 40 CFR parts 51, 60, 61 and 63 on August 30, 2016. These proposed updates will ensure that state reference methods are equivalent to Federal reference methods and are no more stringent than Federal methods.

Chapter 33—Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality:

33.1—Purpose. The State revised the applicable date to incorporate the recent changes EPA made to the Federal requirements of the PSD program from August 19, 2015, to October 18, 2016.

33.1(3)—Definitions. The State revised the definition of ''volatile organic compounds'' (VOC) to reflect changes made to the Federal definition of VOC on August 1, 2016. The compound 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy) Ethane (HFE-347pcf2) was excluded from the Federal definition at 40 CFR 51.100(s) because this compound makes a negligible contribution to tropospheric ozone formation. This proposed revision to the state's VOC definition ensures consistency with the Federal definition.

33.3(17)—Public participation. The State made revisions that addresses public participation requirements for the PSD program to reflect updates to the Federal regulations, at 40 CFR part 51, subpart I, published October 18, 2016. The revision removes the requirements for advertisement in a newspaper of general circulation in each region in which the proposed source will be constructed, and provides for posting of the public comment period on a website identified by the department.[2] The electronic notice shall be available for the duration of the public comment period and include the notice of public comment, the draft permit(s), information on how to access the administrative record for the draft permit(s), and how to request or attend a public hearing on the draft permits(s). The revision also requires the department to be consistent in the method of providing public notice while using other means necessary to ensure adequate notice to the affected public.

33.3(22)—Permit rescission. This revision allows for rescission of PSD permits to be consistent with the Federal changes made to 40 CFR part 51, subpart I, published October 18, 2016, with regard to public participation. A notice of permit rescission may be posted on a publicly available website identified by the department.

Chapter 34—Provisions for Air Quality Emissions Trading Programs. Due to the regulations being phased out and replaced with the Cross-State Air Pollution Rule published in the **Federal Register** on August 8, 2011 at 76 FR 48208, Iowa is implementing the Cross-State Air Pollution Rule through a Federal Implementation Plan, and removing its regulations that implement CAIR. Because the State CAIR trading programs created by these rules are no longer being implemented, and because the rules serve no other purpose, removal of the rules from the SIP does not interfere with any applicable requirement concerning attainment or any other requirement of the CAA.

EPA is proposing to approve the rescission of the following chapters in the Iowa SIP:

34.201, CAIR NO_X Annual Trading Program Provisions;

34.202, CAIR Designated Representative for CAIR NO_X sources;

34.203, Permits;

34.204, Reserved;

34.205, CAIR NO_X Allowance Allocations;

34.206, CAIR NO_X Allowance Tracking System;

34.207, CAIR NO_X Allowance Transfers;

34.208, Monitoring and Reporting;

34.209, CAIR NO_X Opt-in Units;

34.210, CAIR SO_2 Trading Program;

34.211–34.219, Reserved;

34.220, CAIR NO_X Ozone Season Trading Program;

34.221, CAIR NO_X Ozone Season Trading Program General Provisions;

34.222, CAIR Designated Representative for CAIR NO_X Ozone Season Sources;

34.223, CAIR NO_X Ozone Season Permits;

34.224, Reserved;

34.225, CAIR NO_X Ozone Season Allowance Allocations;

34.226, CAIR NO_X Ozone Season Allowance Tracking System;

34.227, CAIR NO_X Ozone Season Allowance Transfers;

34.228, CAIR NO_X Ozone Season Monitoring and Reporting, and 34.229, CAIR NO_X Ozone Season Opt-in Units.

[1] *https://www.ecfr.gov/cgi-bin/text-idx?SID=db4b0eb8f69070dfa866091c274c941c&mc=true&node=se40.37.1068_130&rgn=div8.*

[2] The ''department'' is the Iowa Department of Natural Resources and the permitting authority.

III. What operating permits plan revisions are being proposed by EPA?

EPA is proposing to approve the following revisions to Iowa's Operating Permits Program (Title V) as follows:

Chapter 22.100—Definitions for Title V Operating Permits: The State revised the definition of ''EPA reference method,'' to adopt the most current EPA methods for measuring air pollutant emissions (stack testing and continuous monitoring). EPA revised the reference methods in 40 CFR parts 51, 60, 61 and 63 on August 30, 2016. These updates will ensure that state reference methods are equivalent to Federal reference methods and are no more stringent than Federal methods.

Chapter 22.103—Insignificant activities:

Subparagraph 22.103(2)''b''(6) applies to the exemption for internal combustion engines that are used for emergency response purpose with a brake horsepower rating of less than 400 measured at the shaft. The revision adds that emergency engines that are subject to the following rules are not to be considered insignificant: New Source Performance Standards (NSPS), 40 CFR part 60 subpart IIII (stationary compression ignition internal combustion engines); NSPS 40 CFR part 60, subpart JJJJ (stationary spark ignition internal combustion engines), and National Emission Standards for hazardous air pollutants, 40 CFR part 63, subpart ZZZZ (reciprocating internal combustion engines).

Chapter 22.106, Title V permit fees:

The revision to 22.106(2) applies to emission inventories and documentation due dates. The revision specifies that emissions inventories will be submitted with forms specified by the department. For emissions in Polk and Linn Counties, three copies of forms should be submitted that document actual emissions for the previous calendar year annually by March 31. Emissions in other counties are required to submit two copies of forms documenting actual emissions for the previous calendar year annually by March 31. With this revision, the following forms have been removed: Form 1.0, ''Facility Identification''; Form 4.0, ''Emission Unit—Actual Operations and Emissions'' for each emission unit; Form 5.0, ''Title V Annual Emissions Summary/Fee'', and Part 3, ''Application Certification.''

Chapter 22.107, Title V permit processing procedures:

The revision to subrule 22.107(6), ''Public notice and public participation,'' updates the Title V program to reflect the changes made to Federal regulations at 40 CFR 70.7(h), published October 18, 2016. The revision removes the requirements for advertisement in a newspaper of general circulation and adds that posting of the notice, including the draft permit, for the duration of the public comment period on a public website identified by the permitting authority.[3]

Chapter 22.120: This chapter applies to the acid rain program. In Iowa, all provisions of the acid rain program are approved under the Title V Operating Permits Program. Therefore, the test methods as applied in Chapter 22.100 apply to Chapter 22.120 to include the most recent EPA reference method revision to 40 CFR part 75 (August 30, 2016).

Chapter 30—Fees: The revision to ''Fees Associated with Title V Operating Permits'' at 30.4(2) ''b'' removes the following forms: Form 1.0, ''Facility Identification''; Form 5.0, ''Title V Annual Emissions Summary/Fee'', and Part 3, ''Application Certification.'' The revision also adds the language ''with forms specified by the department.''

IV. Have the requirements for approval of a SIP and the Operating Permits Program revisions been met?

The submission met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The State held a public comment period from December 20, 2017 to January 22, 2018, with a public hearing on January 22, 2018. No comments were received. The submissions also satisfied 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. These revisions are also consistent with applicable EPA requirements of Title V of the CAA and 40 CFR part 70.

V. What actions are proposed?

EPA is proposing to approve revisions to the Iowa SIP and the Operating Permits Program. The proposed revisions clarify rules, makes revisions and corrections, and rescinds rules no longer relevant to the air program. 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.

VI. Incorporation by Reference

In this document, 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, EPA is proposing to incorporate by reference the Iowa Regulations described in the proposed amendments to 40 CFR part 52 set forth below. 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).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act (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 Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

[3] Iowa Department of Natural Resources.

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 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

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: September 25, 2018.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 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. Amend § 52.820, paragraph (c), by:

■ a. Revising the table entries ''567–20.2'', ''567–22.1'', ''567–22.8'', ''567–25.1'', ''567–33.1'', and ''567–33.3'', and

■ b. Removing the table entries and the heading for ''Chapter 34—Provisions for Air Quality Emissions Trading Programs'' in its entirety.

The revisions 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	4/18/2018	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	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.	4/18/2018	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	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.''
*	*	*	*	* * *
567–22.8	Permit by Rule	4/18/2018	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	* * *
Chapter 25—Measurement of Emissions				
567–25.1	Testing and Sampling of New and Existing Equipment.	4/18/2018	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 33—Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality				
567–33.1	Purpose	4/18/2018	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
567–33.3	Special Construction Permit Requirements for Major Stationary Sources in Areas Designated Attainment or Unclassified (PSD).	4/18/2018	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	Provisions of the 2010 $PM_{2.5}$ PSD—Increments, SILs and SMCs rule (75 FR 64865, October 20, 2010) relating to SILs and SMCs that were affected by the January 22, 2013, U.S. Court of Appeals decision are not SIP approved. Iowa's rule incorporating EPA's 2007 revision of the definition of ''chemical processing plants'' (the ''Ethanol Rule,'' published May 1, 2007) or EPA's 2008 ''fugitive emissions rule,'' (published December 19, 2008) are not SIP-approved.
*	*	*	*	*

* * * * *

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. Amend appendix A to part 70 by adding new paragraph (t) under Iowa to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(t) The Iowa Department of Natural Resources submitted for program approval revisions to rules 567–22.103, 567–22.106, 567–22.107, and 567–30.4. The state effective date is April 18, 2018. This revision is effective [date 60 days after date of publication of the final rule in the **Federal Register**].

* * * * *

[FR Doc. 2018–21287 Filed 10–1–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 423

[CMS–4174–P]

RIN 0938–AT27

Medicare Program: Changes to the Medicare Claims and Medicare Prescription Drug Coverage Determination Appeals Procedures

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations setting forth the appeals process that Medicare beneficiaries, providers, and suppliers must follow in order to appeal adverse determinations regarding claims for benefits under Medicare Part A and Part B or determinations for prescription drug coverage under Part D. These changes would help streamline the appeals process and reduce administrative burden on providers, suppliers, beneficiaries, and appeal adjudicators. These revisions, which include technical corrections, would also help to ensure the regulations are clearly arranged and written to give stakeholders a better understanding of the appeals process.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 3, 2018.

ADDRESSES: In commenting, please refer to file code CMS–4174–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address *only*: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4174–P, P.O. Box 8013, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address *only*: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4174–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joella Roland, (410) 786–7638 or Nishamarie Sherry, (410) 786–1189.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments

received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

As specified under sections 1869 and 1860D–4 of the Social Security Act (the Act) and their implementing regulations, once Medicare makes a coverage or payment determination under Medicare Parts A, B, or D, affected parties have the right to appeal the decision through four levels of administrative review. If a minimum amount in controversy (AIC) is met, parties can then appeal the decision to federal district court.

Section 1869 of the Act sets forth the process for appealing Parts A and B claim determinations. For most Part A and B claims, the initial determination is made by a Medicare Administrative Contractor (MAC). If a party is dissatisfied with the initial determination, the party may request a redetermination by the MAC, which is a review by MAC staff not involved in the initial determination. If a party is dissatisfied with the MAC's redetermination, the party may request a Qualified Independent Contractor (QIC) reconsideration consisting of an independent review of the administrative record, including the redetermination. Provided a minimum AIC is met, parties then have the option to appeal to the Office of Medicare Hearings and Appeals (OMHA) where they may receive either a hearing or review of the administrative record by an Administrative Law Judge (ALJ), or a review of the administrative record by an attorney adjudicator. Parties then have the option to appeal to the Medicare Appeals Council (the Council) within the Departmental Appeals Board, where an Administrative Appeals Judge examines their claim. A party can then appeal the decision to federal district court if certain requirements are met, including a minimum AIC.

The appeals process described above for Parts A and B claim determinations was initially proposed in the November 15, 2002 **Federal Register** (67 FR 69312), which was promulgated to implement section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554). This process was implemented in an interim final rule with comment period published on March 8, 2005 (the 2005 interim final rule with comment period) (70 FR 11420), which also set forth new provisions to implement the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173). Correcting amendments to the 2005 interim final rule were published on June 30, 2005 (70 FR 37700) and August 26, 2005 (70 FR 50214), and the final rule was published on December 9, 2009 (74 FR 65296). Subsequent revisions to implement section 201 of the Strengthening Medicare and Repaying Taxpayers Act of 2012 (Pub. L. 112–242) were published on February 27, 2015 (80 FR 10611). These appeals procedures for Part A and B claims are set forth in regulations at part 405, subpart I.

Section 1860D–4 of the Act sets forth the appeals process for Part D coverage determinations. Under Medicare Part D, the Part D plan sponsor issues a coverage determination. If this coverage determination is appealed, the Part D plan sponsor reviews the determination, which is known as a redetermination. If a party is dissatisfied with the redetermination, the party may request a reconsideration by an independent review entity. Similar to the appeals process for Parts A and B claim determinations, provided a minimum AIC is met, parties then have the option to appeal to OMHA where they may receive either a hearing or review of the administrative record by an ALJ, or a review of the administrative record by an attorney adjudicator. If not satisfied with OMHA's decision, a party then may appeal to the Council. The Council decision then may be appealed to federal district court if certain requirements are met, including a minimum AIC. These procedures are set forth in regulations at part 423, subparts M and U.

On January 17, 2017, we issued a final rule entitled ''Medicare Program: Changes to the Medicare Claims and Entitlement, Medicare Advantage Organization Determination, and Medicare Prescription Drug Coverage Determination Appeals Procedures'' (82 FR 4974) (the January 17, 2017 final rule), which revised the Parts A, B, C, and D appeals procedures. The goals of this rulemaking were to streamline the appeals process, increase consistency in decision-making, improve efficiency for both appellants and adjudicators, and provide particular benefit to beneficiaries by clarifying processes and adding provisions for increased assistance when they are unrepresented. On April 16, 2018, we issued a final rule (83 FR 16440) that made additional changes to subparts M and U in order to implement section 704 of the Comprehensive Addiction and Recovery Act of 2016 (Pub. L. 114–198), along with other changes.

Through our experience implementing the current appeals process, and through additional research, we have identified several opportunities to streamline the claims appeals process and reduce associated burden on providers, beneficiaries, and appeals adjudicators. We have also identified several technical corrections that should be made to correct cross-references, inconsistent definitions, and confusing terminology.

II. Provisions of the Proposed Regulations

A. Removal of Requirement That Appellants Sign Appeal Requests (§§ 405.944, 405.964, 405.1112, and 423.2112)

Existing regulations at part 405, subpart I; and part 423, subparts M and U, specify the required elements of requests for Medicare Parts A and B claims appeals and for Medicare Part D coverage determination appeals, respectively. Generally, when a contractor or plan issues a Part A or B initial determination or a Part D coverage determination, it notifies the provider, supplier, and/or beneficiary and offers the opportunity to appeal. If this determination is appealed, the contractor or plan reviews the determination, which, in Medicare Parts A, B and D appeals, is known as a redetermination (see §§ 405.940 and 423.580). This can be followed by a review by an independent contractor consisting of an independent review of the administrative record, including the redetermination, which is known as a reconsideration (§§ 405.960 and 423.600). If a minimum amount-in-controversy is met, parties then have the option to appeal to the OMHA where the administrative record may be reviewed by an attorney adjudicator or an ALJ or a hearing may be held by an ALJ (§§ 405.1000 *et seq.* and 423.2000 *et seq.*). Parties then have the option to appeal to the Council within the Departmental Appeals Board where an Administrative Appeals Judge reviews their claim (§§ 405.1100 *et seq.* and 423.2100 *et seq.*).

Appeal requests can be made using different standard forms. These standard forms include the following: Medicare Redetermination Request Form (CMS–20027); Medicare Reconsideration Request Form (CMS–20033); Request for

Administrative Law Judge Hearing or Review of Dismissal (OMHA–100); and Request for Review of Administrative Law Judge (ALJ) Medicare Decision/Dismissal (DAB–101). A written request that is not made on a standard form is also accepted if it contains certain required elements. For example, see, §§ 405.944(b), 405.964(b), 405.1014(a), 405.1112, 423.2014(a), 423.2112.

As discussed previously, all Medicare Parts A, B, and D appeal requests must contain the information specified in our regulations. In addition, for Parts A and B claims appeal requests at the redetermination, reconsideration, and Council review levels (§§ 405.944(b)(4), 405.964(b)(4), and 405.1112(a)), and for Part D coverage determination appeal requests at the Council level (§ 423.2112(a)(4)), the appellants must sign their appeal requests. However, there is no signature requirement when the appellant requests OMHA review of Parts A and B claim determinations, or when the appellant requests a redetermination, reconsideration, or OMHA review of Part D coverage determinations. In addition, there is no requirement that appellants sign appeals requests for appeals of Part C organization determinations.

In order to promote consistency between appeal levels, ensure transparency in developing our appeal request requirements, help ensure that we do not impose nonessential requirements on appellants, reduce the burden on appellants, and improve the appeals process based on our experience, we are proposing that appellants in Medicare Parts A and B claim and Part D coverage determination appeals be allowed to submit appeal requests without a signature. Specifically, we are proposing to revise §§ 405.944(b)(4), 405.964(b)(4), 405.1112(a), and 423.2112(a)(4) to remove the requirement of the appellant's signature for appeal requests.

As discussed previously, there is no requirement that appellants sign appeal requests when appealing their cases to OMHA, for the Part C organization determination appeals process, or at the redetermination and reconsideration levels of Part D appeals. However, the other requirements for appeal requests are substantially similar between levels of appeal and appeals processes, or there is a clear reason for the differing requirements. For example, the requirements for Part A and B appeal requests at the redetermination and reconsideration levels are identical with the exception of the reconsideration requirement that the name of the contractor be listed on the reconsideration appeal request (§§ 405.944 and 405.964). The rationale for the requirement that the name of the contractor be included on reconsideration appeal requests is that without this information, the independent contractor does not have a method of determining which contractor made the initial determination and redetermination, and is unable to get the case file. Since the contractor doing the redetermination is the same contractor who performed the initial determination, it is not necessary that this information be included in the redetermination appeal request.

By contrast, we do not believe there is a compelling reason to require that a signature be included on redetermination, reconsideration, and Council-level appeal requests, but not on OMHA appeal requests. Removing the requirement that appellants sign their appeal requests, would help promote consistency between appeal request requirements, thus making the appeals process easier for parties to understand.

Eliminating the requirement that appellants sign their appeal requests would reduce the burden of developing the appeal request and appealing dismissals of appeal requests for lack of a signature to the next level of review (for example, §§ 405.952(b), 405.972(b)). Allowing adjudicators to review appeal requests without signatures would allow them to focus their attention on the merits of the appeal, rather than having to dismiss potentially meritorious appeals for a lack of a signature.

When we promulgated the requirement for appellants to sign the appeal requests in regulations, we included a signature on the appeal request to ensure that the person requesting the appeal was a proper party to the appeal. Through experience, we have found that, in practice, little verification of the signature is possible. To determine if the appeal requestor is a proper party to the appeal, the adjudicator uses the name of the beneficiary and name of the party listed on the appeal request, in addition to the information listed in the case file.

The other appeal request requirements consist of fields that are necessary for the adjudicators to properly process the appeal request. As discussed previously, the name of the contractor who made the redetermination is required for the independent contractor to review the case file. The Part A and B redetermination appeal request requirement to include the disputed service and/or item enables the contractor to determine the merit of the appellant's claim.

Thus, we believe there is no need for a signature on an appeal request at this time and propose to eliminate that requirement. However, if, we find in the future that there are other reasons that would warrant an appellant's signature on an appeal request (for example, for a good-faith attestation), we would re-examine the possibility of adding the requirement back in. However, given that our existing statutory authority limits our ability to enforce certain attestations, we find the signature requirement unnecessary.

We are inviting public comments on our proposal to revise §§ 405.944(b)(4), 405.964(b)(4), 405.1112(a), and 423.2112(a)(4) of the regulations to remove the requirement that the appellant sign the appeal request.

B. Change to Timeframe for Vacating Dismissals (§§ 405.952, 405.972, 405.1052, and 423.2052)

The regulations at §§ 405.952(d), 405.972(d), 405.1012(e), and 423.2052(e) allow adjudicators to vacate a dismissal of an appeal request for a Medicare Part A or B claim or Medicare Part D coverage determination within 6 months of the date of the notice of dismissal. This allows sufficient time for adjudicators to carefully evaluate their dismissals while taking into account the principle of administrative finality.

Through experience, we have concluded that the timeframe for vacating a dismissal would be better expressed in calendar days, rather than months, for two reasons. First, all timeframes in the regulations under part 405, subpart I and part 423 subpart U, associated with the filing of appeal requests, adjudication periods, reopening of prior determinations, and other time-limited procedural actions are expressed in calendar days, not months. For example, see §§ 405.942 and 423.2056. Second, applying a timeframe based on days, rather than months, leads to more consistency in interpretation and actual timeframes. A timeframe based on months could be subject to varying interpretations, as the number of days in a consecutive 6-month period varies from 181 to 184 days. For example, if an ALJ or attorney adjudicator's dismissal is dated August 31 of one calendar year, advancing the timeframe 6 months to February could be confusing for parties and adjudicators because February does not contain 30 or 31 days. Also, given that February has only 28 or 29 days (in a leap year), any 6-month period that includes February would be shorter than other 6 month periods, leading to

some inconsistency in the actual timeframe for vacating a dismissal.

To provide more consistency and predictability for appellants and adjudicators, and better conformity with other timeframes in the part 405, subpart I and part 423 subpart U, we are proposing to revise the timeframe for vacating a dismissal from 6 months to 180 days in §§ 405.952(d), 405.972(d), 405.1052(e), and 423.2052(e).

C. Technical Correction to Regulations To Change Health Insurance Claim Number (HICN) References to Medicare Numbers (§§ 405.910, 405.944, 405.964, 405.1014, 405.1112, 423.2014, and 423.2112)

Section 501 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10), added section 205(c)(2)(C)(xiii) of the Act to prohibit Social Security Numbers (or derivatives) from being displayed on Medicare cards. As a result, CMS is undertaking efforts to issue new Medicare cards, which contain a randomly generated Medicare Beneficiary Identifier (MBI), rather than the Social Security Number-based Health Insurance Claim Number (HICN) that is on the current Medicare cards. In order to ensure that appellants can easily submit appointment of representative documentation and appeal requests, we would accept this documentation with HICNs or MBIs. Consistent with these efforts, we are proposing to remove references to the Social Security Number-based HICN on Medicare cards that are included in the Medicare appeals regulations, and to replace them with references to Medicare number to clarify that either a HICN or MBI can be included on appointment of representative documentation and appeal requests. Accordingly, we are proposing to revise the following provisions of Medicare regulations to remove the words ''health insurance claim'' from the phrase ''Medicare health insurance claim number'' so that there is only a reference to ''Medicare number'': §§ 405.910(c)(5), 405.944(b)(2), 405.964(b)(2), 405.1014(a)(1)(i), 405.1112(a), 423.2014(a)(1)(i), and 423.2112(a)(4).

D. Removal of Redundant Regulatory Provisions Relating to Medicare Appeals of Payment and Coverage Determinations and Conforming Changes (§§ 423.562, 423.576, 423.602, 423.604, 423.1970, 423.1972, 423.1974, 423.1976, 423.1984, 423.1990, 423.2002, 423.2004, 423.2006, 423.2014, 423.2020, 423.2044, 423.2100, and 423.2136)

The January 17, 2017 final rule revised certain Medicare procedures for appeals of payment and coverage determinations for items and services furnished to Medicare beneficiaries and enrollees. Since the publication of this final rule, we have identified four regulatory provisions in part 423, subpart U that are redundant. In order to reduce potential confusion, we are proposing to remove redundant provisions at §§ 423.1970, 423.1972, 423.1974, and 423.1976 and, where necessary, incorporate appropriate provisions in other sections of the regulations.

Section 423.1970 of the regulations relating to the rights of enrollees to an ALJ hearing provides—

- In paragraph (a), that, if the amount remaining in controversy after the independent review entity (IRE) reconsideration meets the threshold requirement established annually by the Secretary, an enrollee who is dissatisfied with the IRE reconsideration determination has a right to a hearing before an ALJ;
- In paragraph (b)(1), the methodology for computing the AIC when the basis for appeal is the refusal by the Part D plan sponsor to provide drug benefits;
- In paragraph (b)(2), the methodology for computing the AIC when the basis for appeal is an at-risk determination made under a drug management program in accordance with § 423.153(f); and
- In paragraph (c), the requirements for aggregating appeals to meet the AIC.

Section 423.2002 also contains provisions on the right to an ALJ hearing. This section contains cross-references to the provisions in § 423.1970, and also—

- Establishes a 60-calendar day timeframe for filing a written request for an ALJ hearing following receipt of the written notice of the IRE's reconsideration; and indicates the AIC requirement must be met to be entitled to an ALJ hearing;
- Provides the circumstances under which an enrollee may request that an ALJ hearing be expedited;
- Establishes a 5-calendar day presumption for receipt of the reconsideration following the date of the written reconsideration, unless there is evidence to the contrary; and
- Provides that, for purposes of the section, requests for hearing are considered as filed on the date they are received by the office specified in the IRE's reconsideration.

Because §§ 423.1970 and 423.2002 both address the right to an ALJ hearing, and because there is a possibility that confusion may arise from having two sections with the same title in the same CFR subpart, we are proposing to remove § 423.1970. Because § 423.1970(a) is redundant of §§ 423.2000(a) and 423.2002(a)(2) in describing that an enrollee has a right to an ALJ hearing when the enrollee is dissatisfied with an IRE reconsideration and meets the AIC requirement, we believe § 423.1970(a) should be eliminated. We are proposing to relocate § 423.1970(b) and (c) to new proposed § 423.2006 (''Amount in controversy required for an ALJ hearing and judicial review'') as paragraphs (c) and (d), respectively.

In addition, we are proposing to remove the reference to ''CMS'' in § 423.1970(b) (relocated to proposed § 423.2006(c)) to clarify that adjudicators, not CMS, ultimately compute the amount remaining in controversy in determining whether the AIC threshold is met for an ALJ hearing or review of an IRE dismissal, and judicial review.

We believe having one section titled ''Right to an ALJ hearing'' at § 423.2002 and another section titled ''Amount in controversy required for an ALJ hearing and judicial review'' at § 423.2006 is more consistent with the corresponding rules in 42 CFR part 405, subpart I for appeals of Medicare Part A and Part B initial determinations (§§ 405.1002 and 405.1006). For consistency with § 423.2000(a) and language that was removed from § 423.1970(a), we are also proposing to add language to § 423.2002(a) providing that the right to an ALJ hearing is available to enrollees who are dissatisfied with the IRE's reconsideration determination.

In order to further increase consistency with § 405.1006 and consolidate the Medicare Part D appeals rules regarding the AIC, we are proposing to incorporate provisions in proposed new § 423.2006(a) and (b) that are similar to those provisions contained at § 405.1006(b) and (c), describing the amounts in controversy required for an ALJ hearing and judicial review, respectively, including the annual adjustment of these amounts. In order to more clearly state the AIC requirements for appeals of Part D prescription drug plan coverage

determinations, without the need for multiple statutory and regulatory cross-references, we are proposing that new § 423.2006 would include the following:

• At proposed paragraph (a)(1), a provision similar to § 405.1006(b)(1) that the required amount remaining in controversy must be $100 increased by the percentage increase in the medical care component of the Consumer Price Index for All Urban Consumers (U.S. city average) as measured from July 2003 to the July preceding the current year involved.

• At proposed paragraph (a)(2), a provision similar to § 405.1006(b)(2) that, if the figure in § 423.2006(a)(1) is not a multiple of $10, it is rounded to the nearest multiple of $10, and that the Secretary will publish changes to the AIC requirement in the **Federal Register** when necessary.

• At proposed paragraph (b), a provision similar to § 405.1006(c) that, to be entitled to judicial review, the enrollee must meet the AIC requirements of this subpart and have an amount remaining in controversy of $1000 or more, adjusted as specified in proposed § 423.2006(a)(1) and (2).

• At proposed paragraph (c), a provision similar to current § 423.1970(b) explaining how the amount remaining in controversy is calculated.

• At proposed paragraph (d), the text currently found in § 423.1970(c) concerning aggregation of appeals to meet the amount in controversy.

Finally, we are proposing to update or remove the cross-references to § 423.1970 in §§ 423.562(b)(4)(iv), 423.576, 423.602(b)(2), 423.1984(c); 423.2002(a) introductory text and (a)(2), and (b)(3), 423.2004(a)(2), and 423.2044(c) and to add a cross-reference to § 423.2006 in § 423.1990(b)(3) in place of the language ''established annually by the Secretary.''

Section 423.1972, titled ''Request for an ALJ hearing,'' provides the procedures an enrollee must follow when filing a request for hearing as follows:

• Paragraph (a) provides that a written request must be filed with the OMHA office specified in the IRE's reconsideration notice.

• Paragraph (b) provides the timeframe for filing a request.

• Paragraph (c)(1) states that if a request for hearing clearly shows that the AIC is less than that required under § 423.1970, the ALJ or attorney adjudicator dismisses the request.

• Paragraph (c)(2) provides that if, after a hearing is initiated, the ALJ finds that the AIC is less than the amount required under § 423.1970, the ALJ discontinues the hearing and does not rule on the substantive issues raised in the appeal.

With the exception of paragraph (c)(2), all of the provisions in § 423.1972 are duplicative of or incorporate by reference other provisions found in § 423.2002(a) and (d) (Right to an ALJ hearing), § 423.2014(d)(2) and (e) (Request for an ALJ hearing or a review of an IRE dismissal), § 423.2020 (Time and place for a hearing before an ALJ), and § 423.2052(a)(2) (Dismissal of a request for a hearing before an ALJ or request for review of an IRE dismissal). In order to eliminate the redundancy and potential confusion, we are proposing to remove § 423.1972 in its entirety. As a part of this proposed change, we also are proposing to update or remove the cross-references to § 423.1972 in §§ 423.604, 423.1984(c), 423.2014(d) introductory text and (e)(1), and 423.2020(a). We do not believe it is necessary to retain § 423.1972(c)(2) in another location because ALJs have broad authority to regulate the course of the hearing. In the rare circumstances described in § 423.1972(c)(2) where an ALJ does not make a finding regarding the AIC until after a hearing is initiated, the ALJ may discontinue the hearing and issue a dismissal under §§ 423.2002(a)(2) and 423.2052(a)(2).

Section 423.1974, titled ''Council review,'' provides that an enrollee who is dissatisfied with an ALJ's or attorney adjudicator's decision or dismissal may request that the Council review the ALJ's or attorney adjudicator's decision or dismissal as provided in § 423.2102. This provision is similar to § 423.2100, titled ''Medicare Appeals Council review: general.'' To eliminate the redundancy, we are proposing to remove the language of § 423.1974 and incorporate it in § 423.2100(a). This language would replace the language in § 423.2100(a). We also are proposing to update or remove the cross-references to § 423.1974 in §§ 423.562(b)(4)(v) and 423.1984(d).

Section 423.1976, titled ''Judicial review,'' provides the following:

• In paragraph (a), that an enrollee may request judicial review of an ALJ's or attorney adjudicator's decision if the Council denied the enrollee's request for review and the AIC meets the threshold requirement established annually by the Secretary.

• In paragraph (b), that the enrollee may request judicial review of a Council decision if it is the final decision of CMS and the AIC meets the threshold established in paragraph (a)(2).

• In paragraph (c), that, in order to request judicial review, an enrollee must file a civil action in a district court of the United States in accordance with section 205(g) of the Act.

With the exception of paragraph (a), these provisions are largely duplicative of other provisions contained in § 423.2136, also titled ''Judicial review.'' To eliminate this redundancy, we are proposing to remove the provisions of § 423.1976 and revise § 423.2136 as follows:

• Section 423.2136(a) would be redesignated as § 423.2136(a)(1). The cross-reference to § 423.1976 would be removed, and language from § 423.1976(b) would be incorporated in § 423.2136(a)(1)(i) and (ii) and revised by replacing ''CMS'' with ''the Secretary'' for consistency with the language in section 1876(c)(5)(B) of the Act and § 423.2140, and replacing ''paragraph (a)(2) of this section'' with ''§ 423.2006'' which we are proposing to add to the regulations to address the AIC requirements.

• Language at § 423.1976(a) would be revised to incorporate a reference to § 423.2006 and the authorizing language from § 423.2136(a) (proposed § 423.2136(a)(1)) and moved to new § 423.2136(a)(2).

• We also are proposing to update or remove the cross-references to § 423.1976 in §§ 423.562(b)(4)(vi), 423.576, and 423.2136(b)(1). We seek comment on these proposed changes.

In summary, we are proposing to remove or relocate language as shown in the following table:

Current section	Proposed new section	Proposed action	Rationale
§ 423.1970(a)	N/A	Remove	Similar language exists in §§ 423.2000(a) and 423.2002(a)(2).
§ 423.1970(b)	§ 423.2006	Remove and incorporate revised language at proposed new § 423.2006(c).	Increases consistency with § 405.1006.
§ 423.1970(c)		Remove and incorporate at proposed new § 423.2006(d).	

Current section	Proposed new section	Proposed action	Rationale
N/A	§ 423.2006(a)	Add language concerning AIC computation not previously outlined in 42 CFR part 423.	
N/A	§ 423.2006(b)		
§ 423.1972(a), § 423.1972(b), § 423.1972(c)(1).	N/A	Remove	Similar language exists in §§ 423.2002(a) and (d), 423.2014(d)(2) and (e), 423.2020, and 423.2052(a)(2) and reduces redundancy.
§ 423.1972(c)(2)	N/A	Remove	Unnecessary.
§ 423.1974	N/A	Remove and incorporate into § 423.2100(a).	Reduces redundancy.
§ 423.1976(a)	N/A	Remove and incorporate revised language at new § 423.2136(a)(2).	
§ 423.1976(b)		Remove and incorporate revised language at proposed new § 423.2136(a)(1).	
§ 423.1976(c)	N/A	Remove	Similar language exists in § 423.2136(b)(1).

E. Change to Timeframe for Council Referral (§ 405.1110 and § 423.2110)

The regulations at §§ 405.1110(a) and (b)(2) and 423.2110(a) and (b)(2) give CMS or its contractors 60 calendar days after the date or issue date, respectively, of OMHA's decision or dismissal to refer the case to the Council. In the case of Part A and Part B appeals, CMS or its contractors are sent the decision notice when they are a party to the hearing or soon after the hearing occurred. For Part D appeals, as specified in § 423.2046(a)(1), the decision notice is sent to the enrollee, plan sponsor, and IRE.

Our regulations generally include regulatory timeframes that start when CMS or its contractors receive the decision notice, rather than the date the decision notice was issued. For example, § 405.1010(b)(3), which addresses the timing of when CMS or its contractor may elect to participate in an ALJ hearing, provides that CMS or its contractor must send notice of its intent to participate, if no hearing is scheduled, no later than 30 calendar days after notification that a request for hearing was filed or, if a hearing is scheduled, no later than 10 calendar days after receiving the notice of hearing. The rationale for starting the timeframe in § 405.1010(b)(3) after receipt of the notice was to ensure that CMS or its contractors have sufficient time to conduct a thorough evaluation of the facts and the case.

For the same reason, we are proposing to revise the timeframe in §§ 405.1110(a) and (b)(2) and 423.2110(a) and (b)(2) for CMS or it contractors to refer a case to the Council such that the timeframe would begin after the ALJ's or attorney adjudicator's decision or dismissal is received. Starting the timeframe after CMS or its contractor receives OMHA's written decision or dismissal would help ensure that CMS and its contractors have sufficient time to decide whether the case is the type of case that should be referred to the Council for review. This proposed change would help ensure that even if CMS and its contractors receive a delayed notice, they would have sufficient time to decide whether the case should be referred to the Council.

In order to ensure consistent implementation of this proposal, we also are proposing to add new §§ 405.1110(e) and 423.2110(e) to provide that the date of receipt of the ALJ's or attorney adjudicator's decision or dismissal is presumed to be 5 calendar days after the date of the notice of the decision or dismissal, unless there is evidence to the contrary. This would help facilitate the Council's determination on the timeliness of the referral by establishing a date by which the Council may presume that CMS or its contractor received the decision from OMHA. This 5 day mailing presumption is consistent with the presumption included in §§ 405.1102(a)(2) and 423.2102(a)(3) with respect to the timeframe for requesting Council review following an ALJ's or attorney adjudicator's decision or dismissal.

For these reasons, we are proposing to revise the Council referral timeframes in §§ 405.1110(a) and (b)(2) and 423.2110(a) and (b)(2), and proposing to add §§ 405.1110(e) and 423.2110(e) as discussed previously.

F. Technical Correction to Regulation Regarding Duration of Appointed Representative in a Medicare Secondary Payer Recovery Claim (§ 405.910)

Section 405.910 sets forth provisions addressing the appointment of representatives in a Medicare Parts A and B claims appeals, including for secondary payer recovery claims. Specific requirements regarding the duration of time that an appointment of representative instrument is valid are provided under § 405.910(e).

On February 27, 2015, we published a final rule entitled ''Medicare Program; Right of Appeal for Medicare Secondary Payer Determinations Relating to Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers' Compensation Laws and Plans (80 FR 10611). In that final rule, we added paragraph (e)(4) to § 405.910 in order to provide applicable plans with the benefit of the existing rule for Medicare secondary payers regarding the duration of appointment for an appointed representative. Within this added provision, we included a citation to § 405.906(a)(1)(iv), as the regulation establishing party status for applicable plans. This citation is an incorrect cross-reference; and the correct cross-reference is § 405.906(a)(4). We are proposing to revise § 405.910(e)(4) to correct the cross-reference. This proposed correction would not alter any existing processes or procedures within the Medicare claims appeals process.

G. Technical Correction to Actions That Are Not Initial Determinations (§ 405.926)

Section 405.926 sets forth actions that are not considered initial determinations subject to the administrative appeals process under part 405, subpart I. On October 4, 2016, we issued a final rule entitled ''Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities'' (81 FR 68688 through 68872) that moved the definition of ''transfer and discharge'' in § 483.12 to the definitions under § 483.5.

Accordingly, we updated the cross-reference to ''§ 483.5'' within § 405.926(f) to the cross-reference to ''§ 483.5(n)''. However, the citation of § 483.5(n) is an incorrect cross-reference.

To correct this error, we are proposing to revise § 405.926(f) to remove the incorrect reference to ''§ 483.5(n)'' and replace it with the cross-reference ''§ 483.5 definition of 'transfer and discharge' ''. This proposed technical correction would serve to correct an incorrect citation. It would not alter any existing processes or procedures within the Medicare claims appeals process.

H. Changes To Enhance Implementation of Rule Streamlining the Medicare Appeals Procedures (§§ 405.970, 405.1006, 405.1010, 405.1014, 405.1020, 405.1034, 405.1046, 405.1052, 405.1056, 423.1014, 423.1990, 423.2002, 423.2010, 423.2016, 423.2032, 423.2034, 423.2036, 423.2052, and 423.2056)

Since we published the January 17, 2017 final rule, we have identified several provisions that, upon further review, pose unanticipated challenges with implementation, which are explained in this section. In addition, there are other regulatory provisions that we believe require additional clarification and the correction of technical errors and omissions. In the proposals listed in this section, we seek to help ensure the provisions are implemented as intended, provide clarification, and correct technical errors and omissions. Our proposed changes are as follows.

1. Amount in Controversy (AIC) (§ 405.1006)

Section 405.1006 addresses the AIC required for an ALJ hearing and judicial review, and § 405.1006(d) provides the methodology for computing the AIC. In general, the AIC is computed as the amount that the provider or supplier bills for the items and services in the disputed claim, reduced by any Medicare payments already made or awarded for the items or services, and further reduced by any deductible and/or coinsurance amounts that may be collected for the items or services. In the January 17, 2017 final rule, we created several exceptions to this general computation methodology for situations where we believed an alternative methodology would more accurately describe the amount actually in dispute. Among these alternatives was the calculation methodology specified in § 405.1006(d)(4), which states that when an appeal involves an identified overpayment, the AIC is the amount of the overpayment specified in the demand letter for the items or services in the disputed claim. For appeals involving an estimated overpayment amount determined through the use of statistical sampling and extrapolation, § 405.1006(d)(4) further provides that the AIC is the total amount of the estimated overpayment determined through extrapolation, as specified in the demand letter.

When we created this exception, we did not account for the possibility that the amount of the overpayment or estimated overpayment specified in the demand letter might change throughout the administrative appeals process if, for example, an adjudicator finds that some of the items or services for which an overpayment was demanded are covered and payable, or alternatively, if an adjudicator raises a new issue that results in the denial of additional items or services. Even outside the administrative appeals process, the amount of an overpayment may be revised by a CMS contractor (for example, following a discussion period with the contractor that initially determined the overpayment). Although some of these situations may result in the issuance of a revised demand letter, such a letter may not always be issued during the pendency of the appeals process.

To account for situations where the amount of an overpayment specified in the demand letter does not reflect subsequent adjustments to the amount remaining in controversy, we are proposing to revise § 405.1006(d)(4) to state that when an appeal involves an identified overpayment, the AIC is the amount of the overpayment specified in the demand letter, or the amount of the revised overpayment if the amount originally demanded changes as a result of a subsequent determination or appeal, for the items or services in the disputed claim. For appeals involving an estimated overpayment amount determined through the use of statistical sampling and extrapolation, we are further proposing to revise § 405.1006(d)(4) to state that the AIC is the total amount of the estimated overpayment determined through extrapolation, as specified in the demand letter, or as subsequently revised.

2. Submissions by CMS and CMS Contractors (§§ 405.1010 and 405.1012)

In § 405.1010(b)(1), we stated that if CMS or a CMS contractor elects to participate in the proceedings on a request for hearing before receipt of a notice of hearing, or when notice of hearing is not required, it must send written notice of its intent to participate to the parties who were sent a copy of the notice of reconsideration, and to the assigned ALJ or attorney adjudicator, or if the appeal is not assigned, to a designee of the Chief ALJ. We discussed in the January 17, 2017 final rule that the requirement to notify the parties who were sent a copy of the notice of reconsideration helps ensure that the potential parties to a hearing, if a hearing is conducted, would receive notice of the intent to participate (82 FR 5016). However, the final regulation at § 405.1010(b)(1) does not account for requests for reconsideration that are escalated from the QIC level to the OMHA level of appeal without a notice of reconsideration having been issued.

In order to help ensure that the potential parties to a hearing would receive notice of CMS' or the contractor's intent to participate and address reconsideration escalations from the QIC to OMHA, we are proposing to revise § 405.1010(b)(1) to require that, for escalated requests for reconsideration, notice of the intent to participate would also be sent to any party that filed a request for reconsideration or was found liable for the services at issue subsequent to the initial determination, which we believe is consistent with circumstances under which a party would receive notice of a hearing under § 405.1020. (Section 405.1020(c)(1) also provides that a notice of hearing is sent to all parties that participated in the reconsideration. However, we do not believe this provision is necessary in circumstances where the QIC has not issued a reconsideration because, in practice, there is generally no opportunity for participation in these circumstances by parties other than the party that filed the request for reconsideration.) For the same reason, we also are proposing to revise § 405.1010(c)(3)(ii)(A), which currently requires that copies of CMS or contractor position papers or written testimony that are submitted before receipt of a notice of hearing must be sent to the parties who were sent a copy of the notice of reconsideration. We are proposing to revise § 405.1010(c)(3)(ii)(A) to instead provide that copies are sent to the parties that are required to be sent a copy of the notice of intent to participate in accordance with § 405.1010(b)(1). No corresponding revisions to § 423.2010 are needed because escalation is not available in Medicare Part D appeals.

In § 405.1010(b)(3)(ii), we stated that if CMS or a CMS contractor elects to participate after a hearing is scheduled, it must send written notice of its intent to participate no later than 10 calendar days ''after receiving the notice of

hearing.'' Upon reviewing the revised rules, we noticed an inconsistency between this language and the language in § 405.1012(a)(1), which requires CMS or a CMS contractor electing to be a party to a hearing to send written notice of its intent to be a party no later than 10 calendar days ''after the QIC receives the notice of hearing.'' We explained in the January 17, 2017 final rule (82 FR 5020) that the timeframe in § 405.1012(a)(1) was based on receipt of the notice of hearing by the QIC because notices of hearing are currently sent to the QIC in accordance with § 405.1020(c). We believe these requirements should be consistent and the timeframes should begin on the same date, regardless of whether CMS or a CMS contractor is electing to be a party or participant. We also believe that the regulations should provide flexibility for CMS to designate another contractor, other than the QIC, to receive notices of hearing under § 405.1020(c) if that contractor is then tasked with disseminating the notice of hearing to other CMS contractors. Therefore, and as discussed in this section with regard to notices of hearing, we are proposing to revise § 405.1020(c)(1) to provide for this flexibility.

For conformity with proposed revised § 405.1020(c)(1) and to resolve the existing inconsistency in §§ 405.1010(b)(3)(ii) and 405.1012(a)(1), we are proposing to revise both sections to provide that written notice of the intent to participate or intent to be a party must be submitted no later than 10 calendar days after receipt of the notice of hearing by the QIC or another contractor designated by CMS to receive the notice of hearing. No corresponding revision is needed to the part 423, subpart U rules because notices of hearing are sent to both the Medicare Part D plan sponsor and the IRE.

In § 405.1010(c)(3)(i), we state that CMS or a CMS contractor that filed an election to participate must submit any position papers or written testimony within 14 calendar days of its election to participate if no hearing has been scheduled, or no later than 5 calendar days prior to the hearing if a hearing is scheduled, unless the ALJ grants additional time to submit the position paper or written testimony. In the January 17, 2017 final rule (82 FR 5017), we discussed that the requirement to submit any written testimony within 14 calendar days of the election to participate if no hearing has been scheduled helps to ensure that the position paper and/or written testimony are available when determinations are made to schedule a hearing or issue a decision based on the record in accordance with § 405.1038.

Although § 405.1010(c)(3)(i) allows an ALJ to extend the 5-calendar day submission timeframe for cases in which a hearing is scheduled, the regulation text may be unclear as to whether the same discretion is afforded to ALJs or attorney adjudicators with respect to the 14-calendar day submission timeframe for cases in which no hearing has been scheduled. Our intent was to apply this discretionary extension in both circumstances, as evidenced by the corresponding regulation at § 423.2010(d)(3)(i), which allows an ALJ or attorney adjudicator to grant additional time to submit a position paper or written testimony both in cases where a hearing has been scheduled and in cases where no hearing has been scheduled (82 FR 5019). Accordingly, to clarify our intent and help ensure consistency between the part 405 and part 423, we are proposing to revise § 405.1010(c)(3)(i) to clarify that an ALJ or attorney adjudicator may also extend the 14-calendar day timeframe for submission of position papers and written testimony in cases in which no hearing has been scheduled.

In § 405.1012(b), we stated that if CMS or a CMS contractor elects to be a party to the hearing, it must send written notice of its intent to the ALJ and to ''the parties identified in the notice of hearing.'' Upon reviewing the revised rules, we noticed an inconsistency between this language and the language in § 405.1010(b)(2), which states that if CMS or a CMS contractor elects to participate after receipt of a notice of hearing, it must to send written notice of its intent to participate to the ALJ and ''the parties who were sent a copy of the notice of hearing.'' Although the standard for who must receive notice is the same, the way in which it is articulated is different, which we believe may lead to confusion. To prevent potential confusion and help ensure consistency in the regulations, we are proposing to revise § 405.1012(b)(2) by replacing the language ''identified in the notice of hearing'' with ''who were sent a copy of the notice of hearing''. No corresponding revision is needed to the part 423, subpart U rules because only the enrollee is a party to a Medicare Part D appeal and CMS, the IRE, and the Part D plan sponsor may only request to be nonparty participants.

Finally, § 405.1012(e)(1) states the circumstances under which an ALJ or attorney adjudicator may determine that a CMS or contractor election to be a party to a hearing made under § 405.1012 is invalid. Because § 405.1012(a) only permits CMS or a contractor to elect to be a party after the QIC receives a notice of hearing, and only an ALJ may schedule and conduct a hearing, we believe the determination as to whether an election made under § 405.1012 is valid should be left to the assigned ALJ. Therefore, we are proposing in § 405.1012(e)(1) to replace the phrase ''ALJ or attorney adjudicator'' with ''ALJ.'' No corresponding revision is needed to the part 423, subpart U rules because only the enrollee is a party to a Medicare Part D appeal and CMS, the IRE, and the Part D plan sponsor may only request to be nonparty participants.

3. Extension Requests (§§ 405.1014 and 423.2014)

Prior to the January 17, 2017 final rule, § 405.1014(c)(2) provided that any request for an extension of the time to request a hearing must be in writing, give the reasons why the request for a hearing was not filed within the stated time period, and must be filed with the entity specified in the notice of reconsideration. In the January 17, 2017 final rule, this provision was relocated to § 405.1014(e)(2) and revised, in part, to state that any request for an extension of the time to request a hearing or review of a QIC dismissal must be filed with the request for hearing or request for review. This change was motivated by questions from appellants concerning whether a request for an extension should be filed without a request for hearing so that a determination could be made on the extension request before the request for hearing was filed (82 FR 5038). However, in our attempt to provide clarity to appellants, we created a requirement that, in its strictest interpretation, would foreclose an appellant from requesting an extension of the time to request a hearing or review after a request for hearing is filed. The need for such a request to be made may arise when an appellant—particularly an unrepresented beneficiary—is not aware that a request for hearing is untimely at the time of filing. In these situations, OMHA frequently requests that the appellant provide an explanation for the untimely filing and, if the OMHA adjudicator finds good cause for the untimely filing, the time period for filing is extended in accordance with § 405.1014(e)(3).

In order to remedy this situation, we are proposing to revise § 405.1014(e)(2) to provide that requests for extension must be filed with the request for hearing or request for review, or upon notice that the request may be dismissed because it was not timely filed. We also

are proposing a corresponding revision to § 423.2014(e)(3) for extension requests filed by Medicare Part D enrollees.

4. Notice of Hearing (§ 405.1020)

In § 405.1020(c)(1), we require that a notice of hearing be sent to all parties that filed an appeal or participated in the reconsideration, any party who was found liable for the services at issue subsequent to the initial determination or may be found liable based on a review of the record, the QIC that issued the reconsideration, and CMS or a contractor that elected to participate in the proceedings in accordance with § 405.1010(b) or that the ALJ believes would be beneficial to the hearing, advising them of the proposed time and place of the hearing. However, this rule does not account for requests for reconsideration that are escalated from the QIC level to the OMHA level of appeal without a reconsideration having been issued.

To help ensure that the QIC, and other CMS contractors who receive notice of scheduled hearings through the QIC, receive notice of all scheduled hearings, we are proposing to revise § 405.1020(c)(1) to require that notice be sent to the QIC that issued the reconsideration or from which the request for reconsideration was escalated. As discussed in section II.H.3. of this proposed rule with regard to CMS and CMS contractor submissions, we also are proposing to provide future flexibility for CMS to designate another contractor to receive notices of hearing by revising § 405.1020(c)(1) to state, in part, that the notice of hearing may instead be sent to another contractor designated by CMS to receive it. No corresponding revisions are needed in § 423.2020(c)(1) because escalation is not available in Medicare Part D appeals, and notices of hearing are sent to both the Medicare Part D plan sponsor and the IRE.

5. Request for an In-Person or Video Teleconference (VTC) Hearing (§§ 405.1020 and 423.2020)

Section 405.1020(i)(1) and (i)(5) provides that if an unrepresented beneficiary who filed the request for hearing objects to a video-teleconference (VTC) hearing or to the ALJ's offer to conduct a hearing by telephone, or if a party other than an unrepresented beneficiary who filed the request for hearing objects to a telephone or VTC hearing, an ALJ may grant the unrepresented beneficiary's or other party's request for an in-person or VTC hearing if it satisfies the requirements in § 405.1020(i)(1) through (3), with the concurrence of the Chief ALJ or a designee and upon a finding of good cause. Prior to the January 17, 2017 final rule, § 405.1020(i) dealt exclusively with a party's request for an in-person hearing and § 405.1020(i)(5) required concurrence of the Managing Field Office ALJ and a finding of good cause for an ALJ to grant the request. (As we discussed in the January 17, 2017 final rule, the position of Managing Field Office ALJ was replaced by the position of Associate Chief ALJ, and we replaced the reference to ''Managing Field Office ALJ'' in § 405.1020(i)(5) with ''Chief ALJ or a designee'' to provide greater flexibility in the future as position titles change.) Managing Field Office ALJ concurrence and a finding of good cause were not required prior to the January 17, 2017 final rule for requests for a VTC hearing because VTC was the default method of hearing.

When we revised § 405.1020(i) in the January 17, 2017 final rule to reflect the change from VTC to telephone hearing as the default method for appearances by parties other than unrepresented beneficiaries, we neglected to restrict the requirement for the concurrence of the Chief ALJ or designee to requests for in-person hearing, in accordance with § 405.1020(b)(1)(ii) and (b)(2)(ii). In addition, we neglected to clarify that, because VTC is the default hearing method for unrepresented beneficiaries, a finding of good cause is not required when an unrepresented beneficiary who filed the request for hearing objects to an ALJ's offer to conduct a hearing by telephone and requests a VTC hearing. Accordingly, we are proposing to revise § 405.1020(i)(5) to clarify that concurrence of the Chief ALJ or designee is only required if the request is for an in-person hearing, and that a finding of good cause is not required for a request for VTC hearing made by an unrepresented beneficiary who filed the request for hearing and objects to an ALJ's offer to conduct a hearing by telephone. We also are proposing corresponding revisions to § 423.2020(i)(5) for objections filed by Medicare Part D enrollees.

In reviewing the January 17, 2017 final rule, we also noted potential confusion about whether § 405.1020(e) or (i) applies to objections to the place of a hearing when the objection is accompanied by a request for a VTC or an in-person hearing. While an objection to a hearing being conducted by telephone or VTC may broadly qualify as an objection to the place of the hearing under § 405.1020(e), our intent was for § 405.1020(i) to apply to such an objection when the objection is accompanied by a request for a different hearing format, because § 405.1020(i) is specific to an objection to the scheduled hearing format and request for an alternate hearing format. To mitigate the potential confusion as to which provisions applies, we are proposing to revise § 405.1020(e) by adding paragraph (e)(5) to make clear that it applies only when the party's or enrollee's objection does not include a request for an in-person or VTC hearing. We also are proposing a corresponding revision to § 423.2020(e) concerning a Medicare Part D enrollee's objection to the time and place of hearing.36. Dismissal of a Request for a Hearing (§§ 405.1052 and 423.2052)

Section 405.1052(a) describes the situations under which an ALJ may dismiss a request for hearing (other than withdrawals of requests for hearing, which are described in § 405.1052(c)). Although paragraph (a) pertains only to ALJ dismissals, paragraphs (a)(3), (4)(i), (5), and (6) contain inadvertent references to attorney adjudicators.

- Paragraph (a)(3) states that an ALJ may dismiss a request for hearing when the party did not request a hearing within the stated time period and the ALJ or attorney adjudicator has not found good cause for extending the deadline, as provided in § 405.1014(e).
- Paragraph (a)(4)(i) provides that when determining whether the beneficiary's surviving spouse or estate has a remaining financial interest, the ALJ or attorney adjudicator considers whether the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation of liability provisions based on the denial of the services at issue. (As discussed in section II.H.10. of this proposed rule, we are proposing to change the reference to ''limitation of liability'' to ''limitation on liability.'')
- Paragraph (a)(5) states that an ALJ or attorney adjudicator dismisses a hearing request entirely or refuses to consider any one or more of the issues because a QIC, an ALJ or attorney adjudicator, or the Council has made a previous determination or decision under part 405, Subpart I about the appellant's rights on the same facts and on the same issue(s) or claim(s), and this previous determination or decision has become binding by either administrative or judicial action.
- Paragraph (a)(6) states that an ALJ or attorney adjudicator may conclude that an appellant has abandoned a request for hearing when OMHA attempts to schedule a hearing and is unable to contact the appellant after making reasonable efforts to do so.

As discussed of in the January 17, 2017 final rule (82 FR 4982), our intent in finalizing the attorney adjudicator proposals was to provide authority for attorney adjudicators to dismiss a request for hearing only when an appellant withdraws his or her request for an ALJ hearing, and not under any other circumstances. We further explained that attorney adjudicators could not dismiss a request for hearing due to procedural issues or make a determination that would result in a dismissal of a request for an ALJ hearing (other than a determination that the appellant had withdrawn the request for hearing) (82 FR 5008 and 5009). Therefore, we are proposing to revise § 405.1052(a)(3), (a)(4)(i), and (a)(6) to remove the reference to attorney adjudicators and paragraph (a)(5) to remove the first reference to an attorney adjudicator. We also are proposing corresponding corrections to § 423.2052(a)(3), (5), and (6) for dismissals of Part D requests for hearing.

Prior to the January 17, 2017 final rule, § 405.1052(b) required that notice of a dismissal of a request for hearing be sent to all parties at their last known address. We explained in the final rule that the requirement to send notice of the dismissal to all parties was overly inclusive and caused confusion by requiring notice of a dismissal to be sent to parties who have not received a copy of the request for hearing or request for review that is being dismissed (82 FR 5086). Therefore, we revised this provision (and moved it to § 405.1052(d)) to state that OMHA mails or otherwise transmits a written notice of a dismissal of a request for hearing or review to all parties who were sent a copy of the request for hearing or review at their last known address.

However, in our effort to better tailor the list of recipients, we neglected to specify that notice is also sent to the appellant—who must receive notice of the dismissal, but would not have received a copy of its own request for hearing or review—and to account for CMS or a CMS contractor who elected to be a party to the appeal. We believe that CMS or a CMS contractor that is a party to an appeal has an interest in the outcome of the appeal and should be notified if the request for hearing or review is dismissed. Section 405.1046 helps ensure that CMS or CMS contractors who are a party to a hearing receive notice of the decision by requiring that the decision be sent to all parties at their last known address. In order to help ensure CMS and CMS contractors are afforded similar notice of dismissals, and that the appellant is notified of a dismissal of its request for hearing or review, we are proposing to revise § 405.1052(d) to require that notice be sent to the appellant, all parties who were sent a copy of the request for hearing or review at their last known address, and to CMS or a CMS contractor that is a party to the proceedings on a request for hearing. No corresponding revision to § 423.2052 is needed because only the enrollee is a party to a Medicare Part D appeal and receives notice of the dismissal.

7. Remanding a Dismissal of a Request for Reconsideration (§§ 405.1056, 405.1034, 423.2034, and 423.2056)

Section 405.1056(a)(1) provides that if an ALJ or attorney adjudicator requests an official copy of a missing redetermination or reconsideration for an appealed claim in accordance with § 405.1034, and the QIC or another contractor does not furnish the copy within the timeframe specified in § 405.1034, the ALJ or attorney adjudicator may issue a remand directing the QIC or other contractor to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication. Section 405.1056(a)(2) provides that if the QIC does not furnish the case file for an appealed reconsideration, an ALJ or attorney adjudicator may issue a remand directing the QIC to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication. In § 405.1056(d), an ALJ or attorney adjudicator will remand a case to the appropriate QIC if the ALJ or attorney adjudicator determines that a QIC's dismissal of a request for reconsideration was in error.

Occasionally, an ALJ or attorney adjudicator may need to remand a request for review of a dismissal of a reconsideration request for reasons similar to those specified in § 405.1056(a)(1) and (2) because the ALJ or attorney adjudicator is unable to obtain an official copy of the dismissal determination, or because the QIC does not furnish the case file for an appealed dismissal. By restricting the bases for remand under § 405.1056(a)(1) and (2) to appeals of reconsiderations, we inadvertently made these reasons unavailable for remands of requests for review of a dismissal under § 405.1056(d). Therefore, we are proposing to revise § 405.1056(d) by redesignating existing paragraph (d) as paragraph (d)(1), and adding paragraph (d)(2) to state that an ALJ or attorney adjudicator may also remand a request for review of a dismissal in accordance with the procedures in paragraph (a) of the section if an official copy of the notice of dismissal or case file cannot be obtained from the QIC. We also are proposing corresponding revisions to § 423.2056(d) for Medicare Part D remands of a request for review of an IRE's dismissal of a request for reconsideration. This proposed change would necessitate two additional revisions.

First, §§ 405.1056(g) and 423.2056(g), which discuss reviews of remands by the Chief ALJ or designee, state that the review of remand procedures are not available for and do not apply to remands that are issued under §§ 405.1056(d) or 423.2056(d), respectively. In the January 17, 2017 final rule, we explained that this limitation was due to the fact that remands issued on review of a QIC's or IRE's dismissal of a request for reconsideration (that is, based on a determination that the QIC's or IRE's dismissal was in error) are more akin to a determination than a purely procedural mechanism (82 FR 5069 through 5070). Because remands issued under new proposed §§ 405.1056(d)(2) and 423.2056(d)(2) would be procedural remands, we are proposing to revise §§ 405.1056(g) and 423.2056(g) by replacing the references to paragraph (d) with a reference to paragraph (d)(1), so that remands issued under paragraph (d)(2) would be subject to the review of remand procedures in paragraph (g).

Second, we are proposing to revise §§ 405.1034(a)(1) and 423.2034(a)(1) to provide that the request for information procedures in these paragraphs apply not only to requests for official copies of redeterminations and reconsiderations, but also to requests for official copies of dismissals of requests for redetermination or reconsideration.

8. Notice of a Remand (§ 405.1056)

Section 405.1056(f) provides that OMHA mails or otherwise transmits written notice of a remand of a request for hearing or request for review to all of the parties who were sent a copy of the request for hearing or review, at their last known address, and to CMS or a contractor that elected to be a participant in the proceedings or party to the hearing. However, § 405.1056(f) does not require that notice be sent to the appellant, who would not have received a copy of its own request for hearing or review. For the same reasons described in section II.H.6 above with regard to notices of dismissal, we are proposing to revise § 405.1056(f) to require that notice be sent to the appellant, all parties who were sent a copy of the request for hearing or review at their last known address, and to CMS or a contractor that elected to be a participant in the proceedings or party

to the hearing. No corresponding revision to part 423, subpart U is needed because § 423.2056(f) already provides that notice is sent to the enrollee, who is the only party to a Part D appeal.

In addition, § 405.1056(f) provides that the notice of remand states that there is a right to request that the Chief ALJ or a designee review the remand. However, § 405.1056(g) states that the review of remand procedures are not available for and do not apply to remands that are issued under § 405.1056(d) (which, as noted in section II.H.D.7. of this proposed rule, we are proposing to redesignate as § 405.1056(d)(1)). To resolve this discrepancy and help ensure that parties receive accurate information regarding the availability of the review of remand procedures, we are proposing to revise § 405.1056(f) to clarify that the notice of remand states that there is a right to request that the Chief ALJ or a designee review the remand, unless the remand was issued under § 405.1056(d)(1). We are also proposing corresponding changes to § 423.2056(d)(1).

9. Requested Remands (§ 423.2056)

Section 423.2056(b) provides that if an ALJ or attorney adjudicator finds that the IRE issued a reconsideration and no redetermination was made with respect to the issue under appeal or the request for redetermination was dismissed, the reconsideration will be remanded to the IRE, or its successor, to readjudicate the request for reconsideration. However, when we finalized this provision in the January 17, 2017 final rule, we did not account for situations in which no redetermination was issued because the Medicare Part D plan sponsor failed to meet the timeframe for a standard or expedited redetermination, as provided in § 423.590. In these situations, § 423.2056(b) does not provide a basis for remand because the failure of the Part D plan sponsor to provide a redetermination within the specified timeframe constitutes an adverse redetermination decision, and the Part D plan sponsor is required to forward the enrollee's request to the IRE within 24 hours of the expiration of the adjudication timeframe in accordance with § 423.590(c) (for requests for standard redeterminations) and (e) (for requests for expedited redeterminations). Accordingly, we are proposing to revise § 423.2056(b) to clarify that this reason for remand does not apply when the request for redetermination was forwarded to the IRE in accordance with § 423.590(c) or (e) without a redetermination having been conducted.

10. Other Technical Changes

In the January 17, 2017 final rule, we amended regulations throughout 42 CFR part 405, subparts I and J; part 422, subpart M; Part 423, subparts M and U; and part 478, subpart B by replacing certain references to ALJs, ALJ hearing offices, and unspecified entities with a reference to OMHA or an OMHA office. We explained that these changes were being made to provide clarity to the public on the role of OMHA in administering the ALJ hearing program, and to clearly identify where requests and other filings should be directed (82 FR 4992). However, we neglected to revise two existing references to ALJs in § 405.970(c)(2) and one existing reference to an ALJ in § 405.970(d). To correct our oversight, we are proposing to revise § 405.970(c)(2) and (d) by replacing each instance of the phrase ''to an ALJ'' with ''to OMHA'' to clarify that appeals are escalated to OMHA, rather than an individual ALJ.

In the January 17, 2017 final rule, in order to reduce confusion with MACs, we revised references to the Medicare Appeals Council throughout part 405, subpart I; part 422, subpart M; and part 423, subparts M and U by replacing ''MAC'' with ''Council'' (82 FR 4993). However, we neglected to change one reference to ''MAC'' in § 423.1990(d)(2)(ii). Accordingly, we are proposing to revise § 423.1990(d)(2)(ii) by replacing ''MAC'' with ''Council.''

In § 423.2010(d)(1), we stated that CMS, IRE, and/or Part D plan sponsor participation in an appeal may include filing position papers and/or providing testimony to clarify factual or policy issues in a case, but it does not include calling witnesses or cross-examining the witnesses of an enrollee to the hearing. This provision is similar to § 405.1010(c)(1), which describes the scope of CMS and CMS contractor participation in Medicare Part A and Part B appeals and provides, in part, that such participation does not include calling witnesses or cross-examining the witnesses of a party to the hearing. When finalizing § 423.2010(d)(1) in the January 17, 2017 final rule, which we based on § 405.1010(c)(1), we inadvertently retained the phrase ''to the hearing'' after ''enrollee''. We believe this phrase is unnecessary in this context and reads awkwardly, and are proposing to revise § 423.2010(d)(1) to remove it.

Prior to the January 17, 2017 final rule, § 423.2016(b)(1) provided that an ALJ may consider the standard for granting an expedited hearing met if a lower-level adjudicator has granted a request for an expedited hearing. We revised this paragraph in the January 17, 2017 final rule to account for the possibility that a request for an expedited appeal could be granted by an attorney adjudicator. However, we neglected to correct the existing reference to a lower-level adjudicator having granted a request for an expedited hearing. Because lower-level adjudicators do not conduct hearings, we are proposing to revise § 423.2016(b)(1) by replacing ''hearing'' with ''decision''.

Section 423.2032(c) describes the circumstances in which a coverage determination on a drug that was not specified in a request for hearing may be added ''to pending appeal.'' We inadvertently omitted the word ''a'' and are proposing to revise § 423.2032(c) by removing the phrase ''to pending appeal'' and adding ''to a pending appeal'' in its place.

Prior to the January 17, 2017 final rule, § 423.2036(g) stated, in part, that an ALJ may ask the witnesses at a hearing any questions relevant to the issues ''and allow the enrollee or his or her appointed representative, as defined at § 423.560.'' In the final rule, we redesignated this paragraph as paragraph (d), but neglected to correct the missing language at the end of the sentence. For consistency with § 405.1036(d), we are proposing to revise § 423.2036(d) by adding '', to do so'' at the end of the paragraph, before the period.

Section 423.2036(e) discusses what evidence is admissible at the hearing, and states that an ALJ may not consider evidence on any change in condition of a Part D enrollee after a coverage determination, and further provides that if an enrollee wishes for such evidence to be considered, the ALJ must remand the case to the Part D IRE as set forth in § 423.2034(b)(2). Prior to the January 17, 2017 final rule, § 423.2034(b)(2) stated that an ALJ will remand a case to the appropriate Part D IRE if the ALJ determines that the enrollee wishes evidence on his or her change in condition after the coverage determination to be considered in the appeal. In the final rule, we moved this provision to § 423.2056(e), but neglected to update the cross-reference to it in § 423.2036(e). Accordingly, we are proposing to revise § 423.2036(e) to replace the reference to ''§ 423.2034(b)(2)'' with the reference ''§ 423.2056(e)''.

In §§ 405.952(b)(4)(i), 405.972(b)(4)(i), 405.1052(a)(4)(i) and (b)(3)(i), and 405.1114(c)(1), when discussing determinations as to whether a beneficiary's surviving spouse or estate has a remaining financial interest in an

appeal, we refer to limitation on liability under section 1879 of the Act as ''limitation of liability.'' To increase consistency with the language used in the statute and help reduce confusion as to which standard is being applied, we are proposing to replace the phrase ''limitation of liability'' with ''limitation on liability'' in each of these sections.

We have identified one provision in part 405, subpart I, and two provisions in part 423, subpart U, where we used incorrect terminal punctuation at the end of a paragraph that is part of a list. To correct our errors, we are proposing to revise §§ 405.1046(a)(2)(ii), 423.2002(b)(1), and 423.2010(b)(3)(ii) by replacing the period at the end of each paragraph with a semicolon.

Lastly, we are proposing to revise the authority citations for parts 405 and 423 to meet current Office of the Federal Register regulatory drafting guidance. The guidance requires that we use only the United States Code (U.S.C.) citations for statutory citation unless the citation does not exist.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. In addition, appeals are considered to be an information collection requirement that is associated with an administrative action pertaining to specific individuals or entities (5 CFR 1320.4(a)(2) and (c)). As a result, the burden for preparing and filing an appeal is exempt from the requirements and collection burden estimates of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Consequently, there is no need for review by the Office of Management and Budget under the authority of the PRA.

IV. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A RIA must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This rule would have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' OMB's interim guidance, issued on April 5, 2017, *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf,* explains that ''E.O. 13771 deregulatory actions are not limited to those defined as significant under E.O. 12866 or OMB's Final Bulletin on Good Guidance Practices.'' This proposed rule, if finalized, is considered a E.O. 13771 deregulatory action. Consistent with Executive Order 13771 requirements, when discounted from 2016 to infinity at 7 percent, this proposed rule would annually save $9,497,685.00 a year.

Our proposal to remove the requirement that appellants sign appeal requests would result in a slight reduction of burden to appellants by allowing them to spend less time developing their appeal request and appealing dismissals of appeal requests for lack of a signature to the next level of review. Using the data from the number of appeal requests received, we estimate that approximately 4,465,000 appeal requests per year require a signature. We estimate that it takes 1 minute to sign the appeal request. Therefore, the reduction in administrative time spent would be 4,465,000 × .016 hour = 71,440.00 hours.

We used an adjusted hourly wage of $34.66 based on the Bureau of Labor Statistics May 2016 website for occupation code 43–9199, ''All other office and administrative support workers,'' which gives a mean hourly salary of $17.33, which when multiplied by a factor of two to include overhead, and fringe benefits, results in $34.66 an hour. The consequent cost savings would be 71,440.00 × $34.66 = $2,476,110.40 for time spent signing the appeal requests.

Based on a sampling of the number of appeal requests that are dismissed for not containing a signature, we estimated that 284,486 appeal requests are dismissed per year for not containing a signature on them, and 5 minutes to request that the adjudicator vacate the dismissal or appeal the dismissal. For appellants, the reduction in

administrative time spent would be 284,486 × .0083 hours = 23,612 hours with a consequent savings of 23,612 hours × $34.66 per hour = $818,404.00. The total amount saved for appellants would be $3,294,514.40, which consists of $2,476,110.40 for time spent signing the appeal requests added to $818,404.00 for time saved appealing the dismissed appeal requests.

When the cost of contractors dismissing appeal requests for the lack of signature is factored in, the cost savings becomes $11,757,600. This cost is calculated by multiplying the number of appeal requests dismissed at the MAC and QIC levels multiplied by the cost that we pay the contractors to adjudicate a dismissal. The average cost for a MAC to dismiss an appeal request would be $25 × 200,000 appeals dismissed for a lack of signature per year, which equates to $5,000,000. The average cost for a QIC to dismiss an appeal request would be $80 × 84,470 appeal requests dismissed for a lack of signature per year, which equates to a savings of $6,757,600. When these two costs are added together the cost savings becomes $11,757,600.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Diseases, Health facilities, Health professions, Medical devices, Medicare, Reporting and recordkeeping, Rural areas, X-rays.

42 CFR Part 423

Administrative practice and procedures, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

For reasons stated in the preamble, CMS proposes to amend 42 CFR parts 405 and 423 as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority citation for part 405 is revised to read as follows:

Authority: 42 U.S.C. 263a, 405(a), 1302, 1320b–12, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr, and 1395ww(k).

§ 405.910 [Amended]

■ 2. Section 405.910 is amended—

■ a. In paragraph (c)(5), by removing the phrase ''health insurance claim''; and

■ b. In paragraph (e)(4), by removing the reference ''§ 405.906(a)(1)(iv)'' and adding the reference ''§ 405.906(a)(4)'' in its place.

§ 405.926 [Amended]

■ 3. Section 405.926 is amended in paragraph (f) by removing the reference ''§§ 483.5(n) and 483.15'' and adding the reference ''§ 483.5 definition of 'transfer and discharge' and § 483.15'' in its place.

§ 405.944 [Amended]

■ 4. Section 405.944 is amended—

■ a. In paragraph (b)(2) by removing the phrase ''health insurance claim''; and

■ b. In paragraph (b)(4) by removing the phrase ''and signature''.

§ 405.952 [Amended]

■ 5. Section 405.952 is amended—

■ a. In paragraph (b)(4)(i) by removing the phrase ''limitation of liability'' and adding the phrase ''limitation on liability'' in its place; and

■ b. In paragraph (d) by removing the phrase ''6 months'' and adding the phrase ''180 calendar days'' in its place.

§ 405.964 [Amended]

■ 6. Section 405.964 is amended—

■ a. In paragraph (b)(2) by removing the phrase ''health insurance claim''; and

■ b. In paragraph (b)(4) by removing the phrase ''and signature''.

§ 405.970 [Amended]

■ 7. Section 405.970 is amended in paragraphs (c)(2) and (d) by removing the phrase ''to an ALJ'' each time it appears and adding the phrase ''to OMHA'' in its place.

§ 405.972 [Amended]

■ 8. Section 405.972 is amended—

■ a. In paragraph (b)(4)(i) by removing the phrase ''limitation of liability'' and adding the phrase ''limitation on liability'' in its place; and

■ b. In paragraph (d) by removing the phrase ''6 months'' and adding the phrase ''180 calendar days'' in its place.

■ 9. Section 405.1006 is amended by revising paragraph (d)(4) to read as follows:

§ 405.1006 Amount in controversy required for an ALJ hearing and judicial review.

* * * * *

(d) * * *

(4) *Overpayments.* Notwithstanding paragraph (d)(1) of this section, when an appeal involves an identified overpayment, the amount in controversy is the amount of the overpayment specified in the demand letter, or the amount of the revised overpayment if the amount originally demanded changes as a result of a subsequent determination or appeal, for the items or services in the disputed claim. When an appeal involves an estimated overpayment amount determined through the use of statistical sampling and extrapolation, the amount in controversy is the total amount of the estimated overpayment determined through extrapolation, as specified in the demand letter, or as subsequently revised.

* * * * *

■ 10. Section 405.1010 is amended by revising paragraphs (b)(1), (b)(3)(ii), (c)(3)(i), and (c)(3)(ii)(A) to read as follows:

§ 405.1010 When CMS or its contractors may participate in the proceedings on a request for an ALJ hearing.

* * * * *

(b) * * *

(1) *No notice of hearing.* If CMS or a contractor elects to participate before receipt of a notice of hearing, or when a notice of hearing is not required, it must send written notice of its intent to participate to—

(i) The assigned ALJ or attorney adjudicator, or a designee of the Chief ALJ if the request for hearing is not yet assigned to an ALJ or attorney adjudicator; and

(ii) The parties who were sent a copy of the notice of reconsideration or, for escalated requests for reconsideration, any party that filed a request for reconsideration or was found liable for the services at issue subsequent to the initial determination.

* * * * *

(3) * * *

(ii) If a hearing is scheduled, no later than 10 calendar days after receipt of the notice of hearing by the QIC or another contractor designated by CMS to receive the notice of hearing.

(c) * * *

(3) * * *

(i) Unless the ALJ or attorney adjudicator grants additional time to submit the position paper or written testimony, a position paper or written testimony must be submitted within 14 calendar days of an election to

participate if no hearing has been scheduled, or no later than 5 calendar days prior to the hearing if a hearing is scheduled.

(ii) * * *

(A) The parties that are required to be sent a copy of the notice of intent to participate in accordance with paragraph (b)(1) of this section, if the position paper or written testimony is being submitted before receipt of a notice of hearing for the appeal; or

* * * * *

§ 405.1012 [Amended]

■ 11. Section 405.1012 is amended—

■ a. In paragraph (a)(1) by removing the phrase ''after the QIC receives the notice of hearing'' and adding the phrase ''after receipt of the notice of hearing by the QIC or another contractor designated by CMS to receive the notice of hearing'' in its place;

■ b. In paragraph (b) by removing the phrase ''identified in the notice of hearing'' and adding the phrase ''who were sent a copy of the notice of hearing'' in its place; and

■ c. In paragraph (e)(1) by removing the phrase ''ALJ or attorney adjudicator'' and adding the term ''ALJ'' in its place.

§ 405.1014 [Amended]

■ 12. Section 405.1014 is amended—

■ a. In paragraph (a)(1)(i) by removing the phrase ''health insurance claim''; and

■ b. In paragraph (e)(2) by removing the phrase ''with the request for hearing or request for review of a QIC dismissal'' and adding the phrase ''with the request for hearing or request for review of a QIC dismissal, or upon notice that the request may be dismissed because it was not timely filed,'' in its place.

■ 13. Section 405.1020 is amended by revising paragraph (c)(1), adding paragraph (e)(5), and revising paragraph (i)(5) to read as follows:

§ 405.1020 Time and place for a hearing before an ALJ.

* * * * *

(c) * * *

(1) A notice of hearing is sent to all parties that filed an appeal or participated in the reconsideration; any party who was found liable for the services at issue subsequent to the initial determination or may be found liable based on a review of the record; the QIC that issued the reconsideration or from which the request for reconsideration was escalated, or another contractor designated to receive the notice of hearing by CMS; and CMS or a contractor that elected to participate in the proceedings in accordance with § 405.1010(b) or that the ALJ believes would be beneficial to the hearing, advising them of the proposed time and place of the hearing.

* * * * *

(e) * * *

(5) If the party's objection to the place of the hearing includes a request for an in-person or VTC hearing, the objection and request are considered in paragraph (i) of this section.

* * * * *

(i) * * *

(5) The ALJ may grant the request, with the concurrence of the Chief ALJ or designee if the request was for an in-person hearing, upon a finding of good cause and will reschedule the hearing for a time and place when the party may appear in person or by VTC before the ALJ. Good cause is not required for a request for VTC hearing made by an unrepresented beneficiary who filed the request for hearing and objects to an ALJ's offer to conduct a hearing by telephone.

* * * * *

■ 14. Section 405.1034 is amended by revising paragraph (a)(1) to read as follows:

§ 405.1034 Requesting information from the QIC.

(a) * * *

(1) Official copies of redeterminations and reconsiderations that were conducted on the appealed claims, and official copies of dismissals of a request for redetermination or reconsideration, can be provided only by CMS or its contractors. Prior to issuing a request for information to the QIC, OMHA will confirm whether an electronic copy of the redetermination, reconsideration, or dismissal is available in the official system of record, and if so will accept the electronic copy as an official copy.

* * * * *

§ 405.1046 [Amended]

■ 15. Section 405.1046 is amended in paragraph (a)(2)(ii) by removing the period at the end of the paragraph and adding a semicolon in its place.

■ 16. Section 405.1052 is amended by revising paragraphs (a)(3), (a)(4)(i), (a)(5) and (6), (b)(3)(i), (d), and (e) to read as follows:

§ 405.1052 Dismissal of a request for a hearing before an ALJ or request for review of a QIC dismissal.

(a) * * *

(3) The party did not request a hearing within the stated time period and the ALJ has not found good cause for extending the deadline, as provided in § 405.1014(e).

(4) * * *

(i) The request for hearing was filed by the beneficiary or the beneficiary's representative, and the beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the ALJ considers if the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation on liability provisions based on the denial of the services at issue.

* * * * *

(5) The ALJ dismisses a hearing request entirely or refuses to consider any one or more of the issues because a QIC, an ALJ or attorney adjudicator, or the Council has made a previous determination or decision under this subpart about the appellant's rights on the same facts and on the same issue(s) or claim(s), and this previous determination or decision has become binding by either administrative or judicial action.

(6) The appellant abandons the request for hearing. An ALJ may conclude that an appellant has abandoned a request for hearing when OMHA attempts to schedule a hearing and is unable to contact the appellant after making reasonable efforts to do so.

* * * * *

(b) * * *

(3) * * *

(i) The request for review was filed by the beneficiary or the beneficiary's representative, and the beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the ALJ or attorney adjudicator considers if the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation on liability provisions based on the denial of the services at issue.

* * * * *

(d) *Notice of dismissal.* OMHA mails or otherwise transmits a written notice of the dismissal of the hearing or review request to the appellant, all parties who were sent a copy of the request for hearing or review at their last known address, and to CMS or a CMS contractor that is a party to the proceedings on a request for hearing. The notice states that there is a right to request that the ALJ or attorney adjudicator vacate the dismissal action. The appeal will proceed with respect to any other parties who filed a valid request for hearing or review regarding the same claim or disputed matter.

(e) *Vacating a dismissal.* If good and sufficient cause is established, the ALJ or attorney adjudicator may vacate his or her dismissal of a request for hearing or review within 180 calendar days of the date of the notice of dismissal.

■ 17. Section 405.1056 is amended by revising paragraphs (d), (f), and (g) to read as follows:

§ 405.1056 Remands of requests for hearing and requests for review.

* * * * *

(d) *Remanding a QIC's dismissal of a request for reconsideration.* (1) Consistent with § 405.1004(b), an ALJ or attorney adjudicator will remand a case to the appropriate QIC if the ALJ or attorney adjudicator determines that a QIC's dismissal of a request for reconsideration was in error.

(2) If an official copy of the notice of dismissal or case file cannot be obtained from the QIC, an ALJ or attorney adjudicator may also remand a request for review of a dismissal in accordance with the procedures in paragraph (a) of this section.

* * * * *

(f) *Notice of remand.* OMHA mails or otherwise transmits a written notice of the remand of the request for hearing or request for review to the appellant, all of the parties who were sent a copy of the request at their last known address, and CMS or a contractor that elected to be a participant in the proceedings or party to the hearing. The notice states that there is a right to request that the Chief ALJ or a designee review the remand, unless the remand was issued under paragraph (d)(1) of this section.

(g) *Review of remand.* Upon a request by a party or CMS or one of its contractors filed within 30 calendar days of receiving a notice of remand, the Chief ALJ or designee will review the remand, and if the remand is not authorized by this section, vacate the remand order. The determination on a request to review a remand order is binding and not subject to further review. The review of remand procedures provided for in this paragraph are not available for and do not apply to remands that are issued under paragraph (d)(1) of this section.

■ 18. Section 405.1110 is amended—

■ a. In paragraph (a) by removing the phrase ''after the date'' and adding the phrase ''of receipt'' in its place; and

■ b. In paragraph (b)(2) by removing the term ''issued'' and adding the term ''received'' in its place.

■ c. Adding paragraph (e).

The addition reads as follows:

§ 405.1110 Council review on its own motion.

* * * * *

(e) *Referral timeframe.* For purposes of this section, the date of receipt of the ALJ's or attorney adjudicator's decision or dismissal is presumed to be 5 calendar days after the date of the notice of the decision or dismissal, unless there is evidence to the contrary.

§ 405.1112 [Amended]

■ 19. Section 405.1112 is amended in paragraph (a)—

■ a. By removing the phrase ''health insurance claim''; and

■ b. By removing the phrase ''and signature''.

§ 405.1114 [Amended]

■ 20. Section 405.1114 is amended in paragraph (c)(1) by removing the phrase ''limitation of liability'' and adding the phrase ''limitation on liability'' in its place.

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 21. The authority citation for part 423 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1306, 1395w-101 through 1395w-152, and 1395hh.

§ 423.562 [Amended]

■ 22. Section 423.562 is amended—

■ a. In paragraph (b)(4)(iv) by removing the reference ''§ 423.1970'' and adding the reference ''§ 423.2006'' in its place;

■ b. In paragraph (b)(4)(v) by removing the reference ''§ 423.1974'' and adding the reference ''§ 423.2100'' in its place; and

■ c. In paragraph (b)(4)(vi) by removing the reference ''§ 423.1976'' and adding the cross-reference ''§ 423.2006'' in its place.

§ 423.576 [Amended]

■ 23. Section 423.576 is amended by removing the reference ''§ 423.1970 through § 423.1976'' and adding the reference ''§ 423.2000 through § 423.2140'' in its place.

§ 423.602 [Amended]

■ 24. Section 423.602 is amended in paragraph (b)(2)by removing the reference ''§ 423.1970'' and adding the cross ''§ 423.2006'' in its place.

§ 423.604 [Amended]

■ 25. Section 423.604 is amended by removing the reference ''§ 423.1972'' and adding the reference ''§ 423.2014'' in its place.

§ 423.1970 [Removed and reserved]

■ 26. Section 423.1970 is removed and reserved.

§ 423.1972 [Removed and reserved]

■ 27. Section 423.1972 is removed and reserved.

§ 423.1974 [Removed and reserved]

■ 28. Section 423.1974 is removed and reserved.

§ 423.1976 [Removed and reserved]

■ 29. Section 423.1976 is removed and reserved.

§ 423.1984 [Amended]

■ 30. Section 423.1984 is amended—

■ a. In paragraph (c) by removing the reference ''§ 423.1970 through § 423.1972 and''; and

■ b. In paragraph (d) by removing the phrase ''§ 423.1974 and''.

§ 423.1990 [Amended]

■ 31. Section 423.1990 is amended—

■ a. In paragraph (b)(3) by removing the phrase ''established annually by the Secretary'' and adding the phrase ''specified in § 423.2006'' in its place; and

■ b. In paragraph (d)(2)(ii) by removing the term ''MAC'' and adding the term ''Council'' in its place.

■ 32. Section 423.2002 is amended—

■ a. By revising paragraphs (a) introductory text and (a)(2);

■ b. In paragraph (b)(1) by removing the period at the end of the paragraph and adding a semicolon in its place; and

■ c. By revising paragraph (b)(3).

The revisions read as follows:

§ 423.2002 Right to an ALJ hearing.

(a) An enrollee who is dissatisfied with the IRE reconsideration determination has a right to a hearing before an ALJ if—

* * * * *

(2) An enrollee meets the amount in controversy requirements of § 423.2006.

* * * * *

(b) * * *

* * * * *

(3) An enrollee meets the amount in controversy requirements of § 423.2006.

* * * * *

§ 423.2004 [Amended]

■ 33. Section 423.2004 is amended in paragraph (a)(2) by removing the reference ''§ 423.1970'' and adding the reference ''§ 423.2006'' in its place.

■ 34. Section 423.2006 is added to read as follows:

§ 423.2006 Amount in controversy required for an ALJ hearing and judicial review.

(a) *ALJ review.* To be entitled to a hearing before an ALJ, an enrollee must meet the amount in controversy requirements of this section.

(1) For ALJ hearing requests, the required amount remaining in controversy must be $100, increased by the percentage increase in the medical

care component of the Consumer Price Index for All Urban Consumers (U.S. city average) as measured from July 2003 to the July preceding the current year involved.

(2) If the figure in paragraph (a)(1) of this section is not a multiple of $10, it is rounded to the nearest multiple of $10. The Secretary will publish changes to the amount in controversy requirement in the **Federal Register** when necessary.

(b) *Judicial review.* To be entitled to judicial review, the enrollee must meet the amount in controversy requirements of this subpart at the time it requests judicial review. For review requests, the required amount remaining in controversy must be $1,000 or more, adjusted as specified in paragraphs (a)(1) and (2) of this section.

(c) *Calculating the amount remaining in controversy.* (1) If the basis for the appeal is the refusal by the Part D plan sponsor to provide drug benefits, the projected value of those benefits is used to compute the amount remaining in controversy. The projected value of a Part D drug or drugs must include any costs the enrollee could incur based on the number of refills prescribed for the drug(s) in dispute during the plan year.

(2) If the basis for the appeal is an at-risk determination made under a drug management program in accordance with § 423.153(f), the projected value of the drugs subject to the drug management program is used to compute the amount remaining in controversy. The projected value of the drugs subject to the drug management program shall include the value of any refills prescribed for the drug(s) in dispute during the plan year.

(d) *Aggregating appeals to meet the amount in controversy.* (1) *Enrollee.* Two or more appeals may be aggregated by an enrollee to meet the amount in controversy for an ALJ hearing if—

(i) The appeals have previously been reconsidered by an IRE;

(ii) The enrollee requests aggregation at the same time the requests for hearing are filed, and the request for aggregation and requests for hearing are filed within 60 calendar days after receipt of the notice of reconsideration for each of the reconsiderations being appealed, unless the deadline to file one or more of the requests for hearing has been extended in accordance with § 423.2014(d); and

(iii) The appeals the enrollee seeks to aggregate involve the delivery of prescription drugs to a single enrollee, as determined by an ALJ or attorney adjudicator. Only an ALJ may determine the appeals the enrollee seeks to aggregate do not involve the delivery of prescription drugs to a single enrollee.

(2) *Multiple enrollees.* Two or more appeals may be aggregated by multiple enrollees to meet the amount in controversy for an ALJ hearing if—

(i) The appeals have previously been reconsidered by an IRE;

(ii) The enrollees request aggregation at the same time the requests for hearing are filed, and the request for aggregation and requests for hearing are filed within 60 calendar days after receipt of the notice of reconsideration for each of the reconsiderations being appealed, unless the deadline to file one or more of the requests for hearing has been extended in accordance with § 423.2014(d); and

(iii) The appeals the enrollees seek to aggregate involve the same prescription drugs, as determined by an ALJ or attorney adjudicator. Only an ALJ may determine the appeals the enrollees seek to aggregate do not involve the same prescription drugs.

§ 423.2010 [Amended]

■ 35. Section 423.2010 is amended—

■ a. In paragraph (b)(3)(ii) by removing the period at the end of the paragraph and adding a semicolon in its place; and

■ b. In paragraph (d)(1) by removing the phrase ''to the hearing''.

■ 36. Section 423.2014 is amended by revising paragraphs (a)(1)(i), (d) introductory text, and (e)(1) and (3) to read as follows:

§ 423.2014 Request for an ALJ hearing or a review of an IRE dismissal.

(a) * * *

(1) * * *

(i) The name, address, telephone number, and Medicare number of the enrollee.

* * * * *

(d) *When and where to file.* The request for an ALJ hearing after an IRE reconsideration or request for review of an IRE dismissal must be filed:

* * * * *

(e) * * *

(1) If the request for hearing or review is not filed within 60 calendar days of receipt of the written IRE's reconsideration or dismissal, an enrollee may request an extension for good cause.

* * * * *

(3) The request must be filed with the office specified in the notice of reconsideration or dismissal, must give the reasons why the request for a hearing or review was not filed within the stated time period, and must be filed with the request for hearing or request for review of an IRE dismissal, or upon notice that the request may be dismissed because it was not timely filed.

* * * * *

§ 423.2016 [Amended]

■ 37. Section 423.2016 is amended in paragraph (b)(1) by removing the term ''hearing'' and adding the term ''decision'' in its place.

■ 38. Section 423.2020 is amended by revising paragraph (a), adding paragraph (e)(5), and revising paragraph (i)(5) to read as follows:

§ 423.2020 Time and place for a hearing before an ALJ.

(a) *General.* The ALJ sets the time and place for the hearing, and may change the time and place, if necessary.

* * * * *

(e) * * *

(5) If the enrollee's objection to the place of the hearing includes a request for an in-person or video-teleconferencing hearing, the objection and request are considered in paragraph (i) of this section.

* * * * *

(i) * * *

(5) The ALJ may grant the request, with the concurrence of the Chief ALJ or designee if the request was for an in-person hearing, upon a finding of good cause and will reschedule the hearing for a time and place when the enrollee may appear in person or by video-teleconference before the ALJ. Good cause is not required for a request for video-teleconferencing hearing made by an unrepresented enrollee who filed the request for hearing and objects to an ALJ's offer to conduct a hearing by telephone.

* * * * *

§ 423.2032 [Amended]

■ 39. Section 423.2032 is amended in paragraph (c) by removing the phrase ''to pending appeal'' and adding the phrase ''to a pending appeal'' in its place.

■ 40. Section 423.2034 is amended by revising paragraph (a)(1) to read as follows:

§ 423.2034 Requesting information from the IRE.

(a) * * *

(1) Official copies of redeterminations and reconsiderations that were conducted on the appealed issues, and official copies of dismissals of a request for redetermination or reconsideration, can be provided only by CMS, the IRE, and/or the Part D plan sponsor. Prior to issuing a request for information to the IRE, OMHA will confirm whether an electronic copy of the missing redetermination, reconsideration, or dismissal is available in the official system of record, and if so will accept the electronic copy as an official copy.

* * * * *

§ 423.2036 [Amended]

■ 41. Section 423.2036 is amended—

■ a. In paragraph (d) by removing the reference ''§ 423.560.'' and adding the phrase ''§ 423.560, to do so.'' in its place; and

■ b. In paragraph (e) by removing the reference ''§ 423.2034(b)(2)'' and adding the reference ''§ 423.2056(e)'' in its place.

§ 423.2044 [Amended]

■ 42. Section 423.2044 is amended in paragraph (c) by removing the reference ''§ 423.1970'' and adding the reference ''§ 423.2006'' in its place.

§ 423.2052 [Amended]

■ 43. Section 423.2052 is amended—

■ a. In paragraph (a)(3) by removing the phrase ''or attorney adjudicator'';

■ b. In paragraph (a)(5) by removing the phrase ''or attorney adjudicator'' the first time it appears;

■ c. In paragraph (a)(6) by removing the phrase ''or attorney adjudicator''; and

■ d. In paragraph (e) by removing the phrase ''6 months'' and adding the phrase ''180 calendar days'' in its place.

■ 44. Section 423.2056 is amended by revising paragraphs (b), (d), (f), and (g) to read as follows:

§ 423.2056 Remands of requests for hearing and requests for review.

* * * * *

(b) *No redetermination.* If an ALJ or attorney adjudicator finds that the IRE issued a reconsideration and no redetermination was made with respect to the issue under appeal or the request for redetermination was dismissed, the reconsideration will be remanded to the IRE, or its successor, to readjudicate the request for reconsideration, unless the request for redetermination was forwarded to the IRE in accordance with § 423.590(c) or (e) without a redetermination having been conducted.

* * * * *

(d) *Remanding an IRE's dismissal of a request for reconsideration.* (1) Consistent with § 423.2004(b), an ALJ or attorney adjudicator will remand a case to the appropriate IRE if the ALJ or attorney adjudicator determines that an IRE's dismissal of a request for reconsideration was in error.

(2) If an official copy of the notice of dismissal or case file cannot be obtained from the IRE, an ALJ or attorney adjudicator may also remand a request for review of a dismissal in accordance with the procedures in paragraph (a) of this section.

* * * * *

(f) *Notice of a remand.* OMHA mails or otherwise transmits a written notice of the remand of the request for hearing or request for review to the enrollee at his or her last known address, and CMS, the IRE, and/or the Part D plan sponsor if a request to be a participant was granted by the ALJ or attorney adjudicator. The notice states that there is a right to request that the Chief ALJ or a designee review the remand, unless the remand was issued under paragraph (d)(1) of this section.

(g) *Review of remand.* Upon a request by the enrollee or CMS, the IRE, or the Part D plan sponsor filed within 30 calendar days of receiving a notice of remand, the Chief ALJ or designee will review the remand, and if the remand is not authorized by this section, vacate the remand order. The determination on a request to review a remand order is binding and not subject to further review. The review of remand procedures provided for in this paragraph are not available for and do not apply to remands that are issued in paragraph (d)(1) of this section.

■ 45. Section 423.2100 is amended by revising paragraph (a) to read as follows:

§ 423.2100 Medicare Appeals Council review: general.

(a) An enrollee who is dissatisfied with an ALJ's or attorney adjudicator's decision or dismissal may request that the Council review the ALJ's or attorney adjudicator's decision or dismissal.

* * * * *

■ 46. Section 423.2110 is amended—

■ a. In paragraph (a) introductory text by removing the phrase ''after the date'' and adding the phrase ''of receipt'' in its place; and

■ b. In paragraph (b)(2) by removing the term ''issued'' and adding the term ''received'' in its place.

■ c. Adding paragraph (e).

The addition reads as follows:

§ 423.2110 Council review on its own motion.

* * * * *

(e) *Referral timeframe.* For purposes of this section, the date of receipt of the ALJ's or attorney adjudicator's decision or dismissal is presumed to be 5 calendar days after the date of the notice of the decision or dismissal, unless there is evidence to the contrary.

§ 423.2112 [Amended]

■ 47. Section 423.2112 is amended in paragraph (a)(4)—

■ a. By removing the phrase ''health insurance claim''; and

■ b. By removing the phrase ''and signature''.

■ 48. Section 423.2136 is amended by revising paragraphs (a) and (b)(1) to read as follows.

§ 423.2136 Judicial review.

(a) *General rule.* (1) *Review of Council decision.* To the extent authorized by sections 1876(c)(5)(B) and 1860D–4(h) of the Act, an enrollee may obtain a court review of a Council decision if—

(i) It is a final decision of the Secretary; and

(ii) The amount in controversy meets the threshold requirements of § 423.2006.

(2) *Review of ALJ's or attorney adjudicator's decision.* To the extent authorized by sections 1876(c)(5)(B) and 1860D–4(h) of the Act, the enrollee may request judicial review of an ALJ's or attorney adjudicator's decision if—

(i) The Council denied the enrollee's request for review; and

(ii) The amount in controversy meets the threshold requirements of § 423.2006.

(b) * * *

(1) Any civil action described in paragraph (a) of this section must be filed in the District Court of the United States for the judicial district in which the enrollee resides.

* * * * *

Dated: July 16, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 5, 2018.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2018–21223 Filed 9–28–18; 11:15 am]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 83, No. 191

Tuesday, October 2, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Availability of Revised Model Adjudication Rules

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Office of the Chairman of the Administrative Conference of the United States, through its Model Adjudication Rules Working Group, has completed a revision of the Conference's 1993 Model Adjudication Rules. The rules are intended for use by all Federal agencies when designing new, and revising existing, procedural rules governing agency adjudications that involve a trial-type hearing—whether conducted pursuant to the Administrative Procedure Act), other statutes, agency regulations, or practice—that offers an opportunity for fact-finding before an adjudicator, whether or not the adjudicator is an administrative law judge.

The final revised Model Adjudication Rules are available at *https://www.acus.gov/model-rules/model-adjudication-rules*.

FOR FURTHER INFORMATION CONTACT: Francis Massaro, Attorney Advisor, Administrative Conference of the United States, 1120 20th Street NW, Suite 706 South, Washington, DC 20036; Telephone (202) 480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations for improvements to agencies, the President, Congress, and the Judicial Conference of the United States.

Originally released in 1993 by a working group of the Conference, the Model Adjudication Rules were designed for use by Federal agencies to amend or develop their procedural rules for hearings conducted under the Administrative Procedure Act. In 2016, the Office of the Chairman of the Administrative Conference of the United States established a similar working group—the Model Adjudication Rules Working Group—to review and revise the Conference's 1993 Model Adjudication Rules.

Numerous agencies have relied on the Conference's 1993 Model Adjudication Rules to improve existing adjudicative schemes; and newer agencies, like the Consumer Financial Protection Bureau, have relied on them to design new procedures. Significant changes in adjudicative practices and procedures since 1993—including use of electronic case management and video hearings—necessitated a careful review and revision of the Model Adjudication Rules. In the course of its work, the new Working Group relied on the Conference's extensive empirical research of adjudicative practices reflected in the Federal Administrative Adjudication Database, available at *https://acus.law.stanford.edu/;* amendments to the Federal Rules of Civil Procedure since 1993; and input from agency officials, academics, practitioners, and other stakeholders. Public comment on the draft revised Model Adjudication Rules was solicited in the **Federal Register** on January 22, 2018 (83 FR 2958), and multiple public meetings of the Working Group and the Conference's Adjudication Committee were held to help inform the final document.

Additional information about the Administrative Conference's Model Adjudication Rules project, including drafts, meeting agendas, a listing of the Working Group members, and other related information, can be found on the Conference's website at *https://www.acus.gov/research-projects/office-chairman-model-adjudication-rules-working-group*.

Dated: September 26, 2018.

Shawne McGibbon,

General Counsel.

[FR Doc. 2018–21438 Filed 10–1–18; 8:45 am]

BILLING CODE 6110–01–P

AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The U.S. African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration. This meeting will occur at the USADF office.

DATES: The meeting date is Thursday, October 11, 2018, 9:30 a.m. to 12:00 noon.

ADDRESSES: The meeting location is USADF, 1400 I St. NW, Suite 1000, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Jenny Morgan, (202)233–8819.

Authority: Public Law 96–533 (22 U.S.C.§ 290h).

Dated: September 26, 2018.

June B. Brown,

General Counsel.

[FR Doc. 2018–21373 Filed 10–1–18; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 27, 2018.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by November 1, 2018. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Floriculture Survey.

OMB Control Number: 0535–0093.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare current official state and national estimates of crop and livestock production. Since 1985 Congress has provided funds to conduct an annual Commercial Floriculture Survey which obtains data on this important and growing industry. Several program changes have occurred since the previous approval in November of 2015. Results from the surveys that were conducted in January 2016 referencing 2015 production data, were published in April 2016. In January 2017 and 2018 the national surveys were postponed due to budget cuts. NASS did collect data for the State of Hawaii only for those two years under a cooperative agreement with the Hawaii State Dept. of Agriculture.

Following an extensive review of the floriculture industry and trends in production, NASS is proposing the following changes to the program. Based on the 2014 Horticultural Specialties Census, the top 16 states which represent 79.6% of the combined total of floriculture production and sales in the United States, will be surveyed. In addition, Congress has provided line item funding for the inclusion of Alaska into the Floriculture Survey program. The 17 States that will be included in the program in this renewal request are: Alaska, California, Colorado, Connecticut, Florida, Illinois, Michigan, Ohio, Oregon, New Jersey, New York, North Carolina, Pennsylvania, Texas, Virginia, Washington, and Wisconsin. New to this program are the States of Alaska, Colorado, Connecticut, Virginia, and Wisconsin. Dropped from the federally funded program are Hawaii, Maryland, and South Carolina. However, NASS has been contacted by the States of Arizona, Hawaii and Maryland about doing a reimbursable survey through a cooperative agreement with each State. These three State surveys will be included in this OMB approval request.

General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which can be obtained by the collection of statistics . . . and shall distribute them among agriculturists''. The floriculture industry accounted for approximately $5.9 billion in wholesale sales at the U.S. level in 2014 (Census of Horticultural Specialties). In 2015 the 15 States that were surveyed by the Commercial Floriculture Survey accounted for $4.37 billion in wholesale sales or a little over 74% of the U.S. total.

Need and Use of the Information: NASS obtains basic agricultural statistics on production and value of floriculture products. The target population for this survey is all operations with production and sales of at least $10,000 of floriculture products. Data collected from the survey will assess alternative agriculture opportunities, and provide statistics for Federal and State agencies to monitor the use of agricultural chemicals. If the information is not collected data users could not keep abreast of changes.

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

Number of Respondents: 12,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 5,793.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–21381 Filed 10–1–18; 8:45 am]

BILLING CODE 3410–20–P

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

TIME AND DATE: 10:00 a.m.–12:00 p.m. October 26, 2018.

PLACE: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The primary purpose of this meeting is to (1) Review the independent auditors' report of the Commission's financial statements for fiscal year 2017–2018; (2) Review the Low-Level Radioactive Waste (LLRW) generation information for 2017; (3) Consider a proposed budget for fiscal year 2019–2020; (4) Review recent regional and national developments regarding LLRW management and disposal; and (5) Elect the Commission's Officers.

PORTIONS CLOSED TO THE PUBLIC: Executive Session, if deemed necessary, will be announced at the meeting.

CONTACT PERSON FOR MORE INFORMATION: Rich Janati, Administrator of the Commission at 717–787–2163.

Rich Janati,

Administrator, Appalachian Compact Commission.

[FR Doc. 2018–21447 Filed 10–1–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Idaho Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Idaho Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Mountain Time) Tuesday, October 16, 2018, for the purpose of reviewing the project proposal on Native American voting rights.

DATES: The meeting will be held on Tuesday, October 16, 2018, at 12:00 p.m. MT.

Public Call Information:

Dial: 888–602–6363.

Conference ID: 2385391.

FOR FURTHER INFORMATION CONTACT: Alejandro Ventura at *aventura@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the number listed above. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Alejandro Ventura at *aventura@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=245.* Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Call to Order and Roll Call

II. Adoption of Agenda

III. Review of Project Proposal on Native American Voting Rights

IV. Public Comment

V. Vote on Project Proposal

VI. Discussion of Next Steps

VII. Adjournment

Dated: September 26, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–21357 Filed 10–1–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota 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 North Dakota Advisory Committee to the Commission will by teleconference at 11:00 a.m. (MDT) on Thursday, October 25, 2018. The purpose of the meeting is for project and briefing planning.

DATES: Thursday, October 25, 2018, at 11:00 a.m. MDT.

Public Call-In Information: Conference call-in number: 1–877–260–1479 and conference call 8958570.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ebohor@usccr.gov* or by phone at 303–866–1040.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–877–260–1479 and conference call 8958570. 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 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–877–260–1479 and conference call 8958570.

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 Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1040, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/apex/FACAPublicCommittee?id=a10t0000001gzl9AAA*; click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. 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 Rocky Mountain Regional Office at the above phone numbers, email or street address.

Agenda

Thursday, October 25, 2018, 11:00 a.m. (MDT)

- Rollcall
- Project/Briefing Planning
- Open Comment
- Adjourn

Dated: September 27, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–21444 Filed 10–1–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Oregon Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Oregon Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Pacific Time) Monday, October 15, 2018. The purpose of the meeting is to review and vote on their final draft of the human trafficking report.

DATES: The meeting will be held on Monday, October 15, 2018, at 1:00 p.m. PT.

Public Call Information:
Dial: 877–260–1479
Conference ID: 2624390

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the above toll-free call-in number. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://facadatabase.gov/committee/meetings.aspx?cid=270.* Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Review Report Draft
  a. Findings and Recommendations Section
  i. Vote
  b. Introduction Section
  i. Vote
  c. Summary of Testimony Section
  i. Vote
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: September 26, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–21358 Filed 10–1–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Telephonic Business Meeting.

DATES: Wednesday, October 3, 2018, 12:00 p.m. ET.

ADDRESSES: Meeting to take place by telephone.

FOR FURTHER INFORMATION CONTACT: Brian Walch, phone: (202) 376–8371; TTY: (202) 376–8116; email: *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public by telephone only.

Participant Access Instructions: Listen-Only, Toll Free: 1 (888) 811–5448; Conference ID: 305–5056. Please dial in 5–10 minutes prior to the start time.

Meeting Agenda

I. Approval of Agenda
II. Program Planning
- Discussion and Vote on Commission Report, *Crisis of Conscience: The Broken Promises to Native Americans*
- Discussion and Vote on Commission Findings and Recommendations, *Crisis of Conscience: The Broken Promises to Native Americans*

III. Adjourn Meeting

Dated: September 28, 2018.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2018–21529 Filed 9–28–18; 11:15 am]

BILLING CODE 6335–01–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 Wednesday, October 10, 2018. The purpose of the meeting is project planning and decision-making on next steps.

DATES: Wednesday, October 10, 2018 at 12:00 p.m. (EDT).

Public Call-In Information: Conference call-in number: 1–877–260–1479 and conference call 5634706.

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: 1–877–260–1479 and conference call 5634706. 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: 1–877–260–1479 and conference call 5634706.

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 *https://gsageo.force.com/FACA/apex/FACAPublicCommittee?id=a10t0000001gzlqAAA;* 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

Wednesday, October 10, 2018 at 12 p.m. (EDT)

- Roll Call
- Project Planning/Vote on Project Proposal
- Open Comment
- Adjourn

Dated: September 26, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–21356 Filed 10–1–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New York 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 meeting of the New York Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EDT) on: Friday, October 12, 2018. The purpose of the meeting is to discuss topics of study.

DATES: Friday, October 12, 2018 at 12:00 p.m. EDT.

Public Call-In Information: Conference call-in number: 1–334–323–0522 and conference ID# 9150864.

FOR FURTHER INFORMATION CONTACT: David Barreras, at *dbarreras@usccr.gov* or by phone at 312–353–8311.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–334–323–0522 and conference ID# 9150864. 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: 1–334–323–0522 and conference ID# 9150864.

Members of the public are invited to make statements during the open comment period of the meetings 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 Midwest Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604, faxed to (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwest Regional Office at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=265;* 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 Midwest Regional Office at the above phone numbers, email or street address.

Agenda

Friday, October 12, 2018

- Open—Roll Call
- Discussion of Study Topics
- Open Comment
- Adjourn

Dated: September 26, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–21363 Filed 10–1–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Hawaii 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 Hawaii Advisory Committee (Committee) will hold a meeting via teleconference on Wednesday, October 17, 2018, from 1:00 p.m.–4:00 p.m. (Hawaiian Time) for the purpose of hearing testimony regarding equal opportunity barriers facing Micronesian immigrant groups in the state.

DATES: The meeting will be held on Wednesday, October 17, 2018, from 1:00 p.m.–4:00 p.m. (HDT).

Location: Impact Hub Honolulu, 1050 Queen Street, #100, Honolulu, HI 96814. The location is accessible via public transportation. Street parking is available.

Teleconference: The public may also participate via conference call by calling (855) 719–5012 and use Conference ID# 5908102.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. This meeting is an open comment period, members of the public will be asked to sign in and will be allowed to make a statement, beginning at 1:00 p.m. To request individual accommodations for persons with disabilities planning to attend, please contact the Regional Programs Unit at 312–353–8311 at least 10 days prior to the meeting. 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 mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

The Committee intends to receive testimony from Hawaii's Micronesian population on the topic of barriers to equal opportunity based on color, race, sex, religion, national origin, and/or disability status. The Committee will hear testimony from any community member wishing to be heard on the topic.

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, Hawaii Advisory Committee link (*https://gsageo.force.com/FACA/apex/FACAPublicCommittee?id=a10t0000001gzl0AAA*). Persons interested in the work of this Committee are 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

Opening Remarks and Introductions (1:00 p.m.)
Open Forum (1:10 p.m.–4:00 p.m.)
Closing Remarks (4:00 p.m.)

Dated: September 26, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–21361 Filed 10–1–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island 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 Rhode Island State Advisory Committee to the Commission will convene by conference call, on Tuesday, October 16, 2018 at 11:00 a.m. (EDT). The purpose of the meeting is to vote on the voting rights report, review and possibly vote on the predatory lending report, and continue planning.

DATES: Tuesday, October 16, 2018, at 11:00 a.m. (EDT).

Public Call-In Information: Conference call number: 1–877–260–1479 and conference call ID: 9226912.

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 number: 1–877–260–1479 and conference call ID: 9226912. Please be advised that before placing them into the conference call, the conference call operator may 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 telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–877–260–1479 and conference call ID: 9226912.

Members of the public are invited to 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, 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 *https://gsageo.force.com/FACA/apex/FACAPublicCommittee?id=a10t0000001gzm4AAA;* 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 number, email or street address.

Agenda

Tuesday, October 16, 2018 at 11:00 a.m. (EDT)

I. Rollcall
II. Review of Reports
III. Vote on Reports
IV. Next Steps/Other Discussion
V. Open Comment
VI. Adjournment

Dated: September 27, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–21442 Filed 10–1–18; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: 2020 Census.

The clearance requested from OMB is for all data collection operations in the 2020 Census. The initial **Federal Register** Notice described the 2020 Census in full. Approval for the 2020 Census is being sought from OMB in phases. This **Federal Register** Notice will provide details about the 2020 Census Address Canvassing operation only. This is the operation that creates the address list for the census, which precedes census enumeration data collection. The remaining operations scoped for the 2020 Census, as listed below, will be described in detail in a future **Federal Register** Notice for an additional 30-day comment period, and the full census description will be considered as a substantive change to the approved OMB materials.

OMB Control Number: 0607–XXXX.

Form Number(s): D–CN(E/S) (Confidentiality Notice for Address Canvassing)

Type of Request: New Collection.

Number of Respondents: 17,365,407 for Address Canvassing; 180,955,761 for all operations in 2020 Census.

Average Hours per Response: 5 minutes for Address Canvassing; 10 minutes for census enumeration.

Burden Hours: 1,447,117 for Address Canvassing; 26,533,537 for Census.

2020 CENSUS

Operation or category	Estimated number of respondents	Estimated time per response	Total burden hours
Address Canvassing	15,786,734	5 minutes	1,315,561
Address Canvassing Listing Quality Control	1,578,673	5 minutes	131,556

2020 CENSUS—Continued

Operation or category	Estimated number of respondents	Estimated time per response	Total burden hours
Total for Address Canvassing*	17,365,407		1,447,117
Geographic Areas Focused on Self-Response (this includes Mailout and Update Leave):			
Internet/Telephone/Paper	80,700,000	10 minutes	13,450,000
Update Leave	11,900,000	5 minutes	991,667
Update Leave Quality Control	1,190,000	5 minutes	99,167
Nonresponse Followup	52,700,000	10 minutes	8,783,333
Reinterview, Coverage, and Quality	7,400,000	various	725,304
Self-Response Areas Subtotal	153,890,000		24,049,471
Geographic Area Focused on Update Enumerate:			
Update Enumerate Production	506,000	12 minutes	101,200
Reinterview and Quality	75,900	various	8,434
Update Enumerate Subtotal	581,900		109,634
Group Quarters:.			
Group Quarters Advance Contact and Enumeration	8,311,300	various	720,934
Group Quarters Quality	8,500	5 minutes	708
Group Quarters Subtotal	8,319,800		721,642
Enumeration at Transitory Locations	650,000	10 minutes	108,333
Federally Affiliated Count Overseas	82	5 minutes	7
Island Areas Censuses—Housing Units	138,281	40 minutes	92,187
Island Areas Censuses—Group Quarters	10,291	30 minutes	5,146
Totals	180,955,761		26,533,537

* Address Canvassing projected counts are more detailed than the projections that inform later 2020 Census operations.

Overview of 2020 Census Operations

Below is a summary of the needs of uses of the 2020 Census, followed by a more detailed overview of data collection operations. As noted earlier, this notice is focused solely on Address Canvassing operations and solicits comments on these operations alone. The geographic areas discussed in this notice refer only to the 50 states, the District of Columbia, and Puerto Rico, unless otherwise noted.

Needs and Uses

Article 1, Section 2 of the United States Constitution mandates that the U.S. House of Representatives be reapportioned every ten years by conducting a national census of all residents. In addition to the reapportionment of the U.S. Congress, Census data are used to draw legislative district boundaries within states. Census data also are used by numerous agencies to determine funding allocations for the distribution of an estimated $675 billion of federal funds each year.

The Census Bureau plans to conduct the most automated, modern, and dynamic decennial census in history. The 2020 Census includes design changes in four key areas, discussed below:

(1) New methodologies to conduct the Address Canvassing operation.

(2) Innovative ways of optimizing self-response.

(3) The use of administrative records and third-party data to reduce the Nonresponse Followup (NRFU) operation workload.

(4) The use of technology to reduce the manual effort and improve the productivity of field operations, while decreasing the amount of physical space required to perform the field operations.

(1) Reengineering Address Canvassing

An accurate address list is the cornerstone of a successful census. In order to manage the work for decennial census, the Census Bureau uses the address and physical location of each place where someone is, or could be, living. The Census Bureau maintains this address list and spatial data for the United States and Puerto Rico in its Master Address File (MAF)/ Topologically Integrated Geographic Encoding and Referencing (TIGER) System database.

This database was created using the address files from the 1990 Census and has been subsequently and regularly updated using:

- Information collected from decennial census operation updates, including address and spatial updates.
- The Delivery Sequence File of addresses from the United States Postal Service (USPS).
- Input from tribal, state, and local governments and third parties, including address and boundary updates from various programs conducted over the decade, such as the Local Update of Census Addresses operation.
- Information collected in other Census Bureau programs, such as the American Community Survey.

The purpose of Address Canvassing is (1) to deliver a complete and accurate address list and spatial database for enumeration and tabulation, and (2) to determine the type and address characteristics for each living quarter. Prior to a field Address Canvassing data collection, the Census Bureau will delineate the entire land area of the United States, Puerto Rico, and Island Areas into Type of Enumeration Areas (TEAs). Most stateside United States living quarters will be delineated into the self-response area, where the census address list will be created before the census, census materials will be provided in the mail, and self-response modes will be supported and promoted. Other areas will be designated for Update Leave, Update Enumerate (including Remote Alaska), Military

Enumeration, or Island Areas Enumeration.

For the 2020 Census there will be a full Address Canvassing of the country that will consist of In-Office Address Canvassing complemented with In-Field Address Canvassing. In-Office Address Canvassing is the process of using empirical geographic evidence (*e.g.,* imagery, comparison of the Census Bureau's address list to address lists provided by the United States Postal Service and governmental units that partner with the Census Bureau) to assess the current address list and make changes where necessary. This component also detects and captures areas of change from high quality administrative records and third-party data. Advancements in technology have enabled continual address and spatial updates to occur throughout the decade as part of the In-Office Address Canvassing effort. Since 2015, satellite imagery has been used for the identification of areas where there are changes in living quarters. Where the necessary updates can be captured from electronic sources and are deemed to be sufficiently accurate, In-Office Address Canvassing will complete the update process prior to the census. The remaining blocks will become eligible to be sent to In-Field Address Canvassing for updating on the ground by field staff.

(2) Optimizing Self-Response

The goal of this innovation area is to make it as easy and efficient as possible for people to respond to the 2020 Census by offering new response options through the internet and telephone, in addition to the traditional mailback paper questionnaire option. Self-response reduces the need to conduct in-person follow-up operations to complete the enumeration, by far the most expensive method of data collection. To that end, the Census Bureau will motivate people to respond, as well as make it easy for people to respond, from any location at any time, even if they don't have the unique identifier for their address provided to them by the Census Bureau.

The importance of responding to the 2020 Census will be communicated in a variety of ways, including through mailings, questionnaire delivery, advertising, and partnership efforts. In particular, the Integrated Partnership and Communications operation is responsible for communicating the importance of participating in the 2020 Census.

Internet response represents a substantial innovation for the Census Bureau. The internet was not a response option in the 2010 Census. The internet response option has been included in multiple tests leading up to the 2020 Census: the 2014 Census Test; all three census tests performed in 2015; the 2016 Census Test; the 2017 Census Test; and the 2018 End-to-End Census Test. It has also been used in the American Community Survey since 2013.

(3) Utilizing Administrative Records and Third-Party Data

For the 2020 Census, ''administrative records'' and ''third-party data'' are terms used to describe microdata records contained in files collected and maintained by Federal, state, and local government agencies (''administrative records'') and commercial entities (''third-party data'') for administering programs and providing services. For many decades, the Census Bureau has successfully and securely used administrative records and third-party data for statistical purposes. For the 2020 Census, the Census Bureau intends to use administrative records from both internal sources, such as data from prior decennial censuses and the American Community Survey, and from a range of other Federal agencies, including the Internal Revenue Service (IRS), the Social Security Administration, the Centers for Medicare and Medicaid Services, the Department of Housing and Urban Development, the Indian Health Service, the Selective Service, and the U.S. Postal Service. The Census Bureau is also working to acquire state government administrative records from enrollment in Federal block grant programs, such as the U.S. Department of Agriculture's Supplemental Nutrition Assistance Program and the Special Supplemental Nutrition Program for Women, Infants, and Children. Finally, the Census Bureau is also utilizing commercial third-party data from organizations such as CoreLogic and the Veterans Service Group of Illinois.

Throughout the decade, the Census Bureau continuously conducted analyses and assessments to verify that the proposed uses of administrative records and third-party data sources in the 2020 Census were appropriate in each instance. Based on this research, testing, and analyses, the Census Bureau announced its plans in November 2015 to utilize administrative records and third-party data in the 2020 Census. The 2020 Census Operational Plan calls for employing this information for the following purposes:

I. Consistent with previous decennial censuses, the Census Bureau will utilize administrative records from federal and state government agencies and third-party data to refine contact strategies and build and update the residential address list.

II. Also consistent with previous decennial censuses, the Census Bureau will utilize federal and state administrative records to edit or impute invalid, inconsistent, or missing responses.

III. The new use of administrative records for the 2020 Census is to use data exclusively from federal administrative records to improve the accuracy and efficiency of the NRFU operation by:

a. removing vacant housing units and nonresidential addresses from the NRFU workload.

b. enumerating households that do not self-respond and whom we were unable to contact after six mailings and one in-person field visit.

For each of the purposes listed in items II, IIIa, and IIIb, the Census Bureau will use or plans to use administrative data only when it can confirm empirically across multiple sources that the data are consistent, of high quality, and can be accurately applied to the addresses and households in question. The Census Bureau plans to enumerate households utilizing administrative records only from Federal government agencies, such as the IRS. Use of administrative records for nonresponding addresses will be evaluated under a strict set of Census Bureau rules throughout the process to ensure completeness and accuracy.

Based on the research and tests conducted, the Census Bureau estimates that under the current operational plan, Federal administrative records will be used to enumerate up to 6.5 million households of the projected total of approximately 60 million addresses that are expected to be in the NRFU workload for the 2020 Census. These 6.5 million households represent less than five percent of the approximately 145 million addresses in the Census master address file. Where the Census Bureau does not have confidence in the data, such as when the data are inconsistent or missing in the Federal administrative records, the household will remain in the NRFU workload to be enumerated in person.

(4) Reengineering Field Operations

The final innovation area, ''Reengineering Field Operations,'' has a goal of using technology to manage the 2020 Census fieldwork efficiently and effectively, and as a result, reduce the staffing, infrastructure, and brick and mortar footprint for the 2020 Census. The Census Bureau plans to provide

most listers and enumerators with the capability to work completely remotely and perform all administrative and data collection tasks directly from a mobile device.

Supporting Documents About the 2020 Census Design and the 2020 Census Objectives

Multiple Census Bureau publications provide background on the plans for the 2020 Census. The 2020 Census Operational Plan v3.0, which was published in September 2017, describes each of the 35 operations scoped and defined for the census. Every task performed for the 2020 Census must be assigned to one of the 35 operations. The Operational Plan also summarizes the major findings of the census tests performed this decade. Moreover, this document shows the planned design of the 2020 Census as of September 2017 and identifies design decisions made, as well as remaining decisions to be made using census test results. Key design components for the 2020 Census for every operation are discussed in Chapter 5 of the 2020 Census Operational Plan.

Type of Enumeration Areas

Prior to the census, it is necessary to delineate all geographic areas into Type of Enumeration Areas (TEAs). These TEAs describe what methodology will be used for census material delivery and household enumeration in order to use the most cost-effective enumeration approach for achieving maximum accuracy and completeness. TEAs also describe what methodology will be used for updating the address frame. For the United States and Puerto Rico, TEAs are delineated at the block level based on the address and spatial data in the MAF/TIGER database.

The MAF/TIGER does not contain data for the Island Areas, so a separate TEA is designated for these areas. The TEAs designated for the 2020 Census are:

* TEA 1 = Self-Response.
* TEA 2 = Update Enumerate.
* TEA 3 = Island Areas.
* TEA 4 = Remote Alaska.
* TEA 5 = Military.
* TEA 6 = Update Leave.

The most common enumeration method by percentage of households is self-response (TEA 1), where materials will be delivered to each address through the mail, and self-response will be supported and promoted. After the initial self-response phase, nonresponding households will be enumerated in the NRFU operation. Update Enumerate uses the methodology of updating the address list and attempting household enumeration at the same time. This will be used for a very small portion of the addresses in country, such as those with access problems or minimal mail service. The Island Areas are not included in MAF/TIGER. For these areas, the address list will be created and enumeration will be attempted at the same time. Remote Alaska uses the Update Enumerate methodology but in remote areas of Alaska that require a different schedule for enumeration. Military areas require special procedures due to security restrictions. Update Leave is an update of the address list at the same time that a questionnaire is left at each individual housing unit and the enumeration data is expected to be returned or submitted by a respondent. Puerto Rico is designated as entirely Update Leave (except for military locations). Operations that will contribute to the respondent experience of the 2020 Census will be described in detail, as shown below, but only the Address Canvassing operation will be described within this clearance request. The 2020 Census Operational Plan and Detailed Operational Plans, available at *www.census.gov,* provide design details about the remaining operations, and the remaining operations will be described in future documents related to this OMB clearance.

A. Content and Forms Design

The Content and Forms Design operation will be described in more detail in subsequent versions of this document.

B. Language Services

The Language Services operation will be described in more detail in subsequent versions of this document.

C. Address Canvassing

Address Canvassing, as described above, consists of two major components: In-Office Address Canvassing and In-Field Address Canvassing. In-Office Address Canvassing is the process of using empirical geographic evidence (*e.g.,* imagery, comparison of the Census Bureau's address list to partner-provided lists) to assess the current address list and make changes where necessary. This component detects and captures areas of change from high quality administrative records and third-party data. Advancements in technology have enabled continual address and spatial updates to occur throughout the decade as part of the In-Office Address Canvassing effort.

Areas not resolved by In-Office Address Canvassing become the universe of geographic areas worked during In-Field Address Canvassing. Only the In-Field component of Address Canvassing involves in person collection of information from residents at their living quarters.

For In-Field Address Canvassing, an extract of addresses from the MAF is created, and this address list is verified and updated in the field, as needed. Updates can include adding units missing from the address list and removing nonexistent or nonresidential units from the list. In addition, living quarters are classified as housing units or group quarters. Group quarters are living quarters where people who are typically unrelated have group living arrangements and frequently are receiving some type of service. College/university student housing and nursing/skilled-nursing facilities are examples of group quarters. Transitory locations include recreational vehicle parks, campgrounds, racetracks, circuses, carnivals, marinas, hotels, and motels. People residing at transitory locations during the census are recorded as living in housing units located at transitory locations.

During In-Field Address Canvassing, listers knock on doors at every structure in the assignment in an attempt to locate living quarters and classify each living quarter as a housing unit, group quarter, or transitory location. If someone answers, the lister will provide a Confidentiality Notice and ask about the address in order to verify or update the information, as appropriate. The listers will then ask if there are any additional living quarters in the structure or on the property. If there are additional living quarters, the listers will collect/update that information, as appropriate. In addition, there will be a check on the quality of the address listing work on approximately 10 percent of the address listing workload.

The results of Address Canvassing are processed with MAF/TIGER and then used as input into the creation of the census address list for enumeration. This address list in turn, is used in conjunction with the TEA delineation to determine which materials should be printed for use in the operation(s) designated for each area of the country.

D. Forms Printing and Distribution

The Forms Printing and Distribution operation will be described in more detail in subsequent versions of this document.

E. Internet Self-Response

The internet Self-Response operation will be described in more detail in subsequent versions of this document.

F. Census Questionnaire Assistance

The Census Questionnaire Assistance operation will be described in more detail in subsequent versions of this document.

G. Update Leave

The Update Leave operation will be described in more detail in subsequent versions of this document.

H. Update Enumerate

The Update Enumerate operation will be described in more detail in subsequent versions of this document.

I. Non-ID Processing

The Non-ID Processing operation will be described in more detail in subsequent versions of this document.

J. Nonresponse Followup

The Nonresponse Followup Operation will be described in more detail in subsequent versions of this document.

K. Group Quarters

The Group Quarters operation will be described in more detail in subsequent versions of this document.

L. Paper Data Capture

The Paper Data Capture operation will be described in more detail in subsequent versions of this document.

M. Response Processing

The Response Processing Operation will be described in more detail in subsequent versions of this document.

N. Redistricting Data Program

The Redistricting Data Program operation will be described in more detail in subsequent versions of this document. This program has a separate OMB clearance number. There is more detail about this program in **Federal Register** July 26, 2018, (Vol. 83, No. 144, pp. 35458–35460. FR Doc No. 2018–15972).

O. Data Products and Dissemination

The Data Products and Dissemination operation will be described in more detail in subsequent versions of this document.

P. Archiving

The Archiving operation will be described in more detail in subsequent versions of this document.

Q. Federally Affiliated Count Overseas

The Federally Affiliated Count Overseas operation will be described in more detail in subsequent versions of this document.

R. Island Areas Censuses

The Island Areas Censuses operation will be described in more detail in subsequent versions of this document.

S. Evaluations and Experiments

The Evaluations and Experiments operation will be described in more detail in subsequent versions of this document.

The Census Bureau is not currently planning a separate clearance for the Evaluations and Experiments program, as has been done in past censuses. For the 2020 Census, these evaluations and experiments will be described either as Nonsubstantive Changes to this clearance or within other related clearance documents.

Affected Public: Individuals or Households.

Frequency: Once every 10 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Section 141.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the Address Canvassing phase of the proposed information collection, identified by Docket number OMB–2018–0004, may be submitted to the Federal e-Rulemaking portal: *Fs://www.regulations.gov* within 30 days of publication of this notice. You may also submit comments and recommendations to *2020_Census_Comments@omb.eop.gov* or fax to (202) 395–5806. All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–21386 Filed 10–1–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Membership of the Performance Review Board for the Office of the Secretary

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice of Membership on the Office of the Secretary Performance Review Board.

SUMMARY: The Office of the Secretary, the Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and Senior Level (SL) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for the Office of the Secretary Performance Review Board begins on October 2, 2018.

FOR FURTHER INFORMATION CONTACT: Joan Nagielski, U.S. Department of Commerce, Office of Human Resources Management, Department of Commerce Human Resources Operations Center, Office of Employment and Compensation, 14th and Constitution Avenue NW, Room 50013, Washington, DC 20230, at (202)482–6342.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Office of the Secretary, Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Office of the Secretary Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) and (SL) members and (2) making recommendations to the appointing

authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

Dates: The name, position title, and type of appointment of each member of the Performance Review Board are set forth below:

1. Brian DiGiacomo, Assistant General Counsel for Employment, Litigation, and Information Law, Career SES.
2. John Cobau, Chief Counsel for International Commerce, Career SES.
3. Kurt Bersani, Chief Financial Officer and Director of Administration, Enterprise Services, Career SES.
4. Catrina Purvis, Senior Agency Official for Privacy (SAOP)/Chief Privacy Officer (CPO) & Director of Open Government (OPOG), Career SES.
5. Sivaraj Shyam-Sunder, Senior Science Advisor, NIST, Career SES.

Dated: September 27, 2018.

Joan M. Nagielski,

Human Resources Specialist, Office of Employment and Compensation, Department of Commerce Human Resources Operations Center, Office of Human Resources Management, Office of the Secretary, Department of Commerce.

[FR Doc. 2018–21430 Filed 10–1–18; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Temporarily Denying Export Privileges

Eastline Technologies OU, Akadeemia tee 21, 12618 Tallinn, Estonia; and Peterburi tee 47–210, 11415 Tallinn, Estonia

Adimir OU, Akadeemia tee 21, 12618 Tallinn, Estonia; and Peterburi tee 47–210, 11415 Tallinn, Estonia

Valery Kosmachov, a/k/a Valeri Kosmachov, a/k/a Valery Kosmatsov, a/k/a Valery Kosmatshov, a/k/a Valery Kosmachev, Vabaõhukooli tee 76–A9, 12015 Tallinn, Estonia

Sergey Vetrov, a/k/a Sergei Vetrov, 6–39 Karl Marx Str., Ramenskoye, Moscow, Russia 140100

Real Components Ltd., 8–1 Aviamotornaya Str., Moscow, Russia 111024

I. Introduction and Background of the Parties at Issue

Pursuant to Section 766.24 of the Export Administration Regulations (the ''Regulations'' or ''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I issue an order temporarily denying, for a period of 180 days, the export privileges of Eastline Technologies OU (''Eastline''), Adimir OU (''Adimir''), Valery Kosmachov a/k/a Valeri Kosmachov, a/k/a Valery Kosmatsov, a/k/a Valery Kosmatshov, a/k/a Valery Kosmachev (''Kosmachov''), and Sergey Vetrov a/k/a Sergei Vetrov (''Vetrov'') (collectively, ''Respondents''). OEE also has requested, pursuant to Sections 766.23 and 766.24 of the Regulations, that this order (''the TDO'') be applied to Real Components, Ltd. (''Real Components'') as a related person.

Eastline is located in Tallinn, Estonia, and describes itself as a distributor of electronic parts and components, computer-related products, industrial personal computers and embedded systems, equipment for industrial automation, and other state-of-the-art solutions. The company holds an Estonian business license and has two addresses in Tallinn identified in registration documents. Eastline is operated primarily for the purpose of procuring electronic components, including those of U.S. origin. Kosmachov and Vetrov were listed as co-owners of Eastline until late 2016. The company is currently listed as being solely owned by Valeria Mihhailova, whom OEE has reason to believe is Kosmachov's daughter. Evidence presented by OEE indicates that both Kosmachov and Vetrov remain active in the business, as well as that Kosmachov also has previously represented that Eastline partners with Real Components, which is located in Moscow, Russia, is owned by Vetrov, and is Eastline's primary customer in Russia.

Kosmachov also has previously identified himself as being the sole owner of Adimir, an Estonian company. Adimir shares the same business addresses as Eastline. Adimir is known to have previously been involved in the transshipment and attempted transshipment of U.S.-origin items to Russia in apparent violation of the Regulations, as described in a TDO issued by BIS on March 19, 2015, as amended on March 23, 2015 (the ''March 2015 TDO''). *See* 80 FR 15979 (March 26, 2015); 80 FR 16632 (March 30, 2015).[2] During the investigation leading up to the issuance of the March 2015 TDO, Adimir admitted to transshipping U.S.-origin items to Russia, but was not named as a respondent, as Adimir was believed to have ceased operating. *See id.; see also* Section III., *infra.* However, as discussed in Section IV., *infra,* recently-obtained evidence indicates that Adimir appears to have resumed operating, and to again be involved in the procurement of U.S.-origin items for transshipment to Russian customers, primarily including Real Components.

II. Legal Standard

Pursuant to Section 766.24 of the Regulations, BIS may issue, on an *ex parte* basis, an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(a)–(b). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''[l]ack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

Pursuant to Sections 766.23 and 766.24, a TDO also may be made applicable to other persons if BIS has reason to believe that they are related to a respondent and that applying the

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2018). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''the EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 FR 39871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Public Law 115–232 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

[2] The limited amendment on March 23, 2015, did not relate to the discussion of Adimir. *See* 80 FR 16632, at note 2. The March 2015 TDO was renewed for an additional 180 days on September 14, 2015. 80 FR 56439 (Sept. 18, 2015).

order to them is necessary to prevent its evasion. 15 CFR 766.23(a)–(b) and 766.24(c). A ''related person'' is a person, either at the time of the TDO's issuance or thereafter, who is related to a respondent ''by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business.'' 15 CFR 766.23(a).

III. The March 2015 TDO and Adimir OU'S Admitted Transshipment Activities

The March 2015 TDO issued against Flider Electronics, LLC d/b/a Trident International Corporation (''Trident''), Pavel Semenovich Flider (Trident's president and owner), and Gennadiy Semenovich Flider (Trident's office manager) for engaging in conduct prohibited by the Regulations by exporting items subject to the EAR to Russia via transshipment through third countries, including Estonia and Finland. Contemporaneous to these events, in or about March 2015, in an indictment unsealed in the United States District Court for the Northern District of California, Pavel Flider was charged with fifteen counts of smuggling goods, one count of conspiracy to commit international money laundering, and ten counts of money laundering, and Trident was charged with all the same counts, except conspiracy. On August 16, 2016, Pavel Flider pled guilty to two counts of felony smuggling, and Trident pled guilty to two counts of money laundering involving the transshipment of U.S.-origin electronic components through Estonia and Finland to Russia. During the investigation, U.S. authorities identified other companies and individuals involved in the transshipment of U.S.-origin electronic components to Russia.

Specifically, for example, Trident's president and owner, Pavel Flider, identified Adimir in Estonia as the ultimate consignee in a shipment of Xilinix field programmable gate array circuits that were controlled under Export Control Classification Number 3A001.a.2.c for national security reasons and required a license for export to Russia. OEE presented evidence that indicated that Adimir was not the end user of the items. In addition, Kosmachov, an Adimir corporate officer and its owner, admitted that Adimir had transshipped U.S.-origin items to Russia for Trident and Pavel Flider. In an interview with OEE, Trident office manager Gennadiy Flider stated that Trident had been doing business with Adimir for many years and that it was the only customer Trident had. Similarly, Pavel Flider stated in an interview that Adimir was Trident's one and only customer, and that at times Adimir requested that items be shipped to a freight forwarder in Finland, rather than to Adimir in Estonia.

In sum, the March 2015 TDO described a procurement scheme that featured exports of U.S.-origin items structured as transshipments to camouflage the actual destination, end users and/or end uses of the items. As noted above, while Adimir had been involved in transshipping the items to Russia, Adimir was not made a party to the March 2015 TDO, as it was believed to have already ceased operating. The March 2015 TDO and related investigation appears to have for a time deterred Adimir and those affiliated or associated with it from engaging in similar activities. However, OEE has presented evidence as part of its current TDO request indicating that by at least May 2017, Kosmachov and Vetrov were using a revised scheme with Eastline identified falsely as the ultimate consignee and have expanded their activities to include the procurement of U.S.-origin items by both Eastline and Adimir, including as recently as August and September 2018.

IV. Subsequent Interviews With Kosmachov About Eastline, the Detention of an Attempted Transshipment in May 2017, and More Recent Procurement and Transshipment Activities Involving Eastline and Adimir

OEE's current request for a TDO includes evidence that an ongoing procurement scheme involves Eastline and Adimir in Estonia and Eastline's customer and partner Real Components Ltd. in Russia, all of whom share or have shared a common web of ownership or control involving Kosmachov and Vetrov. For example, Adimir and Eastline not only share a common address but also have shared a common owner in Kosmachov, who, as discussed *supra,* previously admitted to using Adimir to transship U.S.-origin items to Russia. Kosmachov remains active in Eastline's procurement operations, though company registration documents do not currently list him as a shareholder. Furthermore, Eastline and Real Components both have ties to Vetrov, with his continuing involvement in Eastline procurement activities and ownership of Real Components. As set forth below, OEE has presented evidence of these relationships based on interviews with Eastline in 2015–2016, a detained shipment in May 2017 and information related to recent export activities.

In July 2015, Kosmachov, who was Eastline's acknowledged co-owner at the time (and until late November 2016), told the U.S. Government that Eastline started in 2005 as an independent distributor of electronic parts and components, among other items. Kosmachov stated that 99% of Eastline's business was in electronic components and that its primary customers are in Russia. According to Kosmachov, he chose to do business in Estonia because ''it was easier to get electronics into Estonia than it was into Russia.'' He also stated that U.S. companies were ''easier to deal with as a European company, rather than as a Russian company.'' Kosmachov indicated that ''all Eastline's shipments to Russia go across the Tallinn-Helsinki Ferry to Helsinki and then across the Finnish-Russian border'' because it was ''cheaper'' and took ''less time'' than shipping directly from Estonia to Russia. Also present at this meeting was another individual identified as a purchasing manager for both Eastline and Real Components. Kosmachov indicated that Eastline partners with Real Components, which is owned by Vetrov.

In a subsequent meeting in March 2016, Kosmachov confirmed that nothing had changed in relation to Eastline since the May 2015 meeting and that he continued to own Adimir, which shares business addresses with Eastline. He noted again that Eastline primarily exports to Real Components in Russia. The purchasing manager for both Eastline and Real Components was again present at this meeting.

OEE has presented evidence that Kosmachov and Vetrov remained the acknowledged shareholders in Eastline until November 29, 2016, at which time Valeria Mihhailova, who is believed to be Kosmachov's daughter, became listed as the sole shareholder. Information obtained from a May 2017 detention by the Department of Homeland Security indicates, moreover, that Kosmachov and Vetrov continue to be active in Eastline's business operations by having items from the United States procured under their names for Eastline and delivered on Eastline's behalf to a package forwarder's address in the United States. The package forwarder then consolidated multiple Eastline shipments into one export and, based on information provided by Eastline, created a commercial invoice and made an Electronic Export Information (''EEI'') filing in the Automated Export System (''AES'') [3] listing Estonia as the

[3] The AES system is used by BIS (and U.S. Customs and Border Protection) for export control

Continued

ultimate destination and Eastline as the ultimate consignee, even though Eastline has admitted that it is not an end user and that its primary customers are in Russia. The related export documents listed the ''bill to'' party as ''Eastline Technologies OU, Attn: Valery Kosmachov'' in Estonia, and the ''ship to'' as ''Eastline Technologies OU, Attn: Sergey Vetrov'' at the package forwarder's address in the United States. Furthermore, OEE has presented evidence that Kosmachov and Vetrov currently have access to Eastline bank accounts.

Based on a review of EEI filings in AES for 2018, Eastline continued to order U.S.-origin items and have them delivered to its package forwarder in the U.S., for consolidation and export from the United States, with Eastline listed as the ultimate consignee at its address in Estonia, including as recently as June 2018. Based on the transshipment activities described in the March 2015 TDO, the May 2017 detention, and its ongoing investigation, OEE has reason to believe these items were actually intended for Real Components or another Russian customer and thus were transshipped to Russia. In addition, Eastline represents itself on its website as an independent ''distributor'' of electronic computers for such locations as Russia, lending additional support to OEE's contention that Eastline is not an end user of the items it procures. Moreover, OEE is concerned that Respondents' strategy of using a package forwarder in the United States to consolidate orders placed with multiple U.S. manufacturers or suppliers, rather than having the items exported directly by the manufacturers or suppliers themselves, may be part of a concerted effort to conceal their activities.

Further, OEE has presented evidence indicating that both Eastline and Adimir have received shipments of U.S.-origin items as recently as August and September 2018, including shipments directly to Eastline and Adimir and shipments to Eastline through its package forwarder in the United States. Kosmachov's involvement in both Eastline and Adimir, Adimir's prior involvement with transshipment of controlled U.S.-origin items to Russia, and Adimir's continued receipt of U.S.-origin items, taken together, indicate that Adimir as well as Eastline presents an imminent threat of a violation of the Regulations and thus a temporary denial order is appropriate.

and clearance purposes and used by the U.S. Census Bureau to, inter alia, collect export statistics.

V. Findings

I find that the evidence presented by BIS demonstrates that a violation of the Regulations is imminent in both time and degree of likelihood. Eastline, Adimir, Kosmachov, and Vetrov have engaged in knowing violations of the Regulations relating to the procurement of U.S.-origin items subject to the Regulations for export to Russia, via transshipment through Estonia and Finland, while providing false or misleading information regarding the ultimate consignee and final destination of the items to U.S. suppliers and/or the U.S. Government. The ways in which their export transactions have been structured and routed appear designed to conceal or obscure the destinations, end users, and/or end uses of the U.S.-origin items they procure, including items on the Commerce Control List, thereby attempting to avoid export control scrutiny and possible detection by U.S. law enforcement.

In sum, the facts and circumstances taken together, including the transshipment of U.S.-origin items, misrepresentations made in AES filings, and concerted actions of the Respondents, provide strong indicators that future violations are likely absent the issuance of a TDO. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with Eastline, Adimir, Kosmachov, and Vetrov in export transactions involving items subject to the EAR. Accordingly, I find that an order denying the export privileges of Eastline, Adimir, Kosmachov, and Vetrov is necessary, in the public interest, to prevent an imminent violation of the EAR.

Additionally, Section 766.23 of the Regulations provides that in order to prevent evasion, TDOs ''may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business.'' 15 CFR 766.23(a). Eastline and Real Components are intertwined in ownership and control and in their conduct of business. As noted above, Vetrov owns Real Components, Eastline's primary customer in Russia, and also remains active in Eastline, including apparently receiving shipments on behalf of the company and also holding a bank card in Eastline's name. The two companies also share a purchasing manager, further suggesting that Eastline serves as a procurement and transshipment agent for Real Components. Accordingly, I find that Real Components meets the criteria set out in Section 776.23 and should be added to the TDO as a related person in order to prevent evasion.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with Section 766.24 of the Regulations.

It is therefore ordered:

First, that EASTLINE TECHNOLOGIES OU, with last known addresses at Akadeemia tee 21, 12618 Tallinn, Estonia, and Peterburi tee 47–210, 11415 Tallinn, Estonia, ADIMIR OU, with last known addresses at Akadeemia tee 21, 12618 Tallinn, Estonia, and Peterburi tee 47–210, 11415 Tallinn, Estonia, VALERY KOSMACHOV, a/k/a VALERI KOSMACHOV, a/k/a VALERY KOSMATSOV, a/k/a VALERY KOSMATSHOV, a/k/a VALERY KOSMACHEV, with a last known address at Vabaõhukooli tee 76–A9, 12015 Tallinn, Estonia, SERGEY VETROV, a/k/a SERGEI VETROV, with a last known address at 6–39 Karl Marx Str., Ramenskoye, Moscow, Russia, 140100, and REAL COMPONENTS LTD., with a last known address at 8–1 Aviamotornaya Str., Moscow, Russia, 111024, and when acting for or on their behalf, any successors, assigns, directors, officers, employees, or agents (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing, in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or engaging in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the EAR, any other person, firm, corporation, or business organization or entity related to Eastline Technologies OU, Adimir OU, Valery Kosmachov, or Sergey Vetrov by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Section 766.24(e) of the EAR, Eastline Technologies OU, Adimir OU, Valery Kosmachov, and Sergey Vetrov may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Sections 766.23(c)(2) and 766.24(e)(3) of the EAR, Real Components Ltd. may, at any time, appeal its inclusion as a related person by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Eastline Technologies OU, Adimir OU, Valery Kosmachov, and Sergey Vetrov may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be sent to Eastline Technologies OU, Adimir OU, Valery Kosmachov, Sergey Vetrov, and Real Components Ltd., and shall be published in the **Federal Register**.

This Order is effective upon issuance and shall remain in effect for 180 days.

Douglas Hassebrock,

Director, Office of Export Enforcement, performing the non-exclusive functions and duties of the Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2018–21446 Filed 10–1–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–433–813 and A–427–830]

Strontium Chromate From Austria and France: Initiation of Less-Than-Fair-Value Investigations

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

DATES: Applicable September 25, 2018.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Brian Smith at (202) 482–5973 or (202) 482–1766, respectively; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On September 5, 2018, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of strontium chromate from Austria and France, filed in proper form on behalf of the Lumimove Inc., d.b.a. WPC Technologies (the petitioner).[1]

From September 7 to 19, 2018, we requested from the petitioner information pertaining to the scope and allegations contained in the petition.[2] The petitioner supplemented the record in response to these requests.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of strontium chromate from Austria and France are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing strontium chromate in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting its allegation.

We find that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. We also find that the petitioner demonstrated sufficient industry support with respect to the

[1] *See* the petitioner's Letter, ''Petitions for the Imposition of Antidumping Duties on Strontium Chromate from Austria and France,'' dated September 5, 2018 (the Petitions).

[2] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Strontium Chromate from Austria and France: Supplemental Questions,'' dated September 7, 2018; ''Petition for the Imposition of Antidumping Duties on Imports of Strontium Chromate from France: Supplemental Questions,'' dated September 7, 2018; ''Petition for the Imposition of Antidumping Duties on Imports of Strontium Chromate from Austria: Supplemental Questions,'' dated September 7, 2018; ''Phone Call with Counsel to Petitioner,'' dated September 14, 2018; ''Phone Call with Counsel to Petitioner,'' dated September 17, 2018; and Memorandum, ''Petitions for the Imposition of Antidumping Duties on Imports of Strontium Chromate from Austria and France; Phone Call with Counsel to the Petitioner,'' dated September 19, 2018 (September 19, 2018 Memorandum).

[3] *See* the petitioner's Letters, titled, ''Petitioner's Response to the Department of Commerce's September 7, 2018 General Issues Questionnaire Regarding the Petitions for the Imposition of Antidumping Duties on Strontium Chromate from France and Austria,'' dated September 13, 2018 (General Issues Supplement); ''Petitioner's Response to the Department of Commerce's September 7, 2018 Volume II Supplemental Questionnaire Regarding the Petitions for the Imposition of Antidumping Duties on Strontium Chromate from Austria'', dated September 13, 2018 (Austria AD Supplement); ''Petitioner's Response to the Department of Commerce's September 7, 2018 Volume II Supplemental Questionnaire Regarding the Petitions for the Imposition of Antidumping Duties on Strontium Chromate from France,'' dated September 13, 2018 (France AD Supplement); ''Petitioner's Response to Questions from the Department of Commerce's September 14, 2018 Phone Call Regarding the Petitions for the Imposition of Antidumping Duties on Strontium Chromate from France and Austria,'' dated September 17, 2018 (Second Supplement); and ''Petitioner's Response to Questions from the Department of Commerce's September 17, 2018 Phone Call Regarding the Petitions for the Imposition of Antidumping Duties on Strontium Chromate from France and Austria,'' dated September 18, 2018 (Third Supplement).

initiation of the AD investigations that the petitioner is requesting.[4]

Period of Investigations

Because the Petitions were filed on September 5, 2018, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for these investigations is July 1, 2017, through June 30, 2018.[5]

Scope of the Investigations

The product covered by these investigations is strontium chromate from Austria and France. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Scope Comments

During our review of the Petitions, we contacted the petitioner regarding the proposed scope language to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[6] As a result, the scope of the Petitions was modified to clarify the description of merchandise covered by the Petitions. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the preamble to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[7] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[8] all such factual information should be limited to public information. To facilitate preparation of our questionnaires, we request that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on October 15, 2018, which is 20 calendar days from the signature date of this notice.[9] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on October 25, 2018, which is 10 calendar days from the initial comments deadline.

We request that any factual information parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the Austria and France less-than-fair-value investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for the AD Questionnaires

We are providing interested parties an opportunity to comment on the appropriate physical characteristics of strontium chromate to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe strontium chromate, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on October 15, 2018, which is 20 calendar days from the signature date of this notice.[11] Any rebuttal comments must be filed by 5:00 p.m. ET on October 25, 2018. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the records of the Austria and France less-than-fair-value investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute

[4] *See* the ''Determination of Industry Support for the Petitions'' section, *infra.*

[5] *See* 19 CFR 351.204(b)(1).

[6] *See* General Issues Supplement, at 1–4; *see also* Second Supplement, at 1–2 and Exhibit 1; *see also* September 19, 2018 Memorandum.

[7] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[8] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[9] *See* 19 CFR 351.303(b).

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[11] *See* 19 CFR 351.303(b).

directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[14] Based on our analysis of the information submitted on the record, we have determined that strontium chromate, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the Appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2017.[16] The petitioner states that it is the only known producer of strontium chromate in the United States; therefore, the Petitions are supported by 100 percent of the U.S. industry.[17]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[18] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[19] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[20] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[21] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the AD investigations that it is requesting that Commerce initiate.[22]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; decline in the domestic industry's shipments, financial performance, and employment levels; underutilized capacity; and lost sales and revenues.[24] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[25]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which Commerce based its decision to initiate AD investigations of imports of strontium chromate from Austria and France. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the Austria and France AD Initiation Checklists.

Export Price

For Austria and France, the petitioner based U.S. export prices (EP) on the transaction-specific average unit values for shipments of strontium chromate identified from each of these countries entered under the relevant Harmonized Tariff Schedule of the United States (HTSUS) subheading for one month during the POI into a specific port.[26] Under this methodology, the petitioner linked shipment data from Port Import Export Reporting Service (PIERS) to

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] *See* Volume I of the Petitions, at 11–16.

[15] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist: Strontium Chromate from Austria (Austria AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping Duty Petitions Covering Strontium Chromate from Austria and France (Attachment II); and Antidumping Duty Investigation Initiation Checklist: Strontium Chromate from France (France AD Initiation Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[16] *See* Volume I of the Petitions, at Exhibit General-2.

[17] *Id.,* at 2–4; *see also* Volume II of the Petitions, at Exhibit II–16. For further discussion, *see* Austria AD Initiation Checklist and France AD Initiation Checklist, at Attachment II.

[18] *Id.*

[19] *Id.; see also* section 732(c)(4)(D) of the Act.

[20] *See* Austria AD Initiation Checklist and France AD Initiation Checklist, at Attachment II.

[21] *Id.*

[22] *Id.*

[23] *See* Volume I of the Petitions, at 24–25 and Exhibit General-4.

[24] *Id.* at 11, 18–30 and Exhibits General-2 through General-8 and General-16.

[25] *See* Austria AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petitions Covering Strontium Chromate from Austria and France (Attachment III); and France AD Initiation Checklist, at Attachment III.

[26] *See* Austria and France AD Initiation Checklists.

monthly U.S. port-specific import statistics (obtained from the ITC's Dataweb).[27] The petitioner made a deduction from U.S. price for movement expenses, consistent with the manner in which the data is reported in Dataweb.[28]

Normal Value

For Austria and France, the petitioner based NV on home market prices obtained through market research for strontium chromate produced in and sold, or offered for sale, in each country within the proposed POI.[29] Where applicable, the petitioner calculated net home market prices, adjusting as appropriate for delivery terms and other price adjustments.[30]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of strontium chromate from Austria and France are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for strontium chromate from Austria and France are 90.97 and 47.91 percent, respectively.[31]

Initiation of Less-Than-Fair-Value Investigations

Based upon the examination of the Petitions, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of strontium chromate from Austria and France are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

The petitioner named one company in Austria and one company in France as producers/exporters of strontium chromate.[32] Following standard practice in AD investigations involving market economy countries, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate HTSUS numbers listed with the ''Scope of the Investigations,'' in the Appendix.

We also intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO on the record within five business days of publication of this **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven calendar days after the placement of the CBP data on the record of these investigations. Parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for the initial comments. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *http://enforcement.trade.gov/apo.*

All respondent selection comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully, in its entirety, by Commerce's electronic records system, ACCESS, by 5:00 p.m. ET by the dates noted above. We intend to finalize our decision regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Austria and France *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of strontium chromate from Austria and/or France are materially injuring or threatening material injury to a U.S. industry.[33] A negative ITC determination will result in the investigation being terminated with respect to that country.[34] Otherwise, the investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [35] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[36] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *See* Volume I of the Petitions at Exhibit General-9; *see also* General Issues Supplement, at 1 and Exhibit 1.

[33] *See* section 733(a) of the Act.

[34] *Id.*

[35] *See* 19 CFR 351.301(b).

[36] *See* 19 CFR 351.301(b)(2).

(September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[37] Parties must use the certification formats provided in 19 CFR 351.303(g).[38] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: September 25, 2018.

Gary Taverman,

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

Appendix

Scope of the Investigations

The merchandise covered by these investigations is strontium chromate, regardless of form (including but not limited to, powder (sometimes known as granular), dispersions (sometimes known as paste), or in any solution). The chemical formula for strontium chromate is $SrCrO_4$ and the Chemical Abstracts Service (CAS) registry number is 7789–06–2.

Strontium chromate that has been blended with another product or products is included in the scope if the resulting mix contains 15 percent or more of strontium chromate by total formula weight. Products with which strontium chromate may be blended include, but are not limited to, water and solvents such as Aromatic 100 Methyl Amyl Ketone (MAK)/2-Heptanone, Acetone, Glycol Ether EB, Naphtha Leicht, and Xylene. Subject merchandise includes strontium chromate that has been processed in a third country into a product that otherwise would be within the scope of these investigations if processed in the country of manufacture of the in-scope strontium chromate.

The merchandise subject to these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2841.50.9100. Subject merchandise may also enter under HTSUS subheading 3212.90.0050. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2018–21406 Filed 10–1–18; 8:45 am]

BILLING CODE 3510–DS–P

[37] *See* section 782(b) of the Act.

[38] *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.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–944]

Oil Country Tubular Goods From People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty order on oil country tubular goods (OCTG) from the People's Republic of China (China). The period of review (POR) is January 1, 2017, through December 31, 2017.

DATES: Applicable October 2, 2018.

FOR FURTHER INFORMATION CONTACT: Jessica Pomper or Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–9122 or (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 2018, Commerce published a notice of opportunity to request an administrative review of the countervailing duty order on OCTG from China for the POR.[1] Commerce received a timely-filed request from Maverick Tube Corporation (Maverick), in accordance with 19 CFR 351.213(b), for an administrative review of 18 producers/exporters of OCTG from China: Anhui Tianda Oil Pipe Company Limited; Doright Co., Ltd.; DSC Pipes and Tubes Private Limited; Hainan Standard Stone Co., Ltd.; Hengyang Hongda Special Steel Tube Co. Ltd.; Hengyang Steel Tube Group International Trading Inc.; Hubei Xingegang Steel Co., Ltd.; Jiangsu Chengde Steel Tube Co., Ltd.; Jiangyi City Changlongde; Shanghai Jianeng Luggage Co., Ltd.; Tianjn Pipe International Economic & Trading Corporation; Wuxi Seamless Oil Pipe Co., Ltd.; Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd.; Yangzhou Chengde Steel Pipe Co., Ltd.; Yangzhou Lontrin Steel Tube Co., Ltd.; Yangzhou Shengde Crafts Co., Ltd.; Zhejiang Gross Seamless Tube Co., Ltd.; and Zhejiang Xinghe Group.[2] On March 16, 2018, the Department published a notice of initiation.[3] This notice of initiation inadvertently omitted Yangzhou Shengde Crafts Co., Ltd. for which an administrative review was requested by Maverick. On September 10, 2018, Commerce published a notice of initiation to correct this omission.[4] Subsequent to the *Initiation Notices,* Commerce requested from U.S. Customs and Border Protection (CBP) data for U.S. imports of subject merchandise during the POR for the companies for which an administrative review was requested.[5] The results of the CBP data inquiry demonstrated that there were no entries of subject merchandise exported by these companies during the POR.[6] Commerce solicited interested party comments,[7] and we received no comments.

Rescission of Review

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 98 (January 2, 2018).

[2] *See* letter from Maverick, ''Certain Oil Country Tubular Goods from the People's Republic of China: Request for Administrative Review,'' date January 31, 2018.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 11686 (March 16, 2018).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 45596 (September 11, 2018).

[5] *See* Memorandum ''Certain Oil Tubular Goods from the People's Republic of China: Placement on the Record of Results of Inquiry to U.S. Customs and Border Protection for 2017 Period of Review,'' dated April 19, 2018. *See also* Memorandum ''Certain Oil Tubular Goods from the People's Republic of China: Placement on the Record of Results of Inquiry to U.S. Customs and Border Protection for 2017 Period of Review,'' dated September 11, 2018.

[6] *Id.*

[7] *Id.*

liquidation is suspended.[8] *See* 19 CFR 351.212(b)(l). Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can order CBP to liquidate at the newly calculated countervailing duty assessment rate. Accordingly, in the absence of suspended entries of subject merchandise during the POR, we are now rescinding this administrative review of the countervailing duty order on OCTG from China, pursuant to 19 CFR 351.213(d)(3).

This determination and notice are issued and published pursuant to sections 705(d) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 25, 2018.

James Maeder,

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

[FR Doc. 2018–21405 Filed 10–1–18; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See, e.g., Lightweight Thermal Paper from The People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015* 82 FR 14349 (March 20, 2017).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG522

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Climate Scenarios Investigation Committee (CSI) will hold a webinar, which is open to the public.

DATES: The webinar meeting will be held on Tuesday, October 23, 2018, from 3 p.m. until 5:30 p.m.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the meeting by visiting this link *http://www.gotomeeting.com/online/webinar/join-webinar,* (2) enter the Webinar ID: 723–578–011, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number 1–562–247–8422, (2) enter the attendee phone audio access code 152–720–055, and (3) then enter your audio phone pin (shown after joining the webinar). **Note:** We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps*). You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 411 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The Pacific Council formed the CSI in September 2018 to guide the development of future climate scenarios that will be developed under the Fishery Ecosystem Plan Climate and Communities Initiative. The CSI will report to the Pacific Council at its November 1–8, 2018 meeting on its work (see Agenda Item F.6.a, Supplemental Tri-State Report, September 2018). The purpose of this webinar is to present a draft report of their findings, explain the CSI's proposed activities, and gain feedback from the Pacific Council's Ad Hoc Ecosystem Workgroup, other Pacific Council committees, and the public.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the 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 Mr. Kris Kleinschmidt, (503) 820–2411, at least 10 business days prior to the meeting date.

Dated: September 27, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–21399 Filed 10–1–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG360

Marine Mammals; File No. 20648

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Heidi Pearson, Ph.D., University of Alaska—Southeast, 11120 Glacier Hwy., AND1, Juneau, AK 99801, has applied in due form for a permit to conduct scientific research on marine mammals in southern Alaskan waters.

DATES: Written, telefaxed, or email comments must be received on or before November 1, 2018.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 20648 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Courtney Smith or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a five-year permit to conduct research that would assess the behavior, ecology, and movement patterns of cetaceans in the Gulf of Alaska with a focus on Southeast Alaska, particularly waters around Juneau. Fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae;* range-wide including those from the endangered Mexico Distinct Population Segment), gray (*Eschrichtius robustus*), killer (*Orcinus orca*); minke (*Balaenoptera acutorostrata*), and sperm (*Physeter macrocephalus*) whales, Dall's (*Hocoenoides dalli*) and harbor porpoises (*Phocoena phocoena*), and Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) will be taken during vessel and unmanned aerial surveys. Researchers will use the following methods on all or some of the above listed species: Observation, photographic identification, photogrammetry, passive acoustic recording, tagging (suction-cup), remote biopsy and other biological sampling (breath/exhaled air, fecal, swabbed and sloughed skin). Humpback and killer whales may be remote biopsy sampled. Acoustic disturbance from sonar for prey mapping may also occur. Steller sea lions (*Eumetopias jubatus;* Eastern and Western Distinct Population Segments) and harbor seals may be incidentally harassed during research activities.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 26, 2018.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–21339 Filed 10–1–18; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Request for Nominations for the Interest Rate Benchmark Reform Subcommittee Under the Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is requesting nominations for membership on the Interest Rate Benchmark Reform Subcommittee (Subcommittee) under the Market Risk Advisory Committee (MRAC). The MRAC is a discretionary advisory committee established by the Commission in accordance with the Federal Advisory Committee Act.

DATES: The deadline for the submission of nominations is October 16, 2018.

ADDRESSES: Nominations should be emailed to *MRAC_Submissions@cftc.gov* or sent by hand delivery or courier to Alicia L. Lewis, MRAC Designated Federal Officer and Special Counsel to Commissioner Rostin Behnam, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Please use the title ''MRAC Interest Rate Benchmark Reform Subcommittee'' for any nominations you submit.

FOR FURTHER INFORMATION CONTACT: Alicia L. Lewis, MRAC Designated Federal Officer and Special Counsel to Commissioner Rostin Behnam at (202) 418–5862 or email: *alewis@cftc.gov.*

SUPPLEMENTARY INFORMATION: The Subcommittee was established to provide reports and recommendations to the MRAC regarding ongoing efforts to transition U.S. dollar derivatives and related contracts to a risk-free reference rate—the Secured Overnight Financing Rate (SOFR)—and the impact of this transition on the derivatives markets. Topics and issues this Subcommittee may consider include, but are not limited to, the following:

- The treatment, under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, of existing derivatives contracts that are amended to include new fallback provisions or otherwise reference alternative risk-free rate benchmarks (''RFRs'') such as SOFR and new derivatives contracts that reference RFRs; and
- Impact on liquidity in derivatives and related markets during the transition.

The Subcommittee will report directly to the MRAC and will not provide reports and/or recommendations directly to the Commission. The Subcommittee has no authority to make decisions on behalf of the MRAC, and no determination of fact or policy will be made by the Subcommittee on behalf of the Commission.

Subcommittee members will generally serve as representatives and provide advice reflecting the views of organizations and entities that constitute the structure of the derivatives and financial markets. The Subcommittee may also include regular government employees when doing so furthers its purpose. It is anticipated that the Subcommittee will hold at least three meetings per year. Subcommittee members serve at the pleasure of the Commission. In addition, Subcommittee members do not receive compensation or honoraria for their services, and they are not reimbursed for travel and per diem expenses.

The Subcommittee will include as members individuals who are members of the MRAC and other individuals. For these other individuals who are not serving on the MRAC currently, the Commission seeks nominations of individuals from a wide range of perspectives, including from industry, academia, the government, and public interest. To advise the MRAC effectively, Subcommittee members must have a high-level of expertise and experience with interest rate benchmarks; efforts to transition to an RFR; assessing the impact of such efforts on the derivatives and related markets; and the Commodity Exchange Act and Commission regulations thereunder. To the extent practicable, the Commission will strive to select members reflecting wide ethnic, racial, gender, and age representation.

The Commission invites the submission of nominations for Subcommittee membership. Each nomination submission should include the proposed member's name, title, organization affiliation and address, email address and telephone number, as well as information that supports the individual's qualifications to serve on the Subcommittee. The submission should also include the name, email address and telephone number of the person nominating the proposed

Subcommittee member. Self-nominations are acceptable.

Submission of a nomination is not a guarantee of selection as a member of the Subcommittee. As noted in the MRAC's Membership Balance Plan, the Commission seeks to ensure that the membership of a subcommittee is balanced relative to the particular issues addressed by the subcommittee in question. The Commission will identify members for the Subcommittee based on Commissioners' and Commission staff professional knowledge of ongoing efforts to transition to SOFR, consultation with knowledgeable persons outside the CFTC, and requests to be represented received from organizations. The office of the Commissioner primarily responsible for the MRAC and the Subcommittee plays a primary, but not exclusive, role in this process and makes recommendations regarding membership to the Commission. The Commission, by vote, authorizes members to serve on MRAC subcommittees.

(Authority: 5 U.S.C. App. II)

Dated: September 27, 2018.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2018–21408 Filed 10–1–18; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps Member Application

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, CNCS is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 3, 2018.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, AmeriCorps State & National; ATTN: Erin Dahlin, Deputy Chief of Program Operations, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Erin Dahlin, 202–606–6931 or *EDahlin@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: AmeriCorps Member Application.

OMB Control Number: 3045–0054.

Type of Review: Renewal.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 250,000.

Total Estimated Number of Annual Burden Hours: 281,250.

Abstract: Currently, CNCS is soliciting comments concerning its proposed renewal of the AmeriCorps Member Application Form. Applicants will respond to the questions included in this ICR in order to apply to serve as AmeriCorps members. CNCS also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on December 31, 2018.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov*.

Dated: September 25, 2018.

Erin Dahlin,

Deputy Chief of Program Operations.

[FR Doc. 2018–21376 Filed 10–1–18; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decisions Under the Randolph-Sheppard Act

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

ACTION: Notice.

SUMMARY: This notice lists arbitration panel decisions under the Randolph-Sheppard Act issued in January, February, and March 2018. This notice also lists any older decisions that the Department has made publicly available in accessible electronic format during that period. All decisions are available on the Department's website and by request.

FOR FURTHER INFORMATION CONTACT: Donald Brinson, U.S. Department of Education, 400 Maryland Avenue SW, Room 5045, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7310. Email: *donald.brinson@ed.gov.* If you use a

telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: For the purpose of providing individuals who are blind with remunerative employment, enlarging their economic opportunities, and stimulating greater efforts to make themselves self-supporting, the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.* (Act), authorizes individuals who are blind to operate vending facilities on Federal property and provides them with a priority for doing so. The vending facilities include, among other things, cafeterias, snack bars, and automatic vending machines. The Department administers the Act and designates an agency in each State—the State Licensing Agency (SLA)—to license individuals who are blind to operate vending facilities on Federal and other property in the State.

The Act requires arbitration of disputes between SLAs and vendors who are blind and between SLAs and Federal agencies before three-person panels convened by the Department whose decisions constitute final agency action. 20 U.S.C. 107d–1. The Act also makes these decisions matters of public record and requires their publication in the **Federal Register**. 20 U.S.C. 107d–2(c).

On September 5, 2017, the Department announced that it would publish quarterly lists of Randolph-Sheppard arbitration panel decisions in the **Federal Register** and that the full text of the decisions listed would be available on the Department's website or by request (see 82 FR 41941).

In the first quarter of 2018, Randolph-Sheppard arbitration panels issued the following decisions.

Case name	Docket No.	Date	State
Opportunities for Ohioans with Disabilities v. *Wright Patterson Air Force Base*	R–S/16–08	2/22/18	OH
California Vendors Policy Committee v. *California Department of Rehabilitation*	R–S/10–09	2/20/18	CA
Taylor v. *Wisconsin's Department of Workforce Development, Division of Vocational Rehabilitation*	R–S/12–01	2/05/18	WI
Florida Department of Education v. *Tyndall Air Force Base*	R–S/16–04	1/30/18	FL
Hooks v. *North Carolina Division of Services for the Blind*	R–S/15–16	1/02/18	NC

These decisions, and other decisions that we have already posted, are searchable by key terms, are accessible under Section 508 of the Rehabilitation Act, and are available in Portable Document Format (PDF) at *www.ed.gov/programs/rsarsp/arbitration-decisions.html* or by request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

At the same site, we have posted the following decision from 2016.

Case name	Docket No.	Date	State
Texas Department of Assistive and Rehabilitative Services v. *Fort Bliss*	R–S/13–13	11/2/16	TX

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 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**.ou may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register** in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Departmentpublished in the **Federal Register** by using the article search feature at *www.federalregister.gov.*

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 26, 2018.

Johnny W. Collett,

Assistant Secretary, Special Education and Rehabilitative Services.

[FR Doc. 2018–21423 Filed 10–1–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Policy Statement on Developing Student Achievement Levels for the National Assessment of Educational Progress

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Extension of Public Comment Period on Draft Policy Statement on Developing Student Achievement Levels for the National Assessment of Educational Progress.

SUMMARY: The National Assessment Governing Board (Governing Board) is soliciting public comment for guidance in finalizing a revised policy on Developing Student Achievement Levels for the National Assessment of Educational Progress (NAEP), which published September 10, 2018, in the **Federal Register**. Based on public comments received on the document, the comment period is being extended.

DATES: The comment period for the draft policy statement published on September 10, 2018, at 83 FR 45618, is extended. Comments must be received no later than October 15, 2018.

ADDRESSES: Comments may be provided via email at *NAEPALSpolicy@ed.gov* and may also be mailed to the following address: NAEP Achievement Level Setting Policy, National Assessment Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Sharyn Rosenberg, National Assessment Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6940.

SUPPLEMENTARY INFORMATION: All responses will be taken into consideration before finalizing the updated policy on Developing Achievement levels for NAEP for Board adoption. Once adopted, the policy will be used in setting and reporting achievement levels for NAEP assessments. Additional information on this document can be found on the Governing Board website at *https://*

www.nagb.gov/news-andevents/calendar/public-comment-onals-policy.html.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: September 27, 2018.

Lisa Stooksberry,

Deputy Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2018–21451 Filed 10–1–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho Cleanup Project

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho Cleanup Project. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 25, 2018; 8:00 a.m.–4:00 p.m.

The opportunities for public comment are at 10:15 a.m. and 3:00 p.m.

This time is subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Sun Valley Lodge, Sage Room, 1 Sun Valley Road, Sun Valley, ID 83353.

FOR FURTHER INFORMATION CONTACT: Brad Bugger, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–0833; or email: *buggerbp@id.doe.gov* or visit the Board's internet home page at: *https://energy.gov/em/icpcab/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Brad Bugger for the most current agenda):

- Recent Public Outreach
- Idaho Cleanup Project (ICP) Overview
- Update on Integrated Waste Treatment Unit (IWTU)
- Flour Idaho Safety Initiatives
- Update on Accelerated Retrieval Project (ARP) V Incident
- Report from the EM SSAB Chairs Meeting, EM National Cleanup Workshop and any motions to be discussed

Public Participation: The EM SSAB, Idaho Cleanup Project, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Brad Bugger at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Brad Bugger at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Brad Bugger, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following website: *https://energy.gov/em/icpcab/listings/cab-meetings.*

Signed in Washington, DC, on September 27, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–21439 Filed 10–1–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2477–000]

DXT Commodities North America LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of DXT Commodities North America LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 16, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 26, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21413 Filed 10–1–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–1198–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: APL 09–21–2018 MDU Delivery Point Filing to be effective 10/22/2018.
Filed Date: 9/21/18.
Accession Number: 20180921–5108.
Comments Due: 5 p.m. ET 10/3/18.

Docket Numbers: RP18–1038–001.
Applicants: Northern Border Pipeline Company.
Description: Compliance filing Best Bid Evaluation—Compliance Filing to be effective 9/24/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5021.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1038–002.
Applicants: Northern Border Pipeline Company.
Description: Compliance filing Best Bid Evaluation—Compliance Amended to be effective 9/1/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5136.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1199–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Amendments to NC Agmts (BHP 31591 to MMGJ AR Upstream 31591) to be effective 9/28/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5034.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1200–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate-Bay State to BBPCs 797515 and 797514 to be effective 10/1/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5037.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1201–000.
Applicants: Gas Transmission Northwest LLC.
Description: eTariff filing per 1430: GTN 501(g) Request for Waiver.
Filed Date: 9/24/18.
Accession Number: 20180924–5079.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: RP18–1202–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 092418 Negotiated Rates—Hartree Partners, LP R–7090–05 to be effective 11/1/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5081.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1203–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 092418 Negotiated Rates—Hartree Partners, LP R–7090–06 to be effective 11/1/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5082.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1204–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (SPS) to be effective 9/25/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5106.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1205–000.
Applicants: Dominion Energy Questar Pipeline, LLC.
Description: Compliance filing Compliance filing in Docket CP18–192–000 to be effective 9/25/2018.
Filed Date: 9/25/18.
Accession Number: 20180925–5002.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1206–000.
Applicants: PennEnergy Resources, LLC, R. E. Gas Development, LLC.
Description: Joint Petition for Temporary Waiver of Capacity Release Regulations and Related Tariff Provisions, et al. of PennEnergy Resources, LLC, et al.
Filed Date: 9/24/18.
Accession Number: 20180924–5160.
Comments Due: 5 p.m. ET 10/4/18.

Docket Numbers: RP18–1207–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Boston Gas to BBPC 797549 to be effective 10/1/2018.
Filed Date: 9/25/18.
Accession Number: 20180925–5029.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1208–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 092518 Negotiated Rates—Wells Fargo Commodities, LLC R–7810–08 to be effective 11/1/2018.
Filed Date: 9/25/18.
Accession Number: 20180925–5032.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1209–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 092518 Negotiated Rates—Wells Fargo Commodities, LLC R–7810–09 to be effective 11/1/2018.
Filed Date: 9/25/18.
Accession Number: 20180925–5033.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1210–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 092518 Negotiated Rates—Wells Fargo Commodities, LLC R–7810–10 to be effective 11/1/2018.
Filed Date: 9/25/18.
Accession Number: 20180925–5034.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1211–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 092518 Negotiated Rates—Wells Fargo Commodities, LLC R–7810–11 to be effective 11/1/2018.
Filed Date: 9/25/18.
Accession Number: 20180925–5035.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1212–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Shell Negotiated Rate—October 2018 to be effective 10/1/2018.
Filed Date: 9/25/18.
Accession Number: 20180925–5036.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1213–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 092518 Negotiated Rates—Wells Fargo Commodities, LLC R–7810–12 to be effective 11/1/2018.
Filed Date: 9/25/18.
Accession Number: 20180925–5038.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1214–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 092518 Negotiated Rates—Wells Fargo Commodities, LLC R–7810–13 to be effective 11/1/2018.
Filed Date: 9/25/18.
Accession Number: 20180925–5039.

Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1215–000.

Applicants: Fayetteville Express Pipeline LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Service Agreement on 9–25–18 to be effective 9/28/2018.

Filed Date: 9/25/18.

Accession Number: 20180925–5054.

Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1216–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rate—Eco-Energy 8953069 eff 10–1–18 to be effective 10/1/2018.

Filed Date: 9/25/18.

Accession Number: 20180925–5055.

Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1217–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: TCO WBX NR and NC Agreements to be effective 10/25/2018.

Filed Date: 9/25/18.

Accession Number: 20180925–5118.

Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1218–000.

Applicants: Dominion Energy Cove Point LNG, LP.

Description: eTariff filing per 1430: DECP—Request for Waiver of Requirement to File Form No. 501–G.

Filed Date: 9/25/18.

Accession Number: 20180925–5121.

Comments Due: 5 p.m. ET 10/9/18.

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

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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

Dated: September 26, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21412 Filed 10–1–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: EC18–162–000.

Applicants: Mendota Hills, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Mendota Hills, LLC.

Filed Date: 9/25/18.

Accession Number: 20180925–5133.

Comments Due: 5 p.m. ET 10/16/18.

Docket Numbers: EC18–163–000.

Applicants: San Diego Gas & Electric Company, Citizens Sycamore-Penasquitos Transmission.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of San Diego Gas & Electric Company, et. al.

Filed Date: 9/26/18.

Accession Number: 20180926–5034.

Comments Due: 5 p.m. ET 10/17/18.

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

Docket Numbers: ER18–1883–001.

Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company, LLC.

Description: Compliance filing: 2018–09–26_SA 3132 Compliance Filing for METC-Wolverine T–T to be effective 6/1/2018.

Filed Date: 9/26/18.

Accession Number: 20180926–5072.

Comments Due: 5 p.m. ET 10/17/18.

Docket Numbers: ER18–1974–001.

Applicants: Otter Tail Power Company.

Description: Compliance filing: Compliance Notification of Effective Date to be effective 9/17/2018.

Filed Date: 9/26/18.

Accession Number: 20180926–5086.

Comments Due: 5 p.m. ET 10/17/18.

Docket Numbers: ER18–2013–000.

Applicants: Terra-Gen Dixie Valley, LLC.

Description: Report Filing: Refund Report to be effective N/A.

Filed Date: 9/25/18.

Accession Number: 20180925–5096.

Comments Due: 5 p.m. ET 10/16/18.

Docket Numbers: ER18–2474–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Attachment V GIA Pro Forma Clean-Up Filing to be effective 5/15/2018.

Filed Date: 9/25/18.

Accession Number: 20180925–5120.

Comments Due: 5 p.m. ET 10/16/18.

Docket Numbers: ER18–2475–000.

Applicants: Imperial Valley Solar 3, LLC.

Description: § 205(d) Rate Filing: Imperial Valley Solar 3, LLC Co-Tenancy and Shared Use Agreement to be effective 9/26/2018.

Filed Date: 9/25/18.

Accession Number: 20180925–5122.

Comments Due: 5 p.m. ET 10/16/18.

Docket Numbers: ER18–2476–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Historical Cleanup Filing, MISO–PJM JOA, Section 9.4 to be effective 1/1/2014.

Filed Date: 9/25/18.

Accession Number: 20180925–5098.

Comments Due: 5 p.m. ET 10/16/18.

Docket Numbers: ER18–2477–000.

Applicants: DXT Commodities North America LLC.

Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 11/25/2018.

Filed Date: 9/25/18.

Accession Number: 20180925–5097.

Comments Due: 5 p.m. ET 10/16/18.

Docket Numbers: ER18–2478–000.

Applicants: Southwestern Public Service Company.

Description: Notice of cancellation of Interconnection Agreement (No. 102–SPS) of Southwestern Public Service Company.

Filed Date: 9/25/18.

Accession Number: 20180925–5138.

Comments Due: 5 p.m. ET 10/16/18.

Docket Numbers: ER18–2479–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Third Revised ISA, SA No. 2962; Queue No. Z2–083 to be effective 8/28/2018.

Filed Date: 9/26/18.

Accession Number: 20180926–5039.

Comments Due: 5 p.m. ET 10/17/18.

Docket Numbers: ER18–2480–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: Tariff Cancellation: Termination of Agreements to be effective 6/1/2018.

Filed Date: 9/26/18.

Accession Number: 20180926–5074.

Comments Due: 5 p.m. ET 10/17/18.

Docket Numbers: ER18–2481–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: PSCo-WAPA-Intercon-TSA-Agrmt-376–0.1.0 to be effective 10/1/2018.

Filed Date: 9/26/18.

Accession Number: 20180926–5095.
Comments Due: 5 p.m. ET 10/17/18.
Docket Numbers: ER18–2482–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedules to be effective 9/27/2018.
Filed Date: 9/26/18.
Accession Number: 20180926–5113.
Comments Due: 5 p.m. ET 10/17/18.

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

Docket Numbers: ES18–62–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Oklahoma Gas and Electric Company.
Filed Date: 9/26/18.
Accession Number: 20180926–5088.
Comments Due: 5 p.m. ET 10/17/18.

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

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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

Dated: September 26, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21411 Filed 10–1–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11834–068]

Notice of Application for Amendment of License, Soliciting Comments, Motions To Intervene, and Protests; Brookfield White Pine Hydro, LLC

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

a. *Type of Proceeding:* Application for amendment of license.
b. *Project No.:* 11834–068.
c. *Date Filed:* August 28, 2018.
d. *Licensee:* Brookfield White Pine Hydro, LLC.
e. *Name of Project:* Upper and Middle Dams Storage Project.
f. *Location:* The project is located on the Rapid River in Oxford and Franklin counties, Maine.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.
h. *Licensee Contact:* Ms. Kelly Maloney, Brookfield Renewable, 150 Main Street, Lewiston, ME, (207) 233–1995, *Kelly.maloney@brookfieldrenewable.com.*
i. *FERC Contact:* Ms. Rebecca Martin, (202) 502–6012, *Rebecca.martin@ferc.gov.*
j. Deadline for filing comments, interventions, and protests is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–11834–068.
k. *Description of Project Facilities:* The project includes two developments: Upper Dam, which impounds Mooselookmeguntic Lake, and Middle Dam, which impounds Richardson Lake. The two dams operate as a single water storage project to regulate flows to the Androscoggin River for downstream hydroelectric generation, reduction of flood flows, and other beneficial uses. The proposed work would only occur at Middle Dam. Project works at the Middle Dam Development consist of the 244-foot-long Middle Dam equipped with a gatehouse containing: (a) Three 15-foot-wide by 12-foot-deep sluice gates: (b) five 6-foot-wide by 14.7-foot-deep gates; (c) six 7-foot-wide 14.7-foot-deep shoal gates; and (d) six 9-foot-wide by 12.3-foot deep spillway gates; a 560-foot-long earthen dike extending north of the gatehouse; a 200-foot-long earthen dike extending south of the gatehouse; the 7,470 acre reservoir; the 180-foot-long earthen dike (Black Cat Dike) located 2,000 feet to the southeast of Middle Dam; and appurtenant facilities.
l. *Description of Request:* The licensee has filed a copy of its application with the Maine Land Use Planning Commission and the US Army Corps of Engineers for its proposed replacement of the spillway at the Middle Dam Development. Replacement of the Middle Dam Development spillway is being required under Part 12 of the Commission's regulations for safety of water power projects and project works. The proposal involves a multi-year, phased approach beginning with the installation of a bypass gate to pass all river flow during the removal of the existing dam and installation of the new dam. Black Cat Dike embankment would also be modified to meet Commission requirements. The proposed measures would not alter the basic footprint of the existing dam or involve substantial modification of the licensed operation of the project. Work is proposed to begin in May 2019 and be completed by December 15, 2023.
m. This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction in the Commission's Public Reference Room located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371.
n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.
o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .212 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the surrender application that is the subject of this notice. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: September 26, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21414 Filed 10–1–18; 8:45 am]

BILLING CODE 6717–01–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting: Farm Credit Administration Board

AGENCY: Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 11, 2018, from 9:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056, *aultmand@fca.gov.*

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 13, 2018

B. New Business

- AgFirst Farm Credit Bank Rural Housing Mortgage-backed Securities Program

Closed Session *

- Office of Secondary Market Oversight Periodic Report

Dated: September 28, 2018.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2018–21580 Filed 9–28–18; 4:15 pm]

BILLING CODE 6705–01–P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

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 on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve 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.: 201208–002.

Agreement Name: Amended and Restated Marine Terminal Services Agreement Port of Houston Authority and NYK Line (North America) Inc.

Parties: Nippon Yusen Kaisha; Ocean Network Express Pte. Ltd.; and Port of Houston Authority.

Filing Party: Chasless Yancy, Port of Houston Authority.

Synopsis: The amendment assigns the MTSA such that ONE will assume all of NYK's rights, title, obligations, and liabilities under the MTSA, effective as of the date of the transfer of such entities' container shipping divisions to ONE.

Proposed Effective Date: 9/20/2018.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/16293.

Agreement No.: 011730–008.

Agreement Name: GWF/Dole Space Charter and Sailing Agreement.

Parties: Dole Ocean Cargo Express, LLC; Great White Fleet Corp.; and Great White Fleet Liner Services, Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment removes Dole Ocean Cargo Express, Inc. as a party to the Agreement and replaces it with Dole Ocean Cargo Express, LLC.

Proposed Effective Date: 11/10/2018.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/698.

Dated: September 27, 2018.

Rachel Dickon,

Secretary.

[FR Doc. 2018–21407 Filed 10–1–18; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

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

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

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

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

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 2018.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *USB Bancorp Inc., Danbury, Connecticut;* to become a bank holding company by acquiring 100 percent of the voting shares of Union Savings Bank, Danbury, Connecticut.

Board of Governors of the Federal Reserve System, September 27, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–21419 Filed 10–1–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in the Children's Online Privacy Protection Act Rule (''COPPA Rule'' or ''Rule''), which will expire on January 31, 2019.

DATES: Comments must be filed by December 3, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''COPPA Rule: Paperwork Comment, FTC File No. P155408'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/coppapra,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Peder Magee, Attorney, (202) 326–3538, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The COPPA Rule, 16 CFR part 312, requires commercial websites to provide notice and obtain parents' consent before collecting, using, and/or disclosing personal information from children under age 13, with limited exceptions. The COPPA Rule contains certain statutorily required notice, consent, and other requirements that apply to operators of any commercial website or online service directed to children, and operators of any commercial website or online service with actual knowledge of collecting personal information from children. Covered operators must: provide online notice and direct notice to parents of how they collect, use, and disclose children's personal information; obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure, with limited exceptions; provide reasonable means for the parent to obtain access to the information and to direct its deletion; and, establish procedures that protect the confidentiality, security, and integrity of personal information collected from children.

Burden Statement

1. Estimated Annual Hours Burden: 17,500 Hours

(a) New Entrant Web Operators' Disclosure Burden

Based on public comments received by the Commission during its 2013 COPPA Rule amendments rulemaking,[1] FTC staff estimates that the Rule affects approximately 280 new operators per year.[2] Staff maintains its longstanding estimate that new operators of websites and online services will require, on average, approximately 60 hours crafting a privacy policy, designing mechanisms to provide the required online privacy notice and, where applicable, the direct notice to parents.[3] Applied to the estimated number of new operators per year, this yields a cumulative yearly total of 16,800 hours (280 new operators x 60 hours each).

(b) Safe Harbor Applicant Reporting Requirements

Operators can comply with the COPPA Rule by meeting the terms of industry self-regulatory guidelines that the Commission approves after notice and comment.[4] While the submission of industry self-regulatory guidelines to the agency is voluntary, the COPPA Rule sets out the criteria for approval of guidelines and the materials that must be submitted as part of a safe harbor application. Staff estimates that it would require, on average, 265 hours per new safe harbor program applicant to prepare and submit its safe harbor proposal in accordance with Section 312.11(c) of the Rule.[5] In the past, industry sources have confirmed that this estimate is reasonable. Given that several safe harbor programs are already available to website operators, FTC staff believes that it is unlikely that more than one additional safe harbor applicant will submit a request within the next three years of PRA clearance

[1] 78 FR 3971 at 4005 (Jan. 17, 2013).

[2] This consists of certain traditional website operators, mobile app developers, plug-in developers, and advertising networks.

[3] *See, e.g.,* 78 FR at 4006; 76 FR 31334 (May 31, 2011); 73 FR 35689 (June 24, 2008); 70 FR 21107 (Apr. 22, 2005); 80 FR 57818 (Sept. 25, 2015); 80 FR 76491 (Dec. 9, 2015).

[4] See Section 312.11(c). Approved self-regulatory guidelines can be found on the FTC's website at *http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html.*

[5] Staff believes that most of the records submitted with a safe harbor request would be those that these entities have kept in the ordinary course of business. Under 5 CFR 1320.3(b)(2), OMB excludes from the definition of PRA burden the time and financial resources needed to comply with agency-imposed recordkeeping, disclosure, or reporting requirements that customarily would be undertaken independently in the normal course of business.

sought. Thus, annualized burden attributable to this requirement would be approximately 88 hours per year (265 hours ÷ 3 years) or, roughly, 100 hours, for the estimated one additional safe harbor applicant.

(c) Annual Audit and Report for Safe Harbor Programs

The COPPA Rule requires safe harbor programs to audit their members at least annually and to submit annual reports to the Commission on the aggregate results of these member audits. The burden for conducting member audits and preparing these reports likely will vary for each safe harbor program depending on the number of members. Commission staff estimates that conducting audits and preparing reports will require approximately 100 hours per program per year. Aggregated for one new safe harbor (100 hours) and seven existing (700 hours) safe harbor programs, this amounts to an estimated cumulative reporting burden of 800 hours per year.

(d) Safe Harbor Program Recordkeeping Requirements

FTC staff believes that most of the records listed in the COPPA Rule's safe harbor recordkeeping provisions consist of documentation that such parties have kept in the ordinary course of business irrespective of the COPPA Rule. As noted above, OMB excludes from the definition of PRA burden, among other things, recordkeeping requirements that customarily would be undertaken independently in the normal course of business. In staff's view, any incremental burden, such as that for maintaining the results of independent assessments under section 312.11(d), would be marginal.

2. Estimated Annual Labor Costs: $5,768,900

(a) New Entrant Web Operators' Disclosure Burden

Consistent with its past estimates and based on its 2013 rulemaking record, FTC staff assumes that the time spent on compliance for new operators covered by the COPPA Rule would be apportioned five to one between legal (outside counsel lawyers or similar professionals) and technical (*e.g.,* computer programmers, software developers, and information security analysts) personnel. Staff therefore estimates that outside counsel costs will account for 14,000 of the estimated 16,800 hours required as estimated in 1(a) above. Regarding outside counsel costs, FTC staff believes it reasonable to assume that the workload among law firm partners and associates for COPPA compliance questions would be distributed among attorneys at varying levels of seniority, and be weighted most heavily to junior attorneys. Assuming two-thirds of such work is done by junior associates at a rate of approximately $300 per hour, and one-third by senior partners at approximately $600 per hour, the weighted average of outside counsel costs would be about $400 per hour.[6] Computer programmers responsible for posting privacy policies and implementing direct notices and parental consent mechanisms would account for the remaining 2,800 hours. FTC staff estimates an hourly wage of $44 for technical assistance, based on Bureau of Labor Statistics (''BLS'') data.[7] Accordingly, associated annual labor costs would be $5,723,200 [(14,000 hours × $400/hour) + (2,800 hours × $44/hour)] for the estimated 280 new operators.

(b) Safe Harbor Applicant Reporting Requirements

Previously, industry sources have advised that all of the labor to comply with new safe harbor applicant requirements would be attributable to the efforts of in-house lawyers. To determine in-house legal costs, FTC staff applied an approximate average between the BLS reported mean hourly wage for lawyers ($68.22),[8] and a rough approximation of in-house hourly attorney rates ($300) that staff believes more generally reflects the costs associated with Commission information collection activities, which yields an approximate hourly rate of $185. Accordingly, applying the estimated time for these tasks (100 hours) for the one new safe harbor applicant estimated in 1(b) above to the assumed hourly wage for in-house counsel ($185) yields $18,500 in labor costs per year.

(c) Annual Audit and Report for Safe Harbor Programs

Commission staff assumes that compliance officers, at a labor rate of $34, will prepare annual reports.[9] Accordingly, applied to the 800 hours estimated per year in 1(c) above for all safe harbor programs, this amounts to $27,200 in aggregate yearly labor costs.

(d) Safe Harbor Program Recordkeeping Requirements

For the reasons stated in 1(d) above, associated labor costs, for PRA purposes, would be marginal.

3. Estimated Annual Non-Labor Costs: $0

Because websites will already be equipped with the computer equipment and software necessary to comply with the Rule's notice requirements, the predominant costs incurred by the websites are the aforementioned estimated labor costs. Similarly, industry members should already have in place the means to retain and store the records that must be kept under the Rule's safe harbor recordkeeping provisions, because they are likely to have been keeping these records independent of the Rule. Capital and start-up costs associated with the Rule are minimal.

Request for Comments

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the COPPA Rule (OMB Control Number 3084–0117).

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the collection of information requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity

[6] These estimates are drawn from the ''Laffey Matrix.'' The Laffey Matrix is a fee schedule used by many United States courts for determining the reasonable hourly rates in the District of Columbia for attorneys' fee awards under federal fee-shifting statutes. It is used here as a proxy for market rates for litigation counsel in the Washington, DC area. For 2018, rates in table range from $302 per hour for most junior associates to $602 per hour for most senior partners. *See* Laffey Matrix, Civil Division of the United States Attorney's Office for the District of Columbia, United States Attorney's Office, District of Columbia, Laffey Matrix B 2015–2018, *available at https://www.justice.gov/usao-dc/file/796471/download.*

[7] The estimated mean hourly wages for technical labor support ($44) is based on an average of the salaries for computer programmers, software developers, information security analysts, and web developers as reported by the Bureau of Labor statistics. *See Occupational Employment and Wages—May 2017,* Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2017), *available at http://www.bls.gov/news.release/ocwage.nr0.htm* (hereinafter, ''BLS Table 1'').

[8] *See* BLS Table 1 (attorneys).

[9] *See* BLS Table 1 (compliance officers, $32.69).

of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before December 3, 2018. Write ''COPPA Rule: Paperwork Comment, FTC File No. P155408'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/coppapra,* by following the instructions on the web-based form. When this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you file your comment on paper, write ''COPPA Rule: Paperwork Comment, FTC File No. P155408'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *https://www.ftc.gov/,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 3, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Heather Hippsley,

Deputy General Counsel.

[FR Doc. 2018–21377 Filed 10–1–18; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2018–05; Docket No. 2018–0002; Sequence No. 17]

Redesignation of Federal Buildings

AGENCY: Public Buildings Service (PBS), General Services Administration.

ACTION: Notice of a bulletin.

SUMMARY: The attached Federal Management Regulation bulletin announces the redesignation of two Federal buildings.

DATES: This bulletin is applicable October 2, 2018. However, the building redesignations announced by this bulletin will remain in effect until canceled or superseded.

FOR FURTHER INFORMATION CONTACT: General Services Administration, Public Buildings Service, Attn: Ms. Joanna Rosato, Regional Commissioner, 100 S Independence Mall West, Philadelphia, PA 19016, email *joanna.rosato@gsa.gov,* or telephone 215–446–4640.

SUPPLEMENTARY INFORMATION: This bulletin announces the redesignation of two Federal buildings. Public Law 107–217, 116 STAT. 1143, dated August 21, 2002, permits the redesignation of the ''Computer Center Building,'' and the ''Utility Building,'' as the ''Perimeter East Building,'' and the ''Perimeter East Utility Building,'' respectively.

Dated: September 26, 2018.

Emily Murphy,

Administrator of General Services.

GENERAL SERVICES ADMINISTRATION

REDESIGNATION OF FEDERAL BUILDING

PBS–2018–05

TO: Heads of Federal Agencies

SUBJECT: Redesignation of Federal Buildings

1. *What is the purpose of this bulletin*? This bulletin announces the redesignation of two Federal buildings.

2. *When does this bulletin expire*? The building redesignations announced by this bulletin will remain in effect until canceled or superseded.

3. *Redesignation.* The former and new names of the redesignated buildings are as follows:

Former name	New name
Computer Center Building, 6401 Security Boulevard, Woodlawn, MD 21235.	Perimeter East Building, 6401 Security Boulevard, Woodlawn, MD 21235.

Former name	New name
Utility Building, 6401 Security Boulevard, Woodlawn, MD 21235	Perimeter East Utility Building, 6401 Security Boulevard, Woodlawn, MD 21235.

4. *Who should we contact for further information regarding redesignation of these Federal buildings*? U.S. General Services Administration, Public Buildings Service, Attn: Ms. Joanna Rosato, Regional Commissioner, 100 S. Independence Mall West, Philadelphia, PA, 19016, email *joanna.rosato@gsa.gov,* or telephone 215–446–4640.

Dated: September 26, 2018.

Emily Murphy, Administrator of General Services.

[FR Doc. 2018–21360 Filed 10–1–18; 8:45 am]

BILLING CODE 6820–A6–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0460]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before December 3, 2018.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0460–60D and project title for reference, to *Sherrette.funn@hhs.gov,* or call the Reports Clearance Officer, (202) 795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Office of Adolescent Health Pregnancy Assistance Fund (PAF) Performance Data Collection, FY2018–FY2020.

Type of Collection: (Revision).

OMB No. 0990–0460—Office of Adolescent Health.

Abstract: The Office of Adolescent Health seeks a revision of the Pregnancy Assistance Fund (PAF) performance measures data collection. A new cohort of 23 PAF grantees was funded in 2018. PAF provides funding to States and Tribes to provide expectant and parenting teens, women, fathers and their families with a seamless network of supportive services to help them complete high school or postsecondary degrees; and to help states improve services to expectant females who experience intimate partner violence or stalking, Additional measures have been proposed for addition to the existing menu of approved measures. A 3 year clearance period is requested. The respondents would be the 23 state and tribal entities receiving PAF awards in 2018. Data would be collected annually.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
PAF Performance Measures Form ...	All PAF Grant Recipients	23	1	29	667
Services for PAF grantees funding State Attorney General Offices.	PAF Grantees funding State Attorney General Offices.	2	1	2	4
Total	.....	.....	1	.....	671

Terry Clark,

Asst. Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2018–21403 Filed 10–1–18; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990—new]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before December 3, 2018.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or

requesting information, please include the document identifier 0990–New–60D and project title for reference, to *Sherrette.funn@hhs.gov,* or call the Reports Clearance Officer, (202) 795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Cohort 3 Teen Pregnancy Prevention (TPP) Program Performance Measures.

Type of Collection: New.

OMB No. 0990–NEW—Office of Adolescent Health, OS.

Abstract: The Office of Adolescent Health Requests a new clearance for the collection of performance measures from the cohort 3 Teen Pregnancy Prevention (TPP) grant recipients, anticipated to be awarded in September 2018. OAH released a funding announcement to support Phase 1 of a third cohort of TPP grantees in the spring of 2018, subject to the availability of funding, with awards expected to be made in September 2018. Phase 1 cohort 3 TPP grants shall be issued in for an anticipated 2 year period of performance. A subset of successful Phase 1 grantees will be selected for Phase 2 grants. A 3 year clearance is requested for this request. TPP phase 1 grant recipients will be expected to report data twice each year.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
TPP Grantees, Performance Measures Form.	Grant Recipients	60	2	7	840
TPP Participants Pre/Post Test Compilation.	Grant Recipients	60	2	3	360
TPP Participants Pre/Post Test	Participants in TPP-grant funded projects.	45,000	2	5/60	7,500
Total			2		8,700

Terry Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Office.

[FR Doc. 2018–21402 Filed 10–1–18; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: October 30, 2018.

Open: 8:00 a.m. to 12:00 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Bethesda, MD 20892.

Closed: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Laura K. Moen, Ph.D., Director, Division of Extramural Research Activities National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, 301–435–0260, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 26, 2018.

Ronald J. Livingston, Jr.,

Program Analyst Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21371 Filed 10–1–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the National Cancer Institute Council of Research Advocates was renewed for an

additional two-year period on August 17, 2018.

It is determined that the National Cancer Institute Council of Research Advocates is in the public interest in connection with the performance of duties imposed on the National Cancer Institute and National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Acting Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail Stop Code 4875), *harriscl@nih.gov* or Telephone (301) 496–2123.

Dated: September 26, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21372 Filed 10–1–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *http://www.samhsa.gov/workplace*.

FOR FURTHER INFORMATION CONTACT: Charles LoDico, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N02C, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438 (Formerly: STERLING Reference Laboratories)

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

Charles P. LoDico,

Chemist.

[FR Doc. 2018–21345 Filed 10–1–18; 8:45 am]

BILLING CODE 4162–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2017–0894]

RIN 1625–ZA37

Update to the 2016 National Preparedness for Response Exercise Program (PREP) Guidelines

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability of the 2016.1 PREP Guidelines.

SUMMARY: The Coast Guard announces the availability of the final 2016.1 National Preparedness for Response Exercise Program (PREP) Guidelines. The Coast Guard publishes this notice on behalf of the Preparedness for Response Exercise Program Compliance, Coordination, and Consistency Committee (PREP 4C). The PREP 4C includes representatives from the Coast Guard under the Department of Homeland Security, the Environmental Protection Agency, the Pipeline and Hazardous Materials Safety Administration under the Department of Transportation, and the Bureau of Safety and Environmental Enforcement under the Department of the Interior.

DATES: The 2016.1 PREP Guidelines are effective on October 1, 2018.

ADDRESSES: To view the 2016.1 PREP Guidelines, as well as documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov,* type ''USCG–2017–0894'' and click ''Search.'' Then click the ''Open Docket Folder.''

FOR FURTHER INFORMATION CONTACT: For information about the 2016.1 PREP Guidelines, call Mr. Jonathan Smith, Office of Marine Environmental Response Policy, Coast Guard, telephone 202–372–2675; Mr. Troy Swackhammer, Office of Emergency Management, Regulations Implementation Division, Environmental Protection Agency, telephone 202–564–1966; Mr. John Caplis, Oil Spill Preparedness Division, Bureau of Safety and Environmental Enforcement, telephone 703–787–1364; and Mr. Eddie Murphy, Office of Pipeline Safety, Department of Transportation, telephone 202–366–4595.

SUPPLEMENTARY INFORMATION:

I. Abbreviations

BSEE Bureau of Safety and Environmental Enforcement
CFR Code of Federal Regulations
EPA Environmental Protection Agency
FR Federal Register
HSEEP Homeland Security Exercise and Evaluation Program
IMT Incident Management Team
MSEL Master Scenario Event List
PREP Preparedness for Response Exercise Program
PREP 4C PREP Compliance, Coordination, and Consistency Committee
QI Qualified Individual
RAC Remote Assessment and Consultation
SMFF Salvage and Marine Firefighting
TTX Tabletop exercise

II. Background

On December 22, 2017, the Coast Guard, on behalf of the Preparedness for Response Exercise Program Compliance, Coordination, and Consistency Committee (PREP 4C), published for public comment a draft update to the 2016 PREP Guidelines in the **Federal Register** (82 FR 60693). We referred to the draft update as the ''2016.1 PREP Guidelines.'' On February 26, 2018, the Coast Guard published for public comment (83 FR 8290) an economic analysis of the potential deregulatory savings that may result from the draft update. During the 2 public comment periods, we received 11 comments. One commenter submitted an identical comment three times. Therefore, the docket reflects 13 submissions. All comments are posted on *http://www.regulations.gov* under docket number USCG–2017–0894. Below are our responses to the public comments and a discussion of the changes made as a result of the public comments.

III. Summary of Comments and Changes

Of the 11 comment submissions received over the 2 comment periods, 9 addressed the proposed reduction to the Remote Assessment and Consultation (RAC) drill frequency. Four of these submissions were generally

unsupportive of the proposed reduction to the RAC drill frequency, while five were generally supportive. None of the comments regarding the frequency of RAC drills were submitted by plan holders. With the exception of one, all comments in support of reducing the frequency of RAC drills were from salvage providers. One salvage provider opposed reducing the frequency of RAC drills. The other commenters who opposed reducing the frequency of RAC drills were from individual citizens and citizens' advisory councils who felt that reducing RAC drill frequency from one drill per year to once every 3 years is inadequate for purposes of ensuring the salvage providers fully recognize the scope of area for which they are responsible to cover. Three comment submissions addressed concerns regarding the language for Incident Management Team (IMT) exercises for offshore facilities regulated by the Bureau of Safety and Environmental Enforcement (BSEE), which include (1) the members of an IMT which must be exercised, (2) the involvement of participating IMT members in the design phase of the exercise, (3) the exercising of source control positions, and (4) the requirement that IMT exercises must be a functional exercise rather than a tabletop exercise for offshore facilities as outlined in section 6.2 and appendix B of the PREP Guidelines. One comment submission addressed concerns over response timelines for facilities regulated by the Environmental Protection Agency (EPA) in remote locations.

Coast Guard Response to Industry Comments

One commenter noted the Coast Guard ''committed waste by conducting a deregulatory savings analysis for guidelines that are voluntary to regulated industry and for which, the Coast Guard did not identify any costs or potential cost savings associated with the Federal Government.'' The commenter also noted the annualized cost savings analysis to the maritime industry is a benefit to private industry that apparently outweighs the Coast Guard's own policy to ensure adequate spill response planning and preparedness. Finally, the commenter noted, ''the potential costs and benefits were originally determined to be found 'not significant.' ''

Response: As mentioned above, the Coast Guard conducted a deregulatory savings analysis for the population affected by a reduction in RAC drills, which are plan holders that would be required to conduct RAC drills for vessels listed in their respective response plans. As stated in our deregulatory savings analysis, we did not identify any cost savings associated with the Federal Government. We disagree with the commenter that the ''benefit to private industry apparently outweighs the Coast Guard's own policy to ensure adequate spill response planning and preparedness . . .'' First and foremost, we do not believe plan holders' response preparedness will degrade by reducing RAC drills. Our intent in reducing the frequency of RAC drills is to establish adequate spill response planning and preparedness without imposing an undue burden on plan holders. Finally, we are unsure what the commenter is referring to when the commenter states, ''the potential costs and benefits [. . .] were originally determined to be found not significant.'' The Coast Guard did not make a prior statement regarding the significance or non-significance of the potential costs and benefits in either the deregulatory savings analysis or the notice of availability, in which we invited the public to comment on the deregulatory savings analysis.

Reduction of RAC drill frequency: As mentioned above, 9 of the 11 comment submissions concerned the proposed Coast Guard change that reduced the RAC drill frequency from one annual RAC drill per vessel to one triennial RAC drill per plan holder, noting that a single plan holder may have responsibility over a fleet of vessels and not just one vessel. The supportive comments cited the financial and administrative burden of the current RAC drill frequency, and one commenter noted that the proposed reduction in frequency is more reasonable and would not degrade response preparedness. The opposing comments noted that the reduction in RAC drills would diminish vessel master or crew familiarity with Salvage and Marine Firefighting (SMFF) emergency protocols, and would degrade overall preparedness. Additionally, the unsupportive comments cited the importance of keeping RAC drills as unique, vessel-centric drills that emphasize interaction between vessel crew and salvage provider, versus plan holder-centric drills. Additionally, commenters that opposed the reduction in RAC drills were concerned that the proposed reduction in drill frequency would diminish the SMFF provider's ability to accurately assess a condition that may be compromising to the safety of a vessel and that, in turn, could impair the effectiveness of a response.

Response: The purpose of a required RAC drill is to exercise the procedure for a RAC performed between the SMFF provider and the vessel owner or operator. We expect these drills to be more than just notifications and, instead, seek to encourage substantive interaction between the vessel master and crew and the SMFF provider. The Coast Guard believes the benefit of exercising one vessel in a plan will extend to all vessels in the plan.

Randomized selection of a vessel within a fleet for RAC drill purposes: One commenter noted the need to add language specifying random selection of a vessel within a fleet for purposes of performing a RAC drill.

Response: Under the final 2016.1 PREP Guidelines, the plan holder has discretion for vessel selection. Nevertheless, this suggestion has merit and we urge plan holders to conduct random selections when determining which vessel, within a fleet of vessels, performs a RAC drill. Moreover, the Coast Guard will consider adding a ''random selection'' requirement in future revisions to the PREP Guidelines.

Recordkeeping for RAC drills: One commenter noted some confusing language in the guidelines regarding whether both the Qualified Individual (QI) and the vessel are required to retain records.

Response: Coast Guard regulations require the vessel owner to maintain records for training and exercises. Pursuant to 33 CFR 155.1060(f), a vessel owner or operator must ensure that exercise records are maintained and available to the Coast Guard for 3 years following the completion of the exercise. Under existing PREP guidelines, the vessel owner or operator must maintain RAC exercise records for manned vessels in a minimum of two locations, on the vessel and with one of the following: The U.S. location of the QI, the vessel owner or operator, the IMT, or the SMFF provider. The Vessel Response Plan must state the location of the records. This requirement remains unchanged in the 2016.1 PREP Guidelines. Currently, PREP guidelines require RAC exercise records for unmanned tank barges to be kept either on board the barge or with the Vessel Response Plan for the barge. This requirement remains unchanged in the 2016.1 PREP Guidelines. However, the Coast Guard may consider changing the required location of RAC exercise records for both manned and unmanned vessels now that the requirement applies to plan holders, and may include a fleet of vessels covered by a plan. Until that time, we encourage plan holders to maintain RAC exercise records on board each vessel on the plan. This will assist the Coast Guard

when it verifies compliance with exercise requirements during vessel inspections.

Environmental Protection Agency-Regulated Facilities Comments

Alternative timelines for extreme situations: One commenter suggested that the Environmental Protection Agency (EPA) allow regional administrators to develop alternative timelines for ''extreme situations'' when it is unfeasible to secure oil spill recovery equipment on scene within response timelines specified in 40 CFR part 112 because of the geographic remoteness of some facilities.

Response: The EPA's Facility Response Plan regulation in 40 CFR part 112, subpart D, does not include a provision to request alternate timeframes outlined in appendix E for responses to small, medium, and worst-case discharge planning levels. However, the EPA encourages plan holders to evaluate the specific response needs (both equipment and personnel considerations) for their facilities, which may include partnerships with companies operating in the same oil fields.

Bureau of Safety and Environmental Enforcement-Regulated Offshore Facilities Comments

Participation of the Incident Commander during an IMT exercise: One commenter stated that the proposed change in section 6.2 of the guidelines, which involves including the ''command and general staffs, at a minimum,'' would require the participation by every member of the IMT in each IMT exercise. The commenter recommended changing the language to state that the ''incident command, as well as the command and general staff, may be exercised with appropriate objectives during an IMT exercise.''

Response: BSEE agrees with the commenter that not all members of the entire IMT must participate in each IMT exercise, but rather participation by the command and general staff in any particular IMT exercise should be driven by the objectives being tested. BSEE has adjusted the language to clarify this point in section 6.2 of the 2016.1 PREP Guidelines. The primary purpose for adjusting the language in section 6.2 is to clarify that the participating incident commander is considered part of the IMT that is being exercised and, as such, should not be given access to the script and Master Scenario Event List (MSEL) prior to the start of the exercise.

Including source control positions as exercise participants: One commenter stated that some IMT exercises might have source control objectives that are minimal in nature, such as only activating a source control provider, and would not require further participation of source control positions. This commenter suggested clarifying the language to state that source control positions should participate in an IMT exercise ''as appropriate.''

Response: BSEE agrees that source control positions do not always need to be exercised for every scenario that has a source control component. The language in the 2016.1 PREP Guidelines states that a source control branch should be exercised when source control objectives are a significant element of the scenario. BSEE believes the existing language leads to the same outcome that the commenter wants, and that the existing language provides greater clarity regarding the agency's intent regarding this matter. As such, the existing language will remain unchanged.

Ensuring IMT exercise participants do not have prior knowledge of the exercise scenario: Three commenters commented on this issue. The first commenter stated that while there may be times when portions of the exercise specifics may have to be divulged to certain IMT members that will be playing in the exercise, those instances should be kept to a minimum. This commenter also noted that having advance knowledge of the scenario allows the players to develop tactics and strategies prior to the exercise. However, the commenter felt that developing solutions collaboratively between industry, government agencies, and other stakeholders during exercises provides a more valuable overall learning experience for participants.

Response: BSEE agrees.

The second commenter stated that the exercise scenario script is typically general in nature and does not greatly affect how the response is organized or conducted. The commenter also recommended amending language in the 2016.1 PREP Guidelines to refer to the MSEL instead of the scenario script.

Response: BSEE considers the MSEL to be a critical supporting document to the exercise scenario script, and agrees with the commenter that IMT members who participate in the exercise should not have prior access to or knowledge of the MSEL. BSEE has amended the language in section 6.2 of the 2016.1 PREP Guidelines to include a reference to the MSEL in addition to the scenario script.

The third commenter agreed that preventing IMT participants from having prior access to the information on the exercise scenario results in a better test of preparedness. However, this commenter requested that BSEE clarify that these exercises test the overall preparedness of the company, rather than evaluate each IMT member's performance.

Response: BSEE believes that IMT exercises should test both the overall preparedness of the company and the individual preparedness of each member of the IMT, as appropriate, based on the exercise objectives. The performance of IMT members during an exercise is an important indicator of the plan holder's overall preparedness to respond to an actual incident, and should be evaluated. BSEE does not agree with, and has not adopted, the change requested by the commenter.

Exercising source control and subsea containment capabilities: One commenter stated that source control operations are the weak link in a major oil spill response and source control equipment should be exercised in the same way as any other spill response equipment, including offshore deployments.

Response: While BSEE agrees that source control is a critical part of any response, BSEE disagrees that source control equipment should be exercised in the same manner as all other spill response equipment. While this comment is outside of the scope of the changes proposed in the 2016.1 PREP Guidelines, this subject was addressed at length in the preamble of the **Federal Register** notice that published the final 2016 PREP Guidelines (81 FR 21362). As outlined in Notices to Lessees 2010–N10 and 2012–N06,[1] 30 CFR part 254 requires a plan holder to describe a Worst Case Discharge in its plan, and then exercise how it will respond to the discharge, including identifying any equipment necessary to contain and recover the discharge. BSEE interprets this regulatory language to be inclusive of any resources necessary to contain and secure the source of a potential or actual discharge, which could include the use of well control capabilities such as capping stacks, cap and flow equipment, subsea containment devices, and other supporting equipment. As the current regulations in 30 CFR part 254 do not establish a required interval for the deployment of this type of equipment, the 2016.1 PREP Guidelines cannot provide any additional guidance

[1] Notices to Lessees can be found on BSEE's website at *https://www.bsee.gov/guidance-and-regulations/guidance/notice-to-lessees.*

on a specific exercise frequency requirement at this time. In the absence of any defined scope and frequency interval in the regulations, BSEE will continue to conduct deployments of source control capabilities at the discretion of the BSEE Oil Spill Preparedness Division Chief, in consultation with the appropriate BSEE Regional Director, as needed in order to assess and verify the overall preparedness of a plan holder, or group of plan holders, to operate in an Outer Continental Shelf region. As the scope and cost of such deployment exercises can be quite large, BSEE does not intend to require plan holders or providers of source control, subsea containment, and supporting equipment to conduct deployment exercises at the same semi-annual or annual frequency as required for other spill response equipment. BSEE purposely added section 6.5 to the 2016.1 PREP Guidelines to provide specific interim guidance for exercising source control and subsea containment equipment. BSEE will work to clarify expectations and requirements in the regulations in a future rulemaking.

The Nature of IMT exercises for offshore facilities: One commenter stated that the title of section 6.2 of the 2016.1 PREP Guidelines should be changed from ''Functional Exercise (FE): Incident Management Team Exercise—Offshore Facility'' to ''Tabletop Exercise (TTX): Incident Management Team Exercise—Offshore Facility'' to better align with language in 30 CFR part 254.

Response: While this comment is outside of the scope of the proposed changes made in the 2016.1 PREP Guidelines, the BSEE feels it is important to provide clarification on this important issue. When the PREP 4C published the 2016 PREP Guidelines, it updated many terms and concepts to align with developments that have occurred in the National Response System since the previous version was published in 2002. This included adopting the term ''Incident Management Team,'' as opposed to ''Spill Management Team,'' as well as incorporating many elements of today's exercise typology and terminology as established by the Homeland Security Exercise and Evaluation Program (HSEEP). As such, the 2016 PREP Guidelines changed ''SMT Tabletop Exercises (TTX)'' to ''IMT Exercise.'' This language was purposely adopted to allow each PREP agency the flexibility to determine the type and scope of the IMT exercise. As defined in HSEEP and the 2016 PREP Guidelines, a TTX is a type of discussion-based exercise intended to generate discussion of various issues regarding a hypothetical, simulated emergency. The 2016 PREP Guidelines also state that discussion-based exercises focus on strategic, policy-oriented issues, with facilitators or presenters usually leading the discussion to keep participants on track to meet exercise objectives. In addition, the 2016 PREP Guidelines state that functional exercises focus on exercising plans, policies, and procedures, and staff members are involved in management, direction, command, and control functions. In functional exercises, events are projected through an exercise scenario with event updates that drive activity at the management level, and are conducted in a realistic, real-time environment, even though the movement of personnel and equipment is usually simulated. The BSEE believes that functional exercises, as currently defined by the terminology under HSEEP and the 2016 PREP Guidelines, more closely capture the stated intent of 30 CFR 254.42(b)(1), which provides that ''the exercise must test the spill management team's organization, communication and decision-making in managing a response.'' Therefore, the BSEE will retain the ''Functional Exercise (FE)'' language in the existing title for section 6.2 of the 2016.1 PREP Guidelines. However, in a future regulatory update, the BSEE will amend the exercise terminology in 30 CFR 254.42(b)(1) to reflect that an annual IMT functional exercise is required to properly align the CFR terminology with today's HSEEP and the PREP guidance. For additional background information on the adoption of HSEEP exercise terminology for the 2016 PREP Guidelines, see 81 FR 21362.

IV. Cost Savings Analysis

Since our affected population and projected cost estimates have remained the same from when we published the potential deregulatory savings analysis in February 2018, we have retained the projected cost-saving estimates for this notice, which we present below. As stated in the aforementioned economic analysis, which is available in the public docket, we estimate the net cost savings to the U.S. maritime industry to be $1,084,671 annually ($1,177,975 for drills under prior PREP Guidelines—$93,304 for drills under new PREP Guidelines), undiscounted. We estimate the discounted net cost savings to the U.S. maritime industry over a 10-year period of analysis to be between $7.6 million and $9.3 million at 7- and 3-percent discount rates, respectively. The Coast Guard did not identify any costs or potential cost savings associated with the Federal government as a result of the changes in the 2016.1 PREP Guidelines.

V. Public Availability of 2016.1 PREP Guidelines

The PREP 4C has finalized the 2016.1 PREP Guidelines, which are now publicly available. The Coast Guard is releasing the 2016.1 PREP Guidelines on behalf of the PREP 4C.

In addition to the docket, the 2016.1 PREP Guidelines are available at *https://homeportr.uscg.mil/missions/incident-management-and-preparedness/contingency-exercises/port-level-exercises/port-level-exercises-general-information.*

Dated: September 27, 2018.

K. M. Sligh,

Acting Chief, Office of Marine Environmental Response Policy.

[FR Doc. 2018–21450 Filed 10–1–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0018]

Agency Information Collection Activities: Ship's Store Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted no later than November 1, 2018 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border

Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https:/www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 83 FR Page 26072) on June 5, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection:

Title: Ship's Stores Declaration.

OMB Number: 1651–0018.

Form Number: CBP Form 1303.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours. There is no change to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 1303, Ship's Stores Declaration, is used by the carriers to declare articles to be retained on board the vessel, such as sea stores, ship's stores (*e.g.* alcohol and tobacco products), controlled narcotic drugs or bunker fuel in a format that can be readily audited and checked by CBP. This form collects information about the ship, the ports of arrival and departure, and the articles on the ship. CBP Form 1303 form is provided for by 19 CFR 4.7, 4.7a, 4.81, 4.85 and 4.87 and is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=1303&=Apply.*

Estimated Number of Respondents: 8,000.

Estimated Number of Responses per Respondent: 13.

Estimated Number of Total Annual Responses: 104,000.

Estimated Total Annual Burden Hours: 26,000.

Dated: September 27, 2018.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–21394 Filed 10–1–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4363–DR; Docket ID FEMA–2018–0001]

Indiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–4363–DR), dated May 4, 2018, and related determinations.

DATES: The change occurred on September 7, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven W. Johnson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of David G. Samaniego as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21392 Filed 10–1–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4394–DR; Docket ID FEMA–2018–0001]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4394–DR), dated September 16, 2018, and related determinations.

DATES: The declaration was issued September 16, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 16, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of South Carolina resulting from Hurricane Florence beginning on September 8, 2018, and continuing, is of

sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Elizabeth Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Carolina have been designated as adversely affected by this major disaster:

Berkeley, Charleston, Dorchester, Georgetown, Horry, Marion, Orangeburg, and Williamsburg Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

All areas within the State of South Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21393 Filed 10–1–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2018–0022; OMB No. 1660–0059]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Flood Insurance Program Call Center and Agent Referral Enrollment Form

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before November 1, 2018.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Susan Bernstein, Insurance Specialist, FIMA, Marketing and Outreach Branch, (202) 701–3595.

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on June 15, 2018 at 83 FR 28007 with a 60-day public comment period. FEMA received one public comment that did not require any adjudication related to the information collection. Under Flood Disaster Protection Act of 1973, Section 2(a)(6), 42 U.S.C. 4002(a)(6), Congress finds it is in the public interest for persons already living in flood prone areas to have an opportunity to purchase flood insurance and access to more adequate limits of coverage to be indemnified for their losses in the event of future flood disasters. To this end, FEMA established and carries out a National Flood Insurance Program (NFIP), which enables interested persons to purchase insurance against loss resulting from physical damage to or loss of real or personal property arising from any flood occurring in the United States. 42 U.S.C. 4011. In carrying out the NFIP, FEMA operates a call center in conjunction with the FloodSmart website (*www.FloodSmart.gov*). Together these methods of marketing and outreach provide the mechanism for current and potential policyholders to learn more about floods and flood insurance, contact an agent, or assess their risk. The information collected from callers/visitors is used to fulfill requests for published materials, email alerts, policy rates, and agent contact information.

Additionally, FEMA and the NFIP offer *Agents.FloodSmart.gov* as a resource for agents. Upon website registration, agents can enroll in the Agent Referral Program to receive free leads through the consumer site or the call center as outlined above. This information collection seeks approval to continue collecting name, address and telephone number information from: (1) Business and residential property owners and renters who voluntarily call to request flood insurance information and possibly an insurance agent referral and, (2) insurance agents interested in enrolling in the agent referral service.

Collection of Information

Title: National Flood Insurance Program Call Center and Agent Referral Enrollment Form.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0059.

FEMA Forms: FEMA Form 517–0–1, National Flood Insurance Program Agent Site Registration; FEMA Form

512–0–1, National Flood Insurance Program Agent Referral Questionnaire.

Abstract: Consumer names, addresses, and telephone numbers collected through the Call Center or FloodSmart website will be used exclusively for providing information on flood insurance and/or facilitate the purchase of a flood insurance policy through referrals or direct transfers to insurance agents in the agent referral service. Agent names, addresses, telephone numbers, and business information is retained for dissemination to interested consumers who would like to talk to an agent about purchasing a flood insurance policy as part of the agent referral program.

Affected Public: Individuals or households; Businesses or other for-profit.

Estimated Number of Respondents: 59,194.

Estimated Number of Responses: 59,194.

Estimated Total Annual Burden Hours: 2,819 hours.

Estimated Total Annual Respondent Cost: $103,335.52.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $406,941.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

William Holzerland,

Director, Information Management Division, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–21404 Filed 10–1–18; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4383–DR; Docket ID FEMA–2018–0001]

Wisconsin; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–4383–DR), dated August 10, 2018, and related determinations.

DATES: The change occurred on September 7, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven W. Johnson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of David G. Samaniego as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21391 Filed 10–1–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4381–DR; Docket ID FEMA–2018–0001]

Michigan; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Michigan (FEMA–4381–DR), dated August 2, 2018, and related determinations.

DATES: The change occurred on September 7, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven W. Johnson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of David G. Samaniego as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21390 Filed 10–1–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4394–DR; Docket ID FEMA–2018–0001]

South Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4394–DR), dated September 16, 2018, and related determinations.

DATES: This amendment was issued September 21, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include Individual Assistance for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 16, 2018.

Dillon and Marlboro Counties for Individual Assistance and emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

Horry and Marion Counties for Individual Assistance (already designated for emergency protective measures (Category B), including direct federal assistance under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21388 Filed 10–1–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4388–DR; Docket ID FEMA–2018–0001]

Montana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Montana (FEMA–4388–DR), dated August 30, 2018, and related determinations.

DATES: This amendment was issued September 18, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Montana is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 30, 2018.

Petroleum County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21389 Filed 10–1–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520; OMB Control Number 1029–0116]

Agency Information Collection Activities: Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing our intention to request renewed approval for the collection of information for persons seeking permit revisions, renewals, transfer, assignment, or sale of their permit rights for coal mining activities.

DATES: Interested persons are invited to submit comments on or before December 3, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to: The Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Attn: John Trelease, 1849 C Street NW; Mail Stop 4559, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Trelease by email at *jtrelease@osmre.gov,* or by telephone at (202) 208–2783.

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 OSMRE; (2) is the estimate of burden accurate; (3)

how might the OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might the OSMRE 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.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title of Collection: 30 CFR part 774—Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights.

OMB Control Number: 1029–0116.

Abstract: This Part implements the requirements in Sections 506 and 511 of 30 U.S.C. 1201 *et seq.* which provides that persons seeking permit revisions, renewals, transfer, assignment, or sale of their permit rights for coal mining activities submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Surface coal mining permit applicants and State regulatory authorities.

Total Estimated Number of Annual Respondents: Varies from 271 to 2,603 permit applicants; and 266 to 2,528 responses from State regulatory authorities, depending on the activity.

Total Estimated Number of Annual Responses: 4,311 responses from permit applicants and 4,229 responses from State regulatory authorities.

Estimated Completion Time per Response: Varies from 2 to 60 hours per response for permit applicants; and from 2 to 22.25 hours for State regulatory authorities, depending on the activity.

Total Estimated Number of Annual Burden Hours: 302,815 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $1,059,644.

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.

Authority: The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2018–21382 Filed 10–1–18; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520; OMB Control Number 1029–0080]

Agency Information Collection Activities: Permanent Regulatory Program Requirements—Standards for Certification of Blasters

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE) are announcing our intention to request renewed approval for the collection of information used to identify and evaluate new blaster certification programs. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned control number 1029–0080.

DATES: Interested persons are invited to submit comments on or before November 1, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4559, Washington, DC 20240; or by email to *jtrelease@osmre.gov.* Please reference OMB Control Number 1029–0080 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Trelease by email at *jtrelease@osmre.gov,* or by telephone at (202) 208–2783. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A Federal Register notice with a 60-day public comment period soliciting comments on this collection of information was published on July 12, 2018 (83 FR 32326). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of OSMRE; (2) is the estimate of burden accurate; (3) how might OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Title of Collection: 30 CFR part 850—Permanent Regulatory Program Requirements—Standards for Certification of Blasters.

OMB Control Number: 1029–0080.

Abstract: The information is used to identify and evaluate new blaster certification programs. Part 850 implements Section 719 of the Surface Mining Control and Reclamation Act (SMCRA). Section 719 requires the Secretary of the Interior to issue

regulations which provide for each State regulatory authority to train, examine and certify persons for engaging in blasting or use of explosives in surface coal mining operations. Each State that wishes to certify blasters must submit a blasters certification program to OSMRE for approval.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State regulatory authorities and Indian Tribes.

Total Estimated Number of Annual Respondents: 1 State or Tribe every three years.

Total Estimated Number of Annual Responses: 1 every three years.

Estimated Completion Time per Response: 960 hours.

Total Estimated Number of Annual Burden Hours: 320 hours per year.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $0.

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.

Authority: The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2018–21385 Filed 10–1–18; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520; OMB Control Number 1029–0049]

Agency Information Collection Activities: Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing our intention to request renewed approval for the collection of information to protect alluvial valley floors from the adverse effects of surface coal mining operations west of the 100th meridian. This information will be used by the regulatory authorities to make that determination.

DATES: Interested persons are invited to submit comments on or before December 3, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to: The Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Attn: John Trelease, 1849 C Street NW; Mail Stop 4559, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Trelease by email at *jtrelease@osmre.gov,* or by telephone at (202) 208–2783.

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 OSMRE; (2) is the estimate of burden accurate; (3) how might the OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might the OSMRE 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.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title of Collection: 30 CFR part 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors.

OMB Control Number: 1029–0049.

Abstract: This Part implements the requirements in Sections 510(b)(5) and 515(b)(10)(F) of the Surface Coal Mining and Reclamation Act of 1977 (the Act) to protect alluvial valley floors from the adverse effects of surface coal mining operations west of the 100th meridian. Part 822 requires the permittee to install, maintain, and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is necessary to determine whether the unique hydrologic conditions of alluvial valley floors are protected according to the Act.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Coal mine operators and State regulatory authorities.

Total Estimated Number of Annual Respondents: 33 coal mining operators who operate on alluvial valley floors and approximately 4 State regulatory authorities.

Total Estimated Number of Annual Responses: 33 coal mining operators who operate on alluvial valley floors and 33 State regulatory authority responses.

Estimated Completion Time per Response: Varies from 3 to 90 hours per response from Coal mine operators, with an average of 80 hours; and an average of 10 hours for State regulatory authorities.

Total Estimated Number of Annual Burden Hours: 2,970 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $0.

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.

Authority: The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2018–21384 Filed 10–1–18; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520; OMB Control Number 1029–0113]

Agency Information Collection Activities: General Reclamation Requirements

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing our intention to request renewed approval for the collection of information for land and water eligibility requirements, reclamation objectives and priorities and reclamation contractor responsibility.

DATES: Interested persons are invited to submit comments on or before December 3, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to: The Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Attn: John Trelease, 1849 C Street NW; Mail Stop 4559, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Trelease by email at *jtrelease@osmre.gov,* or by telephone at (202) 208–2783.

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 OSMRE; (2) is the estimate of burden accurate; (3) how might the OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might the OSMRE 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.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title of Collection: 30 CFR part 874—General Reclamation Requirements.

OMB Control Number: 1029–0113.

Abstract: Part 874 establishes land and water eligibility requirements, reclamation objectives and priorities and reclamation contractor responsibility. 30 CFR 874.17 requires consultation between the AML agency and the appropriate Title V regulatory authority on the likelihood of removing the coal under a Title V permit and concurrences between the AML agency and the appropriate Title V regulatory authority on the AML project boundary and the amount of coal that would be extracted under the AML reclamation project.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State regulatory authorities and Indian tribes.

Total Estimated Number of Annual Respondents: 8 States and Tribes.

Total Estimated Number of Annual Responses: 8.

Estimated Completion Time per Response: 83 hours per response.

Total Estimated Number of Annual Burden Hours: 664 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $0.

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.

Authority: The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2018–21383 Filed 10–1–18; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520; OMB Control Number 1029–0030]

Agency Information Collection Activities: State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing our intention to request renewed approval for the collection of information which provides authority for citizens to petition States to designate lands unsuitable for surface coal mining operations, or to terminate such designation.

DATES: Interested persons are invited to submit comments on or before December 3, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to: The Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Attn: John Trelease, 1849 C Street NW; Mail Stop 4559, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Trelease by email at *jtrelease@osmre.gov,* or by telephone at (202) 208–2783.

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 OSMRE; (2) is the estimate of burden accurate; (3) how might the OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might the OSMRE 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.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title of Collection: 30 CFR part 764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations.

OMB Control Number: 1029–0030.

Abstract: This part implements the requirement of section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C 1201 *et seq.,* which provides authority for citizens to petition States to designate lands unsuitable for surface coal mining operations, or to terminate such designation. The regulatory authority uses the information to identify, locate, compare and evaluate the area requested to be designated as unsuitable, or terminate the designation, for surface coal mining operations.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals or groups that petition the States, and the State regulatory authorities that process the petitions.

Total Estimated Number of Annual Respondents: 1 petitioner and 1 State regulatory authority.

Total Estimated Number of Annual Responses: 2.

Estimated Completion Time per Response: 600 hours per petition and 4,000 hours per regulatory authority.

Total Estimated Number of Annual Burden Hours: 4,600 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $120.

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.

Authority: The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2018–21380 Filed 10–1–18; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520; OMB Control Number 1029–0057]

Agency Information Collection Activities: Reclamation on Private Lands

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing our collection of information which authorizes Federal, State, and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands.

DATES: Interested persons are invited to submit comments on or before November 1, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4559, Washington, DC 20240; or by email to *jtrelease@osmre.gov.* Please reference OMB Control Number 1029–0057 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Trelease by email at *jtrelease@osmre.gov,* or by telephone at (202) 208–2783. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 12, 2018 (83 FR 32324). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of OSMRE; (2) is the estimate of burden accurate; (3) how might OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made

publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Title of Collection: 30 CFR part 882—Reclamation on Private Lands.

OMB Control Number: 1029–0057.

Abstract: Public Law 95–87 authorizes Federal, State, and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands. These procedures are intended to ensure that governments have sufficient capability to file liens so that certain landowners will not receive a windfall from reclamation.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State governments and Indian Tribes.

Total Estimated Number of Annual Respondents: 1 State or Tribe.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 120 hours.

Total Estimated Number of Annual Burden Hours: 120 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $0.

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.

Authority: The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2018–21387 Filed 10–1–18; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1189 (Review)]

Large Power Transformers From Korea; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on large power transformers from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on July 3, 2017 (82 FR 30896) and determined on October 6, 2017 that it would conduct a full review (82 FR 49229, October 24, 2017). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on April 10, 2018 (83 FR 15398). The hearing was held in Washington, DC, on July 26, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on September 26, 2018. The views of the Commission are contained in USITC Publication 4826 (September 2018), entitled *Large Power Transformers from Korea: Investigation No. 731–TA–1189 (Review).*

By order of the Commission.

Issued: September 26, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–21398 Filed 10–1–18; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1133]

Certain Unmanned Aerial Vehicles 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 August 30, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Autel Robotics USA LLC of Bothell, Washington. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain unmanned aerial vehicles and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,979,174 (''the '174 patent''); U.S. Patent No. 9,260,184 (''the '184 patent''); and U.S. Patent No. 10,044,013 (''the '013 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 26, 2018, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the

United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–8 and 14–17 of the '174 patent; claims 1–5 and 11 of the '184 patent; and claims 1, 3–16, 18, and 21–24 of the '013 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 ''drones, rotors, rotor assemblies, actuators, propulsion assemblies, batteries, battery components, battery assemblies, controllers, processors, processing components, modules, chips, and circuits used therein or therewith'';

(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:

Autel Robotics USA LLC, 22522 29th Dr. SE, Suite 101, Bothell, WA 98021

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

SZ DJI Technology Co. Ltd., 14th Floor, West Wing, Skyworth, Semiconductor Design Building, No. 18, Gaoxin South 4th Ave., Nanshan District, Shenzhen, China 518063

DJI Europe B.V., Bijdorp-Oost 6, 2992 LA Barendrecht, Netherlands

DJI Technology Inc., 201 S Victory Blvd., Burbank, CA 91502

iFlight Technology Co. Ltd., Units 912–916, 9/F, Building 16W, No. 16 Science Park West Avenue, Hong Kong Science Park, Pak Shek Kok, Hong Kong 999077

DJI Baiwang Technology Co. Ltd., Building 9, 7, 2, 1, Baiwang Creative Factory, No. 1051, Songbai Road, Xili, Nanshan District, Shenzhen, China 518105

DJI Research LLC, 435 Portage Avenue, Palo Alto, CA 94306

DJI Service LLC, 17301 Edwards Road, Cerritos, CA 90703

DJI Creative Studio LLC, 201 S. Victory Boulevard, Burbank, CA 91502

(3) 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), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 26, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–21362 Filed 10–1–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Space Enterprise Consortium

Notice is hereby given that, on August 23, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Space Enterprise Consortium (''SpEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Accion Systems, Inc., Boston, MA; Adcole Maryland Aerospace, LLC, Marlborough, MA; Advanced Space, LLC, Boulder, CO; AKELA, Inc., Santa Barbara, CA; Alpha Space Test & Research Alliance LLC, Houston, TX; AMERGINT Technologies, Inc., Colorado Springs, CO; Applied Defense Solutions, Inc., Columba, MD; ASTRA, LLC, Boulder, CO; ATA Engineering, Inc., San Diego, CA; A-Tech Corporation, Albuquerque, NM; ATS–MER, LLC, Tucson, AZ; Ball Aerospace & Technologies Corp., Boulder, CO; Blue Canyon Technologies, Inc., Boulder, CO; Blue Residuum, LLC DBA Blue Residuum Space Alliances, Centreville, VA; Braxton Technologies, LLC, Colorado Springs, CO; Brilligent Solutions, Inc., Fairborn, OH; Charles River Analytics, Inc., Cambridge, MA; CMA Technologies, Inc., Orlando, FL; Cosmic Advanced Engineered Solutions, Inc., Colorado Springs, CO; Decisive Analytics Corporation, Arlington, VA; Electric Drivetrain Technologies, LLC, Castle Valley, UT; ExoAnalytic Solutions, Inc., Mission Viejo, CA; General Atomics, San Diego, CA; Harris Corporation, Palm Bay, FL; Hughes Network Systems, LLC, Germantown, MD; IERUS Technology, Inc., Huntsville, AL; Innoflight, Inc., San Diego, CA; Intelligent Fusion Technology, Inc., Germantown, MD; Iris Technology Corporation, Irvine, CA; Kratos Technology and Training Solutions, Inc., San Diego, CA; L–3 Communication E.O.-IR, Inc., Santa Rosa, CA; Leidos, Inc., Reston, VA; Lockheed Martin Corporation, Sunnyvale, CA; Measurement Analysis Corporation, Torrance, CA; MEI Technologies, Inc., Houston, TX; Microwave Innovations, Inc., Furlong, PA; Millennium Space Systems, El Segundo, CA; MMA Design LLC, Boulder, CO; Modern Technology Solutions, Inc., Alexandria, VA; Moog Inc., Elma, NY; MTEQ (Manufacturing Techniques, Inc.), Lorton, VA; NanoRacks, LLC, Houston, TX; NDP, LLC, Boulder, CO; Northrop Grumman Systems Corporation, Azusa, CA; NovaWurks, Inc., Los Alamitos, CA; Orbital Science Corporation, Dulles, VA; Parabilis Space Technologies, Inc., San Marcos, CA; Parson's Government Services, Inc., Pasadena, CA; Phoebus Optoelectronics LLC, Potsdam, NY; Princeton Satellite Systems, Inc., Plainsboro, NJ; Pumpkin, Inc., San Francisco, CA; Pyramid Imaging, Inc., Tampa, FL; Quantum Dimension, Inc., Huntington Beach, CA; Raytheon

Company, Waltham, MA; Real Time Logic, Inc., Colorado Springs, CO; Riverside Research, New York, NY; Rocket Communications, Inc., San Francisco, Ca; SciTec, Inc., Princeton, NJ; Sierra Nevada Corporation-Space Systems, Louisville, CO; Solers, Inc., Arlington, VA; Sonalyst, Inc., Waterford, CT; Southern Aerospace Company, LLC, Madison, AL; Southwest Research Institute, San Antonio, TX; Space Information Laboratories, LLC, Santa Maria, CA; Space Micro, Inc., San Diego, CA; Space Systems Loral, LLC, Palo Alto, CA; SRI International, Menlo Park, CA; Stratolaunch Federal, Inc., Seattle, WA; Summit Technical Solutions, LLC, Colorado Springs, CO; Systems & Materials Research Corporation, Austin, TX; Systems Engineering Associates, Inc., Torrance, CA; The Boeing Company, Huntington Beach, CA; The Charles Stark Draper Lab, Inc., Cambridge, MA; The University of New Mexico, Albuquerque, NM; Tyvak Nano-Satellite Systems Inc., Irvine, CA; United Launch Alliance, LLC, Centennial, CO; Universities Space Research Association, Columbia, MD; Utah State University Research Foundation, DBA Space Dynamics Laboratory, North Logan, UT; Vector Launch, Inc., Tucson, AZ; Visionary Products, Inc., Draper, UT; VMware, Inc., Palo Alto, CA; ATA Aerospace, Albuquerque, NM; a.i. solutions, Inc., Lanham, MD; ACTA, LLC, Torrance, CA; Ampex Data Systems Corporation, Hayward, CA; Assurance Technology Corporation, Carlisle, MA; AT&T Government Solutions, Inc., Colorado Springs, CO; ATLAS Space Operations, Inc., Traverse City, MI; BAE Systems Information & Electronic Systems Integration, Inc., San Diego, CA; Booz Allen Hamilton, Inc., McLean, VA; Canyon Consulting, LLC, El Segundo, CA; Carahsoft Technology, Corp., Reston, VA; Centil, Broomfield, CO; Chandah Space Technologies, Houston, TX; Cimarron Software Services, Inc., Houston, TX; Colorado Engineering, Inc., Colorado Springs, CO; Deloitte Consulting LLP, Manhattan Beach, CA; DSoft Technology Company, Colorado Springs, CO; Dynetics Technical Solutions, Inc., Huntsville, AL; Emergent Space Technologies, Inc., Laurel, MD; ENSCO, Inc., Falls Church, VA; Epoch Concepts, LLC, Highlands Ranch, CO; Eutelsat America Corp., Washington, DC; ExoTerra Resource, LLC, Littleton, CO; Falcon ExoDynamics, Inc., Redondo Beach, CA; Frontier Technology Inc., Beavercreek, OH; General Dynamics Mission Systems, Inc., Scottsdale, AZ; Hewlett Packard Enterprise Company, Palo Alto, CA; Infinity Systems Engineering, LLC, Colorado Springs, CO; Inmarsat Government, Inc., Reston, VA; Intelsat General Corp., McLean, VA; INVOCON, Inc., Conroe, TX; Ki Ho Military Acquisition Consulting, Inc. DBA KIHOMAC, Inc., Reston, VA; L–3 Communications Cincinnati Electronics Corporation, Mason, OH; L3 Technologies, Inc., Communication Systems-West, Salt Lake City, UT; L3 Telemetry & RF Products, San Diego, CA; Loft Orbital Solutions, Inc., San Francisco, CA; M42 Technologies, LLC, Seattle, WA; Made In Space, Inc., Jacksonville, FL; MDA Information Systems, LLC, Gaithersburg, MD; Microcosm, Inc., Torrance, CA; NextGen Federal Systems, LLC, Morgantown, WV; Numerica Corporation, Ft. Collins, CO; Oakman Aerospace, Inc., Littleton, CO; Omitron, Inc., Beltsville, MD; Oracle America, Inc., Reston, VA; Polaris Alpha, LLC, Colorado Springs, CO; QuesTek Innovations, LLC, Evanston, IL; Radiance Technologies, Inc., Huntsville, AL; Rampart Technologies Corporation, Littleton, CO; Research Innovations, Incorporated, Alexandria, VA; Rincon Research Corporation, Tucson, AZ; River Front Services, Inc., Chantilly, VA; RKF Engineering Solutions, LLC, Bethesda, MD; SaraniaSat, Inc., Los Angeles, CA; Science Applications International Corporation (SAIC), Reston, VA; SEAKR Engineering Inc., Centennial, CO; Silicon Space Technology dba VORAGO Technologies, Austin, TX; Space Vector Corporation, Chatsworth, CA; SysCom, Inc., Colorado Springs, CO; The Genus Group, LLC, North Potomac, MC; Ultramet, Pacoima, CA; Ursa Major Technologies, Inc., Berthoud, CO; Vencore, Inc., Chantilly, VA; VIASAT, Inc., Carlsbad, CA; X-Band LLC, Cambridge, MA; Technology Advancement Group, Inc., Dulles, VA; MaXentric Technologies, LLC, Fort Lee, NJ; XL Scientific, LLC DBA Verus Research, Albuquerque, NM; The Design Knowledge Company, Fairborn, OH; Roccor, LLC, Longmont, CO; Matterwaves Antenna Technology Co., Torrance, CA; Stellar Exploration, Inc., San Luis Obispo, CA; Spectrum Laser & Technologies, Inc. DBA Spectrum Advanced Manufacturing Technologies, Inc., Colorado Springs, CO; Zin Technologies, Inc., Middleburg Heights, OH; Trident Systems Incorporated, Fairfax, VA; L3 Technologies, Inc., Communication Systems-East Division, Camden, NJ; XIA LLC, Hayward, CA; IDEAS Engineering & Technology, LLC, Albuquerque, NM; Linear Space Technology LLC, Hamilton, NJ; Planet Labs, Inc., San Francisco, CA; Virginia Polytechnic Institute and State University, Blacksburg, VA; Solidyn Solutions, LLC, Greenwood Village, CO; Sensing Strategies, Inc., Pennington, NJ; Vox Space, LLC, El Segundo, CA; Airbus Defense and Space, Inc., Herndon, VA; SES Government Solutions, Inc., Reston, VA; Altamira Corporation, McLean, VA; Blacknight Cybersecurity International, Inc., Colorado Springs, CO; NXTRAC, Rolling Hills Estates, CA; Dynetics, Inc., Huntsville, AL; University of Michigan, Ann Arbor, MI; Relativity Space, Inc., Inglewood, CA; Corvid Technologies, LLC, Mooresville, NC; Honeywell International Inc., Clearwater, FL; Yotta Navigation Corporation, Santa Clara, CA; Stotler Henke Associates, Inc., San Mateo, CA; Stellar Solutions, Inc., Palo Alto, CA; Bryce Space and Technology, LLC, Alexandria, VA; and Earth Resources Technology, Inc., Laurel, MD.

The general area of SpEC's planned activity is (1) minimize barriers to entry businesses and non-traditional vendors to work with the U.S. Government and to identify and realize teaming opportunities among entities to promote integrated research and prototyping efficiencies, and (2) reducing the cost of prototype development.

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–21431 Filed 10–1–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Manufacturing Design Innovation Institute

Notice is hereby given that, on September 19, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Digital Manufacturing Design Innovation Institute (''DMDII'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Coca-Cola Company, Atlanta, GA; Phynsa LLC, Cincinnati, OH; PUNDITAS LLC, Wakefield, MA; United Electric Corporation, Canonsburg, PA;

Mira Labs, Inc., Los Angeles, CA; ClearObject, Inc., Fishers, IN; Aegis Industrial Software Corporation, Horsham, PA; CH Hanson LLC, Naperville, IL; Marshall, Gerstein & Borun LLP, Chicago, IL; ARC Precision, Isanti, MN; Authenticiti, Inc., San Francisco, CA; DiMonte Group, Warrenville, IL; Applied Automation Technologies, Inc., Rochester Hills, MI; Janiero Digital, Chicago, IL; Simio, Pittsburgh, PA; Aunalytics, South Bend, IN; American Gear Manufacturers Association, Alexandria, VA; ML Design Technologies, Palo Alto, CA; Bain & Company, Boston, MA; Eural USA, Chicago, IL; Sigmaxim, Inc., Norwood, MA; Electric Imp., Los Altos, CA; Entringa, Chicago, IL; Fraight Inc., Chicago, IL; Xcelgo, Atlanta, GA; Duracell, Chicago, IL; ProMANAGE, Chicago, IL; DP Technology Corp., Camarillo, CA; ClearBlade, Austin, TX; CyberPoint International, Baltimore, MD; Proto Labs, Maple Plain, MN; SWARM Engineering, San Juan, Capistrano, CA; Catalytic, Naperville, IL; CyPhy Works, Danvers, MA; VANTIQ, Walnut Creek, CA; Alta Via Consulting, Palos Heights, IL; Beacon Interactive, Waltham, MA; Cimetrix Inc., Midvale, UT; Factory Physics, Bryan, TX; Ekta Flow LLC, Chicago, IL; Machine Metrics, Inc., Northampton, MA; RetoLogic, Santa Clara, CA; University of New Hampshire, Durham, NH; Consolidated Nuclear Security, Oak Ridge, TN; Design Interactive, Inc., Orlando, FL; EMNS, Inc., Downers Grove, IL; Supply Dynamics, Loveland, OH; Vision Three, Bloomington, IN; University of Central Florida, Orlando, FL; DMR International, Woodstock, IL; iBASEt, Foothill Ranch, CA; Shape Fidelity, Huntsville, AL; AE Machines, Champaign, IL; Montronix, Ann Arbor, MI; Transco Products, Chicago, IL; Hardinge, Inc., Elmira, NY; The Northridge Group, Rosemont, IL; BEET, Plymouth, MI; and Hallsten Innovations, Barberton, OH, have been added as parties to this venture.

Also, Warwick Analytics, Chicago, IL; Wittenstein North America, Bartlett, IL; Hallsten Innovations Ltd., Chicago, IL; Metrosage LLC, Volcano, CA; CUBRC, Buffalo, NY; Building Blocks, Inc., Chicago, IL; Manufacturing Renaissance, Chicago, IL; 3 Degrees LLC, Chicago, IL; Concurrent Technologies Corporation, Johnstown, PA; Alliance for Industry & Manufacturing, Chicago, IL; Strong Oak, Chicago, IL; Koneksys LLC, San Francisco, CA; Isola USA Corp., Chandler, AZ; Sera Laser Precision, Libertyville, IL; EDM Department, Inc., Bartlett, IL; Sensorhound, West Lafayette, IN; Actvcontent, Sunnyvale, CA; 4D Technology, Tucson, AZ; Huntington Ingalls, Inc., Pascagoula, MS; Grant Thornton, Chicago, IL; Agility Network Services, Chicago, IL; Isomorph Development, Inc., Cleveland, OH; Golden Corridor Advanced Manufacturing Partnership, Schaumburg, IL; Sandalwood Engineering & Ergonomics, Livonia, MI; Renaissance Service, Inc., Fairborn, OH; WW Grainger Inc., Lake Forest, IL; Tech Mahindra Americas Inc., Plano, TX; Boston Consulting Group, Boston, MA; CapGemini US LLC, Atlanta, GA; SaltFlats Labs, Santa Clara, CA; Verena Solutions LLC, Chicago, IL; Siewert Solutions, Wylie, TX; Rocky Mountain Technology Alliance, Inc., Colorado Springs, CO; Prairiefire Consulting Inc., Urbana, IL; Wiegel Tool Works, Wood Dale, IL; and Source3, New York, NY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DMDII intends to file additional written notifications disclosing all changes in membership.

On January 5, 2016, DMDII filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 9, 2016 (81 FR 12525).

The last notification was filed with the Department on June 26, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 15, 2017 (82 FR 38709).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–21432 Filed 10–1–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Rhodes Technologies

ACTION: Notice; correction.

SUMMARY: The Drug Enforcement Administration (DEA) published a document in the **Federal Register** on August 15, 2018, concerning a notice of application that inadvertently did not include the controlled substance Fentanyl (9801).

Correction

In the **Federal Register** on August 15, 2018, in FR Doc No: 2018–17605 (83 FR 158) on pages 40567 and 40568, correct the table to include the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Fentanyl	9801	II

Dated: September 20, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–21352 Filed 10–1–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: AMPAC Fine Chemicals, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 3, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on March 14, 2018, AMPAC Fine Chemicals, LLC, Highway 50 and Hazel Avenue, Building 05001, Rancho Cordova, California 95670 applied to be registered

as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Levomethorphan	9210	II
Levorphanol	9220	II
Thebaine	9333	II
Remifentanil	9739	II
Tapentadol	9780	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Dated: September 20, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–21348 Filed 10–1–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by the Drug Enforcement Administration (DEA) as bulk manufacturers of various classes of schedule I and II controlled substances.

SUPPLEMENTARY INFORMATION: The companies listed below applied to be registered as bulk manufacturers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted for these notices.

Company	FR docket	Published
American Radiolabeled Chem	83 FR 28664	June 20, 2018.
Cerilliant Corporation	83 FR 28664	June 20, 2018.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of these registrants to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each of the company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed companies.

Dated: September 20, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–21353 Filed 10–1–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Cambrex Charles City

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 3, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on June 8, 2018, Cambrex Charles City, 1205 11th Street, Charles City, Iowa 50616 applied to be registered as a bulk manufacturer of the basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Amphetamine	1100	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
4-Anilino-N-phenethyl-4-piperidine (ANPP).	8333	II
Phenylacetone	8501	II
Cocaine	9041	II
Codeine	9050	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Opium extracts	9610	II
Opium fluid extract	9620	II
Opium tincture	9630	II
Opium, powdered	9639	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Fentanyl	9801	II

The company plans to manufacture the listed controlled substances in bulk for conversion to other controlled substances and sale to its customers, for dosage form development, for clinical trials, and for use in stability qualification studies.

Dated: September 20, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–21351 Filed 10–1–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by the Drug Enforcement Administration (DEA) as importers of various classes of schedule I or II controlled substances.

SUPPLEMENTARY INFORMATION: The companies listed below applied to be registered as importers of various basic classes of controlled substances. Information on previously published notices are listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for these notices.

Company	FR Docket	Published
AMRI Rensselaer, Inc	83 FR 15176	April 9, 2018.
S&B Pharma, Inc	83 FR 31421	July 5, 2018.
Cerilliant Corporation	83 FR 32906	July 16, 2018.
Shertech Laboratories, LLC	83 FR 34879	July 23, 2018.
Fresenius Kabi USA, LLC	83 FR 34878	July 23, 2018.
VHG Labs DBA LGC Standards	83 FR 34875	July 23, 2018.
Catalent Pharma Solutions, LLC	83 FR 34874	July 23, 2018.
Fisher Clinical Services, Inc	83 FR 34879	July 23, 2018.
Anderson Brecon, Inc	83 FR 37525	August 1, 2018.

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrants to import the applicable basic classes of schedule I or II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

The DEA investigated each company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I or II controlled substances to the above listed companies.

Dated: September 20, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–21354 Filed 10–1–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: R & D Systems, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before November 1, 2018. Such persons may also file a written request for a hearing on the application on or before November 1, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearings must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearings should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417, (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on April 9, 2018, R & D Systems, Inc., 614 McKinley Place NE, Minneapolis, Minnesota 55413–5541 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
3,4-Methylenedioxymethamphetamine	7405	I
Dimethyltryptamine	7435	I
Psilocyn	7438	I
Pentobarbital	2270	II
Phencyclidine	7471	II
Cocaine	9041	II

The company plans to import bulk active controlled substances for distribution to its customers for research and analytical purposes. In reference to drug codes marihuana (7360) and tetrahydrocannabinols (7370) the company plans to import a synthetic cannabidiol and a synthetic tetrahydrocannabinol. No other activity for these drug codes is authorized for this registration.

Dated: September 20, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–21334 Filed 10–1–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: The registrant listed below has applied for and been granted registration by the Drug Enforcement Administration (DEA) as an importer of various classes of schedule I or II controlled substances.

SUPPLEMENTARY INFORMATION: The company listed below applied to be registered as an importer of various basic classes of controlled substances. Information on the previously published notice is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for this notice.

Company	FR docket	Published
Ultra Scientific Inc.	83 FR 37525	August 1, 2018.

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrant to import the applicable basic classes of schedule I or II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I or II controlled substances to the above listed company.

Dated: September 20, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–21336 Filed 10–1–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1751]

Notice of Charter Renewal of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Charter Renewal.

SUMMARY: Notice that the charter of the Coordinating Council on Juvenile Justice and Delinquency Prevention has been renewed.

FOR FURTHER INFORMATION CONTACT: Visit the website for the Coordinating Council at *www.juvenilecouncil.gov* or contact Jeff Slowikowski, Designated Federal Official (DFO), Office of Juvenile Justice and Delinquency Prevention, by telephone at (202) 616–3646 (not a toll-free number) or via email: *jeff.slowikowski@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This **Federal Register** Notice notifies the public that the Charter of the Coordinating Council on Juvenile Justice and Delinquency has been renewed in accordance with the Federal Advisory Committee Act, Section 14(a)(1). The renewal Charter was signed by U.S. Attorney General Jefferson B. Sessions on June 29, 2018. One can obtain a copy of the renewal Charter by accessing the Coordinating Council on Juvenile Justice and Delinquency Prevention's website at *www.juvenilecouncil.gov.*

Jeff Slowikowski,

Senior Advisor to the Coordinating Council on Juvenile Justice and Delinquency Prevention, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2018–21379 Filed 10–1–18; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meetings

Record of Vote of Meeting Closure

(Pub. L. 94–409) (5 U.S.C. 552b)

I, Patricia K. Cushwa, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 1:30 p.m., on Wednesday, September 26, 2018 at the U.S. Parole Commission, 90 K Street NE, Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss original jurisdiction cases pursuant to 28 CFR 2.25. and 28 CFR 2.68(i)(1) Two Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Patricia K. Cushwa and Charles T. Massarone.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: September 26, 2018.

Patricia K. Cushwa,

Acting Chairperson, U.S. Parole Commission.

[FR Doc. 2018–21566 Filed 9–28–18; 4:15 pm]

BILLING CODE 4410–31–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (18–072)]

Notice of Intent To Grant Exclusive Term License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive term license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive term license in the United States to practice the invention described and claimed in U.S. Patent No. 9,749,342 entitled, ''System and Method for Detecting Unauthorized Device Access by Comparing Multiple Independent Spatial-Time Data Sets from Other Devices'' to Equator Corporation, having its principal place of business in Stafford, VA.

DATES: The prospective exclusive license may be granted unless NASA receives written objections, including evidence and argument October 17, 2018, that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth

in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than October 17, 2018 will also be treated as objections to the grant of the contemplated exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Bryan A. Geurts, Goddard Space Flight Center, 8800 Greenbelt Road, M/S 140.1, Greenbelt, MD 20771. Phone (301) 286–7351. Facsimile (301) 286–9502.

FOR FURTHER INFORMATION CONTACT: Dennis Small, Innovative Partnerships Program Office, Goddard Space Flight Center, 8800 Greenbelt Road, M/S 102.0, Greenbelt, MD 20771. Phone (301) 286–7960.

SUPPLEMENTARY INFORMATION: This notice of intent to grant an exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2018–21428 Filed 10–1–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 1, 2018. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2019–011

1. *Applicant:* John Kennedy, 917 Porphyry, Ophir, CO 81426.

Activity for Which Permit is Requested: Waste Management. The applicant proposes to operate a sailing yacht, conduct shore excursions, and operate a remotely piloted aircraft system in the Antarctic Peninsula region. The yacht would carry up to 1200 liters of diesel fuel in a combination of internal and external storage tanks, up to 50 liters of gasoline, and two, 8-kg bottles of propane. A spill kit and absorbent pads would be available during all fueling and fuel transfers. Garbage and food waste, including poultry products, would be stored onboard the vessel and disposed of outside Antarctica. Human waste generated during shore excursions would be contained, stored on the vessel, and disposed of outside Antarctica. The applicant would operate small, battery-operated remotely piloted aircraft systems (RPAS) consisting, in part, of a quadcopter equipped with cameras to aid in navigation and to collect footage of the Antarctic. The quadcopter would not be flown over wildlife, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by a pilot with extensive experience and flights would not occur if the aircraft cannot be flown in GPS mode. Several measures would be taken to prevent against loss of the quadcopters including painting the them a highly visible color; only flying when the wind is less than 20 knots; terminating flights with at least 40% battery life remaining; having an observer on the lookout for wildlife, people, and other hazards; and ensuring that the separation between the operator and quadcopter does not exceed visual line of sight. The applicant is seeking a Waste Permit to cover any accidental releases that may result from operating the vessel, conducting shore excursions, or operating the RPAS.

Location: Antarctic Peninsula region.

Dates of Permitted Activities: December 5, 2018–January 5, 2019.

Permit Application: 2019–012

2. *Applicant:* Conrad Combrink, Senior Vice President, Strategic Development Expeditions and Experiences, Silversea Cruises, Ltd., Wells Fargo Center, 333 Southeast 2nd Avenue, Suite 2600, Miami, Florida 33131.

Activity for Which Permit is Requested: Waste Management. The applicant proposes to operate small, battery-operated remotely piloted aircraft systems (RPAS) consisting, in part, of a quadcopter equipped with cameras to collect commercial and educational footage of the Antarctic. The quadcopter would not be flown over concentrations of birds or mammals, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by pilots with extensive experience, who are pre-approved by the Expedition Leader. Several measures would be taken to prevent against loss of the quadcopter including painting the them a highly visible color; only flying when the wind is less than 25 knots; flying for only 15 minutes at a time to preserve battery life; having prop guards on propeller tips, a flotation device if operated over water, and an ''auto go home'' feature in case of loss of control link or low battery; having an observer on the lookout for wildlife, people, and other hazards; and ensuring that the separation between the operator and quadcopter does not exceed an operational range of 500 meters. The applicant is seeking a Waste Permit to cover any accidental releases that may result from operating the RPAS.

Location: Antarctic Peninsula Region.

Dates of Permitted Activities: November 11, 2018–March 30, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–21415 Filed 10–1–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received and permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated and permits issued under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of a requested permit modification and permit issued.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8224; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF), as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection.

1. NSF issued a permit (ACA 2016–008) to David Rootes, Environmental Manager, Antarctic Logistics and Expeditions, LLC, on October 23, 2015. The issued permit allows the applicant to operate a remote camp at Union Glacier, Antarctica, and provide logistical support services for scientific and other expeditions, film crews, and tourists. These activities include aircraft support, cache positioning, camp and field support, resupply, search and rescue, medevac, medical support and logistic support for some National Operators.

A recent modification to this permit, dated October 6, 2017, permitted the permit holder to continue permitted activities, including minimization, mitigation, and monitoring of waste, for the 2017–2018 Antarctic season.

Now the permit holder proposes a permit modification to continue permitted activities, including minimization, mitigation, and monitoring of waste, for the 2018–2019 Antarctic season. One addition is the establishment and operation of a small camp near the base of Mount Sporli. The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

Dates of Permitted Activities: October 1, 2018–February 28, 2020.

2. NSF issued a permit (ACA 2018–015) to Brandon Harvey, Director, Expedition Operations, Polar Latitudes, Inc., on November 2, 2017. The issued permit allows the permit holder to conduct waste management activities associated with coastal camping and operating remotely piloted aircraft systems.

Now the permit holder proposes a permit modification to continue permitted activities, including minimization, mitigation, and monitoring of waste, for the 2018–2019 Antarctic season. In addition, Hayley Shephard now holds the position of Director of Expedition Operations. The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

Dates of Permitted Activities: October 30, 2018–March 30, 2022.

These permit modifications were issued on September 25, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–21417 Filed 10–1–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–39071; EA–18–033; NRC–2018–0214]

In the Matter of Harman International Industries, Inc.; Confirmatory Order

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a confirmatory order (Order) to Harman International Industries, Inc. (Harman), to memorialize the agreements reached during an alternative dispute resolution mediation session held on August 16, 2018. This Order will resolve the issues that were identified during an NRC records review related to Harman's import, possession, and distribution of lamps containing byproduct material (krypton-85). This Order is effective upon its issuance.

DATES: The confirmatory order became effective on September 27, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0214 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 *http://www.regulations.gov* and search for Docket ID NRC–2018–0214. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; e-mail: *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 *http://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 e-mail to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Sophie Holiday, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001; telephone: 301–415–7865, e-mail: *Sophie.Holiday@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 27th day of September 2018.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Office of Enforcement.

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

In the Matter of: Harman International Industries, Inc., Northridge, California

Docket No. 030–39071

License No. 04–35446–01E

EA–18–033

CONFIRMATORY ORDER MODIFYING LICENSE (EFFECTIVE UPON ISSUANCE)

I

Harman International Industries, Incorporated, (Harman or Licensee) is the holder of Materials License No. 04–35446–01E issued on December 15, 2017, by the U.S. Nuclear Regulatory Commission (NRC) pursuant to Part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR), *Rules of General Applicability to Domestic Licensing of Byproduct Material.* The license authorizes Harman to distribute lamps containing byproduct material (krypton-85) to persons exempt from the regulations. Harman was located in Elkhart, Indiana (IN), prior to June 2018, and is currently located in Northridge, California (CA), with a distribution facility located in Moreno Valley, CA.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on August 16, 2018.

II

The NRC conducted a review on October 2016 through February 2018, related to the import, possession, and distribution of licensed materials (lamps containing krypton-85) by Harman in areas of NRC jurisdiction without having the required NRC licenses.

On June 7, 2018, the NRC issued a letter to Harman that identified the results of the records review and outlined three apparent violations. The apparent violations involved:

(1) initially transferring, for sale or distribution, lamps containing krypton-85 without an NRC license for such activity pursuant to 10 CFR Sections 30.3(a), 30.15(a)(8)(iv), and 32.14; (2) possession of material (krypton-85) without an NRC license for such activity pursuant to 10 CFR 30.3; and (3) importing material (krypton-85) into the United States (U.S.) without an NRC or Agreement State license for possession of the material containing byproduct material pursuant to 10 CFR 110.5, 110.9a, 110.20(a), and 110.27(a).

In the June 7, 2018, letter, the NRC offered Harman the choice to: (1) attend a Pre-decisional Enforcement Conference (PEC); or (2) participate in an ADR mediation session in an effort to resolve these concerns.

In response to the NRC's letter, Harman requested ADR. On August 16, 2018, Harman and the NRC met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, Harman and the NRC reached a preliminary settlement agreement. The elements of the agreement included Harman acceptance of the violations for a period of non-compliance from approximately March 2016 to February 2017, corrective actions that Harman stated were completed as described below, agreed upon future actions, and general provisions as follows:

Harman Completed Corrective Actions to Restore Compliance:

1. As of mid-February 2017, Harman stopped the shipment into the U.S. of finished products containing krypton-85 lamps and krypton-85 spare bulbs.

2. As of mid-February 2017, Harman stopped the shipment to dealers, end users, etc. in the U.S. of Harman's finished products containing krypton-85 lamps and krypton-85 spare bulbs.

3. As of April 2017, the licensee quarantined all remaining product in the Quality Assurance cage (QA cage) to further ensure no product would be distributed (which requires the Quality Manager signature to release).

4. As of May 18, 2017, no radioactive material remained at the Elkhart, IN, location, and all remaining imported bulbs in Elkhart were shipped back to the manufacturer.

5. On June 29, 2017, Harman submitted an application to the State of California, and on December 15, 2017, received a California license for possession of krypton-85 at Harman's facility located in Moreno Valley, CA.

6. Harman submitted an application for a distribution license in September 2017, and on December 15, 2017, NRC issued to Harman distribution license No. 04-35446–01E.

7. Harman engaged the services of a consultant to assist with the NRC license application.

8. Harman has established the position of Compliance Manager. This role is in addition to the Radiation Safety Officer (RSO) for the license. The Compliance Manager is responsible for ensuring compliance with NRC requirements.

9. Harman has established the New Product Introduction/Product Lifecycle Management (NPI/PLM) process.

a. The NPI/PLM is a multistep process that includes determination of whether NRC requirements apply, and ensures compliance with NRC requirements.

b. All new or changed products (to overall or component design), new or changed processes, or transfers of product undergo the process.

c. When radioactive material is identified, the Compliance Manager and the RSO must approve that the process/component changes are consistent with NRC requirements.

Harman Future Actions to Enhance Compliance:

1. Harman will maintain the position of Compliance Manager. This role is in addition to the RSO for the license. The Compliance Manager is responsible for ensuring compliance with NRC requirements.

2. Harman will maintain the NPI/PLM process as described above.

3. Within 90 days of the date of this Confirmatory Order, Harman will ensure that:

a. The documented NPI/PLM process prompts the identification and application of NRC requirements (including regulatory, license, and Order).

b. Applicable documents define the roles and responsibilities of the Compliance Manager and RSO, in the NPI/PLM process, as they relate to NRC requirements.

4. Within 90 days of the date of this Confirmatory Order, Harman will issue a letter from the Compliance Manager to the President, Vice Presidents, and the Directors who report to the Vice President for Operations and Procurement, to ensure awareness of the violations and actions taken. The letter will include:

a. A description of the violations, including a copy of the NRC letter dated June 7, 2018.

b. The actions taken to restore compliance, including a copy of this Confirmatory Order.

5. Within 90 days of the date of this Confirmatory Order, Harman will issue a communication to foreign suppliers of lighting products to Harman to promote awareness of the NRC requirements.

a. The communication will include:

i. That there are U.S. requirements for products containing radioactive material that will be imported and distributed within the U.S.

ii. That selling product to customers could result in putting those entities in non-compliance with U.S. requirements.

iii. Contact information for the NRC.

iv. A request to pass the communication to the suppliers' affiliates and potentially impacted customers.

b. Harman will provide a copy of the letter to NRC, 30 days in advance of issuance.

6. Harman will conduct training for the participants in the NPI/PLM process.

a. Harman will review and modify, if not already included, the current Compliance Training to ensure that it contains the following:

i. NRC regulatory framework.

ii. Applicable requirements for the activities being conducted.

iii. The role of each NPI/PLM participant in ensuring compliance and the specific role of the Compliance Manager and RSO.

b. The training will include an initial training and annual periodic training.

c. The initial training will be completed within 180 days of the date of this Confirmatory Order.

d. Harman will maintain documentation of individuals trained.

7. Harman will continue to conduct training for all employees handling radioactive material.

a. Content will include radiation safety and NRC requirements.

b. The training will include an initial training and annual periodic training.

c. The next training will be completed within 90 days of the date of this Confirmatory Order.

d. Harman will maintain documentation of individuals trained.

8. Beginning in calendar year 2020, Harman will perform an annual audit to ensure compliance with NRC requirements. The audit will be completed in the first quarter of each calendar year.

9. By March 31, 2019:

a. Harman will conduct an audit using an independent third-party consultant to evaluate compliance with NRC requirements.

b. The audit will not commence prior to December 31, 2018.

c. The audit will:

i. Include review of compliance with NRC requirements.

ii. Be documented by an audit report, including the scope, observations, and findings.

d. Harman will provide to the NRC a copy of the consultant report, and a description of any corrective actions taken as a result of the audit.

General provisions:

1. For the purposes of this agreement, the term ''requirements'' includes NRC rules, license and Order requirements.

2. Unless otherwise specified, all dates are calendar days from the date of issuance of this Confirmatory Order.

3. Unless otherwise specified, all documents required to be submitted to the NRC will be sent to: Director, Division of Materials Safety, Security, State and Tribal Programs, Office of Nuclear Material Safety and Safeguards, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738, with copies to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, and to the Branch Chief, Materials Safety Licensing Branch, Division of Materials Safety, Security, State and Tribal Programs, Office of Nuclear Material Safety and Safeguards, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738. Harman will also endeavor to provide courtesy electronic copies to the above individuals, at their NRC email addresses.

4. NRC agrees not to issue a separate Notice of Violation.

5. NRC will categorize the violations as one Severity Level III problem, with a civil penalty of half the base in the amount of $7,250.

6. The Confirmatory Order will be considered escalated action consistent with the current NRC Enforcement Policy for future enforcement.

7. In the event of the transfer of the possession and/or distribution licenses of Harman to another entity, the terms and conditions set forth hereunder shall continue to apply to the new entity and accordingly survive any transfer of ownership or license.

8. Based on the completed actions described above, and the commitments described in Section V below, the NRC agrees to not pursue any further enforcement action based on the apparent violations identified in the NRC's June 7, 2018, letter.

On September 21, 2018, Harman consented to issuing this Confirmatory Order with the commitments, as described in Section V below. Harman further agreed that this Confirmatory Order is to be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that it has waived its right to a hearing.

IV

I find that the Harman actions completed, as described in Section III above, combined with the commitments as set forth in Section V, are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Harman's commitments be confirmed by this Confirmatory Order. Based on the above and Harman's consent, this Confirmatory Order is effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161(b), 161(i), 161(o), 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30, IT IS HEREBY ORDERED, EFFECTIVE UPON ISSUANCE, THAT LICENSE NO. 04-35446-01E IS MODIFIED AS FOLLOWS:

1. Harman will maintain the position of Compliance Manager. This role is in addition to the Radiation Safety Officer (RSO) for the license. The Compliance Manager is responsible for ensuring compliance with NRC requirements.

2. Harman will maintain the New Product Introduction/Product Lifecycle Management (NPI/PLM) process as described in Section III above.

3. Within 90 days of the date of this Confirmatory Order, Harman will ensure that:

a. The documented NPI/PLM process prompts the identification and application of NRC requirements (including regulatory, license, and Order).

b. Applicable documents define the roles and responsibilities of the Compliance Manager and RSO, in the NPI/PLM process, as they relate to NRC requirements.

4. Within 90 days of the date of this Confirmatory Order, Harman will issue a letter from the Compliance Manager to the President, Vice Presidents, and the Directors who report to the Vice President for Operations and Procurement, to ensure awareness of the violations and actions taken. The letter will include:

a. A description of the violations, including a copy of the NRC letter dated June 7, 2018.

b. The actions taken to restore compliance, including a copy of this Confirmatory Order.

5. Within 90 days of the date of this Confirmatory Order, Harman will issue a communication to foreign suppliers of lighting products to Harman to promote awareness of the NRC requirements.

a. The communication will include:

i. That there are U.S. requirements for products containing radioactive material that will be imported and distributed within the U.S.

ii. That selling product to customers could result in putting those entities in non-compliance with U.S. requirements.

iii. Contact information for the NRC.

iv. A request to pass the communication to the suppliers' affiliates and potentially impacted customers.

b. Harman will provide a copy of the letter to NRC, 30 days in advance of issuance.

6. Harman will conduct training for the participants in the NPI/PLM process.

a. Harman will review and modify, if not already included, the current Compliance Training to ensure that it contains the following:

i. NRC regulatory framework.

ii. Applicable requirements for the activities being conducted.

iii. The role of each NPI/PLM participant in ensuring compliance and the specific role of the Compliance Manager and RSO.

b. The training will include an initial training and annual periodic training.

c. The initial training will be completed within 180 days of the date of this Confirmatory Order.

d. Harman will maintain documentation of individuals trained.

7. Harman will continue to conduct training for all employees handling radioactive material.

a. Content will include radiation safety and NRC requirements.

b. The training will include an initial training and annual periodic training.

c. The next training will be completed within 90 days of the date of this Confirmatory Order.

d. Harman will maintain documentation of individuals trained.

8. Beginning in calendar year 2020, Harman will perform an annual audit to ensure compliance with NRC requirements. The audit will be completed in the first quarter of each calendar year.

9. By March 31, 2019:

a. Harman will conduct an audit using an independent third-party consultant to evaluate compliance with NRC requirements.

b. The audit will not commence prior to December 31, 2018.

c. The audit will:

i. Include review of compliance with NRC requirements.

ii. Be documented by an audit report, including the scope, observations, and findings.

d. Harman will provide to NRC a copy of the consultant report, and a description of any corrective actions taken as a result of the audit.

10. Harman will pay a civil penalty in the amount of $7,250.

For the purposes of this agreement, the term ''requirements'' includes NRC rules, license and Order requirements.

Unless otherwise specified, all dates are calendar days from the date of issuance of the Confirmatory Order.

Unless otherwise specified, all documents required to be submitted to the NRC will be sent to: Director, Division of Materials Safety, Security, State and Tribal Programs, Office of Nuclear Material Safety and Safeguards, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738, with copies to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, and to the Branch Chief, Materials Safety Licensing Branch, Division of Materials Safety, Security, State and Tribal Programs, Office of Nuclear Material Safety and Safeguards, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738. Harman will also endeavor to provide courtesy electronic copies to the above individuals, at their NRC email addresses.

The Confirmatory Order will be considered escalated action consistent with NRC current Enforcement Policy for future enforcement.

In the event of the transfer of the possession and/or distribution licenses of Harman to another entity, the terms and conditions set forth hereunder shall continue to apply to the new entity and accordingly survive any transfer of ownership or license.

The Director, Office of Enforcement, NRC, may, in writing, relax or rescind any of the above conditions upon written request by Harman, and demonstration by Harman or its successors of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than Harman, may request a hearing within thirty (30) calendar days of the date of issuance of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended by 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) calendar days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on

those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's Public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an Order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

If a person (other than Harman) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final thirty (30) calendar days from the date of issuance of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A request for hearing shall not stay the effectiveness of this order.

For the Nuclear Regulatory Commission,

Anne T. Boland,

Director, Office of Enforcement.

Dated this 27th day of September 2018.

cc: The State of California

[FR Doc. 2018–21397 Filed 10–1–18; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2018–0199]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of two amendment requests. The amendment requests are for Oconee Nuclear Station and Wolf Creek Generating Station. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. Because the amendment requests contain sensitive unclassified non-safeguards information (SUNSI) and safeguards information (SGI) an order imposes procedures to obtain access to SUNSI and SGI for contention preparation.

DATES: Comments must be filed by November 1, 2018. A request for a hearing must be filed by December 3, 2018. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI and/or SGI is necessary to respond to this notice must request document access by October 12, 2018.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0199. Address questions about NRC DOCKET ID in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email:

Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: Lynn Ronewicz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7996, email: *Lynn.Ronewicz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0199, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0199.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0199, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

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

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI and/or SGI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and

telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-

free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Accessing Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: February 12, 2018, as supplemented by letter dated August 8, 2018. Publicly-available versions are in ADAMS under Accession Nos. ML18046A080 and ML18225A076, respectively.

Description of amendment request: This amendment request contains safeguards information (SGI). The amendments would revise the Duke Energy Physical Security Plan for Oconee Nuclear Station to include additional protective measures during a specific infrequent short-term operating state, including a modification that provides additional access restriction.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment makes changes to the Duke Energy Physical Security Plan (PSP) for Oconee Nuclear Station that include additional protective measures during a specific infrequent short-term operating state as well as a modification that provides additional access restriction. The proposed changes do not modify the reactor coolant system (RCS) pressure boundary, nor make any physical changes to the facility design, material, or construction standards. The proposed changes do not adversely affect the operation of any safety-related System, Structure, or Component (SSC) or the ability of any safety-related SSC to perform its designed safety function. The probability of a credited design basis accident (DBA) is not affected by this change, nor are the consequences of any credited DBA affected by this change.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment makes changes to the Duke Energy PSP for Oconee Nuclear Station that include additional protective measures during a specific infrequent short-term operating state as well as a modification that provides additional access restriction. These proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing normal plant operation. The proposed changes do not adversely affect the operation of any safety-related SSC or the ability of any safety-related SSC to perform its designed safety function. The physical change being proposed does not introduce a new failure mode that would inhibit any safety-related SSC from performing its safety function. Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment makes changes to the Duke Energy PSP for Oconee Nuclear Station that include additional protective measures during a specific infrequent short-term operating state as well as a modification that provides additional access restriction. These proposed PSP changes do not involve: (1) A physical alteration of the Oconee Units; (2) the installation of new or different equipment associated with plant operations; or (3) any impact on the fission product barriers or safety limits. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kate Nolan, Deputy General Counsel, Duke Energy Carolinas, 550 South Tryon Street, Charlotte, North Carolina 28202.

NRC Branch Chief: Michael T. Markley.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station (WCGS), Coffey County, Kansas

Date of amendment request: January 17, 2017, as supplemented by letters dated March 22, May 4, July 13, October 18, and November 14, 2017; and January 15, January 29, April 19, June 19, and August 9, 2018. Publicly-available versions are in ADAMS under Accession Nos. ML17054C103, ML17088A635, ML17130A915, ML17200C939, ML17297A478, ML17325A982, ML18024A477, ML18033B024, ML18114A115, ML18177A198, and ML18232A058, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the WCGS Technical Specification (TSs) to replace the existing Wolf Creek Nuclear Operating Corporation methodology for performing core design, non-loss-of-coolant-accident (non-LOCA) and LOCA safety analyses (for Post-LOCA Subcriticality and Cooling only) with standard Westinghouse developed and NRC-approved analysis methodologies at WCGS.

In addition, the proposed amendment would revise the WCGS licensing basis by adopting the alternative source term (AST) as described in Regulatory Guide (RG) 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' dated July 2000 (ADAMS Accession No. ML003716792).

This notice is being reissued in its entirety due to the revised scope of the license amendment request resulting from supplements dated July 13, October 18, and November 14, 2017; and January 15, January 29, April 19, June 19, and August 9, 2018. The proposed no significant hazards consideration determination is identical to the one published in the **Federal Register** on July 5, 2017 (82 FR 31084).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The new core design, non-LOCA and Post-LOCA Subcriticality and Cooling analyses and resulting TS changes will continue to ensure the applicable safety limits are not exceeded during any conditions of normal operation, for design basis accidents (DBAs) as well as any Anticipated Operational Occurrence (AOO). The methods used to perform the affected safety analyses are based on methods previously found acceptable by the NRC and conform to applicable regulatory guidance. Application of these NRC approved methods will continue to ensure that acceptable operating limits are established to protect the integrity of the RCS and fuel cladding during normal operation, DBAs, and any AOOs. The requested TS changes proposed to conform to the new methodologies do not involve any operational changes that could affect system reliability, performance, or the possibility of operator error. The proposed changes do not affect any postulated accident precursors, or accident mitigation systems, and do not introduce any new accident initiation mechanisms.

Adoptions of the AST and pursuant TS changes and the changes to the atmospheric dispersion factors have no impact to the initiation of DBAs. Once the occurrence of an accident has been postulated, the new accident source term and atmospheric dispersion factors are an input to analyses that evaluate the radiological consequences. The proposed changes do not involve a revision to the design or manner in which the facility is operated that could increase the probability of an accident previously evaluated in Chapter 15 of the Updated Safety Analysis Report (USAR).

The structures, systems and components affected by the proposed changes act to mitigate the consequences of accidents. Based on the AST analyses, the proposed changes do revise certain performance requirements; however, the proposed changes do not involve a revision to the parameters or conditions that could contribute to the initiation of an accident previously discussed in Chapter 15 of the USAR. Plant specific radiological analyses have been performed using the AST methodology and new atmospheric dispersion factors. Based on the results of these analyses, it has been demonstrated that the control room dose consequences of the limiting events considered in the analyses meet the regulatory guidance provided for use with the AST, and the offsite doses are within acceptable limits. This guidance is presented in 10 CFR 50.67 [''Accident source term''] and RG 1.183.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

Implementation of the new core design, non-LOCA and Post-LOCA Subcriticality and Cooling analyses and resulting TS changes do not alter or involve any design basis accident initiators and do not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed change does not adversely affect the design function or mode of operations of structures, systems and components in the facility important to safety. The structures, systems and components important to safety will continue to operate in the same manner as before, therefore, no new failure modes are created by this proposed change. As such, the proposed change does not create any new failure modes for existing equipment or any new limiting single failures. Additionally the proposed change does not involve a change in the methods governing normal plant operation and all safety functions will continue to perform as previously assumed in accident analyses. Thus, the proposed change does not adversely affect the design function or operation of any structures, systems, and components important to safety. The proposed change does not involve changing any accident initiators.

Implementation of AST and the associated proposed TS changes and new atmospheric dispersion factors do not alter or involve any design basis accident initiators. A design modification will be implemented in support of the proposed AST change that will eliminate the need for local operator action to isolate a failed CREVS [control room emergency ventilation system] train. The proposed change does not adversely affect the design function or mode of operations of structures, systems and components in the facility important to safety. The structures, systems and components important to safety will continue to function in the same manner as before after the AST is implemented. Therefore, no new failure modes are created by this proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed methodology and TS changes will not adversely affect the operation of plant equipment or the function of equipment assumed in the accident analysis. The proposed changes do not adversely affect the design and performance of the structures, systems, and components important to safety. Therefore, the required safety functions will continue to be performed consistent with the assumptions of the applicable safety analyses. In addition, operation in accordance with the proposed TS change will continue to ensure that the previously evaluated accidents will be mitigated as analyzed. The NRC approved safety analysis methodologies include restrictions on the choice of inputs, the degree of conservatism inherent in the calculations, and specified event acceptance criteria. Analyses performed in accordance with these methodologies will not result in adverse effects on the regulated margin of safety. As such, there is no significant reduction in a margin of safety.

The results of the AST analyses are subject to the acceptance criteria in 10 CFR 50.67. The analyzed events have been carefully selected, and the analyses supporting these changes have been performed using approved methodologies to ensure that analyzed events are bounding and safety margin has not been reduced. The dose consequences of these limiting events are within the acceptance criteria presented in 10 CFR 50.67 and RG 1.183. Thus, by meeting the applicable regulatory limits for AST, there is no significant reduction in a margin of safety. New control room atmospheric dispersion factors (X/Qs) based on site specific meteorological data, calculated in accordance with the guidance of RG 1.194, utilize more recent data and improved calculation methodologies.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW, Washington, DC 20037.

NRC Branch Chief: Robert J. Pascarelli.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;[2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) website, a secure website that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–3710.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Administrative Services, Mail Services Center, Mail Stop P1–37, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by email to *MAILSVC.Resource@nrc.gov.* The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check.

(d) A check or money order payable in the amount of $324.00[4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted.

(e) If the requestor or any individual(s) who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address: U.S. Nuclear Regulatory Commission, ATTN: Personnel Security Branch, Mail Stop TWFN–03–B46M, 11555 Rockville Pike, Rockville, MD 20852. These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.[5]

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes a final adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the Office of Administration's final adverse determination with respect to trustworthiness and reliability for access to SGI by filing a request for review in accordance with 10 CFR 2.336(f)(1)(iv).

(5) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Agreement or Affidavit for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It Is So Ordered.

Dated at Rockville, Maryland, this 12th of September 2018.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," no "need to know," or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes a final adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
A	If access granted: Issuance of a decision by a presiding officer or other designated officer on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2018–20182 Filed 10–1–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8964; NRC–2012–0214]

Power Resources Inc.; Smith Ranch Highland

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a renewed license to Power Resources, Inc. (PRI), doing business as Cameco Resources, for its Smith Ranch Highland project, materials license SUA–1548. This facility is located in Converse County, Wyoming and has satellite facilities located in Johnson, Campbell, Natrona, and Freemont Counties, Wyoming. The license authorizes PRI to possess uranium source and byproduct material at Smith Ranch Highland and its associated satellite facilities. In addition, the license authorizes PRI to operate its facilities as proposed in its license renewal application, as amended, and as prescribed in the license. The renewed license expires on September 26, 2028.

DATES: The license referenced in this document is available on September 26, 2018.

ADDRESSES: Please refer to Docket ID NRC–2012–0214 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 *http://www.regulations.gov* and search for Docket ID NRC–2012–0214. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Douglas Mandeville, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0724; email: *Douglas.Mandeville@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

Based upon the application dated August 12, 2010 (ADAMS Package Accession No. ML102360313), as supplemented on February 1, 2012 (ADAMS Accession No. ML12234A537 and ML12234A539), February 16, 2012 (ADAMS Accession No. ML121590502), November 18, 2014 (ADAMS Accession No. ML14353A323), December 9, 2014 (ADAMS Accession No. ML15040A602); April 10, 2015 (ADAMS Accession No. ML15133A397); April 21, 2015 (ADAMS Accession No. ML16063A418); March 7, 2018 (ADAMS Accession No. ML18130A032), July 30, 2018 (ADAMS Accession No. ML18239A084), August 16, 2018 (ADAMS Accession No. ML18229A227 and ML18229A235), the NRC has issued a renewed license (ADAMS Accession No. ML18222A515) to PRI. The renewed license authorizes PRI to possess uranium source and byproduct material at Smith Ranch Highland and its associated satellite facilities. In addition, the license authorizes PRI to operate its facilities as proposed in its license renewal application, as amended, and as prescribed in its amended license. The renewed license will expire on September 26, 2028.

The licensee's application for a renewed license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. The NRC has made appropriate findings as required by the Act, part 20 of title 10 of the *Code of Federal Regulations* (10 CFR), and 10 CFR part 40, and sets forth those findings in the renewed license. The agency afforded an opportunity for a hearing in the ''Notice of Opportunity for a Hearing'' published in the **Federal Register** on September 19, 2012 (77 FR 58181). The NRC received no request for a hearing or petition for leave to intervene following the notice.

The NRC staff prepared a safety evaluation report (ADAMS Accession No. ML18193A540) for the renewal of the license and concluded, based on that evaluation, that PRI will continue to meet the regulations in the Act, 10 CFR part 20, and 10 CFR part 40. The NRC staff also prepared an environmental assessment (ADAMS Accession No. ML18257A071) and finding of no significant impact for the renewal of this license, which were published in the **Federal Register** on September 25, 2018 (83 FR 48461). The NRC staff concluded that renewal of this license will not have a significant impact on the quality of the human environment.

II. Availability of Documents

The following table includes the ADAMS accession numbers for the documents referenced in this notice. For additional information on accessing ADAMS, see the **ADDRESSES** section of this document.

Document	ADAMS accession No.
License Renewal Application (LRA), August 12, 2010	ML102360313
LRA Revision, February 1, 2012	ML12234A537
LRA Revision, February 1, 2012	ML12234A539
LRA Revision, February 16, 2012	ML121590502
LRA Revision, November 18, 2014	ML14353A323
LRA Revision, December 9, 2014	ML15040A602
LRA Revision, April 10, 2015	ML15133A397
LRA Revision, April 21, 2015	ML16063A418
LRA Revision, March 7, 2018	ML18130A032
LRA Revision, July 30, 2018	ML18239A084
LRA Revision, August 16, 2018	ML18229A227
LRA Revision, August 16, 2018	ML18229A235
Final Environmental Assessment for the Renewal of the U.S. Nuclear Regulatory Commission License No. SUA–1548, issued September 2018	ML18257A071
NRC Safety Evaluation Report, September 2018	ML18193A540
Source Materials License SUA–1548, September 26, 2018	ML18222A515

Dated at Rockville, Maryland, this 27th day of September 2018.

For the Nuclear Regulatory Commission.

Andrea Kock,

Deputy Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–21429 Filed 10–1–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of October 1, 8, 15, 22, 29, November 5, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of October 1, 2018

There are no meetings scheduled for the week of October 1, 2018.

Week of October 8, 2018—Tentative

Thursday, October 11, 2018

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Spent Fuel Storage and Transportation Business Lines (Public). (Contact: Matthew Meyer: 301–415–6198)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 15, 2018—Tentative

There are no meetings scheduled for the week of October 15, 2018.

Week of October 22, 2018—Tentative

Thursday, October 25, 2018

9:00 a.m. Briefing on Digital Instrumentation and Control (Public). (Contact: Jason Paige: 301–415–1474)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 29, 2018—Tentative

There are no meetings scheduled for the week of October 29, 2018.

Week of November 5, 2018—Tentative

There are no meetings scheduled for the week of November 5, 2018.

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: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated at Rockville, Maryland, on September 27, 2018.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–21527 Filed 9–28–18; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84290; File No. SR–Phlx–2018–59]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change To Amend Rules 1000, 1064, and 1069 To Allow for the Snapshot Functionality of the Floor Based Management System to be Used for All Orders

September 26, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2018, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 Exchange Rules 1000, 1064, and 1069 to allow for the Snapshot functionality of the Floor Based Management System (''FBMS'') to be used for all orders.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.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

On October 30, 2017, the Commission approved the Exchange's proposal to establish the ''Snapshot'' functionality within the Floor Broker Management System (now known as the ''Floor Based Management System'' or ''FBMS'').[3] On July 17, 2018, the Commission approved another Exchange proposal to expand the availability of Snapshot to Registered Options Traders (''ROTs'') and Specialists.[4]

As set forth in Rule 1069, Snapshot allows a Floor Broker, ROT, or Specialist, at the time when they ''provisionally execute''[5] a trade in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–81980 (Oct. 30, 2017), 82 FR 51313 (Nov. 3, 2017) (the ''Snapshot Approval Order''). As described in Exchange Rule 1063, FBMS is the electronic system that enables members to submit option orders represented or negotiated on the Exchange trading floor (the ''Floor'') to the Exchange's Trading System for execution and reporting to the consolidated tape. FBMS also facilitates the creation of an electronic audit trail for such orders.

[4] Securities Exchange Act Release No. 34–83656 (July 17, 2018), 83 FR 34899 (July 23, 2018).

[5] A ''provisional execution'' occurs in the trading crowd when either (i) the participants to a trade reach a verbal agreement in the trading crowd as to

trading crowd, to capture and record the market conditions that prevailed at the time of the provisional execution.[6] Once a member triggers a Snapshot by pressing a button on FBMS, the member has up to 30 seconds to use the information captured by the Snapshot for purposes of entering the terms of the provisionally-executed trade into FBMS and submitting the trade to the Trading System. After 30 seconds, a Snapshot expires and can no longer be used to capture the market that existed at the time when it was taken. When a trade that is subject to a valid Snapshot is submitted to the Trading System, the trade will execute only to the extent that it is consistent with applicable priority and trade-through rules based upon the prevailing market at the time of the Snapshot. The Trading System will reject a trade subject to a Snapshot if it would violate trade-through or priority rules. Whenever a Snapshot becomes invalid due to expiration, rejection by the Trading System, or cancellation in anticipation of expiration or rejection, a member may take a new Snapshot that reflects the market prevailing at the time the new Snapshot is taken, provided that the member first re-announces the trade to the trading crowd and reaches a new agreement as to the terms of the trade.

Snapshot exists to provide members with a means of mitigating risks that are inherent in a Floor-based options trading environment. In particular, Snapshot mitigates the risk that market conditions will shift between the time when members provisionally execute trades on the Floor in open outcry and the time when they enter such trades into FBMS and submit them to the Trading System for execution. This risk exists because, even with the advent of FBMS, which is the Exchange's electronic Floor order entry system, a member still must manually enter the terms of a trade into FBMS prior to submission to the Trading System. This manual process can take several seconds or more to complete, depending upon the complexity of the trade. The Exchange notes that this manual process is not required when trading in an all-electronic environment, such that Snapshot also serves the purpose of rendering Floor trading venues more competitive with electronic venues.

When the Exchange developed Snapshot, it made certain design choices, in coordination with the Commission, to mitigate the risk that Snapshot could be subject to overuse or abuse. For example, the Exchange limited the time period during which a Snapshot remains valid to 30 seconds. Moreover, once a Snapshot expires, a member may take a new Snapshot only after it re-announces the trade to the trading crowd and reaches a new agreement regarding its terms. Additionally, a member may have only one Snapshot outstanding across all option classes and series at a time. The Exchange also prohibits members from triggering Snapshot to obtain favorable priority or trade-through conditions or to improperly avoid unfavorable priority or trade-through conditions, and it surveils the market for proper use of Snapshot, both on a post-trade and a real-time basis.[7]

Finally, to mitigate the risk of Snapshot overuse, the Exchange initially limited its applicability only to multi-leg orders and simple orders involving options on exchange traded funds (''ETFs'') that are included in the Options Penny Pilot. The Exchange limited Snapshot to these two categories of orders because they presented the most immediately compelling use cases for Snapshot.[8]

Snapshot became available for use by Floor Brokers on December 4, 2017 and it recently became available to ROTs and Specialists. Since the Exchange first introduced Snapshot, it has monitored when Snapshot has been used and the frequency of such uses. Such monitoring reveals that concerns regarding the prospective misuse and abuse of Snapshot were greatly overstated. In fact, Snapshot was utilized only 24 times (21 times in executed trades, 3 times in rejected trades) over the course of eight months (December 2017–July 2018). In four of these eight months, it was not used at all. In the other four months in which Snapshot was used, it was used (successfully or otherwise) only once more than 10 times in a month and otherwise, no more than six times in a month.

To improve the competitive position of the Exchange Floor relative to other venues, the Exchange now proposes to broaden the applicability of Snapshot to all orders. The Exchange believes that this proposal will make Snapshot simpler, more consistent, and useful in more circumstances than it is now. Moreover, the Exchange believes that its experience with Snapshot demonstrates that it can accommodate this proposal while continuing to systematically enforce trade-through and priority rules and without materially raising the risk that Snapshot will be overused or abused. The existing design controls that mitigate such risks will continue to apply, and if Surveillance—which will continue monitor Snapshot usage closely—detects a significant uptick in improper usage, then the Exchange will evaluate whether additional controls are appropriate.

The Exchange expects to begin making Snapshot available for all orders before the end of the fourth quarter of 2018. The Exchange will notify members via an Options Trader Alert, to be posted on the Exchange's website, at least seven calendar days prior to the date when Snapshot will be available for expanded use.

Lastly, the Exchange proposes to remove from Rules 1000 and 1064 language that announced the initial launch of the Snapshot functionality in Q4 2017. This language is no longer required as Snapshot is operational.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] 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 to protect investors and the public interest.

Snapshot promotes just and equitable principles of trade and serves the interests of investors and the public by increasing the likelihood that investors will be able to execute their orders and do so in line with their expectations and needs. Similarly, Snapshot mitigates the risk that the Trading System will reject

the terms of the trade, or (ii) a Floor Broker announces a cross in accordance with Phlx Rule 1064(a). *See* Rule 1069(a)(i)(A).

[6] Snapshot records the time when a member triggers the functionality and the prevailing market conditions for an options class or series, which includes all information required to determine compliance with priority and trade through requirements, including the Away Best Bid and Offer, the Exchange Best Bid and Offer, customer orders at the top of the Exchange book, and the best bid and offer of all-or-none orders. *See* Rule 1069(a). The market conditions captured by Snapshot are derived from the same real-time market information that exists in the Trading System.

[7] Conduct that would constitute a violation includes repeated instances in which members permit valid Snapshots to expire without submitting associated trades to the Trading System for verification and reporting to the Consolidated Tape, as well as repeated instances in which a member waits longer than is reasonably necessary to submit a trade subject to a Snapshot to the Trading System for execution.

[8] Snapshot Approval Order, *supra,* at 51315 (These types of orders were at ''heightened risk of failing to execute when market conditions change between the time when Floor Brokers and participants in the crowd agree upon the terms of the trade and the time when the Trading System receives the trade for verification and execution.'').

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

a trade due to a change in market conditions that occurs between the time when the parties negotiate a lawful and valid trade on the Floor and the time when the Trading System receives it. The proposal to expand the applicability of Snapshot to all orders will broaden the scope of such protections.

The expansion of Snapshot to all orders will also help Snapshot to better achieve its intended purpose of rendering the Exchange Floor more competitive with other trading venues at which the Exchange observes trade executions occurring seconds or even minutes after verifications occur, but on trading terms that existed as of the time of verification.

The Exchange believes that it is consistent with the Act to broaden the applicability of Snapshot to all option orders traded on the Exchange Floor. Although multi-leg orders and simple orders in options on Options Penny Pilot ETFs were perhaps the most immediately compelling use cases for Snapshot, they are by no means the only use cases for the functionality. Indeed, all options orders that are negotiated on the Exchange Floor are subject to the same risk of market movement, to varying extents, from the time of their negotiation in open outcry to the time of their submission to the Trading System. For all of these orders, Snapshot will help to mitigate this risk. Enabling members to provisionally execute all categories of options on the Floor (using Snapshot when needed), rather than execute them in the Trading System, will not adversely impact investors or the quality of the market due to the controls that the Exchange proposes on the circumstances in which members may use Snapshot. In fact, the proposal will protect investors and the public interest by improving members' ability to execute orders negotiated on the Floor while continuing to ensure that all priority and trade through rules are systematically enforced.

Moreover, this proposal is consistent with Rule 611 of Regulation NMS,[11] which requires the Exchange to establish policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations. Presently, the Exchange verifies that a proposed trade complies with the trade-through and priority rules as of the time when the Trading System receives the trade from FBMS; if the trade complies, then the Trading System executes the trade and reports it to the consolidated tape. However, the proposal would serve as an exception to this practice. It would permit members, upon reaching a meeting of the minds in the trading crowd regarding the terms of a trade, to take a Snapshot that provisionally executes the trade on the Floor. When the member submits the trade to the Trading System using Snapshot, the Trading System will verify that the provisionally executed trade complied with the trade-through and priority rules as of the time of its execution—*i.e.,* the time when the crowd agreed to the terms of the trade and Snapshot was taken—rather than at the time when the Trading System receives the trade. If the Trading System determines that the provisionally executed trade complied with the trade-through and priority rules, then it will report the trade to the Consolidated Tape. If, however, the Trading System determines that the provisionally executed trade was non-compliant with the trade-through and priority rules as of the time when the Snapshot was taken, then it will reject the trade. In other words, even though the proposal will change the time of execution of a trade for purposes of verifying compliance with the trade-through and priority rules, the automated compliance verification process will otherwise be unchanged and will still apply to systematically prevent any violation of the trade-through and priority rules for all trades, including those utilizing Snapshot.

Finally, the Exchange's proposal accomplishes the above in a manner that: (1) Continues to provide automated and verifiable enforcement of applicable trade-through and priority rules; (2) is documented in writing and transparent; (3) provides for trade reporting to occur in a timely fashion, even for the most complex trades, and within a 30 second time frame that is far less than the maximum 90 second reporting period allowable; and (4) imposes surveillance and responsible limitations upon Snapshot that ensure appropriate usage and prevents violations and abuse.

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 fact, the proposal is pro-competitive for several reasons. The Exchange believes that the Snapshot feature will result in the Exchange's Floor operating more efficiently, which will help it compete with other floor-based exchanges.

Moreover, the proposal helps the Exchange compete by ensuring the robustness of its regulatory program, ensuring members' compliance with that program, and by enhancing Customer protections through further utilization of electronic tools by members. The Exchange considers all of these things to be differentiators in attracting participants and order flow.

Finally, the proposal does not impose an unreasonable burden on intramarket competition because the Exchange would make Snapshot available for use for all orders by all members that trade on the Options Floor.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (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 Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2018–59 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–Phlx–2018–59. 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/*

[11] 12 CFR 242.611 [sic].

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–Phlx–2018–59 and should be submitted on or before October 23, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21365 Filed 10–1–18; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84287; File No. SR–NASDAQ–2018–008]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the Listing Requirements Contained in Listing Rule 5635(d) To Change the Definition of Market Value for Purposes of the Shareholder Approval Rule and Eliminate the Requirement for Shareholder Approval of Issuances at a Price Less Than Book Value but Greater Than Market Value

September 26, 2018.

I. Introduction

On January 30, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the listing requirements contained in Nasdaq Rule 5635(d) to (1) change the definition of market value for purposes of shareholder approval under Nasdaq Rule 5635(d); (2) eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value; and (3) make other conforming changes. The proposed rule change was published for comment in the **Federal Register** on February 20, 2018.[3] The Commission received three comments on the proposed rule change.[4] On April 4, 2018, pursuant to Section 19(b(2) of the Act,[5] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On May 21, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.[7] The Commission thereafter received a response to the Order Instituting Proceedings from the Exchange.[8] On August 16, 2018, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the proposed rule change.[9] On August 16, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.[10] The Commission is publishing notice of the filing of Amendment No. 1 to solicit comment from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 1

The Exchange has proposed to amend Nasdaq Rule 5635(d) to modify the circumstances in which shareholder approval is required for issuances of securities in private placement transactions. Currently, under Nasdaq Rule 5635(d), the Exchange requires a Nasdaq-listed company to obtain shareholder approval prior to the issuance of securities in connection with a private placement transaction (*i.e.,* a transaction other than a public offering[11]) involving: (1) The sale, issuance, or potential issuance by the company of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which, together with sales by officers, directors, or Substantial Shareholders[12] of the company, equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or (2) the sale, issuance, or potential issuance by the company of common stock (or securities convertible into or exercisable for common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.[13] As

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82702 (February 13, 2018), 83 FR 7269 (February 20, 2018) (''Notice'').

[4] *See* Letters to Brent J. Fields, Secretary, Commission, from Michael A. Adelstein, Partner, Kelley Drye & Warren LLP, dated February 28, 2018 (''Kelley Drye Letter''); Penny Somer-Greif, Chair, and Gregory T. Lawrence, Vice-Chair, Committee on Securities Law of the Business Law Section of the Maryland State Bar Association, dated March 13, 2018 (''MSBA Letter''); and Greg Rodgers, Latham Watkins, dated March 14, 2018 (''Latham Watkins Letter'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 82994, 83 FR 15441 (April 10, 2018). The Commission designated May 21, 2018, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] *See* Securities Exchange Act Release No. 83294, 83 FR 24379 (May 25, 2018) (''Order Instituting Proceedings''). The Commission designated August 19, 2018, as the date by which the Commission shall approve or disapprove the proposed rule change.

[8] *See* Letter to Brent J. Fields, Secretary, Commission, from Arnold Golub, Vice President and Deputy General Counsel, Nasdaq, Inc., dated July 18, 2018 (''Nasdaq Response Letter'').

[9] *See* Securities Exchange Act Release No. 83865, 83 FR 42545 (August 22, 2018). The Commission extended the date by which the Commission shall approve or disapprove the proposed rule change to October 18, 2018.

[10] In Amendment No. 1, the Exchange clarified that: (i) In the new definition of ''Minimum Price,'' the closing price (as reflected on *Nasdaq.com*) is measured immediately preceding the signing of the binding agreement, and (ii) a private placement is a transaction other than a public offering. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nasdaq-2018-008/nasdaq2018008-4223952-172984.pdf.*

[11] *See* Nasdaq Rule IM–5635–3 (Definition of a Public Offering).

[12] An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of a Company or party will not be considered a substantial interest or cause the holder of such interest to be regarded as a ''Substantial Shareholder.'' *See* Nasdaq Rule 5635(e)(3).

[13] *See* Nasdaq Rule 5635(d). The Commission notes that Nasdaq Rule 5635 also requires shareholder approval under Nasdaq Rules 5635(a), (b), and (c) for issuances involving an acquisition of stock or assets of another company, a change of control, and equity compensation. Nasdaq is not proposing to amend these other shareholder approval provisions in its proposal.

described in more detail below, the Exchange is proposing to combine these two sections into one definitional section and make changes to the pricing test for triggering shareholder approval.

''Market value'' is defined in Nasdaq Rule 5005(a)(23) as the consolidated closing bid price multiplied by the measure to be valued (*e.g.,* a company's market value of publicly held shares is equal to the consolidated closing bid price multiplied by a company's publicly held shares).[14] This definition applies to the shareholder approval rules as well as other listing rules. The Exchange has proposed to amend the definition of market value only for purposes of Nasdaq Rule 5635(d). The new definition, to be known as the ''Minimum Price,'' is defined as the price that is the lower of (1) the closing price (as reflected on *Nasdaq.com*) immediately preceding the signing of the binding agreement or (2) the average closing price of the common stock (as reflected on *Nasdaq.com*) for the five trading days immediately preceding the signing of the binding agreement.[15] Under the proposal, shareholder approval will only be required for private placement transactions that are priced below the Minimum Price as described above.

In proposing to use the closing price on Nasdaq, rather than the Nasdaq bid price as under the current rule, the Exchange explained, in its proposal, that the closing price reported on *Nasdaq.com* is the Nasdaq Official Closing Price, which is derived from the closing auction on Nasdaq, reflects actual sale prices at one of the most liquid times of the day, and is highly transparent to investors.[16] According to the Exchange, the closing price reported on *Nasdaq.com* is a better reflection of the market price of the security than the closing bid price.[17] The Exchange also noted that this use of closing price is consistent with the approach of other exchanges.[18]

Further, in proposing to also use a five-day average closing price to determine if a shareholder vote is required under Nasdaq Rule 5635(d), the Exchange noted that while investors and companies sometimes prefer to use an average when pricing transactions, there are potential negative consequences to using a five-day average as the sole measure of whether shareholder approval is required. For example, in a declining market, the Exchange noted that the five-day average closing price will be above the current market price, which, according to the Exchange, could make it difficult for companies to close transactions because investors could buy shares at a lower price in the market. The Exchange also noted concerns with using a five-day average in a rising market, in that the five-day average closing price will appear to be at a discount to the closing current market price. Further, according to the Exchange, if material news is announced during the five-day period, the average price could be a worse reflection of market value than the closing price after the news is disclosed. The Exchange stated, however, that it believed that these risks of using the five-day average closing price are already accepted by the market, as evidenced by the use of an average price in transactions that do not require shareholder approval, such as those transactions where less than 20% of the outstanding shares are being issued. In its rule filing, the Exchange also noted that several commenters raised concerns regarding a 2017 solicitation of comments by the Exchange on a proposal to use the five-day average closing price as the sole measure of market value (''2017 Solicitation'').[19] The Exchange stated that it believed these concerns were justified and, as such, proposed to define market value as the lower of the closing price or five-day average closing price. As the Exchange noted, this means that, under its proposal, an issuance would not require shareholder approval as long as the issuance occurs at a price greater than the lower of the two measures.[20]

The Exchange also proposed, in conjunction with its proposal to redefine market value for purposes of determining when a shareholder vote is triggered under Rule 5635(d), to eliminate its current requirement for shareholder approval of private placement issuances at a price that is less than book value. Currently, as noted above, the Exchange's rules require shareholder approval of a private placement transaction if it is priced below market or book value. Accordingly, under the proposal, private placement transactions that are priced below book value but above market value, as defined by the Minimum Price, would not require shareholder approval. In its proposal, the Exchange stated that book value is an accounting measure that is based on the historic cost of assets rather than their current value. According to the Exchange, book value is not an appropriate measure of whether a transaction is dilutive or should otherwise require shareholder approval.[21]

Further, the Exchange proposed to revise Nasdaq Rule 5635(d) to provide that shareholder approval is required prior to a 20% Issuance at a price that is less than the Minimum Price.[22] Under the proposal, the Exchange would define ''20% Issuance'' for purposes of Rule 5635(d) as a transaction, other than a public offering as defined in IM–5635–3, involving the sale, issuance, or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock), which, alone or together with sales by officers, directors, or Substantial Shareholders of the Company, equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.[23] This definition combines the existing provisions of Nasdaq Rule 5635(d)(1) and (d)(2) into one provision. According to the Exchange, this proposed revision does not make any substantive change to the threshold for quantity or voting power of shares being sold that would give rise to the need for shareholder

[14] *See* Nasdaq Rule 5005(a)(23).

[15] *See* proposed Nasdaq Rule 5635(d)(1)(A). *See also* Amendment No. 1, *supra* note 10.

[16] *See* Notice, *supra* note 3, at 7270, which discusses the Nasdaq Official Closing Price and notes, among other things, that the closing auction is ''highly transparent to all investors through the widespread dissemination of stock-by-stock information about the closing auction, including the potential price and size of the closing auction.'' The Exchange stated that the closing price is published on *Nasdaq.com* with a 15 minute delay and is available without registration or fee. According to the Exchange, Nasdaq does not currently intend to charge a fee for access to this data or otherwise restrict availability of this data. The Exchange further stated that it would file a proposed rule change under Section 19(b) of the Act before implementing any such change and, in such filing, address the impact of the proposed rule change on compliance with this rule. *See id.* at 7270 n.6.

[17] *See id.* at 7270. According to the Exchange, the price of an executed trade generally is viewed as a more reliable indicator of value than a bid quotation. *See id.*

[18] *See id.* at 7270 & n.3 (citing Section 312.04(i) of the NYSE Listed Company Manual).

[19] As the Exchange stated in the Notice, in 2017, the Exchange solicited comments on a proposal to amend Nasdaq Rule 5635(d) and the Exchange based its current proposal on its experience and comments received during that process. *See id.* at 7270. The Commission notes that, in its rule filing, the Exchange stated that it received support for this proposal in its 2017 Solicitation, but four commenters raised concerns about reliance on the five-day average closing price to measure market value in certain circumstances. *See id.* at 7271.

[20] *See id.* at 7270–71.

[21] *See id.* at 7271. The Commission notes that, in its rule filing, the Exchange stated that it received support for this change in its 2017 Solicitation, but also received comments opposing the change, one of which raised specific concerns that the Exchange acknowledged in its proposal. *See id.* at 7271, 7274.

[22] *See* proposed Nasdaq Rule 5635(d)(2).

[23] *See* proposed Nasdaq Rule 5635(d)(1)(B).

approval, although, as described above, the applicable pricing test will change.[24]

In addition, the Exchange proposed to amend the preamble to Nasdaq Rule 5635 and the title of Nasdaq Rule 5635(d) to replace references to ''private placements'' with ''transactions other than public offerings'' [25] to, according to the Exchange, conform the language to that in Nasdaq Rule IM–5635–3, which defines a public offering,[26] and to make other conforming changes to Nasdaq Rules IM–5635–3 and IM–5635–4.[27] In Amendment No. 1, Nasdaq stated that private placements would continue to be considered ''transactions other than public offerings'' under the proposed rule change.[28]

III. Summary of Comment Letters

The Commission received three comments on the proposed rule change, all of which supported the proposal,[29] as well as a letter from the Exchange in response to the Order Instituting Proceedings and in support of its proposal.[30] Of the three commenters noted above,[31] one stated it supported the proposed rule change without reservation and the Exchange's reevaluation of its shareholder approval rules in light of changes in market practice and investor protection mechanisms that have taken place since the adoption of these rules.[32] Another commenter stated that, while it supported more significant changes to Nasdaq Rule 5635(d), the proposed rule change would be a strong first step in correcting the inadequacies and inequitableness of Nasdaq Rule 5635(d).[33]

Two of the commenters in support of the proposal specifically addressed the changes to the definition of market value.[34] One commenter stated that the proposed method to determine market value using the lower of the Nasdaq closing price and five-day average of Nasdaq closing prices is a better determination of market value than the current use of closing bid price because it will more accurately reflect the type of price that would occur in an arms-length transaction.[35] This commenter stated that the proposed measure will provide flexibility to account for market fluctuations and events, without incurring the typical adverse consequence of material movements, positive or negative, in a stock price at or near the end of a five-day period.[36]

Another commenter noted that parties often prefer to structure a transaction using an average price to smooth out unusual price fluctuations.[37] This commenter stated that the proposed change to the definition of market value provides listed companies with additional flexibility in structuring their securities transactions, brings the shareholder approval rule more in line with how transactions are structured when the rule is not a consideration, and provides a reasonable indication of market value.[38] This commenter also supported the proposed change to use the Nasdaq Official Closing Price.[39]

In the Nasdaq Response Letter, Nasdaq stated that it believes that the five-day average closing price is a reasonable alternative to use when determining market value for purposes of the shareholder approval requirements under Nasdaq Rule 5635(d) and that the use of the five-day average closing price will provide benefits to companies and their shareholders.[40] Specifically, Nasdaq stated that the five-day average closing price is a reasonable alternative to the closing bid price, as used in the current market value standard and previously approved by the Commission, because it is determined at the most liquid time of day, prices reflecting actual sales are less prone to manipulation than bid prices, and it is more difficult to manipulate a closing price over several days than a single day.[41] Further, Nasdaq stated that the five-day average closing price is a reasonable alternative for measuring market value given the impracticality of assessing market value as of a specific time and could be a more fair indicator of value of the securities than closing bid prices, which are prone to unanticipated market fluctuations.[42]

Nasdaq also stated that the five-day average closing price will more likely be above the final day's closing price in a declining market and below the final day's closing price in a rising market, but that actual results are less predictable because markets usually do not move exclusively in a single direction over time. Nasdaq noted that, in either a rising or a falling market, the proposal would allow companies to be able to complete transactions by accepting the lower of the average of the closing prices for each of the five days immediately preceding the signing of a binding agreement or the most recent closing price before the signing of a binding agreement.[43]

As to the proposal to eliminate book value, two of the commenters specifically discussed their support of this change.[44] One commenter stated that book value does not reflect the actual value of securities and is not relied upon in connection with investment decisions, whereas market price of an issuer's common stock represents the market's consensus on the value of the security.[45] This commenter also stated that in the rare instances where book value exceeds market value, this usually occurs due to the accounting treatment of certain types of capital investments by the issuer and should not impact the issuer's ability to raise capital at market prices.[46] Another commenter strongly supported the proposed elimination of book value and stated it agreed with statements in the Notice that book value is not an appropriate measure of current value and, therefore, whether a transaction is dilutive or should require shareholder approval.[47]

The Nasdaq Response Letter also stated that book value is just one point in a myriad of financial data points that is already incorporated into the market value of the security regardless of market conditions or accounting issues.[48] In particular, the Exchange stated that the marketplace determines the fair value of a security based on all

[24] *See* Notice, *supra* note 3, at 7271.

[25] *See* proposed Nasdaq Rule 5635 and subsection (d).

[26] *See* Notice, *supra* note 3, at 7271.

[27] *See* proposed Nasdaq Rules IM–5635–3 and IM–5635–4.

[28] *See* Amendment No. 1, *supra* note 10.

[29] *See* Kelley Drye Letter, MSBA Letter, and Latham Watkins Letter, *supra* note 4. These three commenters previously provided comment letters to the Exchange in response to the 2017 Solicitation. For a summary prepared by the Exchange of these comment letters, see the Notice, *supra* note 3, at 7273–74.

[30] *See* Nasdaq Response Letter, *supra* note 8.

[31] *See supra,* note 4.

[32] *See* Latham Watkins Letter, *supra* note 4.

[33] *See* Kelley Drye Letter, *supra* note 4, at 1–2.

[34] *See* Kelley Drye Letter and MSBA Letter, *supra* note 4.

[35] *See* Kelley Drye Letter, *supra* note 4, at 3.

[36] *See id.*

[37] *See* MSBA Letter, *supra* note 4, at 2.

[38] *See id.* This commenter also stated that providing listed companies with the alternative of using the five-day average closing price ''does not harm stockholders and is in line with the spirit and purpose of the Rule.'' *See id.*

[39] *See id.*

[40] *See* Nasdaq Response Letter, *supra* note 8, at 2.

[41] *See id.* Nasdaq also noted that the Toronto Stock Exchange uses a volume weighted average trading price for the five trading days immediately preceding the relevant date in requiring shareholder approval of certain private placements that are not at or above market price.

[42] *See id.* at 3.

[43] *See id.*

[44] *See* Kelley Drye Letter and MSBA Letter, *supra* note 4.

[45] *See* Kelley Drye Letter, *supra* note 4, at 2.

[46] *See id.* In addition, this commenter stated that book value may exceed market value due to a market correction, burst bubble, or financial crisis, which is a time when an issuer needs to be able to raise sufficient capital. *See id.*

[47] *See* MSBA Letter, *supra* note 4, at 2.

[48] *See* Nasdaq Response Letter, *supra* note 8, at 4.

publicly available information about the issuers' securities, including, in large part, the issuers' financial position, and that through disclosure of book value in quarterly and annual reports such information is quickly incorporated into the market price of a listed security.[49] As a result, the Exchange stated its belief that the change to eliminate book value will not introduce any significant risks to investor protection and will provide benefits to companies trying to raise money quickly.[50]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[51] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[52] which requires, among other things, that the rules of a national securities exchange be 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The development and enforcement of meaningful corporate governance listing standards for a national securities exchange is of substantial importance to financial markets and the investing public, especially given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities. The corporate governance standards embodied in the listing standards of national securities exchanges, in particular, play an important role in assuring that exchange-listed companies observe good governance practices including safeguarding the interests of shareholders with respect to certain potentially dilutive transactions.[53]

As discussed above, the proposal would modify Nasdaq Rule 5635(d) to change the definition of market value for purposes of shareholder approval of private placement transactions such that (1) shareholder approval would be required prior to an issuance of 20% or more at a price that is less than the lower of the closing price or the five-day average closing price; and (2) shareholder approval would not be required prior to an issuance of 20% or more at a price that is less than book value but greater than market value. In response to the Exchange's 2017 Solicitation, as noted above, some commenters had raised questions and concerns about the use of a five-day average closing price as a measure of market value under certain market conditions, such as the potential that the five-day average would permit the sale of discounted stock in rising markets, and the elimination of the book value standard. Accordingly, in the Order Instituting Proceedings, the Commission specifically requested additional comment on these two aspects of the Exchange's proposal in light of the questions raised in connection with the Exchange's 2017 Solicitation.[54] Other than the Nasdaq Response Letter, the Commission received no additional comment letters following publication of the Order Instituting Proceedings.

The Commission has carefully considered the proposal and finds that the proposed rule change is consistent with the Act. The Commission notes that it received three comment letters on the proposal, all of which were supportive of the proposal, as well as the Nasdaq Response Letter.[55] In addition, the Commission believes that the Exchange sufficiently responded to the issues highlighted for commenters in the Order Instituting Proceedings in either Amendment No. 1 or the Nasdaq Response Letter.[56]

The Commission believes that the proposed change to the definition of market value for purposes of shareholder approval under Nasdaq Rule 5635(d) to use the lower of the closing price or five-day average closing price on *Nasdaq.com* is consistent with the Act. As noted by commenters and the Exchange, the proposed method to determine market value has the potential to provide a better indication of actual market value than the current use of closing bid price under certain market conditions.[57] Nasdaq also stated its belief that the closing price is less prone to manipulation than are bid prices.[58] In addition, the proposal to use the Nasdaq Official Closing Price for purposes of market value should help to ensure transparency to investors in calculating market value for purposes of the rule.[59] The Commission also notes that the five-day period for establishing the average closing price, according to some of the commenters, is related to the way transactions are actually structured to help smooth out price fluctuations.[60]

The Commission believes that the proposal to eliminate the requirement for shareholder approval of 20% Issuances at a price that is less than book value but above market value is also consistent with the Act. As noted

[49] *See id.*

[50] *See id.*

[51] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[52] 15 U.S.C. 78f(b)(5).

[53] *See, e.g.,* Securities Exchange Act Release No. 76814 (Dec. 31, 2015), 81 FR 0820 (Jan. 7, 2016) (NYSE–2015–02) (approving amendments to the NYSE Listed Company Manual to exempt early stage companies from having to obtain shareholder approval in certain circumstances). *See also* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (approving equity compensation shareholder approval rules of both the NYSE and the National Association of Securities Dealers, Inc. n/k/a NASDAQ); and Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (order approving registration of BATS Exchange, Inc. noting that qualitative listing requirements including shareholder approval rules are designed to ensure that companies trading on a national securities exchange will adequately protect the interest of public shareholders).

[54] The Commission also noted in the Order Instituting Proceedings that the Exchange should clarify, for purposes of the definition of Minimum Price, when the closing price would be measured. *See* Order Instituting Proceedings, *supra* note 7, at 24382 n. 36. As discussed above, Amendment No. 1 to the proposed rule change clarified that the closing price refers to the closing price immediately preceding the signing of a binding agreement. *See* Amendment No. 1, *supra* note 10.

[55] *See* Section III, *supra.*

[56] *See supra* note 10. *See also supra* notes 40–43 and 48–50 and accompanying text.

[57] *See* Notice, *supra* note 3, at 7272. *See also supra* notes 16–18 and 35–43 and accompanying text. *See also infra* notes 63–65 and accompanying text.

[58] *See* Notice, *supra* note 3, at 7270 (describing the closing auction on the Exchange, which is how the Nasdaq Official Closing Price is derived. The Exchange states that the closing auction ''is designed to gather the maximum liquidity available for execution at the close of trading, and to maximize the number of shares executed at a single price at the close of the trading day,'' and ''promotes accurate closing prices by offering specialized orders available only during the closing auction and integrating those orders with regular orders submitted during the trading day that are still available at the close.'' In addition, the Exchange states that the closing auction is ''made highly transparent to all investors.'') *See also supra* note 16.

[59] *See supra* notes 57–58. The Commission notes that using closing prices for determining whether shareholder approval is needed for certain stock issuances is consistent with the rules of another exchange. *See* NYSE Listed Company Manual Rule 312.04(i). The Commission also notes that the Exchange has stated that Nasdaq does not currently intend to charge a fee for access to this data or otherwise restrict availability of this data and that the Exchange would file a proposed rule change under Section 19(b) of the Act before implementing any such change, and, in such filing, address the impact of the proposed rule change on compliance with this rule. *See supra* note 16.

[60] *See supra* notes 35–39 and accompanying text.

by commenters and the Exchange,[61] market value (as determined pursuant to the proposal) may be a more appropriate indicator of whether a transaction is dilutive than book value for purposes of Nasdaq's shareholder approval rule.[62]

The Commission notes, in approving the changes to measure market value as the lower of the closing price and five-day average closing price and eliminate the book value requirement, that the ability of listed companies to issue securities in private placements without shareholder approval continues to remain limited by other important Exchange rules.[63] For example, the Commission notes that any discounted issuance of stock to a company's officers, directors, employees, or consultants would require shareholder approval under the Exchange's equity compensation rules.[64] In addition, shareholder approval would be required if the issuance resulted in a change of control and for the acquisition of stock or assets of another company, including where an issuance increases voting power or common shares by 5% or more and an officer or director or substantial security holder has a 5% direct or indirect interest (or collectively 10%) in the company or assets to be acquired. [65]

V. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 to the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2018–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2018–008. 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–NASDAQ–2018–008, and should be submitted on or before October 23, 2018.

VI. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. The Commission notes that Amendment No. 1 clarifies the proposed rule change. In particular, Amendment No. 1 clarifies that: (i) In the new definition of ''Minimum Price,'' the closing price (as reflected on *Nasdaq.com*) is measured immediately preceding the signing of the binding agreement; and (ii) a private placement is a transaction other than a public offering.[66] The clarifications in Amendment No. 1 should help to avoid any confusion as to the scope or application of the rule changes being adopted herein. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[67] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[68] that the proposed rule change (SR–NASDAQ–2018–008), as modified by Amendment No. 1 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21366 Filed 10–1–18; 8:45 am]

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[61] *See supra* notes 21 and 45–50 and accompanying text.

[62] For example, as the Exchange stated in the Nasdaq Response Letter, among other things, book value is disclosed in quarterly and annual reports and is just one point of financial data already incorporated in the market value of the security. *See* Nasdaq Response Letter, *supra* note 8, at 4.

[63] *See, e.g.,* Nasdaq Rule 5635 (a),(b) and (c). The Commission notes that, under Nasdaq rules, if shareholder approval was not required under the private placement requirements in Rule 5635(d) it could still be required under one of the other shareholder approval provisions in Rule 5635 since these provisions apply independently of each other.

[64] *See* Nasdaq Rule 5635(c).

[65] *See* Nasdaq Rule 5635(a) and (b). The Commission notes that as to the additional proposed changes to the rule text, Nasdaq has indicated that these changes were made to improve the readability of the rule, to conform the language of the rule to the rule text and other rules, and to conform references in other rules to the proposed new standards. Among these changes are the changes that replace the references in Rule 5635 from ''private placements'' to ''transactions other than public offerings.'' The Commission notes that in Amendment No. 1 the Exchange stated that private placements would continue to be considered ''transactions other than public offerings'' under Nasdaq Rule 5635(d), as amended by the proposed rule change. *See* Amendment No. 1, *supra* note 10.

[66] *See supra* note 10.

[67] 15 U.S.C. 78s(b)(2).

[68] *Id.*

[69] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, October 4, 2018.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Jackson, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: September 27, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–21502 Filed 9–28–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33255; File No. 812–14899]

Hedge Fund Guided Portfolio Solution, et al.

September 26, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

APPLICANTS: Hedge Fund Guided Portfolio Solutions (the ''Fund''), Grosvenor Capital Management, L.P. (the ''Advisor''), and GRV Securities LLC (the ''Distributor'') (together, the ''Applicants'').

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares of beneficial interest (''Shares'') with varying sales loads and to impose asset-based service and/or distribution fees.

FILING DATES: The application was filed on April 25, 2018 and amended on June 14, 2018, August 22, 2018 and September 6, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 20, 2018 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants, 900 North Michigan Avenue, Suite 1100, Chicago, IL 60611.

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, at (202) 551–6840 or David Marcinkus, Branch Chief, at (202) 551–6882 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Fund is a Delaware statutory trust that is registered under the Act as a non-diversified, closed-end management investment company. The Fund's objective is to seek absolute returns with low to moderate volatility and with minimal correlation to the global equity and fixed income markets while preserving capital. The Fund intends to pursue its investment objective through a multi-manager, multi-strategy program of investment in a group of limited liability private investment vehicles (each, an ''Investment Fund''), managed by third-party investment management firms (each, an ''Investment Manager''). The Fund seeks to implement its investment objective by investing in Investment Funds that will invest both long and short, in a wide range of ''alternative'' investment strategies.

2. The Advisor, an Illinois limited partnership, is registered as an investment adviser under the Investment Advisers Act of 1940. The Advisor serves as an investment adviser to the Fund.

3. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and will act as the distributor of the Fund. The Distributor is under common control with the Advisor and is an affiliated person, as defined in Section 2(a)(3) of the 1940 Act, of the Advisor.

4. Applicants seek an order to permit the Fund to issue multiple classes of Shares, each having its own fees and expense structure and to impose asset-based distribution and/or service fees and early withdrawal charges.

5. Applicants request that the order also apply to any other registered closed-end management investment company that conducts a continuous offering of its shares, existing now or in the future, for which the Advisor or the Distributor, its successors, or any entity controlling, controlled by, or under common control with the Advisor or the Distributor or its successors,[1] acts as investment adviser or distributor, respectively, and which provides periodic liquidity with respect to its Shares through tender offers conducted in compliance with rule 13e-4 under the 1934 Act.[2]

6. The Fund initially will issue a single class of Shares (the ''Initial Class''). Shares will be offered on a continuous basis at net asset value per share. The Shares will be sold only to person who are ''accredited investors,'' as defined in Regulation D under the Securities Act of 1933. The Fund, as a closed-end investment company, does not continuous redeem Shares as does an open-end management investment company. The Shares will not be listed on any securities exchange and do not trade on an over-the-counter system such as NASDAQ. Applicants do not expect that any secondary market will ever develop for the Shares.

7. If the requested relief is granted, the Fund may offer multiple classes of Shares, in addition to the Initial Class. Because of the different distribution fees, service fees, and any other class expenses that may be attributable to the different classes, the net income attributable to, and any dividends payable on, each class of Shares may differ from each other from time to time.

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] The Fund and any other investment company relying on the requested relief will do so in a manner consistent with the terms and conditions of the application. Applicants represent that any person presently intending to rely on the requested relief is listed as an Applicant.

8. Applicants state that, from time to time, the Fund's board of Trustees (the ''Board,'' and each member a ''Trustee'') may create and offer additional classes of Shares, or may vary the characteristics described of the Initial Class Shares, including without limitation, in the following respects: (1) The amount of fees permitted by different distribution plans or different service fee arrangements; (2) voting rights with respect to a distribution and service plan of a class; (3) different class designations; (4) the impact of any class expenses directly attributable to a particular class of Shares allocated on a class basis as described in the Application; (5) differences in any dividends and net asset values per Share resulting from differences in fees under a distribution and service plan or in class expenses; (6) any sales load structure; and (7) any conversion features, as permitted under the Act.

9. Applicants state that the Initial Fund does not currently intend to impose an early withdrawal charge. However, in the future a Fund may impose an early withdrawal charge on shares submitted for repurchase that have been held less than a specified period. The Fund may waive the early withdrawal charge for certain categories of shareholders or transactions to be established from time to time. Applicants state that each Fund will apply the early withdrawal charge (and any waivers or scheduled variations of the early withdrawal charge) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act as if the Fund was an open-end investment company.

10. Applicants state that, in order to provide a limited degree of liquidity to shareholders, the Fund will from time to time offer to repurchase Shares pursuant to written tenders by shareholders in accordance with Rule 13e–4 under the 1934 Act (''Repurchases''). Repurchases of the Fund's Shares will be made at such times, in such amounts, and on such terms as may be determined by the Fund's Board in its sole discretion. In determining whether the Fund should offer to Repurchase Shares, the Board will consider a variety of operational, business and economic factors. The Advisor expects to ordinarily recommend that the Board authorize the Fund to offer to Repurchase Shares from shareholders quarterly with March 31, June 30, September 30 and December 31 valuation dates.

11. Applicants represent that any asset-based service and/or distribution fees will comply with the provisions of Rule 2341 of the Rules of the Financial Industry Regulatory Authority (''FINRA Rule 2341'') as if that rule applied to the Fund.[3] Applicants also represent that the Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of Shares offered for sale by the prospectus, as is required for open-end, multiple class funds under Form N–1A.[4] As is required for open-end funds, the Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or eliminations of sales loads in its prospectus.[5] In addition, Applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[6]

12. The Fund and the Distributor will comply with any requirements that may be adopted by the Commission or FINRA regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund and the Distributor. The Fund or the Distributor will also contractually require that any other distributor of the Fund's Shares comply with such requirements in connection with the distribution of Shares of the Fund.

13. The Fund will allocate all expenses incurred by it among the various classes of Shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of Shares will be borne on a pro rata basis by each outstanding Share of that class. Applicants state that the Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

14. The Fund does not intend to offer any exchange privilege or conversion feature, but any such privilege or feature introduced in the future will comply with rule 11a–1, rule 11a–3, and rule 18f–3 as if the Fund were an open-end investment company.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2)(A) and (B) makes it unlawful for a registered closed-end investment company to issue a senior security that is a stock unless (a) immediately after such issuance it will have an asset coverage of at least 200% and (b) provision is made to prohibit the declaration of any distribution, upon its common stock, or the purchase of any such common stock, unless in every such case such senior security has at the time of the declaration of any such distribution, or at the time of any such purchase, an asset coverage of at least 200% after deducting the amount of such distribution or purchase price, as the case may be. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a registered closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Shares of the Fund may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of Shares of the Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such

[3] Any references to FINRA Rule 2341include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority (''FINRA'').

[4] In all respects other than class-by-class disclosure, the Fund will comply with the requirements of Form N–2.

[5] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[6] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). *See also* Rules 12d1–1, *et seq.* of the Act.

exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Fund to issue multiple classes of Shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its Shares and provide investors with a broader choice of shareholder options. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that the Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charge

1. Applicants state that the early withdrawal charges they intend to impose are functionally similar to contingent deferred sales loads imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose contingent deferred sales loads, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of contingent deferred sales loads where there are adequate safeguards for the investor and state that the same policy considerations support imposition of early withdrawal charges in the interval fund context. In addition, Applicants state that early withdrawal charges may be necessary for the Fund's Distributor to recover distribution costs. Applicants represent that any early withdrawal charge imposed by a Fund will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. Each Fund will disclose early withdrawal charges in accordance with the requirements of Form N–1A concerning contingent deferred sales loads.

Asset-Based Service and/or Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Fund to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based service and/or distribution fees.

3. For the reasons stated above, Applicants submit that the exemptions requested are necessary and appropriate in the public interest and are consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act. Applicants also believe that the requested relief meets the standards for relief in section 17(d) of the 1940 Act and rule 17d–1 thereunder.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and where applicable, 11a–3 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with FINRA Rule 2341, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21374 Filed 10–1–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84293; File No. SR–CboeBYX–2018–021]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Cboe BYX Exchange, Inc.

September 26, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2018, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. 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 filed a proposal to amend the Exchange's fee schedule applicable to its equities trading platform.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 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 the proposed rule change is to amend the Exchange's fee schedule applicable to its equities trading platform (''BYX Equities'') to add a new ADAV [5] requirement to qualify for Remove Volume Tier 8 associated with fee codes W,[6] BB,[7] and N.[8,9]

By way of background, the Exchange provides a standard rebate of $0.0005 per share for orders that remove liquidity from BYX in securities priced at or above $1.00. Members may also qualify for a higher rebate based on the Exchange's Remove Volume Tiers, which are designed to encourage Members to bring order flow to BYX by providing higher rebates for removing liquidity to firms based on their activity on the Exchange.[10] Currently, Members can qualify for a higher rebate of $0.0017 per share pursuant to Remove Volume Tier 8 if the Member has a Step-Up Remove TCV [11] from December 2017 equal or greater than 0.10%. The Exchange proposes to add a second prong to Remove Volume Tier 8 which will also require a Member to meet an ''adding liquidity'' threshold, in addition to the current ''removing liquidity'' threshold. Particularly, the Exchange proposes to add the requirement that a Member have an ADAV that is greater than or equal to 0.30% of the TCV. The proposed change applies to fee codes W, BB, and N, which relate to orders that remove liquidity from BYX in Tapes A, B, and C, respectively. The Exchange believes the proposed change makes the threshold requirements commensurate with the level of the incentive provided in Remove Volume Tier 8. The Exchange also notes that another exchange has adopted a similar rebate that requires Members to meet thresholds relating to both removing and adding liquidity.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6 of the Act [13] and, in particular, the requirements of Section 6(b)(4) and 6(b)(5),[14] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange believes that the amount of the rebate under Remove Volume Tier 8 is reasonable because it remains unchanged. The Exchange also believes that it is reasonable to require an additional threshold in order to receive the rebate because the Exchange believes the updated requirements are commensurate with the level of the rebate offered and ensures Members are providing adequate market participation in return for this rebate.

The Exchange believes the proposal to add a requirement to Remove Volume Tier 8 is an equitable allocation and is not unfairly discriminatory because the proposed rule change applies to all similarly situated Members. Particularly, volume-based rebates such as those currently maintained on the Exchange have been widely adopted by exchanges and are equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value of an exchange's market quality; (ii) associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believe it's reasonable, equitable and not unfairly discriminatory to require that Members meet an adding liquidity threshold in addition to the existing liquidity removing threshold because the proposed ADAV requirement is intended to ensure Members achieving this rebate will meaningfully support trading on the exchange by also providing liquidity that supports the displayed market and, therefore, market quality. The Exchange believes the enhanced rebated under Remove Volume Tier 8, together with the other existing rebates and reduced fees under Add/Remove Volume Tiers 1–9 provide members with choice and flexibility. Particularly, the Exchange notes that Members have other opportunities to receive enhanced rebates or reduced fees should a member be unable to satisfy the qualification criteria required to receive the rebate under Remove Volume Tier 8. As noted above, the Exchange also notes that another exchange has adopted a similar rebate that requires Members to meet thresholds relating to both adding and removing liquidity.[15] In sum, the Exchange believes that the proposed change is an equitable allocation and is not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendment to its fee schedule would not impose any burden on competition that is not necessary or appropriate in

[5] ''ADAV'' means average daily added volume calculated as the number of shares added per day. *See* BYX Fee Schedule, Definitions. ADAV is calculated on a monthly basis. The Exchange excludes from its calculation of ADAV shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours (''Exchange System Disruption''), on any day with a scheduled early market close and on the last Friday in June (the ''Russell Reconstitution Day''). Routed shares are not included in ADAV calculation. With prior notice to the Exchange, a Member may aggregate ADAV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD).

[6] W is associated with orders that remove liquidity from BYX in Tape A securities.

[7] BB is associated with orders that remove liquidity from BYX in Tape B securities.

[8] N is associated with orders that remove liquidity from BYX in Tape C securities.

[9] The Exchange initially filed the proposed fee change on September 4, 2018 (SR–CboeBYX–2018–018) for September 4, 2018 effectiveness. On business date September 13, 2018, the Exchange withdrew SR–CboeBYX–2018–018 and submitted SR–CboeBYX–2018–020. On September 20, 2018, the Exchange withdrew SR–CboeBYX–2018–020 and submitted this filing.

[10] *See* BYX Fee Schedule, footnote 1, Add/Remove Volume Tiers.

[11] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day.

[12] *See* Nasdaq BX, Inc. (''BX'') Rule 7018, Nasdaq BX Equities System Order Execution and Routing, which provides a $0.0016 per share executed credit for orders that meet thresholds relating to accessing liquidity and adding liquidity.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See* Nasdaq BX, Inc., Rule 7018, Nasdaq BX Equities System Order Execution and Routing, which provides a $0.0016 per share executed credit for orders that meet thresholds relating to accessing liquidity and adding liquidity.

furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing programs offered by the Exchange or pricing offered by the Exchange's competitors. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing 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) of the Act [16] and paragraph (f) of Rule 19b–4 thereunder.[17] 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–CboeBYX–2018–021 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 No. SR–CboeBYX–2018–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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 No. SR–CboeBYX–2018–021 and should be submitted on or before October 23, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21364 Filed 10–1–18; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33256; File No. 812–14860]

BC Partners Lending Corporation, et al.; Notice of Application

September 26, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a business development company (''BDC'') and certain closed-end investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: BC Partners Lending Corporation (the ''Company''), BCP Special Opportunities Fund I LP (the ''Private Fund''), and BC Partners Advisors L.P. (the ''Company Adviser'').

FILING DATES: The application was filed on December 27, 2017, and amended on May 31, 2018 and September 12, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 22, 2018 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549–1090. Applicants: 650 Madison Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, at (202) 551–6773, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company is a Maryland corporation organized on December 22, 2017. On April 23, 2018, the Company filed an election to be treated as a BDC [1]

[1] Section 2(a)(48) of the Act defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the

through a notification of election to be subject to sections 55 through 65 of the Act on Form N–54A. The Company filed a registration statement on Form 10 under the Securities Exchange Act of 1934, that became effective on April 23, 2018. The Company will not register its securities on Form N–2 in reliance on Regulation D under the 1933 Act. The Company's Objectives and Strategies will be to generate current income and, to a lesser extent, capital appreciation.[2] The Company intends its investments to primarily take the form of debt investments, which may include secured debt, unsecured debt, other debt and/or equity in private middle-market companies. While the Company's primary focus will be on investments within the U.S., the Company may, on occasion, invest in foreign securities. The Company has a five-member board of directors (the ''Board''), of which a majority are not ''interested persons'' of the Company within the meaning of section 2(a)(19) of the Act (the ''Non-Interested Directors'').[3]

2. The Private Fund was formed as a Cayman Islands exempted limited partnership and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. The Private Fund is managed by the Company Adviser. The Private Fund's investment objective is to make credit-oriented investments on an opportunistic basis. The Private Fund has investment objectives and strategies that overlap, to an extent, with those of the Company.

3. The Company Adviser, a Delaware limited partnership formed on March 29, 2017 and an investment adviser registered with the Commission under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser to both the Company and the Private Fund, in each case, pursuant to an investment advisory agreement with such entity. Under the investment advisory agreements of the Company and the Private Fund, the Company Adviser manages the assets of each entity in accordance with the investment objective, policies and restrictions of each entity, makes investment decisions for each entity, monitors the investments of each entity, and provides each entity with such other investment advisory and related services that each entity may reasonably require for the investment of capital, subject, in the case of the Company, to the oversight of its Board.

4. Applicants seek an order (''Order'') to permit one or more Regulated Funds[4] and/or one or more Affiliated Funds[5] to participate in the same investment opportunities through a proposed co-investment program (the ''Co-Investment Program'') where such participation would otherwise be prohibited under section 57(a)(4) and rule 17d–1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price;[6] and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (''Follow-On Investments''). ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Subsidiary) participates together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Subsidiary) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[7]

5. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subsidiaries.[8] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Subsidiary's participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Subsidiary. The Regulated Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation

Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] ''Objectives and Strategies'' means a Regulated Fund's (defined below) investment objectives and strategies, as described in the Regulated Fund's registration statement, other filings the Regulated Fund has made with the Commission under the Act, under the Securities Act of 1933 (the ''Securities Act''), or under the Securities Exchange Act of 1934, and in the Regulated Fund's reports to shareholders.

[3] No Director will be considered a Non-Interested Director with respect to a particular Co-Investment Transaction unless the Director has no direct or indirect financial interest in that Co-Investment Transaction (as defined below) or any interest in any portfolio company, other than through an interest in the securities of a Regulated Fund (as defined below).

[4] ''Regulated Fund'' means the Company and any Future Regulated Fund. ''Future Regulated Fund'' means any closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the Co-Investment Program. The term ''Adviser'' means (a) the Company Adviser and (b) any future investment adviser that controls, is controlled by or is under common control with the Company Adviser or its successor and is registered as an investment adviser under the Advisers Act. The term ''successor,'' as applied to each Adviser, means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

[5] ''Affiliated Fund'' means the Private Fund and any Future Affiliated Fund. ''Future Affiliated Fund'' means any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

[6] The term ''private placement transactions'' means transactions in which the offer and sale of securities by the issuer are exempt from registration under the Securities Act.

[7] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[8] The term ''Wholly-Owned Investment Subsidiary'' means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments and incur debt (which is or would be consolidated with other indebtedness of such Regulated Fund for financial reporting or compliance purposes under the Act) on behalf of the Regulated Fund; (iii) with respect to which the Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act.

of the Regulated Fund and the Wholly-Owned Investment Subsidiary.

6. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, Board-Established Criteria,[9] investment policies, investment positions, capital available for investment (''Available Capital''), and other pertinent factors applicable to that Regulated Fund. The Board of each Regulated Fund, including the Non-Interested Directors has (or will have prior to relying on the requested Order) determined that it is in the best interests of the Regulated Fund to participate in the Co-Investment Transaction.

7. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1(b) and 2(a), the Adviser will present each Potential Co-Investment Transaction that meets the Board-Established Criteria and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act (''Eligible Directors''), and the ''required majority,'' as defined in section 57(o) of the Act (''Required Majority'')[10] will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund. No Eligible Director will have any direct or indirect financial interest in any Co-Investment Transaction or any interest in any portfolio company, other than indirectly through share ownership (if any) of the Regulated Funds.

8. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

9. Applicants also represent that if the Advisers, the principals of the Advisers (''Principals''), or any person controlling, controlled by, or under common control with an Adviser or the Principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25% of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as required under condition 14. Applicants believe this condition will ensure that the Non-Interested Directors will act independently in evaluating the Co-Investment Program, because the ability of the Advisers or the Principals to influence the Non-Interested Directors by a suggestion, explicit or implied, that the Non-Interested Directors can be removed will be limited significantly. Applicants represent that the Non-Interested Directors will evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds could be deemed to be a person related to each Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1.(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified, for each Regulated Fund the Adviser manages, of all Potential Co-Investment Transactions that (i) an Adviser considers for any other Regulated Fund or Affiliated Fund and (ii) fall within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2.(a) If the Adviser deems a Regulated Fund's participation in any Potential

[9] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which each Adviser to the Regulated Fund should be notified under condition 1.

[10] In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

Co-Investment Transaction to be appropriate for the Regulated Fund, the Adviser will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1(b) and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its stockholders and do not involve overreaching in respect of the Regulated Fund or its stockholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the Regulated Fund's stockholders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of any other Regulated Funds or Affiliated Funds; provided that if any other Regulated Funds or Affiliated Funds, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of the Affiliated Fund or Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Fund in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, any Affiliated Funds or other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[11] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, an Affiliated Fund or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7.(a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is

[11] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which the Regulated Fund already holds investments.

proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8.(a) If any Affiliated Fund or Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed Follow-On Investment at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria, including investments in Potential Co-Investment Transactions made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, and concerning Co-Investment Transactions in which the Regulated Fund participated, so that the Non-Interested Directors may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those Potential Co-Investment Transactions which the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually: (a) The continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions, and (b) the continued appropriateness of any Board-Established Criteria.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee [12] (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable) received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the Co-Investment Transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds, or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the investment advisory agreements between such Adviser and the Regulated Fund or Affiliated Fund).

14. If the Holders own in the aggregate more than 25% of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the

[12] The applicants are not requesting, and the Commission is not providing, any relief for transaction fees received in connection with any Co-Investment Transaction.

removal of one or more directors; or (3) any other matter under either the Act or applicable State laws affecting the Board's composition, size or manner of election.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for the Board of such Regulated Fund that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21375 Filed 10–1–18; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2017–0047]

Social Security Ruling, SSR 18–01p; Titles II and XVI: Determining the Established Onset Date (EOD) in Disability Claims

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are providing notice of SSR 18–01p, which rescinds and replaces SSR 83–20, ''Titles II and XVI: Onset of Disability,'' except as noted here. This SSR clarifies how we determine the EOD in disability claims under titles II and XVI of the Social Security Act (Act). Specifically, it addresses how we determine the EOD in claims that involve traumatic, non-traumatic, and exacerbating and remitting impairments. This ruling also addresses special considerations related to the EOD, such as work activity and previously adjudicated periods. Additionally, this SSR clarifies that an administrative law judge may, but is not required to, call upon the services of a medical expert, to assist with inferring the date that the claimant first met the statutory definition of disability. We concurrently published a separate SSR, SSR 18–02p, ''Titles II and XVI: Determining the Established Onset Date (EOD) in Blindness Claims,'' to discuss how we determine the EOD in statutory blindness claims. SSR 18–02p rescinds and replaces two parts of SSR 83–20. Specifically, SSR 18–02p rescinds and replaces the subsection, ''Title II: Blindness Cases,'' under the section, ''Technical Requirements and Onset of Disability''; and the subsection, ''Title XVI—Specific Onset is Necessary,'' which is also under the section ''Technical Requirements and Onset of Disability,'' as it applies to statutory blindness claims. Therefore, SSR 83–20 is completely rescinded and replaced by SSR 18–01p and SSR 18–02p.

DATES: We will apply this notice on October 2, 2018.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, 410–597–1632, *Dan.OBrien@ssa.gov.* For information on eligibility or filing for benefits, call our national toll-free number at 1–800–772–1213, or visit our internet site, Social Security online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are publishing it in accordance with 20 CFR 402.35(b)(1).

We use SSRs to make available to the public precedential decisions relating to the Federal old age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made in our administrative review process, Federal court decisions, decisions of our Commissioner, opinions from our Office of the General Counsel, or other interpretations of law and regulations.

Although SSRs do not have the same force and effect as law, they are binding on all components of the Social Security Administration in accordance with 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the *Federal Register* that rescinds it, or until we publish a new SSR in the **Federal Register** that rescinds and replaces or modifies it.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

Nancy A. Berryhill,

Acting Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Determining the Established Onset Date (EOD) in Disability Claims

We are providing notice of SSR 18–01p, which rescinds and replaces SSR 83–20, ''Titles II and XVI: Onset of Disability,'' except as noted here. Concurrently, we published a separate SSR, SSR 18–02p, ''Titles II and XVI: Determining the Established Onset Date (EOD) in Blindness Claims,'' to discuss how we determine the EOD in statutory blindness claims. SSR 18–02p rescinds and replaces two parts of SSR 83–20. Specifically, SSR 18–02p rescinds and replaces the subsection, ''Title II: Blindness Cases,'' under the section, ''Technical Requirements and Onset of Disability''; and the subsection, ''Title XVI—Specific Onset is Necessary,'' which is also under the section ''Technical Requirements and Onset of Disability,'' as it applies to statutory blindness claims. Therefore, as of October 2, 2018, the date this SSR was published in the **Federal Register**, SSR 83–20 is completely rescinded and replaced by SSR 18–01p and SSR 18–02p.

Purpose: This SSR explains what we mean by EOD and clarifies how we determine the EOD in disability claims under titles II and XVI of the Act. Specifically, it addresses how we determine the EOD in claims that involve traumatic, non-traumatic, and exacerbating and remitting impairments. This ruling also addresses special considerations related to the EOD, such as work activity and previously adjudicated periods. Additionally, this SSR clarifies that an administrative law judge (ALJ) may, but is not required to, call upon the services of a medical expert (ME), to assist with inferring the date that the claimant first met the statutory definition of disability.

Citations: Sections 223 and 1614 of the Act, as amended; 20 CFR 404.130, 404.303, 404.315–.316, 404.320–.321, 404.335–.336, 404.350–.351, 404.988–.989, 404.1505, 404.1510, 404.1512–.1513, 404.1520, 404.1574, 416.202, 416.325, 416.905–.906, 416.910, 416.912–.913, 416.920, 416.924, 416.974, and 416.1488–.1489; 20 CFR part 404, subpart P, appendices 1 and 2.

Policy Interpretation

To be entitled to disability benefits under title II of the Act or to be eligible for Supplemental Security Income (SSI) payments based on disability under title XVI of the Act, a claimant must file an application, meet the statutory definition of disability,[1] and satisfy the applicable non-medical requirements. If we find that a claimant meets the statutory definition of disability and meets the applicable non-medical requirements during the period covered by his or her application, we then

[1] *See* 42 U.S.C. 423(d)(1)(A), 1382c(a)(3)(A); 20 CFR 404.1505(a), 416.905(a) (defining disability for adults); 42 U.S.C. 1382c(a)(3)(C); 20 CFR 416.906 (defining disability for children); *see also* 20 CFR 404.1520(a)(4), 416.920(a)(4) (setting forth the five-step sequential evaluation we use to determine disability for adults); 20 CFR 416.924 (setting forth the three-step sequential evaluation we use to determine disability for children).

determine the claimant's EOD. Generally, the EOD is the earliest date that the claimant meets both the definition of disability and the non-medical requirements for entitlement to benefits under title II of the Act or eligibility for SSI payments under title XVI of the Act during the period covered by his or her application. Because entitlement and eligibility depend on non-medical requirements, the EOD may be later than the date the claimant first met the definition of disability, and some claimants who meet the definition of disability may not be entitled to benefits under title II or eligible for disability payments under title XVI.[2]

Outline

I. How do we determine the EOD?
A. What are the non-medical requirements for entitlement and eligibility under the Act?
B. How do we determine whether a claimant meets the statutory definition of disability and, if so, when the claimant first met that definition?
1. How do we determine when a claimant with a traumatic impairment first met the statutory definition of disability?
2. How do we determine when a claimant with a non-traumatic or exacerbating and remitting impairment first met the statutory definition of disability?
3. How do we determine when a claimant with more than one type of impairment first met the statutory definition of disability?
II. What are some special considerations related to the EOD?
A. How does work activity affect our determination of the EOD?
B. May we determine the EOD to be in a previously adjudicated period?
III. When is this SSR applicable?

Discussion

I. How do we determine the EOD?

When we need to determine a claimant's EOD, we start by considering whether we can establish the EOD as of the claimant's potential onset date (POD) of disability. The POD is the first date when the claimant met the non-medical requirements during the period covered by his or her application. The POD is the earliest date that we consider for the EOD because it affords the claimant the maximum possible benefits for the period covered by his or her application. The POD may be the same as, earlier than, or later than the claimant's alleged onset date, which is the date that the claimant alleges he or she first met the statutory definition of disability.

The period covered by an application refers to the period when a claimant may be entitled to benefits under title II or eligible for SSI payments under title XVI of the Act based on a particular application. The period covered by an application depends on the type of claim. For example, the Act and our regulations explain that if a claimant applies for disability insurance benefits under title II of the Act after the first month that he or she could have been entitled to them, he or she may receive benefits for up to 12 months immediately before the month in which the application was filed.[3] If a claimant applies for SSI payments based on disability under title XVI of the Act after the first month that he or she meets the other eligibility requirements, we cannot make SSI payments based on disability for the month in which the application was filed or any months before that month.[4] That is, we cannot make retroactive payments based on disability under title XVI of the Act.

If the claimant meets the statutory definition of disability on his or her POD, we use the POD as the EOD because it would be the earliest date at which the claimant meets both the statutory definition of disability and the non-medical requirements for entitlement to benefits under title II or eligibility for SSI payments under title XVI during the period covered by his or her application. In contrast, if the claimant first meets the statutory definition of disability after his or her POD, we use the first date that the claimant meets both the statutory definition of disability and the applicable non-medical requirements as his or her EOD.

A. What are the non-medical requirements for entitlement and eligibility under the Act?

The non-medical requirements vary based on the type(s) of claim(s) the claimant filed. To illustrate, we identify below the most common types of disability claims and some of the regulations that explain the non-medical requirements for that type of claim.

- Disability insurance benefits: 20 CFR 404.315, 404.316, 404.320, and 404.321;
- Disabled widow(er)'s benefits: 20 CFR 404.335 and 404.336;
- Childhood disability benefits: 20 CFR 404.350 and 404.351; and
- Supplemental Security Income: 20 CFR 416.202 and 416.305.

B. How do we determine whether a claimant meets the statutory definition of disability and, if so, when the claimant first met that definition?

We need specific medical evidence to determine whether a claimant meets the statutory definition of disability. In general, an individual has a statutory obligation to provide us with the evidence to prove to us that he or she is disabled.[5] This obligation includes providing us with evidence to prove to us when he or she first met the statutory definition of disability. The Act also precludes us from finding that an individual is disabled unless he or she submits such evidence to us.[6] The Act further provides that we:

> [S]hall consider all evidence available in [an] individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability.[7]

In addition, when we make any determination, the Act requires us to:

> [M]ake every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.[8]

''Complete medical history'' means the records from the claimant's medical source(s) covering at least the 12-month period preceding the month in which the claimant applied for disability benefits or SSI payments.[9] If the claimant says his or her disability began less than 12 months before he or she applied for benefits, we will develop the claimant's complete medical history beginning with the month he or she says his or her disability began, unless we have reason to believe the claimant's disability began earlier.[10] If applicable, we will develop the claimant's complete medical history for the 12-month period

[2] Under title II of the Act, a claimant may be entitled to a period of disability even though he or she does not qualify for monthly cash benefits. 20 CFR 404.320(a).

[3] 42 U.S.C. 423(b); 20 CFR 404.621(a).

[4] 42 U.S.C. 1382(c)(7); 20 CFR 416.335.

[5] To meet the statutory definition of disability, the claimant must show that he or she is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C. 423(d)(1)(A), 1382c(a)(3)(A); 20 CFR 404.1505(a), 416.905(a).

[6] 42 U.S.C. 423(d)(5)(A), 1382c(a)(3)(H)(i); 20 CFR 404.1512(a), 416.912(a).

[7] 42 U.S.C. 423(d)(5)(B), 1382c(a)(3)(H)(i).

[8] *Id.*

[9] 20 CFR 404.1512(b)(1)(ii), 416.912(b)(1)(ii).

[10] *Id.*

prior to the month he or she was last insured for disability insurance benefits,[11] the month ending the 7-year period when the claimant must establish his or her disability if he or she applied for widow's or widower's benefits based on disability,[12] or the month the claimant attained age 22 if he or she applied for child's benefits under title II [13] based on disability.[14]

We consider all of the evidence of record when we determine whether a claimant meets the statutory definition of disability.[15] The period we consider depends on the type of claim and the facts of the case. For example, a claimant who has applied for disability insurance benefits under title II of the Act must show that:

- He or she met the statutory definition of disability before his or her insured status expired, and
- He or she currently meets the statutory definition of disability,[16] or his or her disability ended within the 12-month period before the month that he or she applied for benefits.[17]

As another example, a claimant who has applied for child's benefits under title II must show that:

- He or she met the statutory definition of disability before he or she attained age 22, and
- He or she currently meets the statutory definition of disability,[18] or his or her disability ended within the 12-month period before the month that he or she applied for benefits.[19]

As a final example—because we cannot make SSI payments based on disability for the month in which the application was filed or any months before that month—a claimant who has applied for SSI payments under title XVI must show that he or she currently meets the statutory definition of disability.[20] If we find that the claimant meets the statutory definition of disability during the period under consideration, then we will determine when the claimant first met that definition. However, we will not consider whether the claimant first met the statutory definition of disability on a date that is beyond the period under consideration.

1. How do we determine when a claimant with a traumatic impairment first met the statutory definition of disability?

For impairments that result from a traumatic injury or other traumatic event, we begin with the date of the traumatic event, even if the claimant worked on that date. An example of a traumatic event that could result in a traumatic injury is an automobile accident. If the evidence of record supports a finding that the claimant met the statutory definition of disability on the date of the traumatic event or traumatic injury, we will use that date as the date that the claimant first met the statutory definition of disability.

2. How do we determine when a claimant with a non-traumatic or exacerbating and remitting impairment first met the statutory definition of disability?

Non-traumatic impairments may be static impairments that we do not expect to change in severity over an extended period, such as intellectual disability; impairments that we expect to improve over time, such as pathologic bone fractures caused by osteoporosis; or progressive impairments that we expect to gradually worsen over time, such as muscular dystrophy. Exacerbating and remitting impairments are impairments that diminish and intensify in severity over time, such as multiple sclerosis. When a claimant has a non-traumatic or exacerbating and remitting impairment(s), and we determine the evidence of record supports a finding that the claimant met the statutory definition of disability, we will determine the first date that the claimant met that definition. The date that the claimant first met the statutory definition of disability must be supported by the medical and other evidence [21] and be consistent with the nature of the impairment(s).

We consider whether we can find that the claimant first met the statutory definition of disability at the earliest date within the period under consideration, taking into account the date the claimant alleged that his or her disability began. We review the relevant evidence and consider, for example, the nature of the claimant's impairment; the severity of the signs, symptoms, and laboratory findings; the longitudinal history and treatment course (or lack thereof); the length of the impairment's exacerbations and remissions, if applicable; and any statement by the claimant about new or worsening signs, symptoms, and laboratory findings. The date we find that the claimant first met the statutory definition of disability may predate the claimant's earliest recorded medical examination or the date of the claimant's earliest medical records, but we will not consider whether the claimant first met the statutory definition of disability on a date that is beyond the period under consideration.

If there is information in the claim(s) file that suggests that additional medical evidence relevant to the period at issue is available, we will assist with developing the record and may request existing evidence directly from a medical source or entity that maintains the evidence. We may consider evidence from other non-medical sources such as the claimant's family, friends, or former employers, if we cannot obtain additional medical evidence or it does not exist (*e.g.,* the evidence was never created or was destroyed), and we cannot reasonably infer the date that the claimant first met the statutory definition of disability based on the medical evidence in the file.

At the hearing level of our administrative review process, if the ALJ needs to infer the date that the claimant first met the statutory definition of disability, he or she may call on the services of an ME by soliciting testimony or requesting responses to written interrogatories (*i.e.,*

[11] *See* 20 CFR 404.130.

[12] *See* 20 CFR 404.335(c)(1).

[13] *See* 20 CFR 404.350.

[14] 20 CFR 404.1512(b)(1)(ii).

[15] *See* 20 CFR 404.1513, 416.913 (describing the categories of evidence we consider).

[16] For a disability insurance benefits claim under title II, an adjudicator may also determine that the claimant had a closed period of disability when the claimant was disabled for at least 12 continuous months and his or her disability ceased after the month of filing, but prior to the date of adjudication.

[17] *See* 42 U.S.C. 416(i), 423(a)(1); 20 CFR 404.315(a), 404.320. For title II claims, if we find that the claimant did not meet the statutory definition of disability before his or her insured status expired, we will not determine whether the claimant is currently disabled or was disabled within the 12-month period before the month that he or she applied for benefits. If, however, the claimant also filed a different type of claim—for example, a claim for SSI disability payments—we may have to consider whether the claimant is currently disabled to adjudicate the SSI claim.

[18] For a child's benefits claim under title II, an adjudicator may also determine that the claimant had a closed period of disability when the claimant was disabled for at least 12 continuous months and his or her disability ceased after the month of filing, but prior to the date of adjudication.

[19] *See* 42 U.S.C. 402(d)(1)(B), 416(i); 20 CFR 404.320, 404.350(a)(5). For a child's benefits claim under title II, if we find that the claimant did not meet the statutory definition of disability before he or she attained age 22, we will not determine whether the claimant is currently disabled or was disabled within the 12-month period before the month that he or she applied for benefits. If, however, the claimant also filed a different type of claim—for example, a claim for SSI disability payments—we may have to consider whether the claimant is currently disabled to adjudicate the SSI claim.

[20] 42 U.S.C. 1382(c)(7); 20 CFR 416.335. For a title XVI claim, an adjudicator may also determine that the claimant had a closed period of disability when the claimant was disabled for at least 12 continuous months and his or her disability ceased after the month of filing, but prior to the date of adjudication.

[21] *See* 20 CFR 404.1513, 416.913 (describing the categories of evidence we consider).

written questions to be answered under oath or penalty of perjury). The decision to call on the services of an ME is always at the ALJ's discretion. Neither the claimant nor his or her representative can require an ALJ to call on the services of an ME to assist in inferring the date that the claimant first met the statutory definition of disability.

The Appeals Council may review the ALJ's finding regarding when the claimant first met the statutory definition of disability, or any other finding of the ALJ, by granting a claimant's request for review or on its own motion authority.[22] The Appeals Council may also exercise its removal authority and assume responsibility of the request for hearing. The Appeals Council will review a case if there is an error of law; the actions, findings, or conclusions of the ALJ are not supported by substantial evidence; there appears to be an abuse of discretion by the ALJ; or there is a broad policy or procedural issue that may affect the general public interest.[23] The Appeals Council will also review a case if it receives additional evidence that meets certain requirements.[24] If the Appeals Council grants review, it will issue its own decision or return the case to the ALJ for further proceedings, which may include obtaining evidence regarding when the claimant first met the statutory definition of disability. If the Appeals Council issues a decision, it will consider the totality of the evidence (subject to the limitations on Appeals Council consideration of additional evidence in 20 CFR 404.970 and 416.1470) and establish the date that the claimant first met the statutory definition of disability, which is both supported by the evidence and consistent with the nature of the impairment(s).

3. How do we determine when a claimant with more than one type of impairment first met the statutory definition of disability?

If a claimant has a traumatic impairment and a non-traumatic or exacerbating and remitting impairment, we will consider all of the impairments in combination when determining when the claimant first met the statutory definition of disability. We will consider the date of the traumatic event as well as the evidence pertaining to the non-traumatic or exacerbating and remitting impairment and will determine the date on which the combined impairments first caused the claimant to meet the statutory definition of disability.

II. What are some special considerations related to the EOD?

A. How does work activity affect our determination of the EOD?

We consider the date the claimant stopped performing substantial gainful activity (SGA) when we establish the EOD. SGA is work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit.[25] If medical and other evidence indicates the claimant's disability began on the last day he or she performed SGA, we can establish an EOD on that date, even if the claimant worked a full day. Generally, we may not determine a claimant's EOD to be before the last day that he or she performed SGA.

We may, however, determine a claimant's EOD to be before or during a period that we determine to be an unsuccessful work attempt (UWA). A UWA is an effort to do work that discontinues or reduces to the non-SGA level after a short time (no more than six months) because of the impairment or the removal of special conditions related to the impairment that are essential for the further performance of work.[26]

B. May we determine the EOD to be in a previously adjudicated period?

Yes, if our rules for reopening are met[27] and the claimant meets the statutory definition of disability and the applicable non-medical requirements during the previously adjudicated period.[28] Reopening, however, is at the discretion of the adjudicator.[29]

III. When is this SSR applicable?

This SSR is applicable on October 2, 2018. We will use this SSR beginning on its applicable date. We will apply this SSR to new applications filed on or after the applicable date of the SSR and to claims that are pending on and after the applicable date. This means that we will use this SSR on and after its applicable date, in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions. If a court reverses our final decision and remands a case for further administrative proceedings after the applicable date of this SSR, we will apply this SSR to the entire period at issue in appropriate cases when we make a decision after the court's remand.

[FR Doc. 2018–21368 Filed 10–1–18; 8:45 am]

BILLING CODE 4191–02–P

[22] 20 CFR 404.969, 416.1469.

[23] 20 CFR 404.970, 416.1470.

[24] 20 CFR 404.970(a)(5), (b) and 416.1470(a)(5), (b).

[25] 20 CFR 404.1510, 416.910.

[26] 20 CFR 404.1574(a)(1), (c) and 416.974(a)(1), (c).

[27] 20 CFR 404.988, 404.989, 416.1488, 416.1489.

[28] *See also* Program Operations Manual System (POMS) DI 25501.250.A.5 (explaining when a period of disability may begin during a previously adjudicated period).

[29] 20 CFR 404.988, 416.1488 (stating that "[a] determination, revised determination, decision, or revised decision *may* be reopened . . .") (emphasis added).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2016–0034]

Social Security Ruling, SSR 18–3p; Titles II and XVI: Failure To Follow Prescribed Treatment

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are providing notice of SSR 18–3p. This Ruling provides guidance about how we apply our failure to follow prescribed treatment policy in disability and blindness claims under Titles II and XVI of the Social Security Act (Act).

DATES: We will apply this notice on October 29, 2018.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Vocational, Evaluation, and Process Policy in the Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–597–1632. For information on eligibility or filing for benefits, call our national toll-free number at 1–800–772–1213, or visit our internet site, Social Security online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are publishing it in accordance with 20 CFR 402.35(b)(1).

We use SSRs to make available to the public precedential decisions relating to the Federal old age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made in our administrative review process, Federal court decisions, decisions of our Commissioner, opinions from our Office of the General Counsel, or other interpretations of law and regulations.

Although SSRs do not have the same force and effect as law, they are binding on all components of the Social Security Administration in accordance with 20

CFR 402.35(b)(1), and are binding as precedents in adjudicating cases.

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or until we publish a new SSR in the **Federal Register** that rescinds and replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security— Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Nancy A. Berryhill,

Acting Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Failure To Follow Prescribed Treatment

This Social Security Ruling (SSR) rescinds and replaces SSR 82–59: ''Titles II and XVI: Failure to Follow Prescribed Treatment.''

Purpose: To provide guidance on how we apply our failure to follow prescribed treatment policy in disability and blindness claims under titles II and XVI of the Social Security Act (Act).

Citations (Authority): Sections 216(i), 223(d) and (f), and 1614(a) of the Act, as amended; 20 CFR 404.1530 and 416.930.

Dates: We will apply this notice on October 29, 2018.[1]

Overview

A. *Background*
B. *When we decide whether the failure to follow prescribed treatment policy may apply in an initial claim*
Condition 1: The individual is otherwise entitled to disability or statutory blindness benefits under titles II or XVI of the Act
Condition 2: There is evidence that an individual's own medical source(s) prescribed treatment for the medically determinable impairment(s) upon which the disability finding is based
Condition 3: There is evidence that the individual did not follow the prescribed treatment
C. *How we will make a failure to follow prescribed treatment determination*
Assessment 1: We assess whether the prescribed treatment, if followed, would be expected to restore the individual's ability to engage in substantial gainful activity (SGA)
Assessment 2: We assess whether the individual has good cause for not following the prescribed treatment
D. *Development procedures*
E. *Required written statement of failure to follow prescribed treatment determination*
F. *When we make a failure to follow prescribed treatment determination within the sequential evaluation process*
Adult claims that meet or equal a listing at step 3
Title XVI child claims that meet, medically equal, or functionally equal the listings at step 3
Adult claims finding disability at step 5
G. *Reopening a determination or decision*
H. *Continuing Disability Reviews (CDR)*
I. *Duration in disability and Title II blindness claims*
J. *Duration in Title XVI blindness claims*
K. *Claims involving both drug addiction and alcoholism (DAA) and failure to follow prescribed treatment*

A. Background

Under the Act, an individual who meets the requirements to receive disability or blindness benefits will not be entitled to these benefits if the individual fails, without good cause, to follow prescribed treatment that we expect would restore his or her ability to engage in substantial gainful activity (SGA).[2]

We apply the failure to follow prescribed treatment policy at all levels of our administrative review process when we decide an initial claim for benefits based on disability or blindness. We also apply the policy when we reopen a prior determination or decision involving a claim for benefits based on disability or blindness, when we conduct an age-18 redetermination, and when we conduct a continuing disability review (CDR) under titles II or XVI of the Act.

This SSR explains the policy and procedures we follow when we decide whether an individual has failed to follow prescribed treatment as required by the Act and our regulations.[3]

B. When We Decide Whether the Failure To Follow Prescribed Treatment Policy May Apply in an Initial Claim

We will determine whether an individual has failed to follow prescribed treatment only if all three of the following conditions exist:

1. The individual would otherwise be entitled to benefits based on disability or eligible for blindness benefits under titles II or XVI of the Act;

2. We have evidence that an individual's own medical source(s) prescribed treatment for the medically determinable impairment(s) upon which the disability finding is based; and

3. We have evidence that the individual did not follow the prescribed treatment. If all three conditions exist, we will determine whether the individual failed to follow prescribed treatment, as explained below.[4]

Condition 1: The Individual Is Otherwise Entitled to Disability or Statutory Blindness Benefits Under Titles II or XVI of the Act

We only perform the failure to follow prescribed treatment analysis discussed in this SSR after we find that an individual is entitled to disability or eligible for statutory blindness benefits under titles II or XVI of the Act, regardless of whether the individual followed the prescribed treatment. We will not determine whether an individual failed to follow prescribed treatment if we find the individual is not disabled, not blind, or otherwise not entitled to or eligible for benefits under titles II or XVI of the Act.

Condition 2: There Is Evidence That an Individual's Own Medical Source(s) Prescribed Treatment for the Medically Determinable Impairment(s) Upon Which the Disability Finding Is Based

If we find that the individual is otherwise entitled to disability or eligible for statutory blindness benefits under titles II or XVI of the Act, we will only determine if the individual has failed to follow prescribed treatment for the medically determinable impairment(s) upon which the disability finding is based if the individual's own medical source(s) prescribed the

[1] Our adjudicators will apply this ruling when we make determinations and decisions on or after October 29, 2018. When a Federal court reviews our final decision in a claim, we expect the court will review the final decision using the rules that were in effect at the time we issued the decision under review. If a court finds reversible error and remands a case for further administrative proceedings on or after October 29, 2018, the applicable date of this ruling, we will apply this ruling to the entire period at issue in the decision we make after the court's remand. Our regulations on failure to follow prescribed treatment are unchanged.

[2] Sections 223(f) and 1614(a) of the Act. The ability to engage in SGA is the standard in adult disability claims. However, when this policy is applied in title XVI child disability claims, the standard is ''the prescribed treatment is expected to eliminate or improve the child's impairment so that it no longer results in marked and severe functional limitations.'' Similarly, for claims based on statutory blindness, the standard is the prescribed treatment would be expected to ''restore vision to the extent that the individual will no longer be blind.''

[3] See 20 CFR 404.1530 and 416.930.

[4] There are two exceptions at step 3 of the sequential evaluation process, explained in section F (below), when we will not make a failure to follow prescribed treatment determination even if these three conditions are met.

treatment.[5] We will not determine whether the individual failed to follow prescribed treatment if the treatment was prescribed only by a consultative examiner (CE), medical consultant (MC), psychological consultant (PC), medical expert (ME), or by a medical source during an evaluation conducted solely to determine eligibility to any State or Federal benefit.

Prescribed treatment means any medication, surgery, therapy, use of durable medical equipment, or use of assistive devices. Prescribed treatment does not include lifestyle modifications, such as dieting, exercise, or smoking cessation. We will consider any evidence of prescribed treatment, whether it appears on prescription forms or is otherwise indicated within a medical source's records.

We will consider treatment a medical source prescribed in the past if that treatment is still relevant to the individual's medically determinable impairments that are present during the potential period of entitlement or eligibility and upon which the disability finding was based. We will evaluate whether the individual failed to follow the prescribed treatment, and whether there is good cause for this failure, only for the period(s) during which the individual may be entitled to benefits under the Act.

For example: On January 2, 2017, an individual filed for disability benefits based on an impairment related to a lower-extremity amputation. The individual is no longer wearing a prosthesis that her medical source prescribed in 2015. We determine that the individual meets all of the other criteria for disability. In this scenario, we will evaluate whether the individual is failing to follow the prescribed treatment to wear the prosthesis during the potential entitlement period and whether the individual has good cause for not following the prescribed treatment during this period. However, we will not consider whether the individual failed to follow prescribed treatment prior to the first possible date of entitlement.

Condition 3: There Is Evidence That the Individual Did Not Follow the Prescribed Treatment

If we have any evidence that the individual is not following the prescribed treatment, this condition is satisfied. For example, a medical source may include in a treatment note that the patient has not been compliant with a prescribed medication regimen.

[5] See 20 CFR 404.1502 and 416.902 for the definition of ''medical source.''

C. How We Will Make a Failure To Follow Prescribed Treatment Determination

If all three conditions exist, we will determine whether the individual has failed to follow prescribed treatment in the claim. To make a failure to follow prescribed treatment determination, we will:

1. Assess whether the prescribed treatment, if followed, would be expected to restore the individual's ability to engage in SGA.

2. Assess whether the individual has good cause for not following the prescribed treatment.

We may make either assessment first. If we first assess that the prescribed treatment, if followed, would not be expected to restore the individual's ability to engage in SGA, then it is unnecessary for us to assess whether the individual had good cause. Similarly, if we first assess that an individual has good cause for not following the prescribed treatment, then it is unnecessary for us to assess whether the prescribed treatment, if followed, would be expected to restore the individual's ability to engage in SGA.

Assessment 1: We Assess Whether the Prescribed Treatment, if Followed, Would Be Expected To Restore the Individual's Ability To Engage in SGA

This assessment focuses on the prescribed treatment. We will determine whether we would expect the prescribed treatment, if followed, to restore the individual's ability to engage in SGA. We are responsible for making this assessment, and we will consider all the relevant evidence in the record. At the initial and reconsideration levels of the administrative review process, an MC or PC will make this assessment. At the hearings and Appeals Council (AC) levels, the adjudicator(s) will make this assessment. Although the conclusion of this assessment ultimately rests with us, we will consider the prescribing medical source's prognosis.

If we first determine that following the prescribed treatment would not be expected to restore the individual's ability to engage in SGA, then it is unnecessary for us to assess whether the individual had good cause for failing to follow the prescribed treatment. If we determine that following the prescribed treatment would restore the individual's ability to engage in SGA, we will then assess whether the individual has good cause for not following the prescribed treatment.

Assessment 2: We Assess Whether the Individual Has Good Cause for Not Following the Prescribed Treatment

This assessment focuses on whether the individual has good cause for not following the prescribed treatment.

In adult claims, the individual has the burden to provide evidence showing that he or she has good cause for failing to follow prescribed treatment.

In child claims, the parent or guardian has the burden to provide evidence showing that the child has good cause for failing to follow prescribed treatment. If the child has a representative payee and the parent, guardian, or child asserts that the child would have followed prescribed treatment but for the actions of the representative payee, we will determine whether to obtain a new representative payee. If we decide to obtain a new representative payee, we will provide additional time for the child to follow the prescribed treatment before we continue considering the claim.

To assess good cause in both adult and child claims, we will develop the claim according to the instructions in the *Development procedures* section below. The following are examples of acceptable good cause reasons for not following prescribed treatment:

1. *Religion:* The established teaching and tenets of the individual's religion prohibit him or her from following the prescribed treatment. The individual must identify the religion, provide evidence of the individual's membership in or affiliation to his or her religion, and provide evidence that the religion's teachings do not permit the individual to follow the prescribed treatment.

2. *Cost:* The individual is unable to afford prescribed treatment, which he or she is willing to follow, but for which affordable or free community resources are unavailable. Some individuals can obtain free or subsidized health insurance plans or healthcare from a clinic or other provider. In these instances, the individual must demonstrate why he or she does not have health insurance that pays for the prescribed treatment or why he or she failed to obtain treatment at the free or subsidized healthcare provider.

3. *Incapacity:* The individual is unable to understand the consequences of failing to follow prescribed treatment.

4. *Medical disagreement:* When the individual's own medical sources disagree about whether the individual should follow a prescribed treatment, the individual has good cause to not follow the prescribed treatment. Similarly, when an individual chooses

to follow one kind of treatment prescribed by one medical source to the simultaneous exclusion of an alternate treatment prescribed by another medical source, the individual has good cause not to follow the alternate treatment.

5. *Intense fear of surgery:* The individual's fear of surgery is so intense that it is a contraindication to having the surgery. We require a written statement from an individual's own medical source affirming that the individual's intense fear of surgery is in fact a contraindication to having the surgery. We will not consider an individual's refusal of surgery as good cause for failing to follow prescribed treatment if it is based on the individual's assertion that success is not guaranteed or that the individual knows of someone else for whom the treatment was not successful.

6. *Prior history:* The individual previously had major surgery for the same impairment with unsuccessful results and the same or similar additional major surgery is now prescribed.

7. *High risk of loss of life or limb:* The treatment involves a high risk for loss of life or limb. Treatments in this category include:

○ Surgeries with a risk of death, such as open-heart surgery or organ transplant.

○ Cataract surgery in one eye with a documented, unusually high-risk of serious surgical complications when the individual also has a severe visual impairment of the other eye that cannot be improved through treatment.

○ Amputation of an extremity or a major part of an extremity.

8. *Risk of addiction to opioid medication:* The prescribed treatment is for opioid medication.

9. *Other:* If the individual offers another reason for failing to follow prescribed treatment, we will determine whether it is reasonably justified on a case-by-case basis.

We will not consider as good cause an individual's allegation that he or she was unaware that his or her own medical source prescribed the treatment, unless the individual shows incapacity as described above. Similarly, mere assertions or allegations about the effectiveness of the treatment are insufficient to meet the individual's burden to show good cause for not following the prescribed treatment.

D. Development Procedures

If evidence we already have in a claim is insufficient to make the required assessment(s) in the failure to follow prescribed treatment determination, we may develop the evidence, as appropriate. This development could include contacting the individual's medical source(s) or the individual to ask why he or she did not follow the prescribed treatment. Although it may be helpful to have evidence from a CE or ME, we are not required to purchase a CE or obtain testimony from an ME to help us determine whether we expect a prescribed treatment, if followed, would restore the ability to engage in SGA. We are responsible for resolving any conflicts in the evidence, including inconsistencies between statements made by the individual and information received from his or her medical source(s). We may also evaluate the claim using the procedures for fraud or similar fault, if appropriate.

E. Required Written Statement of Failure To Follow Prescribed Treatment Determination

When we make a failure to follow prescribed treatment determination, we will explain the basis for our findings in our determination or decision.

F. When We Make a Failure To Follow Prescribed Treatment Determination Within the Sequential Evaluation Process for Initial Claims

Adult Claims That Meet or Equal a Listing at Step 3

Generally, if we find that an individual's impairment(s) meets or medically equals a listing at step 3 of the sequential evaluation process, and there is evidence of all three conditions listed in Section B above, we will determine whether the individual failed to follow prescribed treatment. We will determine whether an individual would still meet or medically equal a listing had he or she followed the prescribed treatment. If we determine the individual would no longer meet or medically equal the listing had he or she followed prescribed treatment, we will assess whether there is good cause for not following the prescribed treatment. We will determine that the individual is disabled if we find that he or she has good cause for not following the prescribed treatment. If we do not find good cause, we will continue to evaluate the claim using the sequential evaluation process by determining the individual's residual functional capacity (RFC).[6]

There are two instances when we will not make a failure to follow prescribed treatment determination at step 3 of the sequential evaluation process, even if there is evidence that an individual did not follow prescribed treatment. First, we will not make a failure to follow prescribed treatment determination when we find the individual disabled based on a listing that requires only the presence of laboratory findings. In these claims, treatment would have no effect on the disability determination or decision. Second, we will not make a failure to follow prescribed treatment determination when we find the individual is disabled based on a listed impairment(s) which requires us to consider whether the individual was following that specific treatment as part of the required listing analysis. If either of these exceptions apply, we will find the individual is disabled without making a failure to follow prescribed treatment determination.

Title XVI Child Claims That Meet, Medically Equal, or Functionally Equal the Listings at Step 3

Generally, if we find that a child's impairment(s) meets, medically equals, or functionally equals the listings at step 3 of the sequential evaluation process, and there is evidence of all three conditions listed in Section B above, we will determine whether there has been a failure to follow prescribed treatment. We will determine whether the child's impairment(s) would still meet, medically equal, or functionally equal the listings had he or she followed the prescribed treatment. If we determine the child's impairment(s) would no longer meet, medically equal, or functionally equal the listings had he or she followed prescribed treatment, we will assess whether there is good cause for not following the prescribed treatment. We will find the child is disabled if we determine that he or she has good cause for not following the prescribed treatment. If we determine that there is not good cause for failing to following the prescribed treatment, we will find the child is not disabled.

There are two instances when we will not make a failure to follow prescribed treatment determination at step 3 of sequential evaluation process even if there is evidence that a child did not follow prescribed treatment. First, we will not make a failure to follow prescribed treatment determination when we find the child is disabled based on a listing that requires only the presence of laboratory findings. In these claims, treatment would have no impact on the disability determination or decision. Second, we will not make a failure to follow prescribed treatment determination when we find the child is disabled based on a listed impairment(s) which requires us to consider whether the child was following that specific treatment as part of the required listing

[6] See 20 CFR 404.1545 and 416.945.

analysis. If either of these exceptions apply, we will find the child is disabled without making a failure to follow prescribed treatment determination.

Adult Claims Finding Disability at Step 5

If we find that an individual is disabled at step 5 of the sequential evaluation process and there is evidence the individual is not following treatment prescribed by his or her own medical source(s), before we find the individual is disabled, we will assess whether the individual would still be disabled if he or she were following the prescribed treatment.

We will determine what the individual's residual functional capacity (RFC) would be had he or she followed the prescribed treatment. We will then use that RFC to reevaluate steps 4 and 5 of the sequential evaluation process to determine whether the individual could perform his or her past relevant work at step 4 or adjust to other work at step 5. We will find the individual is disabled if we determine that the individual would remain unable to engage in SGA, even if the individual had followed the prescribed treatment. We will also find the individual is disabled if we find the individual had good cause for not following the prescribed treatment. However, we will find the individual is not disabled if the individual does not have good cause for not following the prescribed treatment and we determine that, had the individual followed the prescribed treatment, he or she could perform past relevant work or engage in other SGA.

G. Reopening a Determination or Decision

As permitted by our regulations, we may reopen a favorable determination or decision if we discover we did not apply the failure to follow prescribed treatment policy correctly.[7] We may base our reopening on the evidence we had in the folder at the time we made our determination or decision or based on new evidence we receive. When we reopen a disability or blindness determination or decision and find that an individual does not have good cause for failing to follow prescribed treatment, we will issue a predetermination notice and offer the individual an opportunity to respond before we terminate benefits.

H. Continuing Disability Reviews (CDR)

When we conduct a CDR, we will make a failure to follow prescribed treatment determination when the individual's own medical source(s) prescribed a new treatment for the disabling impairment(s) since the last favorable determination or decision and the individual did not follow the prescribed treatment.

We will also make a failure to follow prescribed treatment determination during a CDR if we find that an individual would continue to be entitled to disability or blindness benefits based upon an impairment first alleged during the CDR and there is evidence that the individual has not followed his or her own medical source's prescribed treatment for that impairment.

If we determine an individual does not have good cause for failing to follow the prescribed treatment that we have determined would restore the individual's ability engage in SGA, we will issue a predetermination notice and, because benefits may be terminated, offer the individual an opportunity to respond before terminating benefits. Individuals are entitled to benefits while we develop evidence to determine whether they failed to follow prescribed treatment. If we determine that an individual failed to follow prescribed treatment without good cause in either situation, we will cease benefits two months after the month of the determination or decision that the individual is no longer disabled or statutorily blind.

I. Duration in Disability and Title II Blindness Claims

If an individual failed to follow the prescribed treatment without good cause within 12 months of onset of disability or blindness, we will find the individual is not disabled because the duration requirement is not met.[8] However, if an individual failed to follow prescribed treatment without good cause more than 12 months after onset of disability or blindness and is otherwise disabled, we will find the individual is disabled with a closed period that ends when the individual failed to follow the prescribed treatment. In this situation, we will continue to pay benefits as usual through the second month after the month disability or blindness ends.

J. Duration in Title XVI Blindness Claims

Because title XVI blindness entitlement does not have a duration requirement, an individual meeting the title XVI blindness requirements may be entitled to benefits beginning the month after he or she applies for benefits.[9] If we determine an individual failed to follow prescribed treatment without good cause any time before the first day of the month after filing, we will find the individual is not disabled. However, if we determine the individual failed to follow prescribed treatment without good cause any time after the first day of the month after filing, we will find the individual is disabled with a closed period from the date of entitlement until the date we determined the individual failed to follow the prescribed treatment without good cause. In this situation, we will continue to pay benefits as usual through the second month after the month blindness ends.

If we need further development to determine whether a title XVI blind individual failed to follow prescribed treatment without good cause, the individual is entitled to benefits while we conduct the additional development. At the hearing and Appeals Council levels, we will refer the claim to the effectuating component to develop the evidence necessary to make a failure to follow prescribed treatment determination.

K. Claims Involving Both Drug Addiction and Alcoholism (DAA) and Failure To Follow Prescribed Treatment

In a claim that may involve both DAA and failure to follow a prescribed treatment for an impairment other than DAA, we will first make the DAA determination.[10] If we find that the individual is disabled considering all impairments including the DAA and that DAA is material to our determination of disability, we will deny the claim and not make a failure to follow prescribed treatment determination. If we find that the individual is disabled considering all impairments including the DAA, but the DAA is not material to our determination of disability, we will then make the failure to follow prescribed treatment determination for the impairment(s) other than DAA. Even if the prescribed treatment for the other impairment(s) may also have beneficial effect on the DAA, we do not reevaluate for DAA materiality a second time.

For example, we cannot find that an individual has failed to follow prescribed treatment for liver disease based on a failure to follow treatment prescribed for alcohol dependence. If the cessation of drinking alcohol would

[7] See 20 CFR 404.988, 404.989, 416.1488, and 416.1489.

[8] See 20 CFR 404.1509 and 416.909.

[9] Section 216(i)(1)(B) of the Act.

[10] See SSR 13–2p: Titles II and XVI: Evaluating Cases Involving Drug Addiction and Alcoholism (DAA), 78 FR 11939 (Mar. 22, 2013).

be expected to improve the individual's functioning so that he or she is not disabled, we would find that DAA is material to the determination of disability and deny the claim for that reason.

[FR Doc. 2018–21359 Filed 10–1–18; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2018–0011]

Social Security Ruling, SSR 18–02p; Titles II and XVI: Determining the Established Onset Date (EOD) in Blindness Claims

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are providing notice of SSR 18–02p, which rescinds and replaces the following sections of SSR 83–20, ''Titles II and XVI: Onset of Disability,''—(1) ''Title II: Blindness Cases,'' and (2) ''Title XVI—Specific Onset is Necessary,'' as it applies to blindness claims. Specifically, this SSR addresses how we determine the EOD in blindness claims under titles II and XVI of the Social Security Act (Act). We concurrently published a separate SSR, SSR 18–01p, ''Titles II and XVI: Determining the Established Onset Date (EOD) in Disability Claims,'' which rescinded and replaced all other parts of SSR 83–20. Therefore, SSR 83–20 is completely rescinded and replaced by SSR 18–01p and SSR 18–02p.

DATES: We will apply this notice on October 2, 2018.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, (410) 597–1632, *Dan.OBrien@ssa.gov.* For information on eligibility or filing for benefits, call our national toll-free number at 1–800–772–1213, or visit our internet site, Social Security online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are publishing it in accordance with 20 CFR 402.35(b)(1).

We use SSRs to make available to the public precedential decisions relating to the Federal old age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made in our administrative review process, Federal court decisions, decisions of our Commissioner, opinions from our Office of the General Counsel, or other interpretations of law and regulations.

Although SSRs do not have the force and effect of law, they are binding on all components of the Social Security Administration in accordance with 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or until we publish a new SSR in the **Federal Register** that rescinds and replaces or modifies it.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

Nancy A. Berryhill,

Acting Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Determining the Established Onset Date (EOD) in Blindness Claims

We are providing notice of SSR 18–02p which rescinds and replaces the following sections of SSR 83–20: ''Titles II and XVI: Onset of Disability,''—(1) ''Title II: Blindness Cases,'' and (2) ''Title XVI—Specific Onset is Necessary,'' as it applies to blindness claims. Concurrently, we published a separate SSR, SSR 18–01p, ''Titles II and XVI: Determining the Established Onset Date (EOD) in Disability Claims,'' which rescinded and replaced all other parts of SSR 83–20. Therefore, as of October 2, 2018, the date this SSR was published in the **Federal Register**, SSR 83–20 is completely rescinded and replaced by SSR 18–01p and SSR 18–02p.

Purpose: This SSR explains how we determine the EOD in blindness claims under titles II and XVI of the Social Security Act (Act).

Citations: Sections 216, 220, 223, 1602, 1611, and 1614 of the Act, as amended; Public Law 108–203, 118 STAT. 535; 20 CFR 404.110, 404.130, 404.303, 404.315–.316, 404.320–.321, 404.335–.336, 404.350–.351, 404.1505, 404.1510, 404.1512, 404.1572, 404.1581–.1584, 416.202, 416.305, 416.912, 416.981–.984.

Policy Interpretation:

To be entitled to disability insurance (DI) benefits under title II of the Act or eligible for Supplemental Security Income (SSI) payments under title XVI of the Act based on blindness, a claimant must file an application, meet the relevant statutory definition(s), and satisfy the applicable non-medical requirements. If we find that a claimant meets the relevant statutory definitions and meets the applicable non-medical requirements during the period covered by his or her application, we then determine the claimant's EOD. The EOD is the earliest date that the claimant meets both the relevant definitions and non-medical requirements during the period covered by his or her application.

Outline

I. What is the EOD?
- A. What is the statutory definition of blindness?
- B. What are the statutory definitions of disability for blind claimants and when do they apply?
  - 1. What is the statutory definition of disability for a title II blind claimant who is younger than 55?
  - 2. What is the statutory definition of disability for a title II blind claimant who is age 55 or older?
- C. What are the non-medical requirements?

II. What are some special considerations related to the EOD?
- A. What if a claimant meets all the requirements for DI benefits or SSI payments based on blindness and based on another impairment?
- B. *What happens when a claimant applies for DI benefits under title II and meets the statutory definition of blindness, but continues to work?*

III. When is this SSR applicable?

Discussion

I. What is the EOD?

For title II blindness claims, the EOD is the earliest date that the claimant meets the statutory definitions of blindness and disability [1] and the applicable non-medical requirements [2] for entitlement to benefits during the period covered by his or her application. For title XVI blindness claims, the EOD is the earliest date that the claimant meets the statutory definition of blindness [3] and the

[1] 42 U.S.C. 416(i)(1)(B) (defining blindness), 423(d)(1)(A) (defining disability for blind individuals younger than age 55), 423(d)(1)(B) (defining disability for statutorily blind individuals age 55 and older); 20 CFR 404.1581 (defining blindness), 404.1582 (explaining how we determine a period of disability based on blindness), 404.1583 (explaining how we determine disability for blind persons who are age 55 or older).

[2] *See, e.g.,* 20 CFR 404.315, 404.316, 404.320, 404.321 (setting forth some of the non-medical requirements for title II DI benefits), 20 CFR 404.335, 404.336 (same for title II disabled widow(er)'s benefits (DWB)), 20 CFR 404.350, 404.351 (same for title II childhood disability benefits (CDB)).

[3] 42 U.S.C. 1381a (''Every aged, *blind,* or disabled individual who is determined . . . to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this title, be paid benefits by the Commissioner of Social Security'') (emphasis added), 1382(a) (defining an eligible individual), 1382c(a)(2)

Continued

applicable non-medical requirements [4] for eligibility for SSI payments during the period covered by his or her application.

A. What is the statutory definition of blindness?

Titles II and XVI of the Act define blindness as central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. We consider an eye to have a central visual acuity of 20/200 or less when it has a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.[5] Under title XVI of the Act, an individual may also be considered blind if he or she: (1) Was found blind under a State plan approved under title X or XVI of the Act as in effect for October 1972; (2) received aid under that plan because of blindness for December 1973; and (3) continues to be blind as defined under that plan.[6]

B. What are the statutory definitions of disability for blind claimants and when do they apply?

A claimant who seeks DI benefits under title II based on blindness must show that he or she meets the statutory definition of blindness as well as the statutory definition of disability during the period under consideration.[7] A claimant who seeks SSI payments under title XVI based on blindness need only show that he or she meets the statutory definition of blindness during the period under consideration.[8] Title II of the Act defines disability differently for those who are younger than age 55 and those who are age 55 or older.

1. What is the statutory definition of disability for a title II blind claimant who is younger than 55?

For claimants who meet the statutory definition of blindness during the period under consideration and are younger than age 55, the Act defines disability as the inability to engage in any substantial gainful activity (SGA) [9] by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.[10]

2. What is the statutory definition of disability for a title II blind claimant who is age 55 or older?

For claimants who meet the statutory definition of blindness during the period under consideration and are age 55 or older, the Act defines disability as the inability by reason of such blindness to engage in SGA requiring skills or abilities comparable to those of any gainful activity in which the claimant has previously engaged with some regularity and over a substantial period of time.[11]

C. What are the non-medical requirements?

A claimant is not entitled to DI benefits or eligible for SSI payments based on blindness unless he or she meets the applicable non-medical requirements. The non-medical requirements—such as the insured status requirements under title II and the income and resource limitations under title XVI—vary based on the type(s) of claim(s) the claimant filed. To illustrate, we identify below the most common types of claims and some of the regulations that explain the non-medical requirements for that type of claim.

- *DI Benefits:* 20 CFR 404.315, 404.316, 404.320, 404.321;
- *Disabled Widow(er)'s Benefits (DWB):* 20 CFR 404.335, 404.336;
- *Childhood Disability Benefits (CDB):* 20 CFR 404.350, 404.351; and
- *SSI:* 20 CFR 416.202, 416.305.

II. What are some special considerations related to the EOD?

A. What if a claimant meets all the requirements for DI benefits or SSI payments based on blindness and based on another impairment?

If a claimant meets all the requirements for entitlement to DI benefits or eligibility for SSI payments based on blindness, and also meets all the requirements for entitlement to DI benefits or eligibility for SSI payments based on another impairment, we will establish two EODs. One EOD will be for the first date the claimant meets all the requirements for entitlement to DI benefits or eligibility for SSI payments based on blindness, and the other will be for the first date the claimant meets all the requirements based on the other impairment. The EOD for the other impairment may be before or after the EOD for blindness.

B. What happens when a claimant applies for DI benefits under title II and meets the statutory definition of blindness, but continues to work?

If a claimant applies for DI benefits under title II and meets the insured status requirements [12] and the statutory definition of blindness, but continues to work (even at the SGA level), we may establish a period of disability for him or her. A period of disability must last for at least five consecutive, full calendar months.[13] If we establish a period of disability, we ''freeze'' the claimant's earnings during that period and will not use them to compute cash benefits (unless it advantages the claimant) or to determine whether the claimant still has insured status.[14] However, a period of disability, or disability freeze, does not automatically entitle the claimant to monthly cash benefits.[15] To be entitled to monthly cash benefits, the claimant must still meet the statutory definitions of blindness and disability and the

(defining blindness); 20 CFR 416.981 (defining blindness), 419.982 (explaining when we will consider an individual to be blind based on a State plan).

[4] *See, e.g.,* 20 CFR 416.202, 416.305 (setting forth some of the non-medical requirements for title XVI SSI payments).

[5] 42 U.S.C. 416(i)(1)(B), 1382C(a)(2); 20 CFR 404.1581, 416.981.

[6] 42 U.S.C. 1382c(a)(2); 20 CFR 416.982.

[7] 42 U.S.C. 423(d)(1)(A), (B); 20 CFR 404.1512(a), 404.1582, 404.1583.

[8] 42 U.S.C. 1381a (''Every aged, *blind,* or disabled individual who is determined . . . to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this title, be paid benefits by the Commissioner of Social Security'') (emphasis added), 1382(a) (defining an eligible individual); 20 CFR 416.912 (providing that, in general, a claimant must prove to us that he or she is blind), 416.981 (defining blindness), 416.982 (explaining when we will consider an individual to be blind based on a State plan).

[9] 20 CFR 404.1510 (defining SGA as significant and productive physical or mental duties done (or intended) for pay or profit), 404.1572 (providing further details about what we mean by SGA); *see also* 42 U.S.C. 423(d)(4)(A), 20 CFR 404.1584 (collectively describing how to calculate SGA for claimants who meet the statutory definition of blindness).

[10] 42 U.S.C. 423(d)(1)(A).

[11] *Id.* at (d)(1)(B).

[12] 20 CFR 404.110 (describing how we determine fully insured status and explaining that an individual needs at least six quarters of coverage but not more than 40 quarters of coverage to be fully insured), 404.130(e) (explaining that a claimant is insured in a quarter for purposes of establishing a period of disability or becoming entitled to DI benefits if in that quarter the claimant meets the statutory definition of blindness and is fully insured).

[13] 20 CFR 404.320(a), (b)(4) (explaining that ''[a] period of disability is a continuous period of time during which you are disabled'' and that one of the requirements to be ''entitled to a period of disability . . . [is that a]t least 5 consecutive months go by from the month in which [the claimant's] period of disability begins and before the month in which it would end'').

[14] 42 U.S.C. 420; 20 CFR 404.1582.

[15] 20 CFR 404.1582.

applicable non-medical requirements during the period covered by his or her application.

For purposes of determining the EOD, if we find that the claimant meets the insured status requirements and the statutory definition of blindness, but he or she is performing SGA, we will establish up to two dates. First, we will establish a disability freeze date, which is the date the claimant first met the insured status requirements and the statutory definition of blindness. If the claimant later stops working or his or her work is no longer SGA, we will establish a second date called the ''adjusted blind onset date'' (ABOD). The ABOD is the date the claimant stopped performing SGA and became entitled to monthly cash benefits under title II of the Act, subject to a five-month waiting period.

The five-month waiting period begins with the first full month that the claimant does not perform SGA. However, if the claimant is age 55 or older and performing SGA, we consider how the claimant's work activity compares with work he or she did in the past.[16] We consider work to be non-comparable if it requires skills and abilities that are less than or different from those the claimant used in the work he or she did in the past.[17] If the claimant is age 55 or older and performing ''non-comparable'' SGA, we will count the months the claimant performs ''non-comparable'' SGA in the waiting period if they also fall within the period of disability.

We cannot establish a disability freeze for DWB or CDB claimants under title II of the Act. There is also no freeze equivalent for SSI claimants under title XVI of the Act. However, to be eligible for SSI payments based on disability under title XVI, a claimant need only meet the statutory definition of blindness and the applicable non-medical requirements. Thus, a claimant seeking SSI payments based on blindness need not show that he or she is unable to perform SGA, but if the claimant is working, we will consider his or her earnings under the income and resource rules of title XVI of the Act.[18] When a claimant's income or resources exceed the Act's limitations, he or she is ineligible for SSI payments under title XVI because he or she does not meet the applicable non-medical requirements,[19] even though the claimant meets our statutory definition of blindness.[20]

III. When is this SSR applicable?

This SSR is applicable on October 2, 2018. We will use this SSR beginning on its applicable date. We will apply this SSR to new applications filed on or after the applicable date of the SSR and to claims that are pending on and after the applicable date. This means that we will use this SSR on and after its applicable date in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions. If a court reverses our final decision and remands a case for further administrative proceedings after the applicable date of this SSR, we will apply this SSR to the entire period at issue in appropriate cases when we make a decision after the court's remand.

[FR Doc. 2018–21369 Filed 10–1–18; 8:45 am]

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[16] 20 CFR 404.1584(c).

[17] *Id.*

[18] 20 CFR 416.983(b), 416.984.

[19] 20 CFR 416.202(c), (d) (explaining that to be eligible for SSI payments, a claimant may not have ''more income than is permitted'' or ''more resources than are permitted'').

[20] 20 CFR 416.984.

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at September 7, 2018, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on September 7, 2018, in Binghamton, New York, the Commission approved or tabled the applications of certain water resources projects, and took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: September 7, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Ava Stoops, Administrative Specialist, telephone: 717–238–0423; fax: 717–238–2436; *srbc@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission website at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) Tabling the release of a proposed rulemaking for consideration at a future Commission meeting; (2) adoption of an update to the Commission's investment policy statement addenda; (3) granting a request from Lycoming County Water & Sewer Authority to extend the deadline to commence withdrawal by two years; (4) approval of several grant amendments and agreements, and an equipment purchase; (5) tabling action on a resolution for a consumptive use water storage and mitigation project at Billmeyer Quarry for consideration at the December 2018 Commission meeting; and (6) a report on a delegated settlement, pursuant to Commission Resolution 2014–15, with Moxie Freedom, LLC, in the amount of $1,200.

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor and Facility: ARD Operating, LLC (Pine Creek), McHenry Township, Lycoming County, Pa. Renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20140902).

2. Project Sponsor and Facility: BKV Operating, LLC (East Branch Wyalusing Creek), Jessup Township, Susquehanna County, Pa. Renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20140904).

3. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Tunkhannock Creek), Nicholson Township, Wyoming County, Pa. Renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20140903).

4. Project Sponsor and Facility: Columbia Water Company, Hellam Township, York County, Pa. Groundwater withdrawal of up to 0.015 mgd (30-day average) from Dugan Well 4.

5. Project Sponsor and Facility: Eclipse Resources-PA, LP (Cowanesque River), Deerfield Township, Tioga County, Pa. Surface water withdrawal of up to 3.000 mgd (peak day).

6. Project Sponsor and Facility: Elizabethtown Area Water Authority, Elizabethtown Borough, Lancaster County, Pa. Renewal of groundwater withdrawal of up to 0.300 mgd (30-day average) from Well 5 (Docket No. 19880402).

7. Project Sponsor and Facility: Inflection Energy (PA) LLC (Loyalsock Creek), Upper Fairfield Township, Lycoming County, Pa. Renewal of surface water withdrawal of up to 1.700 mgd (peak day) (Docket No. 20140905).

8. Project Sponsor: Lancaster County Solid Waste Management Authority. Project Facility: Solid Waste Resource Recovery, Conoy Township, Lancaster County, Pa. Renewal of consumptive use of up to 0.950 mgd (peak day) (Docket No. 19880901).

9. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Susquehanna River), Terry Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20140909).

10. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Wappasening Creek), Windham Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20140910).

11. Project Sponsor and Facility: SWEPI LP (Cowanesque River), Deerfield Township, Tioga County, Pa. Modification to reduce surface water withdrawal from 2.000 mgd to 1.000 mgd (peak day) and reassess passby flow thresholds (Docket No. 20161218).

12. Project Sponsor and Facility: Togg Mountain LLC, Town of Fabius, Onondaga County, NY. Consumptive use of up to 0.485 mgd (peak day).

13. Project Sponsor and Facility: Togg Mountain LLC (West Branch of Tioughnioga Creek), Town of Fabius, Onondaga County, NY. Surface water withdrawal of up to 2.200 mgd (peak day).

14. Project Sponsor and Facility: Towanda Municipal Authority, North Towanda Township, Bradford County, Pa. Groundwater withdrawal of up to 0.432 mgd (30-day average) from Church Production Well 1.

15. Project Sponsor and Facility: Towanda Municipal Authority, North Towanda Township, Bradford County, Pa. Groundwater withdrawal of up to 1.000 mgd (30-day average) from Roberts Production Well 1.

16. Project Sponsor and Facility: Towanda Municipal Authority, North Towanda Township, Bradford County, Pa. Groundwater withdrawal of up to 1.000 mgd (30-day average) from Roberts Production Well 2.

Project Applications Tabled

The Commission tabled action on the following project applications:

1. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Beech Mountain System, Butler Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.144 mgd (30-day average) from Beech Mountain Well 1.

2. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Beech Mountain System, Butler Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.144 mgd (30-day average) from Beech Mountain Well 2.

3. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Beech Mountain System, Butler Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.124 mgd (30-day average) from Beech Mountain Well 3.

Project Application Withdrawn

The following project application was withdrawn by the project sponsor:

1. Project Sponsor and Facility: Eclipse Resources-PA, LP (Pine Creek), Gaines Township, Tioga County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: September 27, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–21416 Filed 10–1–18; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Fixing America's Surface Transportation (FAST) Act; Solicitation for Candidate Projects in the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP)

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; solicitation for applications.

SUMMARY: The FHWA invites State transportation departments to submit applications for candidate projects in the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP), authorized in section 1216(b) of the Transportation Equity Act for the 21st Century and amended by section 1411(c) of the Fixing America's Surface Transportation (FAST) Act. Under ISRRPP, FHWA may permit up to three States to collect tolls on a facility on the Interstate System for the purpose of reconstructing or rehabilitating Interstate highway corridors that could not otherwise be adequately maintained or functionally improved without the collection of tolls. This notice describes general program provisions, eligibility and selection criteria, and the application submission and evaluation process.

DATES: Applications will be considered on a first-come, first serve rolling basis until further notice. The FHWA will review submissions in the order that they are received and award provisional approvals to States that will be expected to fully satisfy ISRRPP criteria within 3 years. The FHWA will conduct regular information sessions regarding ISRRPP. Regular program updates will be available as to how many provisional slots are available. For more information, please visit: *https://www.fhwa.dot.gov/ipd/tolling_and_pricing/.*

FOR FURTHER INFORMATION CONTACT: For questions about the pilot program: Ms. Cynthia Essenmacher, Center for Innovative Finance Support, Office of Innovative Program Delivery, Federal Highway Administration, 315 West Allegan Street, Room 201, Lansing, MI 48933, (517) 702–1856. For legal questions: Mr. Steven Rochlis, Office of the Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–1395. Office hours are from 8:00 a.m. to 4:30 p.m. E.T., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Program Description
B. Program Slots
C. Eligibility Information
D. Submission Information
E. Review Information
F. Requirements for Provisionally Approved Projects

A. Program Description

1. Tolling Authority Under ISRRPP

The FAST Act Section 1411(c) amends ISRRPP authorized under Section 1216(b) of the Transportation Equity Act for the 21st Century (TEA–21). The ISRRPP allows a State to collect tolls on a facility on the Interstate System in order to reconstruct or rehabilitate an Interstate highway corridor that could not otherwise be adequately maintained or functionally improved without the collection of tolls. Up to three facilities may participate in ISRRPP, and each must be geographically located in a different State.

Since ISRRPP's establishment in 1998, several States have requested and received what FHWA has termed ''provisional approval'' of pilot projects, also referred to as the reservation of a ''program slot.'' The purpose of this step has been to enable States to invest the considerable resources needed to fully satisfy the program criteria, which are described below, without fear of being superseded by a subsequent applicant. To date, however, no State has fully satisfied ISRRPP criteria.

2. Other Interstate Tolling Authority

The ISRRPP is not the only authority available to States to toll facilities on the

Interstate System. Today, the 46,730-mile Interstate System includes approximately 2,900 miles of toll roads, most built as turnpikes and incorporated into the system in 1957. Current Federal law provides several options for States to toll Interstate facilities. The authorities in 23 United States Code (U.S.C.) 129(a)(1) now allow for the initial construction of an Interstate toll facility; the conversion of an Interstate high occupancy vehicle (HOV) lane to a toll facility; the expansion of an Interstate highway and tolling of the new capacity as long as the current number of toll-free non-HOV lanes is maintained; and the reconstruction or replacement of a toll-free Interstate System bridge or tunnel and its conversion to a toll facility.

Additional authorities are provided under 23 U.S.C. 166(c), which allows public agencies to permit toll-paying vehicles that do not meet minimum occupancy standards to use high-occupancy vehicle (HOV) lanes. Such lanes are commonly referred to as high occupancy toll (HOT) lanes. Finally, the Value Pricing Pilot Program (VPPP), initially authorized in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, Pub. L. 102–240) as the Congestion Pricing Pilot Program and subsequently amended under other laws, encourages implementation and evaluation of value pricing pilot projects to manage congestion through tolling and other pricing mechanisms on facilities both on and off the Interstate System. All these current tolling authorities are separate and distinct from ISRRPP.

3. FAST Act Amendments to ISRRPP

The FAST Act amendments to ISRRPP create several changes. First, acknowledging the key role that State legislative authority has in implementing ISRRPP, the FAST Act adds the specific selection criterion that ''a State has the authority required for the project to proceed.'' This addresses a common challenge facing those States that have held provisional approvals, *i.e.,* securing legal authority from their State legislatures to collect tolls on a currently toll-free Interstate highway.

Second, the FAST Act specifies timeframes under which States with provisional approvals must complete the program's requirements. Any State receiving a provisional approval as a result of this solicitation will have 3 years from the date of the approval to fully satisfy the program criteria, complete environmental review under the National Environmental Policy Act of 1969 (NEPA), and execute a toll agreement with FHWA. The FAST Act allows for a 1-year extension of the 3-year provisional approval if the State demonstrates material progress toward implementation of its pilot project.

Third, the FAST Act gave the States holding provisional approvals at the time the FAST Act was enacted 1 year to satisfy the program criteria or request an extension for an additional year. On the date of enactment, December 4, 2015, three States—Missouri, North Carolina and Virginia—held ISRRPP provisional approvals. Since then, all three have relinquished their program slots.

B. Program Slots

In announcing this ISRRPP solicitation, FHWA seeks applications from States for candidate projects under the program.

Based on the program's experience, FHWA believes it unlikely that any State would invest the considerable effort to develop an application that fully satisfies the program criteria without assurance that its efforts would not be superseded by a competing applicant. Conversely, FHWA recognizes that provisional approval and the reservation of a program slot—while allowing a State to work in earnest to meet the program's environmental, financial, public support and operational requirements—also inhibits other States from pursuing similar projects. Therefore, FHWA will review each candidate project thoroughly before making any commitment of provisional approval.

As provided in Section 1411(c) of the FAST Act, FHWA may grant provisional approval to up to three projects that will fully implement ISRRPP (reconstruct or rehabilitate an Interstate segment and convert it to a toll facility) based on an assessment that eligibility and selection criteria can be met. At the present time, all three program slots are available.

This solicitation does not offer any Federal funds for these projects. Formula Federal-aid highway funds may be used toward a candidate project, subject to the eligibility requirements for these funds. In addition, a candidate project may qualify for credit assistance under 23 U.S.C. 601–609, DOT's Transportation Infrastructure Finance and Innovation Act (TIFIA) credit program.

While Section 1216(b)(6) of TEA–21 specifically prohibited the use of Interstate Maintenance (IM) funds on the Interstate facility covered by an ISRRPP project during the period tolls are collected, the IM program has since been discontinued. Given the expansion of tolling authority under 23 U.S.C. 129, the restriction on use of IM funds is not applied to the use of eligible funding sources, including the National Highway Performance Program.

C. Eligibility Information

To be selected for provisional approval in ISRRPP, an applicant must be a State DOT and the project must be a facility on the Interstate System.

1. Interstate Facility

A facility on the Interstate System is considered to be a route on the Dwight D. Eisenhower National System of Interstate and Defense Highways as described in 23 U.S.C. 103(c). This is the originally designated Interstate System and includes those Interstate additions under former 23 U.S.C. 139(a).

A State may propose only a single Interstate facility as its candidate project, and each facility selected by FHWA must be in a different State.

Note that the existing statute in 23 U.S.C. 129(a)(1)(E) already allows for reconstruction or replacement of a toll-free Interstate bridge or tunnel and its conversion to a toll facility. For the purposes of ISRRPP, the scope of the candidate project must include reconstruction or rehabilitation throughout the Interstate facility (not solely on bridges or tunnels), where estimated improvement costs exceed available funding sources and work cannot be advanced without the collection of tolls.

2. Toll Revenue Uses

The ISRRPP's conditions on toll revenue uses reflect the intent that tolls are collected to reconstruct or rehabilitate an Interstate facility, not to support other surface transportation projects. The State must execute an agreement with FHWA specifying that toll revenues received from operation of the facility will be used in accordance with the requirements set forth in Section 1216(b)(5) of TEA–21. This section requires that all toll revenues be used only for (1) debt service, (2) reasonable return on investment of any private person financing the project, and (3) any costs necessary for the improvement of and the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration and rehabilitation of the toll facility. It is important that applicants understand that these conditions are more restrictive than those that apply to projects authorized under 23 U.S.C. 129 or 23 U.S.C. 166.

In addition, the toll agreement must include a provision that the State will conduct regular (*e.g.,* annual) audits to ensure compliance with the provisions

regarding use of toll revenues, and the results of these audits will be transmitted to FHWA.

The FHWA is concerned that the initiation of new toll collection should not occur until it is evident to the traveling public that tolls will result in investment on the facility. Accordingly, the earliest that tolls may be imposed on an ISRRPP facility is the date of award of a contract for the physical reconstruction or rehabilitation of a significant portion of the facility. In the case of a design-build contract or public-private partnership agreement, this would occur when a notice to proceed for the physical construction has been issued or when the design-builder otherwise becomes contractually obligated to accomplish the physical construction activities of the project.

3. Federal-Aid Requirements

Regardless of whether Federal-aid funds are to be used in the reconstruction or rehabilitation activities, each ISRRPP project must satisfy the applicable Federal laws, rules and regulations set forth in title 23 U.S.C. and title 23 Code of Federal Regulations.

A State receiving provisional approval must complete the environmental review and permitting process under (NEPA, 42 U.S.C. 4321 *et seq.*) for the candidate project before it can receive final approval. The NEPA analysis must take into account not only the impacts of the proposed reconstruction or rehabilitation activities but also consider impacts associated with converting the toll-free facility to a toll facility.

D. Submission Information

A State that seeks to participate in the pilot program must submit an application that addresses the program's statutory eligibility and selection criteria as described below.

1. Address

A State DOT must submit the application to its respective FHWA Division Office. Subsequent application tasks will also be coordinated through the Division Office.

2. Content and Form of Application

Although the State DOT may determine the appropriate form, the application package is limited to no more than 25 pages. The FHWA recommends that the project narrative be prepared with standard formatting preferences (*i.e.,* a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins). The project narrative may not exceed 25 pages in length, excluding cover pages and table of contents. The only substantive portions that may exceed the 25-page limit are supporting documents to support assertions or conclusions made in the 25-page project narrative. If necessary, FHWA may request supplemental or clarifying information from the State.

The application should include information required for FHWA to assess each of the criteria specified in Section E (Review Information). The State should demonstrate the responsiveness of a project to any pertinent selection criteria with the most relevant information it can provide, regardless of whether such information has been specifically requested, or identified, in this notice. The application should describe all critical project milestones and the State's current progress toward achieving them.

The FHWA recommends that the application adhere to the following basic outline and the project narrative include a table of contents, maps, and graphics as appropriate to inform the review. The specific statutory references from Section 1216 of TEA–21 (as amended by Section 1411 of the FAST Act) are noted in brackets after each item:

i. *Project Description:* An identification of the facility on the Interstate System proposed to become a toll facility, including the age, condition, and intensity of use of the facility [1216(b)(3)(A)].

ii. *Metropolitan Planning Organization (MPO) Consultation:* In the case of a facility that affects a metropolitan area, a description of the State's current consultations regarding the candidate project with that area's MPO established under 23 U.S.C. 134. Full satisfaction of this eligibility criteria requires an assurance that MPO for the area has been consulted concerning the placement and amount of tolls on the facility [1216(b)(3)(B)].

iii. *Financial Analysis:* An analysis demonstrating that the facility could not be maintained or improved to meet current or future needs from the State's Federal-aid apportionments and allocations and from revenues for highways from any other source without toll revenues [1216(b)(3)(C)].

iv. Facility Management Plan:

(a) A plan for implementing tolls on the facility [1216(b)(3)(D)(i)]. Note that an approved plan must take into account the interests of local, regional, and Interstate travelers [1216(b)(4)(C)].

(b) A proposed schedule and finance plan for the reconstruction or rehabilitation of the facility using toll revenues [1216(b)(3)(D)(ii)]. The plan should give extensive focus to the development phase requirements, including among its milestones the completion of NEPA, the acquisition of tolling authority from the legislature, and the issuance of any debt backed by toll revenues.

(c) A description of the public transportation agency that will be responsible for implementation and administration of the candidate project [1216(b)(3)(D)(iii)].

(d) A description of whether consideration will be given to privatizing the maintenance and operational aspects of the facility, while retaining legal and administrative control of the portion of the Interstate route [1216(b)(3)(D)(iv)]. Note that ISRRPP selection criteria require the State to give preference to the use of a public toll agency with demonstrated capability to build, operate and maintain a toll expressway system meeting criteria for the Interstate System [1216(b)(4)(E)].

(e) A statement as to whether the State currently has the authority required for the toll project to proceed and, if not, a plan and timetable for when such authority will be obtained [1216(b)(4)(F)].

3. Submission Date

A State DOT may submit an application to its FHWA Division Office at any time. Applications will be considered on a first-come, first serve rolling basis until further notice. States are strongly encouraged to work closely with their respective division offices throughout the preparation of the application.

E. Review Information

1. Review and Selection Process

The FHWA will perform an initial eligibility review of an application. Based on its knowledge of the proposed project and the State's highway program, FHWA will evaluate the project's technical and financial feasibility, risks, planning approvals, NEPA and other environmental reviews/approvals, tolling authority, agreements to operate and maintain a toll expressway system, and other implementation agreements.

The FHWA Headquarters evaluation team will use the information in the application to assess the State's readiness and capability to fully satisfy the ISRRPP criteria in order to deliver the candidate project. Based upon this evaluation, FHWA may provide a provisional approval to the applicant State if it is expected to be able to fully

satisfy the following selection criteria within 3 years. The selection criteria are set forth (*in italics*) in Section 1216(b)(4) of TEA–21 as amended by Section 1411(c)(1) of the FAST Act:

A. *The State is unable to reconstruct or rehabilitate the proposed toll facility using existing apportionments.* Because Federal-aid formula apportionments can support municipal bond issues (*i.e.,* GARVEEs), the State must demonstrate that toll revenue financing (whether through the TIFIA Program or another capital market source) is essential to raising the needed funds. This information should be provided in the Financial Analysis section of the application.

B. *The facility has a sufficient intensity of use, age, or condition to warrant the collection of tolls.* A State should use its asset management process or life cycle planning analysis to support this criterion. This effort should include conducting a performance gap analysis to identify deficiencies hindering progress toward improving or preserving the facility and achieving and sustaining the desired state of good repair. The FHWA will give preference to a facilities with a greater gap between current/projected and target performance. This information should be provided in the Project Description section of the application.

C. *The State plan for implementing tolls on the facility takes into account the interests of local, regional, and Interstate travelers.* The FHWA will give preference to candidate projects that have already been considered for tolling as a strategy in their State and MPO long-range plans, which should also take into account the impact of tolling on local, regional, and Interstate freight movement. This information should be provided in the Facility Management Plan section of the application.

D. *The State plan for reconstruction or rehabilitation of the facility using toll revenues is reasonable.* A reasonable plan will balance the estimated sources and uses of funds in accordance with the requirements on toll revenue use set forth in Section 1216(b)(5) of TEA–21. Likewise, the estimated cost of the candidate project must be matched by a financial plan that includes traffic and revenue projections sufficient to secure the needed debt component. This information should be provided in the Facility Management Plan section of the application.

E. *The State has given preference to the use of a public toll agency with demonstrated capability to build, operate, and maintain a toll expressway system meeting criteria for the Interstate System.* Should a State determine that its public toll agencies lack the capability or resources to take on the candidate project, a public-private partnership may well provide a viable alternative. This information should be provided in the Facility Management Plan section of the application.

F. *The State has the authority required for the project to proceed.* The lack of such authority has previously prevented provisionally approved projects from fully satisfying the program criteria. The FHWA will give preference to candidate projects that have already obtained statutory authority to toll the candidate project or, lacking that, demonstrate the likelihood of obtaining the authority to toll the candidate project as evidenced by expressions of support for the project from State and local governments, community interests, and the public. The FHWA will also give preference to candidate projects that demonstrate the likelihood of completing the environmental review and permitting process under the NEPA within 3 years of provisional approval. This information should be provided in the Facility Management Plan section of the application.

F. Requirements for Provisionally Approved Projects

Should FHWA provisionally approve a candidate project, a State will have 3 years from the date the provisional approval is granted in which to:

- Submit a complete application that fully satisfies the eligibility and selection criteria noted above [1216(b)(6)(A)(i)].
- Complete environmental review and permitting process under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) for the project [1216(b)(6)(A)(ii)].
- Execute a toll agreement [1216(b)(6)(A)(iii)].

Further, FHWA may allow for a 1-year extension of the provisional approval if the State demonstrates material progress toward implementation of the project as evidenced by:

- Substantial progress in completing the environmental review and permitting process for the pilot project under NEPA [1216(b)(6)(B)(i)].
- Funding and financing commitments for the project [1216(b)(6)(B)(ii)].
- Expressions of support for the project from State and local governments, community interests, and the public [1216(b)(6)(B)(iii)].
- Submission of a facility management plan as noted under the eligibility criteria above [1216(b)(6)(B)(iv)].

Given the extensive State DOT and FHWA collaboration needed to implement a project under the ISRRPP, FHWA will regularly assess the progress of each provisionally approved project. Should it become evident that the project will not meet the statutory deadline, FHWA reserves the right to revoke the provisional approval prior to the deadline and re-offer the program slot to other State DOTs.

Issued on: September 24, 2018.

Brandye L. Hendrickson,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 2018–21340 Filed 10–1–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2018–0024; Notice No. 2018–11]

Hazardous Materials: Public Meeting Notice for International Standards on the Transport of Dangerous Goods

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), (DOT).

ACTION: Notice of public meetings.

SUMMARY: This notice announces that on Tuesday, November 13, 2018, PHMSA will host two public meetings. The first meeting—led by PHMSA—will solicit public input on current proposals and discuss potential new work items for inclusion in the agenda of the 54th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG). The second meeting—led by the Occupational Safety and Health Administration (OSHA)—will discuss proposals in preparation for the 36th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS).

Time and Location: Both public meetings will be held at DOT Headquarters, 1200 New Jersey Avenue SE, West Building, Conference Center, Washington, DC 20590–0001 on Tuesday, November 13, 2018.

PHMSA Public Meeting: 9 a.m. to 12 p.m. Eastern Standard Time.

OSHA Public Meeting: 1 p.m. to 4 p.m. Eastern Standard Time.

Registration: DOT requests that attendees pre-register for these meetings by completing the form at *https://www.surveymonkey.com/r/XGN8J7X*. Attendees may use the same form to

pre-register for both meetings. Failure to pre-register may delay access into the DOT Headquarters building. Additionally, if attending in person, please arrive early to allow time for clearing required building security checks.

Conference call-in and ''Skype meeting'' capability will be provided for both meetings. Specific information about remote meeting access information will be posted when available at *https://www.phmsa.dot.gov/international-program/international-program-overview* under ''Upcoming Events''.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Webb or Mr. Aaron Wiener, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC. Telephone: (202) 366–8553. Email: *steven.webb@dot.gov* or *aaron.wiener@dot.gov*.

SUPPLEMENTARY INFORMATION:

PHMSA Public Meeting

The primary purpose of PHMSA's meeting is to prepare for the 54th session of the UNSCOE TDG. This session represents the final meeting scheduled for the 2017–2018 biennium. UNSCOE will consider proposals for the 21st Revised Edition of the *United Nations Recommendations on the Transport of Dangerous Goods* (Model Regulations), which may be incorporated into relevant domestic, regional, and international regulations from January 1, 2021. Copies of working documents, informal documents, and the meeting agenda may be obtained from the United Nations (UN) Transport Division's website at; *https://www.unece.org/trans/main/dgdb/dgsubc3/c32018.html*.

General topics on the agenda for the UNSCOE TDG meeting include:

- Explosives and related matters;
- Listing, classification, and packing;
- Electric storage systems;
- Transport of gases;
- Global harmonization of regulations on the Transport of Dangerous Goods with the Model Regulations;
- Guiding principles for the Model Regulations;
- Cooperation with the International Atomic Energy Agency;
- New proposals for amendments to the Model Regulations;
- Issues relating to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS); and
- Miscellaneous pending issues.

Following the 54th session of the UNSCOE TDG, a copy of the Sub-Committee's report will be available at the UN Transport Division's website at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3rep.html.* Additional information regarding the UNSCOE TDG and related matters can be found on PHMSA's website at *https://www.phmsa.dot.gov/international-program/international-program-overview*.

OSHA Public Meeting

The **Federal Register** notice and additional detailed information relating to OSHA's public meeting will be available upon publication at *www.federalregister.gov*. (Docket No. OSHA–2016–0005). OSHA is hosting the meeting in preparation for the 36th session of the UNSCEGHS. It will provide interested groups and individuals with an update on GHS-related issues, as well as solicit input on the development of U.S. Government positions on proposals submitted to the UNSCEGHS.

Signed on September 27, 2018 at Washington, DC.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2018–21437 Filed 10–1–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

United States Mint

Public Meeting of Citizens Coinage Advisory Committee

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notification of Citizens Coinage Advisory Committee October 16, 2018, Public Meeting.

SUMMARY: The United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for October 16, 2018.

Date: October 16, 2018.

Time: 10:00 a.m. to 3:30 p.m.

Location: Second Floor Conference Room, United States Mint, 801 9th Street NW, Washington, DC 20220.

Subject: Review and discussion of concepts for the 2021 and 2022 Native American $1 Coins; design concepts for the 2021–2025 American Eagle Platinum Coin series; and candidate designs for the 2020 Coast Guard Medal and the 2020 Air Force Medal.

Interested members of the public may either attend the meeting in person or dial in to listen to the meeting at (866) 564–9287/Access Code: 62956028.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by email to *info@ccac.gov.*

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended.

Members of the public interested in attending the meeting in person will be admitted into the meeting room on a first-come, first-serve basis as space is limited. Conference Room A&B can accommodate up to 50 members of the public at any one time. In addition, all persons entering a United States Mint facility must adhere to building security protocol. This means they must consent to the search of their persons and objects in their possession while on government grounds and when they enter and leave the facility, and are prohibited from bringing into the facility weapons of any type, illegal drugs, drug paraphernalia, or contraband.

The United States Mint Police Officer conducting the screening will evaluate whether an item may enter into or exit from a facility based upon federal law, Treasury policy, United States Mint Policy, and local operating procedure; and all prohibited and unauthorized items will be subject to confiscation and disposal.

FOR FURTHER INFORMATION CONTACT: Betty Birdsong, Acting United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7200.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: September 25, 2018.

David J. Ryder,

Director, United States Mint.

[FR Doc. 2018–21335 Filed 10–1–18; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 83 Tuesday,

No. 191 October 2, 2018

Part II

Securities and Exchange Commission

17 CFR Parts 210, 229, 239, et al.

Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 239, 240, and 249

[Release No. 33–10526; 34–83701; File No. S7–19–18]

RIN 3235–AM12

Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the financial disclosure requirements for guarantors and issuers of guaranteed securities registered or being registered, and issuers' affiliates whose securities collateralize securities registered or being registered in Regulation S–X to improve those requirements for both investors and registrants. The proposed changes are intended to provide investors with material information given the specific facts and circumstances, make the disclosures easier to understand, and reduce the costs and burdens to registrants. In addition, by reducing the costs and burdens of compliance, issuers may be encouraged to offer guaranteed or collateralized securities on a registered basis, thereby affording investors protection they may not be provided in offerings conducted on an unregistered basis. Finally, by making it less burdensome and less costly for issuers to include guarantees or pledges of affiliate securities as collateral when they structure debt offerings, the proposed revisions may increase the number of registered offerings that include these credit enhancements, which could result in a lower cost of capital and an increased level of investor protection.

DATES: Comments should be received on or before December 3, 2018.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use our internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–19–18 on the subject line.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–19–18. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method of submission. We will post all comments on our website (*http://www.sec.gov/rules/other.shtml*). Comments also are available for website viewing and printing in our Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

We or the staff may add studies, memoranda, or other substantive items to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Jarrett Torno, Assistant Chief Accountant, at (202) 551–3400, or John Fieldsend, Special Counsel, at (202) 551–3430, in the Division of Corporation Finance, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend

Commission reference	CFR citation (17 CFR)
Regulation S–X: [1]	
Rule 3–10	210.3–10
Rule 3–16	210.3–16
Rule 8–01	210.8–01
Rule 8–03	210.8–03
Rule 10–01	210.10–01
Rule 13–01	210.13–01
Rule13–02	210.13–02
Regulation S–K: [2]	
Item 504	229.504
Item 1100	229.1100
Item 1112	229.1112
Item 1114	229.1114
Item 1115	229.1115
Securities Act of 1933 (Securities Act): [3]	
Form F–1	239.31
Form F–3	239.33
Form 1–A	239.90
Form 1–K	239.91
Form 1–SA	239.92
Securities Exchange Act of 1934 (Exchange Act): [4]	
Rule 12h–5	240.12h–5
Form 20–F	249.220f

[1] 17 CFR 210.1–01 through 210.13.02.

[2] 17 CFR 229.10 through 229.1208.

[3] 15 U.S.C. 77a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

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I. Introduction

A. Background

We are proposing changes to the disclosure requirements in Rules 3–10 and 3–16 of Regulation S–X to better align those requirements with the needs of investors and to simplify and streamline the disclosure obligations of registrants. Rule 3–10 requires financial statements to be filed for all issuers and guarantors of securities that are registered or being registered, but also provides several exceptions to that requirement. These exceptions are typically available for individual subsidiaries of a parent company [5] when certain conditions are met and the consolidated financial statements of that parent company are filed. Rule 3–16 requires a registrant to provide separate financial statements for each affiliate whose securities constitute a substantial portion of the collateral for any class of registered securities as if the affiliate were a separate registrant. The changes we are proposing include amending both rules and relocating part of Rule 3–10 and all of Rule 3–16 to new Rules 13–01 and 13–02 in Regulation S–X, respectively.[6] These changes are intended to provide investors with the information that is material given the specific facts and circumstances, make the disclosures easier to understand, and reduce the costs and burdens to registrants.

This proposal results from an ongoing, comprehensive evaluation of our disclosure requirements.[7] As part of that evaluation, in September 2015, the Commission issued a *Request for Comment on the Effectiveness of Financial Disclosures About Entities Other Than the Registrant* (''Request for Comment'').[8] The Request for Comment sought feedback on, among other things, the financial disclosure requirements in Regulation S–X for certain entities other than the registrant, including the requirements in Rules 3–10 and 3–16. More specifically, the Commission solicited comment on how investors use the disclosures required by these rules to make investment decisions; the challenges that registrants face in providing the required disclosures; and potential changes to these requirements that could enhance the information provided to investors and promote efficiency, competition, and capital formation.

In response, we received approximately 50 comment letters.[9] About half of these comment letters addressed Rule 3–10,[10] and nearly as many addressed Rule 3–16.[11] Additionally, prior to issuing the Request for Comment, one comment letter was submitted, in response to the staff's Disclosure Effectiveness Initiative, that addressed Rules 3–10 and 3–16.[12] These comments were

[5] The identity of the parent company depends on the particular corporate structure. *See* additional discussion in Section II.C, ''Parent Company Financial Statements Condition.''

[6] Proposed Rules 13–01 and 13–02 would contain financial and non-financial disclosure requirements for certain types of securities registered or being registered that, while material to investors, need not be included in the audited and unaudited financial statements.

[7] The staff, under its Disclosure Effectiveness Initiative, is reviewing the disclosure requirements in Regulations S–K and Regulation S–X and is considering ways to improve the disclosure regime for the benefit of both companies and investors. The goal is to comprehensively review the requirements and make recommendations on how to update them to facilitate timely, material disclosure by companies and shareholders' access to that information.

[8] Release No. 33–9929 (Sept. 25, 2015) [80 FR 59083 (Oct. 1, 2015)].

[9] Comments that we received in response to the Request for Comment are available at *https://www.sec.gov/comments/s7-20-15/s72015.shtml.* References to comment letters in this release refer to the comments on the Request for Comment unless otherwise specified.

[10] *See, e.g.,* letters from Association of the Bar of the City of New York (Nov. 30, 2015) (''AB–NYC''); Anuradha RK (Nov. 23, 2015) (''Anuradha''); BDO USA, LLP (Dec. 7, 2015) (''BDO''); Cahill Gordon & Reindel LLP (Nov. 30, 2015) (''Cahill''); California Public Employees' Retirement System (Nov. 30, 2015) (''CalPERS''); Center for Audit Quality (Nov. 25, 2015) (''CAQ''); CFA Institute (Mar. 2, 2016) (''CFA''); Comcast Corporation (Dec. 11, 2015) (''Comcast''); Covenant Review, LLC (Nov. 30, 2015) (''Covenant''); Davis Polk & Wardwell LLP (Nov. 30, 2015) (''Davis Polk''); Deloitte & Touche LLP (Nov. 23, 2015) (''DT''); Ernst & Young LLP (Nov. 20, 2015) (''EY''); FedEx Corporation (''Nov. 30, 2015) (''FedEx''); General Motors Company (Nov. 30, 2015) (''GM''); Grant Thornton LLP (Dec. 1, 2015) (''Grant''); Headwaters Incorporated (Nov. 30, 2015) (''Headwaters''); KPMG LLP (Nov. 30, 2015) (''KPMG''); Medtronic plc (Nov. 30, 2015) (''Medtronic''); Noble Corporation plc (Dec. 1, 2015) (''Noble-UK''); PricewaterhouseCoopers LLP (Nov. 30, 2015) (''PwC''); RSM US LLP (Nov. 30, 2015) (''RSM''); Securities Industry and Financial Markets Association (Nov. 30, 2015) (''SIFMA''); Simpson Thacher & Bartlett LLP (Nov. 30, 2015) (''Simpson''); U.S. Chamber of Commerce, Center for Capital Markets Competitiveness (Nov. 30, 2015) (''Chamber''); and WhiteWave Foods Company (Nov. 30, 2015) (''WhiteWave'').

[11] *See, e.g.,* letters from Anuradha, BDO, Cahill, CalPERS, CAQ, CFA, Covenant, Davis Polk, DT, EY, KPMG, PwC, SIFMA, and Chamber.

[12] *See* letter from Disclosure Effectiveness Working Group of the Federal Regulation of Securities Committee and the Law and Accounting Committee of the Business Law Section of the American Bar Association (Nov. 14, 2014) (''ABA-Committees''), *https://www.sec.gov/comments/*

Continued

considered carefully in developing these proposals.

B. Scope of Proposals

We are proposing changes to the disclosure requirements contained in Rules 3–10 and 3–16. These rules represent a discrete, but important, subset of the Regulation S–X disclosure requirements.[13] Both rules affect disclosures made in connection with registered debt offerings [14] and subsequent periodic reporting.[15] We believe that revising these rules would reduce the cost of compliance for registrants and encourage potential issuers to conduct registered debt offerings or private offerings with registration rights. The proposed amendments would benefit investors by simplifying and streamlining the disclosure provided to them about registered transactions and improve transparency in the market to the extent more offerings are registered.[16] In addition, if the proposed changes reduce the burden associated with providing guarantees or pledges of affiliate securities as collateral,[17] investors may benefit from access to more registered offerings that are structured to include such enhancements and, accordingly, the additional protections that come with Section 11 liability for disclosures made in those offerings.

II. Rule 3–10 of Regulation S–X

A. Background

A guarantee of a debt or debt-like security (''debt security'') [18] is a separate security under the Securities Act [19] and, as a result, offers and sales of these guarantees [20] must be either registered or exempt from registration. If the offer and sale is registered, the issuer of the debt security and the guarantor [21] must each file its own audited annual and unaudited interim [22] financial statements required by Regulation S–X. Additionally, the offer and sale of the securities pursuant to a Securities Act registration statement causes the issuer and guarantor to become subject to reporting under Section 15(d) of the Exchange Act.[23] Reporting under Section 15(d) requires filing periodic reports that include audited annual and unaudited interim financial statements for at least the fiscal year in which the related Securities Act registration statement became effective.[24]

When the Commission amended Rule 3–10 in 2000, it recognized that ''[t]here are circumstances, however, where full Securities Act and Exchange Act disclosure by both the issuer and the guarantors may not be useful to an investment decision and, therefore, may not be necessary.'' [25] Common examples are when: (1) A parent company offers its own securities that its subsidiary guarantees; and (2) a subsidiary offers securities that its parent company fully and unconditionally guarantees. In these and similar situations, in which a parent company and one or more of its subsidiaries serve as issuers and/or guarantors of guaranteed securities, we believe the disclosure requirements generally have been guided by an overarching principle: The consolidated financial statements of the parent company are the principal source of information for investors when evaluating the debt security and its guarantee together.[26] This principle is grounded in the idea that the investment is in the *consolidated* enterprise when: (1) The parent company is fully obligated as either issuer or full and unconditional guarantor of the security; [27] (2) the parent company controls each subsidiary issuer and guarantor, including having the ability to direct all debt-paying activities; [28] and (3) the financial information of each subsidiary issuer and guarantor is included as part of the consolidated financial statements of the parent company.[29] In these

disclosure-effectiveness/disclosureeffectiveness.shtml.

[13] Until 2000, the disclosure requirements for guarantors and issuers of guaranteed securities registered or being registered and those for affiliates whose securities collateralized securities registered or being registered were included in the same rule. The Commission separated those disclosure requirements in 2000 because of the significant change made to the structure and substance of the disclosure requirements for guarantors and issuers of guaranteed securities registered or being registered. *See Financial Statements and Periodic Reports for Related Issuers and Guarantors,* Release No. 33–7878 (Aug. 4, 2000) [65 FR 51691 (Aug. 24, 2000)] (''2000 Release''). The Commission kept these new disclosure requirements in Rule 3–10 and moved the disclosure requirements for affiliates whose securities collateralize securities registered or being registered to new Rule 3–16. The substance of the requirements moved to Rule 3–16 were unchanged. *See Separate Financial Statements Required by Regulation S–X,* Release No. 33–6359 (Nov. 6, 1981) [46 FR 56171 (Nov. 16, 1981)].

[14] In practice, pledges of affiliate securities as collateral are almost always for debt securities. However, the requirements of Rule 3–16 are applicable to any security registered or being registered, whether or not in the form of debt.

[15] The proposed amendments will not affect the presentation of registrants' consolidated financial statements prepared in accordance with U.S. GAAP or International Financial Reporting Standards (''IFRS'') as issued by the International Accounting Standards Board in registration statements and Exchange Act periodic reports, such as Form 10–K. The proposed amendments are focused on the supplemental information about subsidiary issuers and guarantors as well as affiliates whose securities are pledged as collateral.

[16] In a recent report to Congress, the Commission's Division of Economic Risk Analysis determined that capital raising activity in the registered debt market was approximately $1.3 trillion in 2016. *See* U.S. Sec. & Exch. Comm'n, Div. of Econ. & Risk Analysis, *Access to Capital and Market Liquidity* 96 (Aug. 2017) [hereinafter *Access to Capital and Market Liquidity Report*], *https://www.sec.gov/files/access-to-capital-and-market-liquidity-study-2017.pdf.* In 2016, debt offerings under Securities Act Rule 144A raised approximately $562.8 billion, based on staff analysis of data from the SDC Platinum (Thomson Reuters) database.

[17] Currently, registrants often structure debt agreements to release affiliate securities pledged as collateral if the disclosure requirements of Rule 3–16 would be triggered, thereby depriving investors of that collateral protection. *See* additional discussion below. Registrants may cease structuring offerings to release such collateral if disclosure burdens are reduced by the proposed amendments, which would benefit investors.

[18] Rule 3–10 exceptions are available to issuers and guarantors of guaranteed securities that are ''debt or debt-like.'' The 2000 Release stated, in part, ''[t]he characteristics that identify a guaranteed security as debt or debt-like for this purpose are: the issuer has a contractual obligation to pay a fixed sum at a fixed time; and where the obligation to make such payments is cumulative, a set amount of interest must be paid.'' *See* Section III.A.4 of the 2000 Release and additional discussion in Section II.H, ''Securities to which Rule 3–10 Applies.''

[19] *See* Section 2(a)(1) of the Securities Act.

[20] These securities, while separately identified in the Securities Act, are typically purchased by investors together with the related debt security and are held together while outstanding.

[21] The issuer and guarantor structures contemplated by Rule 3–10 can comprise multiple issuers and multiple guarantors. For example, a parent can co-issue a security with one of its subsidiaries that several of its other subsidiaries guarantee.

[22] A foreign private issuer need only provide interim period disclosure in certain registration statements.

[23] *See* 15 U.S.C. 78o(d).

[24] The duty to file under Section 15(d) is automatically suspended as to any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of such fiscal year, the securities of each class to which the registration statement relates are held of record by less than 300 persons. *See* Section 15(d)(1) of the Exchange Act.

[25] *See* Section I of the 2000 Release.

[26] Parent company consolidated financial statements must be filed in all instances where the omission of financial statements of subsidiary issuers and guarantors are permitted under existing Rule 3–10. *See* paragraph (4) in each of Rules 3–10(b)–(f).

[27] Typically, all of a parent company's subsidiaries support the parent company's debt-paying ability. However, in the event of default, the holders of debt without the benefit of guarantees are comparatively disadvantaged. In the event of default, a holder of a debt security issued by a parent company can make claims for payment directly against the issuer and guarantors. The assets of non-issuer and non-guarantor subsidiaries typically would be accessible only by the holder indirectly through a bankruptcy proceeding. In such a proceeding, without a direct guarantee, the claims of the holder would be structurally subordinate to the claims of other creditors, including trade creditors of the non-issuer and non-guarantor subsidiaries.

[28] Debt-paying activities typically include, but are not limited to, the use of the subsidiary issuer's and guarantor's assets and the timing and amount of distributions.

[29] A parent company that prepares its financial statements in accordance with U.S. Generally

circumstances, we believe full Securities Act and Exchange Act disclosures for each subsidiary issuer and guarantor are generally not material for an investor to make an informed investment decision about a guaranteed security. Instead, we believe information included in the consolidated disclosures about the parent company, as supplemented with details about the issuers and guarantors, is sufficient. These disclosures help an investor understand how the consolidated entities within the enterprise support the obligation.

B. Overview of the Existing Requirements

Rule 3–10(a) states the general rule that every issuer of a registered security that is guaranteed and every guarantor of a registered security must file the financial statements required for a registrant by Regulation S–X. The rule also sets forth five exceptions to this general rule.[30] Each exception specifies conditions that must be met, including, in each case, that the parent company provide certain disclosures (''Alternative Disclosures''). If the conditions are met, separate financial statements of each qualifying subsidiary issuer and guarantor may be omitted. Only one of the five exceptions can apply to any particular offering and the subsequent Exchange Act reporting.

Two primary conditions, included in each of the exceptions, must be satisfied for a subsidiary issuer or guarantor to be eligible to omit its separate financial statements:

- Each subsidiary issuer and guarantor must be ''100% owned'' by the parent company; and
- each guarantee must be ''full and unconditional.''

The form and content of the Alternative Disclosures are determined based on the facts and circumstances and can range from a brief narrative to highly-detailed condensed consolidating financial information (''Consolidating Information''). Subsidiary issuers and guarantors that are permitted to omit their separate financial statements under Rule 3–10 are also automatically exempt from Exchange Act reporting under Exchange Act Rule 12h–5. The parent company, however, must continue to provide the Alternative Disclosures for as long as the guaranteed securities are outstanding.[31]

Recently acquired subsidiary issuers and guarantors are addressed separately within Rule 3–10. Rule 3–10(g)[32] requires the Securities Act registration statement of a parent company filed in connection with issuing guaranteed debt securities to include one year of audited, and, if applicable, unaudited interim pre-acquisition financial statements for recently-acquired subsidiary issuers and guarantors that are significant and have not been reflected in the parent company's audited results for at least nine months of the most recent fiscal year.

C. Parent Company Financial Statements

Each of the exceptions in Rule 3–10 requires the parent company to file its financial statements, but Rule 3–10 does not address when an issuer or guarantor is, in fact, the ''parent company'' because, as noted in the 2000 Release, the identity of the parent company will vary based on the particular corporate structure.[33] The 2000 Release identified three conditions that must be met before an entity can be considered the ''parent company'' for purposes of Rule 3–10, including that the entity owns 100% of each subsidiary issuer or guarantor directly or indirectly.[34]

D. 100% Owned

Rule 3–10(h)(1) defines a subsidiary as ''100% owned'' if all of its outstanding voting shares are owned, either directly or indirectly, by its parent company. A subsidiary not in corporate form is ''100% owned'' if the sum of all interests are owned, either directly or indirectly, by its parent company, except that the following are not included in the sum of all interests owned: (1) Securities that are guaranteed by its parent, and, if applicable, other 100%-owned subsidiaries of its parent; and (2) securities that guarantee securities issued by its parent and, if applicable, other 100%-owned subsidiaries of its parent.[35] This condition was adopted so the risks associated with an investment in the parent company and its subsidiary would be ''identical.''[36] A subsidiary issuer or guarantor with any third party ownership interest would fail to meet this condition and not be eligible for an exception in Rule 3–10. This condition would also not be met if a subsidiary issued securities convertible into its voting securities to someone other than the parent company.[37]

E. Full and Unconditional Guarantees

Rule 3–10(h)(2) defines a guarantee as ''full and unconditional'' if, when an issuer of a guaranteed security has failed to make a scheduled payment, the guarantor is obligated to make the scheduled payment immediately and, if the guarantor does not, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable. There can be no conditions, beyond the issuer's failure to pay, to the guarantor's payment obligation.[38] The condition that all guarantees be ''full and unconditional'' was adopted to limit the availability of Alternative Disclosures to situations where the

Accepted Accounting Principles (''U.S. GAAP''), would apply Accounting Standards Codification (''ASC'') 810, *Consolidation,* in determining whether to consolidate a subsidiary issuer or guarantor. A parent company that qualifies as a foreign private issuer and prepares its financial statements in accordance with IFRS would apply IFRS 10, *Consolidated Financial Statements.*

[30] *See* Rules 3–10(b)–(f) of Regulation S–X. *See* Section II.F, ''Exceptions,'' below.

[31] *See* Section III.C.1 of the 2000 Release and additional discussion in Section II.J, ''Exchange Act Reporting Requirements.''

[32] Rule 3–10(g) of Regulation S–X.

[33] *See* Section III.A.6. of the 2000 Release.

[34] The three conditions for an entity to be considered the ''parent company'' are that the entity: (1) Is an issuer or guarantor of the subject securities; (2) is an Exchange Act reporting company, or will become one as a result of the subject Securities Act registration statement; and (3) owns 100% of each subsidiary issuer or guarantor directly or indirectly. *See id.* A number of examples illustrating when an entity is or is not the parent company were included in an appendix to the 2000 Release. *See id.* at Appendix C.

[35] The 2000 Release states that ''[u]nincorporated entities operate differently than corporations. For example, in a limited liability corporation, the ability to vote can be separated from the ability to manage the financial affairs of the entity.'' *See* Section III.A.1.a.ii of the 2000 Release. In recognition of such differences, separate definitions of 100% owned were included in existing Rule 3–10(h)(1) for corporate and non-corporate entities.

[36] *See* Section III.A.1.a.i.(A) of the 2000 Release.

[37] *See id.*

[38] For example, a guarantee is not full and unconditional if it is not operative until some time after default or if the amount the guarantor is obligated to pay differs from the amount the issuer must pay. As the payment obligation does not fall uniformly across the issuer and related guarantors before enforceability of the guarantee, each party in that structure must provide separate financial statements. *See* Section III.A.1.b.i. of the 2000 Release. However, a guarantee can meet the full and unconditional condition if it has a fraudulent conveyance ''savings clause,'' such as the guarantee being limited to the maximum amount that can be guaranteed without constituting a fraudulent conveyance or fraudulent transfer under applicable insolvency laws, or if the guarantee is enforceable to the fullest extent of the law. *See* Section III.A.1.b.ii. of the 2000 Release. Additionally, a guarantee can be full and unconditional even if it has different subordination terms than the guaranteed securities. For example, a parent company's guarantee can be full and unconditional if the subsidiary's debt obligation ranks senior to all of its other debt and the parent company's guarantee ranks junior to other debt obligations of the parent company. While different subordination terms may mean the guaranteed security holders have different rights in the priority of payment with respect to the issuer and guarantor, both the issuer and guarantor remain fully liable to holders for all amounts due under the guaranteed security. *See* Section III.A.1.b.iii. of the 2000 Release.

payment obligations of the issuer and guarantor are essentially identical.[39]

F. Exceptions

Each of the five exceptions in the existing rule contains conditions that, if satisfied, permit registrants to omit separate financial statements of the subject subsidiary issuers and guarantors. These five exceptions are:

(1) A finance subsidiary[40] issues securities that its parent company guarantees;[41]

(2) an operating subsidiary issues securities that its parent company guarantees;[42]

(3) a subsidiary issues securities that its parent company and one or more other subsidiaries of its parent company guarantee;[43]

(4) a parent company issues securities that one of its subsidiaries guarantees;[44] or

(5) a parent company issues securities that more than one of its subsidiaries guarantees.[45]

In addition to the two primary conditions discussed above, depending on which exception is applicable, additional conditions must be satisfied, including providing Alternative Disclosures in the footnotes to the parent company's consolidated financial statements. In most cases, the Alternative Disclosures consist of Consolidating Information. However, there are three situations in which the Alternative Disclosures consist of a brief narrative.[46] These three situations are:

- The subsidiary is a finance subsidiary, and the parent company is the only guarantor of the securities;
- the parent company of the subsidiary issuer has no independent assets or operations,[47] the parent company guarantees the securities, no subsidiary of the parent company guarantees the securities, and any subsidiaries of the parent company other than the issuer are minor;[48] and
- the parent company issuer has no independent assets or operations and all of the parent company's subsidiaries, other than minor subsidiaries, guarantee the securities.

G. Consolidating Information

When the brief narrative disclosure is not permitted, Rule 3–10 requires the inclusion of Consolidating Information in the financial statements. Consolidating Information is detailed financial information consisting of a columnar footnote presentation of each category of parent and subsidiaries as issuer, co-issuers, guarantor(s), or non-guarantor(s) that sums to the consolidated amounts. The presentation must include all major captions of the balance sheet, income statement, and cash flow statement that are required to be shown separately in interim financial statements prepared under 17 CFR 210.10–1 (''Article 10'' of Regulation S–X'').[49] In order to distinguish the assets, liabilities, operations, and cash flows of the entities that are legally obligated to make payments under the guarantee from those that are not, the columnar presentation must show: (1) A parent company's investments in all consolidated subsidiaries based upon its proportionate share of their net assets;[50] and (2) subsidiary issuer and guarantor investments in certain consolidated subsidiaries using the equity method of accounting.[51]

Consolidating Information must be provided as of, and for, the same periods as the parent company's consolidated financial statements and must be audited for the same periods that the parent company financial statements are required to be audited.[52] In addition to requiring disclosures about restricted net assets,[53] as well as certain types of restrictions on the ability of the parent company or any guarantor to obtain funds from their subsidiaries,[54] the instructions specify that the disclosure may not omit information about each guarantor that would be material for investors to evaluate the sufficiency of the guarantee, and that the disclosure must include sufficient information so as to make the financial information presented not misleading.

H. Securities to Which Rule 3–10 Applies

The exceptions to the general rule in existing Rules 3–10(b) through (f) are available only to issuers and guarantors of debt securities.[55] In the 2000 Release, the Commission explained the circumstances under which a guaranteed security should be considered ''debt or debt-like'' and described certain characteristics of such a security. Generally, the substance of the security's obligation will dictate eligibility for Rule 3–10 rather than the form or title of the security. The characteristics that identify a guaranteed security as debt or debt-like are: (1) The issuer has a contractual obligation to pay a fixed sum at a fixed time; and (2) where the obligation to make such payments is cumulative, a set amount of interest must be paid.[56]

I. Recently-Acquired Subsidiary Issuers and Guarantors

If a parent company acquires a new subsidiary issuer or guarantor that otherwise qualifies for one of the

[39] *See* Section III.A.1.b of the 2000 Release.

[40] Rule 3–10(h)(7) of Regulation S–X (''A subsidiary is a finance subsidiary if it has no assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the security being registered and any other securities guaranteed by its parent company.'').

[41] *See* Rule 3–10(b) of Regulation S–X.

[42] *See* Rule 3–10(c) of Regulation S–X.

[43] *See* Rule 3–10(d) of Regulation S–X.

[44] *See* Rule 3–10(e) of Regulation S–X.

[45] *See* Rule 3–10(f) of Regulation S–X.

[46] The content of the brief narrative is specified within each of the exceptions based on the applicable facts and circumstances. For example, if the conditions are met, Rule 3–10(b)(4) of Regulation S–X specifies that the narrative disclosure to be included in a footnote to the parent company's consolidated financial statements must state, if true, ''that the issuer is a 100%-owned finance subsidiary of the parent company and the parent company has fully and unconditionally guaranteed the securities.'' It also requires the footnote to include ''the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.''

[47] Rule 3–10(h)(5) of Regulation S–X (''A parent company has no independent assets or operations if each of its total assets, revenues, income from continuing operations before income taxes, and cash flows from operating activities (excluding amounts related to its investment in its consolidated subsidiaries) is less than 3% of the corresponding consolidated amount.'').

[48] Rule 3–10(h)(6) of Regulation S–X (''A subsidiary is minor if each of its total assets, stockholders' equity, revenues, income from continuing operations before income taxes, and cash flows from operating activities is less than 3% of the parent company's corresponding consolidated amount.'').

[49] Rule 10–01(a) of Regulation S–X.

[50] *See* Rule 3–10(i)(3) of Regulation S–X.

[51] *See* Rule 3–10(i)(5) of Regulations S–X. Investments in the following subsidiaries are required to be presented under the equity method within Consolidating Information: non-guarantor subsidiaries; subsidary issuers or subsidiary guarantors that are not 100% owned and/or whose guarantee is not full and unconditional; subsidiary guarantors whose guarantee is not joint and several with the guarantees of other subsidiaries; and subsidiary guarantors with differences in domestic or foreign laws that affect the enforceability of the guarantees. The equity method is used primarily to ensure that a subsidiary guarantor does not consolidate, within this presentation, its own non-guarantor subsidiary. The equity method of accounting is described in ASC 323. *Investments—Equity Method and Joint Ventures,* for registrants that apply U.S. GAAP and in International Accounting Standards (''IAS'') 28, *Investments in Association and Joint Ventures,* for foreign private issuers that apply IFRS.

[52] Rule 3–10(i)(2) of Regulation S–X.

[53] Rule 3–10(i)(10) of Regulation S–X.

[54] Rule 3–10(i)(9) of Regulation S–X.

[55] The 2000 Release states that ''modified financial information permitted by paragraphs (b)–(f) will be available only for guaranteed debt and debt-like instruments.'' *See* Section III.4.b.i. of the 2000 Release. As discussed below, we are proposing to state this requirement in the rule for clarity.

[56] The Commission provided implementation guidance for certain types of securities such as preferred securities, trust preferred securities, and convertible debt or debt-like securities. *See* Section III.4.b.i and ii of the 2000 Release.

exceptions in Rules 3–10(c) through (f), the parent company may be required to provide one year of audited pre-acquisition financial statements of the newly-acquired issuer or guarantor and, if applicable, unaudited interim financial statements. This requirement is triggered when: (1) A parent company acquires the new subsidiary during or subsequent to one of the periods for which financial statements are presented in a Securities Act registration statement filed in connection with the offer and sale of the debt securities; (2) the subsidiary is deemed significant; and (3) the subsidiary is not reflected in the audited consolidated results of the parent company for at least nine months of the most recent fiscal year.[57] A subsidiary is significant if its net book value or purchase price, whichever is greater, is 20 percent or more of the principal amount of the securities being registered.[58] The financial statements of the recently-acquired subsidiary must conform to the requirements of Regulation S–X because, as an issuer of a security or provider of a guaranty, it is an issuer. These include the requirement that an audit be performed in accordance with the standards of the Public Company Accounting Oversight Board (''PCAOB'') by an auditor registered with the PCAOB.[59]

J. Exchange Act Reporting Requirements

Issuers and guarantors availing themselves of an exception that allows for the Alternative Disclosures in lieu of separate financial statements are exempt from Exchange Act reporting by Exchange Act Rule 12h–5. The parent company, however, must continue to provide the Alternative Disclosures for as long as the guaranteed securities are outstanding.[60] This obligation continues even if the subsidiary issuers and guarantors could have suspended their reporting obligations under 17 CFR 240.12h–3 (''Rule 12h–3'') or Section 15(d) of the Exchange Act,[61] had they chosen not to avail themselves of a Rule 3–10 exception and reported separately from the parent company.

A subsidiary issuer or guarantor that initially meets the requirements but subsequently ceases to satisfy Rule 12h–5 must begin separately reporting under the Exchange Act. It must present the financial statements required by Regulation S–X in a separate periodic report at the time the next report is due and may no longer rely on its parent company's provision of Alternative Disclosures in the parent company's periodic reports.

III. Proposed Amendments to Rule 3–10 and Partial Relocation to Rule 13–01

A. Overarching Principle

We believe that investors in guaranteed securities would be best served by continuing to adhere to the overarching principle upon which existing Rule 3–10 is based, namely that investors in guaranteed debt securities rely primarily on the consolidated financial statements of the parent company and supplemental details about the subsidiary issuers and guarantors when making investment decisions.[62] Although the existing rules provide investors with information about issuers of guaranteed debt and guarantors of those securities, our experience since the adoption of these rules in 2000 suggests the requirements could be improved for the benefit of both investors and registrants while adhering to the overarching principle. In this regard, the existing rules impose certain eligibility restrictions and disclosure requirements that may require unnecessary detail, thereby shifting investor focus away from the consolidated enterprise towards individual entities or groups of entities and may pose undue compliance burdens for registrants. For example, a parent company is not eligible, under the existing rule, to provide the Alternative Disclosures if a subsidiary issuer or guarantor is 99% instead of 100% owned by its parent company. As another example, the use of a brief narrative instead of Consolidating Information is not available if the total assets of either the parent company or non-issuer and non-guarantor subsidiaries of the parent company exceed 3% of the parent company's consolidated total assets. In both cases, slight variations from the conditions set forth in the rule lead to substantially different disclosure outcomes despite the investments being substantially the same. More broadly, the volume of the Consolidating Information and level of detail required can undermine the overarching principle. Consolidating Information typically occupies multiple pages of a parent company's financial statements, is composed of detailed information that may not be material for investors in making an investment decision, and could distract from the financial information of the obligated entities that is most likely to be material. In addition, according to one commenter, debt agreements are often structured to either meet or avoid the requirements of Rule 3–10, which may result in a guarantor structure that is less beneficial to investors.[63] Another commenter stated that the ''burdensome requirements'' of the existing rule ''[lead] to issuers electing to do more unregistered as opposed to registered deals.''[64] We are proposing amendments to address the challenges posed by the current rules in an effort to improve the disclosures to investors, encourage more registered offerings, and facilitate debt structures where the provision of guarantees is less burdensome.

B. Overview of the Proposed Amendments

Under the proposed amendments, the rules would continue to permit the omission of separate financial statements of subsidiary issuers and guarantors when certain conditions are met and the parent company provides supplemental financial and non-financial disclosure about the subsidiary issuers and/or guarantors and the guarantees (''Proposed Alternative Disclosures''). Similar to the existing rule, proposed Rule 3–10 would provide the conditions that must be met in order to omit separate subsidiary issuer or guarantor financial statements. Proposed Rule 13–01 would specify the disclosure requirements for the accompanying Proposed Alternative Disclosures. The proposed amendments would:

- Replace the condition that a subsidiary issuer or guarantor be 100% owned by the parent company with a condition that it be consolidated in the parent company's consolidated financial statements;
- replace Consolidating Information with summarized financial information,

[57] Rule 3–10(g)(1) of Regulation S–X.

[58] Rule 3–10(g)(1)(ii) of Regulation S–X.

[59] In certain circumstances, pre-acquisition financial statements of a recently-acquired subsidiary that were previously provided by a parent company may not meet the requirements of Rule 3–10(g). For example, a parent company may provide on Form 8–K pre-acquisition financial statements of a subsidiary required by 17 CFR 210.3–05 (''Rule 3–05 of Regulation S–X'') that may be audited in accordance with U.S. generally accepted auditing standards or audited by an auditor not registered with the PCAOB. If the parent company later files a registration statement for the offer and sale of its securities that are guaranteed by that same recently acquired subsidiary, those previously filed pre-acquisition financial statements would not meet the requirements of Rule 3–10(g). The parent company would then be required to file pre-acquisition financial statements of that recently acquired subsidiary guarantor audited in accordance with the standards of the PCAOB by an auditor registered with the PCAOB, or request pre-filing relief from the staff.

[60] *See* Section III.C.1 of the 2000 Release and Rule 3–10(a).

[61] *See* 15 U.S.C. 78o(d).

[62] *See* discussion in Section II.A, ''Background.''

[63] *See* letter from DT.

[64] *See* letter from Davis Polk.

as defined in 17 CFR 210.1–02,[65] (''Summarized Financial Information'') of the issuers and guarantors (together, ''Obligor Group''), which may be presented on a combined basis, and reduce the number of periods presented;

- expand the qualitative disclosures about the guarantees and the issuers and guarantors;
- eliminate quantitative thresholds for disclosure and require disclosure of additional information that would be material to holders of the guaranteed security;
- permit the Proposed Alternative Disclosures to be provided outside the footnotes to the parent company's audited annual and unaudited interim consolidated financial statements in the registration statement covering the offer and sale of the subject securities and any related prospectus, and in certain Exchange Act reports filed shortly thereafter;
- require that the Proposed Alternative Disclosures be included in the footnotes to the parent company's consolidated financial statements for annual and quarterly reports beginning with the annual report for the fiscal year during which the first bona fide sale of the subject securities is completed;
- eliminate the requirement to provide pre-acquisition financial statements of recently-acquired subsidiary issuers and guarantors; and
- require the Proposed Alternative Disclosures for as long as the issuers and guarantors have an Exchange Act reporting obligation with respect to the guaranteed securities rather than for so long as the guaranteed securities are outstanding.

The proposed amendments would simplify and streamline the rule structure in several ways. Most significantly, under proposed Rules 3–10(a) and 3–10(a)(1) there would be only a single set of eligibility criteria that would apply to all issuer and guarantor structures instead of having separate sets of criteria in each of the five exceptions in existing Rules 3–10(b) through (f). Similarly, the requirements for the Proposed Alternative Disclosures would be included in a single location within proposed Rule 13–01, rather than spread among the multiple paragraphs of existing Rule 3–10. We believe these changes would simplify the rule structure and facilitate compliance.

Request for Comment

1. Would the proposed amendments to existing Rule 3–10 result in an increase in the number of registered debt offerings that include guarantees? Why or why not? How would increasing the number of registered debt offerings that include guarantees affect investors and issuers?

2. What factors do issuers consider when deciding whether to engage in a registered debt offering or an offering in the private market? Do issuers structure registered debt offerings to not include guarantees because of concerns about compliance with existing Rule 3–10? If so, what are the specific concerns? Are issuers choosing to engage in private debt offerings that include guarantees? If so, what exemptions or safe harbors are issuers using? If these issuers are relying on 17 CFR 230.144A (''Rule 144A''), do these offerings typically include registration rights, or are they offered pursuant to Rule 144A without registration rights? Why or why not?

3. To what type of investors are issuers of registered debt offerings selling or marketing their securities—Qualified Institutional Buyers (''QIBs''), other institutional investors, or retail investors? What is the typical investor break down in this regard?

4. What factors do issuers consider in determining whether to structure a debt offering to include guarantees, and how are they considered?

5. How do investors use the Alternative Disclosures under existing Rule 3–10? For example, how do retail investors, institutional investors, or third parties, such as financial analysts, use the information? How would these investors use the Proposed Alternative Disclosures?

6. Would the proposed amendments to existing Rule 3–10 improve the disclosures provided to investors? If so, how? Are there other changes to the rule that we should consider that would improve disclosures to investors? If so, what are they and how would they improve disclosure?

7. Would the proposed amendments to existing Rule 3–10 make the rule less burdensome and, thereby, encourage issuers to structure debt offerings to include guarantees? Are there other changes to the rule that we should consider that would reduce compliance burdens for issuers but continue to provide the material information investors need to make informed investment decisions?

8. Would the proposed amendments to existing Rule 3–10 remove disclosures that investors or financial analysts rely on? If so, which disclosures? Would the removal of such disclosures have an effect on investor participation in registered debt offerings that include guarantees?

9. What effects do registered debt offerings have on the covenants contained in the related indentures? Do private debt offerings typically contain more or fewer covenants in the related indentures? Why or why not? Would an issuer's offering of debt contain more covenants if offered privately than if offered publicly? Why or why not? What effects would the proposed rules have on the covenants contained in the related indentures?

10. Are there alternative approaches to disclosures about guarantors and guarantees that would benefit investors? If so, what are they and why? How would investors use the disclosures under these alternative approaches?

C. Conditions To Omit the Financial Statements of a Subsidiary Issuer or Guarantor

Under the proposed rules, the financial statements of a subsidiary issuer or guarantor could be omitted if the eligibility conditions contained in proposed Rules 3–10(a) and 3–10(a)(1) are met and the Proposed Alternative Disclosures specified in proposed Rule 13–01 are provided in the filing, as required by proposed Rule 3–10(a)(2). As proposed, the eligibility conditions would be that:

- The consolidated financial statements of the parent company have been filed;
- the subsidiary issuer or guarantor is a consolidated subsidiary of the parent company;
- the guaranteed security is a debt security; and
- one of the following eligible issuer and guarantor structures is applicable:
  - ○ The parent company issues the security or co-issues the security, jointly and severally, with one or more of its consolidated subsidiaries; or
  - ○ a consolidated subsidiary issues the security or co-issues the security with one or more other consolidated subsidiaries of the parent company, and the security is guaranteed fully and unconditionally by the parent company.

1. Eligibility Conditions

a. Parent Company Financial Statements Condition

Proposed Rule 3–10 would continue to require the filing of the parent company's consolidated financial statements. Additionally, under the proposed amendments, ''parent company'' would still be defined as in the 2000 Release, with one change. The first two conditions would continue to be that the entity is: (1) An issuer or guarantor of the securities; and (2) an Exchange Act reporting company, or will become one as a result of the subject Securities Act registration

[65] Rule 1–02(bb)(1) of Regulation S–X.

statement. However, the third condition, that the entity owns, directly or indirectly, 100% of each subsidiary issuer and guarantor, would no longer be required for an entity to be considered the parent company.[66] Instead, the third condition would be that the entity consolidates each subsidiary issuer and guarantor in its consolidated financial statements.[67] For clarity, the definition of ''parent company'' would be included in proposed Rule 3–10(b)(1), stating that the parent company is the entity that meets the three aforementioned conditions.

Consistent with the note to existing Rule 3–10(a)(2), the financial statements of an entity that is not an issuer or guarantor of the registered security could not be substituted for those of the parent company. For example, it would not be appropriate to file, in substitution for the financial statements of the parent company, financial statements of an entity that files Exchange Act reports but is not an issuer or guarantor of the securities being registered even if the financial statements of that entity are virtually identical to those of the parent company, because the security holders cannot enforce payment of the obligation against that particular entity. Because we have included the definition of parent company in proposed Rule 3–10(b)(1), which clearly states that the parent company must be an issuer or guarantor of the guaranteed security, we do not believe the note to existing Rule 3–10(a)(2) is necessary and have removed it from the proposed rule.

Request for Comment

11. Is the proposed definition of ''parent company'' included in proposed Rule 3–10(b)(1) sufficiently clear? Why or why not? Are there other modifications to the proposed definition of ''parent company'' that would be appropriate? If so, what are they and why should they be included?

12. Are there other definitions of ''parent company'' that may differ from our proposed definition? If so, which definitions and what are the similarities or differences? How would any such differences affect issuers' ability to apply our rule? Should we make any modifications to the proposed definition of ''parent company'' in light of those other definitions?

13. Should the proposed rule include a requirement similar to the note to existing Rule 3–10(a)(2) that the financial statements of an entity that is not an issuer or guarantor of the registered security could not be substituted for those of the parent company, or does the proposed definition of ''parent company'' render such a requirement unnecessary?

b. Consolidated Subsidiary Condition

The 2000 Release states that the Commission was adopting the existing rule's definition of 100% owned ''because it assures investors in the guaranteed securities that there is no competing common equity interest in the assets or revenues of the subsidiary. This allows investors to evaluate the creditworthiness of the parent and subsidiary as a single, indivisible business.'' [68] The Commission explained that the risks associated with an investment in a parent company and its subsidiary issuers and/or guarantors would need to be identical to justify the use of the Alternative Disclosures in lieu of separate financial statements of each of those subsidiaries, and if a third party holds an interest in a subsidiary, those risks are not identical.[69]

A number of commenters suggested that existing Rule 3–10's 100%-owned condition be replaced,[70] suggesting various alternative conditions.[71] One commenter recommended permitting guarantor subsidiaries to be majority-owned instead of 100% owned, explaining that any risks associated with a minority investor could be addressed through disclosure,[72] and another stated that ''as long as a registrant controls the subsidiary, a third party minority equity interest in the subsidiary's assets and earnings would not affect the subsidiary's creditworthiness from a debt holder's perspective.'' [73] One commenter recommended retaining the requirement.[74]

We continue to believe that a subsidiary issuer or guarantor should be controlled by the parent company and consolidated into the financial statements of the parent company to be eligible to omit its financial statements. However, having considered commenters' suggestions and our experience since the adoption of the existing rule, it appears that the existence of non-controlling ownership interests in the subsidiary issuer or guarantor does not necessarily mean that separate financial statements are warranted.

We note that the existence of non-controlling interest holders generally does not alter the fundamental nature of the investment such that it should be evaluated similar to multiple investments in different issuers. Specifically, we believe that where a parent company is obligated as issuer or full and unconditional guarantor of a guaranteed security and it controls and includes the subsidiary issuer(s) and guarantor(s) in its consolidated financial statements, there is sufficient financial unity between the parent company and the related subsidiary with respect to the guaranteed debt security such that the consolidated financial statements of that parent company and the Proposed Alternative Disclosures would enable investors to evaluate and sufficiently assess the risks associated with an investment in such guaranteed debt security. In the event of default on the debt security, there could be circumstances where non-controlling interest holders may have the potential to influence certain matters affecting payments to holders of the guaranteed debt security. However, as one commenter suggested,[75] such risks, when material, can be addressed through disclosures tailored to those facts and circumstances [76] rather than requiring separate financial statements of the subsidiary issuer or guarantor.

Proposed Rule 3–10(a) would require the subsidiary issuer or guarantor to be a consolidated subsidiary of the parent company pursuant to the relevant accounting standards already in use.[77] This proposed change would eliminate the distinction between subsidiaries in corporate form and those in other than corporate form, applying a consistent eligibility condition across entities. Also, certain subsidiary issuers and guarantors that are currently not eligible to omit their financial statements under existing Rule 3–10, such as consolidated subsidiary issuers or guarantors that have issued securities convertible into

[66] *See* Section III.A.6. of the 2000 Release.

[67] *See* Section III.C.1.b, ''Consolidated Subsidiary,'' below.

[68] *See* Section III.A.1.a.i.(A) of the 2000 Release.

[69] *See id.*

[70] *See, e.g.,* letters from ABA-Committees, AB–NYC, Chamber, Comcast, EY, and SIFMA.

[71] For example, some commenters recommended permitting subsidiary issuers and guarantors to be ''wholly-owned'' by the parent company as that term is defined in Rule 1–02(aa) of Regulation S–X, which states ''[t]he term wholly owned subsidiary means a subsidiary substantially all of whose outstanding voting shares are owned by its parent and/or the parent's other wholly owned subsidiaries.'' *See* letters from ABA-Committees, AB–NYC, and EY.

[72] *See* letter from SIFMA.

[73] *See* letter from Comcast.

[74] *See* letter from CalPERS.

[75] *See* letter from SIFMA.

[76] *See* proposed Rules 13–01(a)(3) and (4).

[77] For example, a parent company that prepares its financial statements in accordance with U.S. GAAP would apply ASC 810, *Consolidation,* and a parent company that qualifies as a foreign private issuer and prepares its financial statements in accordance with IFRS would apply IFRS 10, *Consolidated Financial Statements.*

their own voting shares, would be eligible to omit their financial statements. The proposed amendments would instead require the parent company to provide disclosures that address the material risks, if any, associated with non-controlling interests in the subsidiary issuer or guarantor, including any risks arising from securities issued by the subsidiary that may be convertible into voting shares and may cause the percentage of non-controlling interest to increase, and to separately provide Summarized Financial Information attributable to those subsidiaries.

Specifically, proposed Rule 13–01(a)(3) would require, to the extent material, a description of any factors that may affect payments to holders of the guaranteed security, such as the rights of a non-controlling interest holder. In addition, proposed Rule 13–01(a)(4) would require separate disclosure of Summarized Financial Information for subsidiary issuers and guarantors affected by those factors. For example, if, through its ability to exercise significant influence [78] over a subsidiary guarantor, a non-controlling interest holder could materially affect payments to holders of the guaranteed security, the parent company would be required to disclose those factors and the Summarized Financial Information attributable to that subsidiary guarantor. Because this disclosure would highlight the material repayment risks and financial information associated with consolidated issuers and guarantors with non-controlling interests, it may no longer be necessary to categorically prohibit such issuers and guarantors from being eligible to omit their financial statements under proposed Rule 3–10.

Request for Comment

14. Should the proposed rule use consolidation of the subsidiary issuer or guarantor under the applicable accounting standards as an eligibility condition? If not, what relationship between the parent company and subsidiary issuer or guarantor should the proposed rule use and why?

15. Would using consolidation of the subsidiary issuer or guarantor under the applicable accounting standards as an eligibility condition allow investors or financial analysts to adequately understand the credit risk of such subsidiary issuer or guarantor? Would the proposed use of consolidation allow investors or financial analysts to adequately understand these credit risks in lieu of the subsidiary issuer or guarantor's financial statements? Why or why not?

16. Should the proposed condition that each issuer and guarantor be a consolidated subsidiary of the parent company be limited such that it would not be available to certain types of entities? If so, what entities and why? For example, should an entity be ineligible if it is consolidated in the parent company's financial statements for reasons other than the parent company holding the majority of voting interests? [79]

17. Should a consolidated subsidiary that has issued and outstanding debt that is convertible into its own voting shares not be eligible to omit its financial statements under the proposed rule? Why or why not? Should a consolidated subsidiary that has issued and outstanding debt that is convertible into its own voting shares, which, upon conversion, would result in the parent company losing control of that subsidiary, not be eligible to omit its financial statements under the proposed rule? Why or why not? Should a consolidated subsidiary that has issued and outstanding debt that is convertible into its own voting shares, which, upon conversation, would result in the parent company owning less than a particular percentage of the voting shares of that subsidiary, not be eligible to omit its financial statements under the proposed rule? If so, what should that percentage be and why?

18. Would any entities that meet the 100%-owned condition under existing Rule 3–10 not meet the proposed condition that an issuer or guarantor be a consolidated subsidiary of the parent company? If so, what are they and why would they not meet this condition?

c. Debt or Debt-Like Securities Condition

As discussed above,[80] the exceptions in existing Rules 3–10(b) through (f) are available only to issuers and guarantors of debt securities. We continue to believe the exceptions provided in Rule 3–10 should only be available for guaranteed debt and guaranteed preferred securities that have payment terms that are substantially the same as debt. In order to provide clarity, proposed Rule 3–10(a)(1) would state explicitly that the guaranteed security must be ''debt or debt-like.''

For additional clarity, proposed Rule 3–10(b)(2) would specify when a guaranteed security would be considered ''debt or debt-like.'' Consistent with the guidance provided in the 2000 Release,[81] a guaranteed security would be considered ''debt or debt-like'' under the proposed rule if:

- The issuer has a contractual obligation to pay a fixed sum at a fixed time; and
- where the obligation to make such payments is cumulative, a set amount of interest must be paid.

As is currently the case, the substance of the security's obligation will determine the availability of relief under Rule 3–10 rather than the form or title of the security. Accordingly, the proposed rule would clarify consistent with the 2000 Release,[82] that:

- Neither the form of the security nor its title will determine whether a security is debt or debt-like. Instead, the substance of the obligation created by the security will be determinative; and
- The phrase ''set amount of interest'' is not intended to mean ''fixed amount of interest. '' Floating and adjustable rate securities, as well as indexed securities, may meet the criteria specified in paragraph (b)(2)(ii) as long as the payment obligation is set in the debt instrument and can be determined from objective indices or other factors that are outside the discretion of the obligor.

Request for Comment

19. Should the proposed rule expressly state that the guaranteed security must be ''debt or debt-like'' and include a definition of that term? Why or why not?

20. Should we modify the proposed definition of ''debt or debt-like''? If so, why, and how should it be modified?

21. Should we provide any additional guidance or instructions to the proposed definition of ''debt or debt-like''? If so, why, and what additional guidance or instructions would be appropriate?

d. Eligible Issuer and Guarantor Structures Condition

Under the existing rule, an issuer and guarantor structure is eligible if it matches one of the specific issuer and guarantor structures in Rule 3–10(b) through (f). If an issuer or guarantor structure does not match one of those

[78] *See* ASC 323, *Investments—Equity Method and Joint Ventures.* Representation on the board of directors, participation in policy-making processes, and extent of ownership by an investor in relation to the concentration of other shareholdings are among the ways listed in ASC 323–10–15–6 that may indicate the ability to exercise significant influence over operating and financial policies of an investee.

[79] Such circumstances may arise when, in accordance with ASC 810, *Consolidation,* the entity is a variable interest entity and the parent company is its primary beneficiary.

[80] *See* Section II.H, ''Securities to which Rule 3–10 Applies.''

[81] *See* Section III.A.4 of the 2000 Release.

[82] *See* Section III.A.4.b.i of the 2000 Release.

specific issuer and guarantor structures, it is ineligible, and the subsidiary issuers and guarantors must file separate financial statements. Eligibility would still be based on qualifying issuer and guarantor structures under the proposed amendments to Rule 3–10. However, the proposed amendments would simplify and streamline the existing rule by replacing the specific issuer and guarantor structures permitted under the five exceptions in existing Rules 3–10(b) through (f) with a broader two-category framework. Under this framework, an issuer and guarantor structure would be eligible if:

- The parent company issues the security or co-issues the security, jointly and severally, with one or more of its consolidated subsidiaries;[83] or
- a consolidated subsidiary issues the security, or co-issues it with one or more other consolidated subsidiaries of the parent company, and the security is guaranteed fully and unconditionally by the parent company.[84]

In a change from the existing exceptions, the status of subsidiary guarantors would not be specified in the proposed categories of eligible issuer and guarantor structures. Although one or more other subsidiaries of the parent company may, and we expect often would, guarantee the security, we believe the eligibility of an issuer and guarantor structure should depend on the role of the parent company. Accordingly, as discussed further in Section III.C.1.d.ii, ''Role of Subsidiary Guarantors'' below, separate financial statements of consolidated subsidiary guarantors may be omitted for each issuer and guarantor structure that is eligible under the proposed rule if the other conditions of proposed Rule 3–10 are met.

i. Role of Parent Company

Under the proposed amendments, the parent company's role as issuer, co-issuer, or full and unconditional guarantor with respect to the guaranteed security would determine whether the issuer and guarantor structure is eligible. Below we further describe conditions that a parent company must meet under the proposed rule.

(A) Parent Company Obligation Is Not Limited or Conditional

Because the parent company's consolidated financial statements serve as the primary source of information for investors, we believe the parent company's obligation as either issuer or guarantor of the guaranteed security should not be conditional or limited. If the parent company's obligation was limited or conditional, focusing on the parent company's financial statements may not be sufficient for investors to evaluate the investment. For example, if a subsidiary issued securities guaranteed by its parent company, but that parent company's obligation under the guarantee's terms was less than the subsidiary's obligation, the parent company's financial statements supplemented with the Proposed Alternative Disclosures would not be sufficient. Instead, the separate financial statements of the subsidiary issuer would likely be material for investors to make an informed investment decision. Therefore, under the proposed amendments, the ability to provide the Proposed Alternative Disclosures in lieu of separate subsidiary issuer and guarantor financial statements would only be available when the parent company's obligation is not limited or conditional.

Request for Comment

22. Should the eligibility of an issuer and guarantor structure under the proposed rule require the parent company's obligation not to be limited or conditional? Why or why not?

23. Are there circumstances where the parent company's consolidated financial statements are not the primary source of information for investors in these situations? If so, what are those circumstances, and what other sources of information would be material in making an investment decision?

24. Should the eligibility of an issuer and guarantor structure continue to depend on the status of subsidiary guarantors? If so, in what way? If not, why not?

(B) Parent Company as Issuer or Co-Issuer

Under the first category of eligible issuer and guarantor structures in proposed Rule 3–10(a)(1)(i), the parent company must issue the security or co-issue the security, jointly and severally, with one or more of its consolidated subsidiaries. When acting as the sole issuer, the parent company would be fully and unconditionally obligated for the full amount of any scheduled payments when they come due. Also, the parent company would be permitted to co-issue a security with one or more of its consolidated subsidiaries, but all co-issuers would be required to be jointly and severally liable under the guaranteed security. This would obligate each of the parent company and its subsidiary co-issuers to all legal responsibilities of an issuer, including making scheduled payments on the debt security in full when they come due. Under this category of eligible issuer and guarantor structures, the parent company would control each consolidated co-issuer, the financial information of the subsidiary co-issuer(s) would be reflected in the consolidated financial statements of the parent company, and the parent company would be fully and unconditionally obligated to make payments in full when due under the guaranteed security. As such, we believe the parent company's consolidated financial statements would serve as the primary source of information for investors in these circumstances and, if all other eligibility conditions of the proposed rule were satisfied, that separate financial statements of the subsidiary co-issuers would be unnecessary. Supplemental information about the subsidiary co-issuer(s) would be included in the Proposed Alternative Disclosures.

Request for Comment

25. Should this first category of eligible issuer and guarantor structures under the proposed rule require the parent company to issue or co-issue the security, jointly and severally, with one or more of its consolidated subsidiaries? Why or why not?

26. Are there other conditions that should be included in this first permissible category of eligible issuer and guarantor structures? If so, what are they and why would they be appropriate?

27. If the parent company co-issues the guaranteed security with one or more of its consolidated subsidiaries, is separate financial information about issuer entities material to an investment decision? If so, why?

(C) Parent Company as Full and Unconditional Guarantor

Under the second category of eligible issuer and guarantor structures in proposed Rule 3–10(a)(1)(ii), a debt security issued by a parent company's consolidated subsidiary, or co-issued by more than one of the parent company's consolidated subsidiaries, must be fully and unconditionally guaranteed by that parent company. For purposes of the proposed rule, whether the parent company's guarantee is ''full and unconditional'' would be determined in the same manner as in existing Rule 3–10(h)(2) and the 2000 Release[85] and would be included in proposed Rule 3–10(b)(3). Under this category of eligible issuer and guarantor structures, the

[83] Proposed Rule 3–10(a)(1)(i).

[84] Proposed Rule 3–10(a)(1)(ii).

[85] *See* Section III.A.1.b of the 2000 Release.

parent company would control each consolidated subsidiary issuer, the financial information of the subsidiary issuer(s) would be reflected in the consolidated financial statements of the parent company, and the parent company would be fully and unconditionally obligated to make payments in full when due under the guaranteed security. In these circumstances, we believe the parent company's financial statements would serve as the primary source of information for investors and, if all other eligibility conditions of the proposed rule were satisfied, that separate financial statements of the subsidiary issuers would be unnecessary. Supplemental information about the subsidiary issuer(s) or co-issuer(s) would be included in the Proposed Alternative Disclosures.

Request for Comment

28. Should this second category of eligible issuer and guarantor structures under the proposed rule require parent company to fully and unconditionally guarantee the debt security that is either issued by that parent company's consolidated subsidiary, or co-issued by more than one of that parent company's consolidated subsidiaries? Why or why not?

29. Are there other conditions that should be included in this second permissible category of eligible issuer and guarantor structures? If so, what are they and why would they be appropriate?

30. Should we retain the existing definition of ''full and unconditional''? Why or why not?

ii. Role of Subsidiary Guarantors

As noted above,[86] one or more consolidated subsidiaries of the parent company could, and we expect often would, guarantee the securities in either of the two proposed eligible categories of issuer and guarantor structures. Existing Rule 3–10(b) through (f) specify the permissible roles of subsidiary guarantors in an issuer and guarantor structure and also impose certain conditions, such as the guarantees being full and unconditional and, where there are multiple guarantees, being joint and several.[87] A few commenters specifically addressed the conditions that subsidiary guarantees be ''full and unconditional'' and ''joint and several.'' One commenter recommended the elimination of these conditions. According to this commenter, investors place less reliance on a guarantee that is not full and unconditional as a source of credit, and accordingly, financial statements of such a guarantor are even less important to an investor and should not be required.[88] Instead, the commenter recommended requiring separate disclosure of those subsidiaries providing lesser guarantees. Another commenter stated that the existing condition should remain unchanged.[89]

The 2000 Release stated that the Commission was adopting the definition of ''full and unconditional,'' which was applicable to the guarantees of both subsidiaries and the parent company, with the intention of limiting the availability of the Alternative Disclosures to those situations where the payment obligations of the issuer and guarantor are essentially identical.[90] We continue to believe it is necessary for the guarantee of a parent company to be full and unconditional in order to rely on its consolidated financial statements as the primary source of information for investors. However, our experience since adoption of the existing rule in 2000 suggests that limitations or conditions on a subsidiary guarantee should not preclude the use of the Proposed Alternative Disclosures when the consolidated subsidiary guarantor is controlled by the parent company and the subsidiary guarantor's financial information is included in the parent company's consolidated financial statements. Instead, similar to existing Rule 3–10's approach to subsidiary guarantees that are not joint and several,[91] we believe such limitations and conditions on a subsidiary's guarantee could be highlighted for investors through incremental financial and non-financial disclosure in the Proposed Alternative Disclosures rather than requiring separate financial statements of the subsidiary guarantor.

Under the proposed rule, because the role of the parent company determines whether an issuer and guarantor structure is eligible, the role of subsidiary guarantors would be irrelevant for determining overall eligibility. As a result, the subsidiary guarantors' role in the issuer and guarantor structure would not need to be specified and the aforementioned conditions (the guarantees being full and unconditional and, where there are multiple guarantees, being joint and several) would no longer be imposed on subsidiary guarantors. Regardless, as stated in proposed Rule 3–10(a), if a subsidiary guarantor is consolidated in its parent company's consolidated financial statements, and the other conditions of proposed Rule 3–10 are met, including providing the disclosures about that subsidiary and its guarantee as specified in proposed Rule 13–01, the subsidiary's financial statements could be omitted.

The role of subsidiary guarantors and their guarantees would affect the required disclosure under the proposed rule. For example, the subsidiary guarantors would be required to be identified pursuant to proposed Rule 13–01(a)(1), and if the guarantees of those subsidiaries were not full and unconditional, disclosure of the limitations and conditions would be required by proposed Rule 13–01(a)(2), to the extent material.[92] Furthermore, proposed Rule 13–01(a)(4) would require separate disclosure of Summarized Financial Information applicable to subsidiary guarantors whose guarantees were not full and unconditional, to the extent material.[93]

Request for Comment

31. Would the proposed changes improve the disclosures for investors? Why or why not?

32. Proposed Rule 3–10(a)(1)(ii) specifies only that the parent company guarantee must be full and unconditional. Should the requirement that a guarantee be full and unconditional also extend to subsidiary guarantors? Why or why not?

33. Where there is more than one subsidiary guarantor, or when the parent company and one or more of its subsidiaries guarantees the security, should all guarantees be joint and several to be eligible to omit separate financial statements of subsidiary guarantors? Why or why not?

[86] *See* Section III.C.1.d, ''Eligible Issuer and Guarantor Structures Condition.''

[87] Where there are multiple subsidiary guarantors, and the guarantee of one or more subsidiaries is not joint and several with other subsidiary guarantors, or as applicable, with the parent company's guarantee, note 4 to existing Rule 3–10(d) and note 3 to existing Rule 3–10(f) permit the use of Consolidating Information in lieu of providing separate financial statements of that subsidiary guarantor so long as each subsidiary whose guarantee is not joint and several is included in a separate column of the Consolidating Information.

[88] *See* letter from SIFMA.

[89] *See* letter from CalPERS.

[90] *See* Section III.A.1.b of the 2000 Release.

[91] Each of existing Rules 3–10(d)(3) and 3–10(f)(3) specify that all guarantees must be joint and several as a condition to permit the omission of the separate financial statements of subsidiary guarantors. However, if all other conditions of the applicable exception paragraph are met, Note 4 to existing Rule 3–10(d) and Note 3 to existing Rule 3–10(f) permit the omission of the separate financial statements of a subsidiary guarantor whose guarantee is not joint and several so long as the Consolidating Information includes a separate column for each such subsidiary guarantor.

[92] *See* discussion in Section III.C.2.b, ''Non-Financial Disclosures.''

[93] *See* discussion in Section III.C.2.a.ii, ''Presentation on a Combined Basis.''

(A) Subsidiary Guarantee Release Provisions

One of the conditions a subsidiary guarantor must meet under the existing rule is that its guarantee must be full and unconditional. A subsidiary's guarantee may have the characteristics of a full and unconditional guarantee at its inception except that there may be contractual provisions permitting the subsidiary to be released from that guarantee under certain circumstances. Such release provisions could cause the subsidiary's guarantee to fail to meet the requirement that the guarantee be full and unconditional because the potential elimination of the guarantee is a condition beyond the issuer's failure to pay. The staff has previously provided guidance that, under certain circumstances, a subsidiary whose guarantee could be released should be able to rely on existing Rule 3–10 so long as all other required conditions of the rule are met.[94] Several commenters recommended codifying this staff guidance into our rules.[95] As noted above,[96] because the nature of the guarantee of a subsidiary guarantor does not affect whether the issuer and guarantor structure is eligible under the proposed rule, a subsidiary guarantee would no longer be required to be full and unconditional. As such, the existence of subsidiary guarantee release provisions would not prevent that subsidiary guarantor from omitting its financial statements. However, to the extent material, such release provisions would be required to be disclosed pursuant to proposed Rule 13–01(a)(2)[97] and separate disclosure of Summarized Financial Information applicable to that subsidiary guarantor would be required by proposed Rule 13–01(a)(4).[98]

Request for Comment

34. Should the proposed rule specify that subsidiary guarantees must be full and unconditional except that certain subsidiary release provisions would be expressly permitted? If so, why? In this regard, which release provisions should be permitted in the proposed rule and why would they be appropriate?

iii. Treatment of Currently Eligible Issuer and Guarantor Structures Under Proposed Rule 3–10

The proposed amendments are not intended to reduce the types of entities or structures that would be able to rely on proposed Rule 3–10. We expect issuer and guarantor structures that are currently eligible under existing Rule 3–10 to be eligible under the two proposed categories of eligible issuer and guarantor structures. As shown in the table below, issuer and guarantor structures that currently fall under existing Rules 3–10(b), (c), or (d) would be eligible to omit their financial statements under the eligible categories in proposed Rules 3–10(a)(1)(i) or (ii), depending on the role of the parent company as either co-issuer or full and unconditional guarantor of the guaranteed security. Issuer and guarantor structures that currently fall under existing Rules 3–10(e) or (f), wherein the parent company is the sole issuer of the guaranteed security, would be able to rely on the first category in proposed Rule 3–10(a)(1)(i). We discuss the proposed amendments in greater detail below.

Existing Rule	Proposed Rule
Rules 3–10(b), 3–10(c), and 3–10(d)	Rule 3–10(a)(1)(i), if the subsidiary co-issued the security, jointly and severally, with its parent. Rule 3–10(a)(1)(ii), if the subsidiary issued the security that is fully and unconditionally guaranteed by its parent.
Rules 3–10(e) and 3–10(f)	Rule 3–10(a)(1)(i).

(A) Finance Subsidiary Issuer of Securities Guaranteed by Its Parent Company

Existing Rule 3–10(b) applies when a ''finance subsidiary,'' as that term is defined in existing Rule 3–10(h)(7), issues securities guaranteed by its parent company. This exception was included to address situations where a parent company directs one of its subsidiaries to issue debt securities that the parent company guarantees, and that subsidiary ''has no assets, operations, revenues, or cash flows other than those related to the issuance, administration, and repayment of the security and any other securities guaranteed by its parent.''[99] In such cases, the Commission has determined that detailed financial information about the finance subsidiary is unlikely to be material to an investment decision. Instead, an investor would look to the consolidated financial statements of the parent company that guaranteed the debt to evaluate the investment in the guaranteed security and generally not need additional information other than a brief narrative describing the arrangement.

Because the proposed amendments to Rule 3–10 do not focus on the role and nature of the subsidiary as a condition to eligibility, the proposed amendments would no longer require a subsidiary issuer or guarantor to be designated as a ''finance subsidiary'' in any particular circumstances. Likewise, the proposed amendments would remove the definition of ''finance subsidiary'' from the existing rule, since it is not otherwise used in Regulation S–X. However, a finance subsidiary used to issue a debt security guaranteed by the parent company, would be addressed by proposed Rule 3–10(a)(1)(ii) or, if the security were to be co-issued, jointly and severally, with its parent, proposed Rule 3–10(a)(1)(i) would apply. We believe eliminating the provisions that apply only to finance subsidiaries, together with the other proposed changes, would simplify the rules while

[94] *See* U.S. Sec. & Exch. Comm'n, Div. of Corp. Fin., *Financial Reporting Manual* Section 2510.5, *https://www.sec.gov/divisions/corpfin/cffinancialreportingmanual.pdf* (last updated Dec. 1, 2017). These circumstances include, for example, when: (1) the subsidiary is sold or sells all of its assets; (2) the subsidiary is declared ''unrestricted'' for covenant purposes; (3) the subsidiary's guarantee of other indebtedness is terminated or released; (4) the requirements for legal defeasance or covenant defeasance or to discharge the indenture have been satisfied; (5) the rating on the parent's debt securities is changed to investment grade; or (6) the parent's debt securities are converted or exchanged into equity securities. The staff guidance also indicates that subsidiary guarantees with such release provisions should not be characterized as full and unconditional without disclosure describing any qualifications to the subsidiary guarantees (*e.g.,* the circumstances in which they could be released). If the proposed changes described herein are adopted, this staff interpretation would no longer be applicable.

[95] *See, e.g.,* letters from ABA-Committees, AB–NYC, and EY.

[96] *See* Section III.C.1.d.ii, ''Role of Subsidiary Guarantors.''

[97] *See* discussion in Section III.C.2.b, ''Non-Financial Disclosures.''

[98] *See* discussion in Section III.C.2.a.ii, ''Presentation on a Combined Basis.''

[99] *See* Section III.A.6 of the 2000 Release.

ensuring that they remain appropriately available for finance subsidiary arrangements. Furthermore, we generally expect detailed financial disclosures about those subsidiaries would not be material, given the nature and amounts of those subsidiaries' assets and operations.[100] While a parent company would be permitted to omit immaterial detailed financial disclosures, all other disclosures required by proposed Rule 13–01, such as the non-financial disclosures specified in proposed Rule 13–01(a)(1) though (3), would be required, to the extent material.

Request for Comment

35. Should we eliminate the ''finance subsidiary'' exception as proposed? Would the proposed elimination of the ''finance subsidiary'' exception under existing Rule 3–10(b) result in supplemental financial information about the finance subsidiary and its parent company being required under the proposed rule where it would not be required under the existing rule? If so, in what circumstances? Would such financial information be material to investors? Why or why not?

(B) Obligated Parent Company and Single Obligated Subsidiary

Existing Rule 3–10(c) applies when an ''operating subsidiary'' issues securities guaranteed by its parent company. Existing Rule 3–10(h)(8) defines an ''operating subsidiary'' to differentiate it from a ''finance subsidiary.'' Since the proposed amendments would remove the ''finance subsidiary'' distinction and definition, proposed Rule 3–10 likewise would no longer need to refer to or define ''operating subsidiary.'' The operating subsidiary structure of existing Rule 3–10(c) would be covered in the issuer and guarantor structure in proposed Rule 3–10(a)(1)(ii) if the security were to be issued by the subsidiary or proposed Rule 3–10(a)(1)(i) if the security were to be co-issued, jointly and severally, with its parent company as contemplated in existing Note 3 to Rule 3–10(c).

Existing Rule 3–10(e) applies to a single subsidiary guarantor of securities issued by the parent company of that subsidiary. This structure would be included in the issuer and guarantor structure in proposed Rule 3–10(a)(1)(i). As discussed above,[101] the requirement in the existing rule that the subsidiary guarantor's guarantee be full and unconditional would not be a condition of eligibility under the proposed rule, but disclosure of any material limitations or conditions to the subsidiary guarantee would be required pursuant to proposed Rule 13–01(a)(2).

(C) Obligated Parent Company and Multiple Obligated Subsidiaries

Existing Rule 3–10(d) applies to a subsidiary that issues securities guaranteed by its parent company and one or more other subsidiaries of that parent company. Existing Rule 3–10(f) applies to multiple subsidiary guarantors of securities issued by the parent company of those subsidiaries. Both of these existing exceptions involve more than one of the parent company's subsidiaries that are obligated as guarantor or issuer of the guaranteed security, and require that all guarantees be joint and several as well as full and unconditional. For issuer and guarantor structures currently included in Rule 3–10(d), proposed Rule 3–10(a)(1)(ii) would apply if the guaranteed security were issued by a subsidiary and proposed Rule 3–10(a)(1)(i) would apply if the guaranteed security were co-issued, jointly and severally, with its parent company as contemplated in existing Note 3 to Rule 3–10(d). Proposed Rule 3–10(a)(1)(i) would apply to parent company issuer and subsidiary guarantor structures currently included in Rule 3–10(f).

As discussed above,[102] while subsidiaries' guarantees would no longer be required to be full and unconditional or joint and several, and would not affect whether an issuer and guarantor structure is eligible under the proposed rule, the terms and conditions of the subsidiary guarantee, including any limitations and conditions, would be required to be disclosed as part of proposed Rule 13–01(a)(2), to the extent material.

Finally, under existing Rule 3–10, issuer and guarantor structures that include more than one subsidiary co-issuer do not explicitly fall into the existing exceptions. Currently, under those circumstances, a registrant would generally seek pre-filing relief from the Commission staff.[103] Multiple subsidiary co-issuers should not change the analysis as to what financial statement disclosures should be provided to investors, because, consistent with the other proposed eligible issuer and guarantor structures, the parent company controls each consolidated co-issuer, the financial information of the subsidiary co-issuers would be reflected in the consolidated financial statements of the parent company, and the parent company would be fully and unconditionally obligated to make payments in full when due under the guaranteed security. Therefore, proposed Rule 3–10(a)(1)(i) would apply to such structures if the subsidiaries co-issued the guaranteed securities jointly and severally with the parent company. Proposed Rule 3–10(a)(1)(ii) would apply if the parent company is a full and unconditional guarantor of securities co-issued by the subsidiaries.

Request for Comment

36. Would any issuer and guarantor structures that are currently eligible under existing Rule 3–10 no longer be eligible under the proposed amendments? If so, what specific structures would not be eligible and why?

37. Should any issuer and guarantor structures that would be eligible under the proposed categories be disallowed? Should any issuer and guarantor structures that are ineligible under the proposed categories be allowed? If so, which ones and why?

2. Disclosure Requirements

Under existing Rule 3–10, one of the conditions to omitting separate financial statements of a subsidiary issuer or guarantor is providing the Alternative Disclosures in the footnotes to the parent company's consolidated financial statements. We are proposing to retain the requirement to provide Alternative Disclosures, with modifications, as we believe the disclosures are an important supplement to the consolidated parent company disclosures. If the eligibility conditions in proposed Rule 3–10(a) and (a)(1) are satisfied, a parent company must include the Proposed Alternative Disclosures specified in proposed Rule 13–01 in the relevant filing, but could omit the separate financial statements of subsidiary issuers and guarantors.[104] The proposed amendments would streamline and simplify the rule by including the Proposed Alternative Disclosures in a single location within proposed Rule 13–01 rather than having such requirements in multiple paragraphs.

[100] *See* discussion and example within Section III.C.2.c, ''When Disclosure is Required.''

[101] *See* Sections III.C.1.d.ii, ''Role of Subsidiary Guarantors.''

[102] *See* Section III.C1.d.ii, ''Role of Subsidiary Guarantors.''

[103] Upon request, pursuant to its delegated authority under 17 CFR 210.3–13 (''Rule 3–13 of Regulation S–X''), the staff has permitted the omission of separate subsidiary issuer and guarantor financial statements for issuer and guarantor structures that included more than one subsidiary co-issuer, provided the other conditions of existing Rule 3–10 were met.

[104] This requirement is specified in proposed Rule 3–10(a)(2).

The proposed amendments are described below.

a. Financial Disclosures

The Consolidating Information currently required by existing Rule 3–10 provides highly-detailed financial information about individual issuers and guarantors or groups of issuers and guarantors within the consolidated parent company, as well as non-guarantor subsidiaries.

Several commenters cited various challenges registrants face in preparing Consolidating Information, such as the complexities of the disclosures; that registrants' books and records often are not maintained on a basis that facilitates the preparation of the disclosures; that extensive manual processes are often necessary; and the difficulty, time, and costs to prepare the disclosures.[105] A number of commenters [106] suggested aligning the disclosure requirements of Rule 3–10 with disclosure practices of issuers and guarantors in the private debt markets that comply with Securities Act Rule 144A.[107] Some commenters stated that the type of information included in debt offerings under Rule 144A, which is less detailed than what is required by Consolidating Information, provides all the material information necessary for investors to make informed investment decisions.[108] For example, one commenter stated that the typical offering memorandum in a Rule 144A offering includes revenues, operating income (or a similar metric) when available, assets and liabilities of the issuers and guarantors as a consolidated group, and the non-guarantor subsidiaries as a consolidated group.[109] Another commenter stated that it was ''not aware of a single Rule 144A offering that has ever included [Rule 3–10]. . .financial statements that were not otherwise already available'' and that the Consolidating Information is ''routinely omitted in unregistered offerings.'' [110]

Prior to the adoption of existing Rule 3–10 in 2000, under Staff Accounting Bulletin No. 53 (1983) (''SAB 53''), subsidiary issuers were ''permitted to include summarized financial information,'' [111] which was presented for each subsidiary issuer or guarantor and did not exclude the financial information of non-guarantor subsidiaries consolidated by those subsidiary issuers and guarantors. In discussing its reasons in the 2000 Release for requiring Consolidating Information instead of summarized financial information, the Commission highlighted that the summarized financial information in SAB 53 did not allow for the more complete and independent assessment of a subsidiary's financial condition that may be necessary in the case of ''more complex'' guarantee structures.[112] Additionally, the Commission noted that SAB 53 disclosures could result in a high number of sets of summarized financial information, which would be burdensome for the parent company and would not likely be useful to investors.[113]

In considering changes to the existing Rule 3–10 disclosure requirements, we have sought to improve the disclosure provided to investors by focusing on the material information needed to make an informed investment decision while reducing the cost and burdens for registrants in providing the information. Our experience since the adoption of the existing Rule 3–10 in 2000 suggests that the level of information required by Consolidating Information, although detailed, could be better focused on what is material to an investment decision. Additionally, we believe that many of the reasons for requiring Consolidating Information instead of summarized financial information highlighted by the Commission in the 2000 Release could be addressed without requiring the use of Consolidating Information, thereby addressing the concerns noted above regarding the burdens associated with issuers' preparation of Consolidating Information.

Accordingly, as discussed below,[114] the financial disclosure requirements in proposed Rule 13–01 are tailored to the type of material information, in addition to the parent company's consolidated financial statements, that we believe investors in registered offerings need to make informed investment decisions about guaranteed debt securities. In seeking to identify the material information investors need, we have considered commenters' suggestion that we look to the disclosures provided in the Rule 144A debt markets. In this regard, we note that the proposed disclosures would be more detailed than that typically provided in exempt offerings, in which investors have the ability to request additional information from potential issuers when they deem it necessary, such as additional financial information about the issuers and guarantors or qualitative disclosures pertaining to the issuer and guarantor structure. Under the proposed revisions, registrants would:

- Be required to provide Summarized Financial Information rather than Consolidating Information;
- be required to provide disclosure about the Obligor Group without financial information of non-obligated entities (financial information of each issuer and guarantor could be combined into a single column); and
- be permitted to reduce the number of periods presented.

As a result of the proposed revisions, the instructions for preparing Consolidating Information in existing Rule 3–10(i) would be eliminated.

i. Level of Detail

Unless a brief narrative is permitted, existing Rule 3–10 requires Consolidating Information, which includes all major captions of the balance sheet, income statement, and cash flow statement that Article 10 of Regulation S–X requires to be shown

[105] *See* letters from ABA-Committees, Anuradha, BDO, Cahill, CAQ, DT, EY, FedEx, GM, Grant, Headwaters, KPMG, Medtronic, and Noble-UK.

[106] *See* letters from ABA-Committees, Davis Polk, EY, PwC, and SIFMA.

[107] The majority of private debt offerings are conducted using Rule 144A, and 99% of Rule 144A offerings are debt offerings. Additionally, although most Regulation D offerings are equity offerings, a significant number include debt securities. *See Access to Capital and Market Liquidity Report,* at p. 38; Scott Bauguess *et al.,* U.S. Sec. & Exch. Comm'n, Div. of Econ. & Risk Analysis, *Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009–2014* (Oct. 2015), *https://www.sec.gov/dera/staff-papers/white-papers/30oct15_white_unregistered_offering.html.*

[108] *See, e.g.,* letters from ABA-Committees, Cahill, and Davis Polk.

[109] *See* letter from Cahill.

[110] *See* letter from Davis Polk.

[111] *See* Section III.A.3.a of the 2000 Release.

[112] In the 2000 Release, the Commission stated that SAB 53 ''did not contemplate more complex guarantee structures where investors must assess the subsidiary's financial condition more completely and independently of its parent company and other subsidiaries of its parent company,'' and also stated that ''summarized financial information is inadequate for this purpose. For example, although cash flow information is significant in assessing creditworthiness, summarized financial information includes no cash flow information.'' *See id.*

[113] In discussing the use of the summarized financial information in SAB 53 to address disclosures involving multiple guarantors, the Commission, in the 2000 Release, stated ''[m]any structures presented to the staff involved a subsidiary issuer, a parent company guarantor, multiple subsidiary guarantors, and multiple subsidiaries that are not guarantors. Other structures involved more than 100 subsidiary guarantors. [SAB 53 disclosures in such structures would have included]. . .more than 100 sets of summarized financial information. Not only would that disclosure have been burdensome for the registrant to provide, it is unlikely to have been useful to investors.'' *See* Section III.A.3.a of the 2000 Release. Other reasons cited by the Commission for requiring Consolidating Information in the 2000 Release are discussed in Sections III.C.2.a.i, ''Level of Detail,'' and III.C.2.a.ii, ''Presentation on a Combined Basis,'' below.

[114] *See* Section III.C.2.a.i, ''Level of Detail.''

separately in interim financial statements. As noted above, a number of commenters recommended reducing the level of detail in financial disclosures by replacing the Consolidating Information with summarized financial information in the notes to the parent company's financial statements.[115]

The Commission stated in the 2000 Release that Consolidating Information ''provides the same level of detail about the financial position, results of operations, and cash flows of subsidiary issuers and subsidiary guarantors that investors are accustomed to obtaining in interim financial statements of a registrant.'' [116] In our experience, this level of detail about subsidiary issuers and guarantors occupies multiple pages of a parent company's financial statements, potentially obscuring important information contained therein.[117] We believe the required supplemental financial information about issuers and guarantors should instead be focused on the information that is most likely to be material to an investment decision. If additional line items beyond those specifically required are material to an investment decision, they would be required to be disclosed as well. Proposed Rule 13–01(a)(4) would therefore require Summarized Financial Information, which would include select balance sheet and income statement line items. Disclosure of additional line items of financial information beyond what is specified in proposed Rule 13–01(a)(4) would be required by proposed Rule 13–01(a)(5), to the extent they are material to an investment decision. For example, if a material amount of reported revenues of the obligated entities are derived from transactions with related parties, such as other non-issuer and non-guarantor subsidiaries of the parent company, disclosure of such related party revenues would be required. This Summarized Financial Information and any additional disclosures that would be required based on materiality would supplement the parent company's consolidated financial statements and would simplify compliance and reduce costs for preparers, while providing investors with more streamlined and easier to understand financial information that is material to an investment decision.

While investors are provided cash flow information at the parent company consolidated level, supplemental cash flow information about subsidiary issuers and guarantors is not typically included in disclosures provided in the Rule 144A debt markets.[118] This leads us to believe that investors in a registered offering look primarily to a parent company's consolidated cash flow information to assess creditworthiness where the parent is the primary obligor or its guarantor obligation is full and unconditional. Based on this observation, and the difficulties and significant costs associated with the preparation of cash flow information for inclusion in Consolidating Information highlighted by several commenters,[119] supplemental cash flow information would not be a required disclosure under the proposed rule.

Request for Comment

38. Should the Proposed Alternative Disclosures require Summarized Financial Information rather than Consolidating Information? Would the Summarized Financial Information, along with the other disclosures required by proposed Rule 13–01, provide the financial information investors need to make an informed investment decision with respect to the guaranteed security?

39. How would issuers and investors be affected by requiring Summarized Financial Information? Are there particular items in Consolidating Information that investors need to make informed investment decisions that would not be provided separately through Summarized Financial Information? Is there any such financial information that underwriters would still require? If so, what would be the effect on the costs associated with the offering?

40. Would additional line items of financial information beyond what would be required by Summarized Financial Information help investors make informed investment decisions? If so, what line items and why? For example, should the proposed rule specifically require supplemental summarized cash flow information resulting from operating, financing, and investing activities? Would issuers face challenges in providing such information?

41. Do investors need summarized cash flow information about issuers and guarantors in addition to the parent company's consolidated cash flow statements to make informed investment decisions about guaranteed securities? If so, how is it used? If not, why not?

ii. Presentation on a Combined Basis

Consolidating Information distinguishes the assets, liabilities, operations, and cash flows of each category of parent and subsidiaries as issuer, guarantor, or non-guarantor. Comments varied with respect to whether and how the financial information of the entities in the issuers and guarantors should be grouped. Some commenters suggested permitting disclosure of financial information of either the Obligor Group or the non-obligated entities as groups,[120] other commenters recommended requiring disclosure of both groups separately,[121] and another commenter suggested several possible groupings.[122] Other commenters stated that investors use the existing Rule 3–10 disclosures to evaluate separately the likelihood of payment by the issuer and guarantors.[123]

The Commission observed in the 2000 Release that there were ''complex guarantee structures where investors must assess the subsidiary's financial condition more completely and independently of its parent company and other subsidiaries of its parent company.'' [124] The Commission also stated that it was ''requiring [Consolidating Information] because it clearly distinguishes the assets, liabilities, revenues, expenses, and cash flows of the entities that are legally obligated under the indenture from those that are not'' and ''[i]t also facilitates analysis of trends affecting subsidiary issuers and subsidiary guarantors and relationships among the various components of a consolidated

[115] *See* letters from BDO, CAQ, DT, EY, Grant, and KPMG.

[116] *See* Section III.A.3.a of the 2000 Release.

[117] *See also* letter from BDO (''In some cases, the value of the alternative disclosure may be overshadowed by its multi-column voluminous nature.'').

[118] *See* letters from ABA-Committees, Cahill, Davis Polk, and PwC.

[119] *See, e.g.,* letter from GM (''There are many challenges when preparing the Consolidating Information, in particular the consolidating statement of cash flows. Our underlying books and records are not based on a guarantor/non-guarantor structure, and due to a centralized cash management function numerous intercompany transactions exist. These factors complicate the preparation of Consolidating Information prepared 'as if' the registrant was a stand-alone entity. These intercompany transactions require extensive analysis and manual reclassification adjustments to permit the preparation of the Consolidating Information, resulting in excessive complexity and effort relative to the limited benefits of providing this information to investors.''). *See also* letters from ABA-Committees, CAQ, Grant, KPMG, and PwC.

[120] *See, e.g.,* letters from BDO and EY.

[121] *See, e.g.,* letters from CAQ and KPMG.

[122] This commenter suggested the Commission consider summarized financial information related only to: (1) The issuers separately and the combined guarantor subsidiaries separately; (2) the issuers and guarantors on a combined basis; or (3) the guarantor subsidiaries. *See* letter from DT.

[123] *See, e.g.,* letters from CalPERS and CFA.

[124] *See* Section III.A.3.a of the 2000 Release.

organization.'' [125] We continue to believe it is important to clearly distinguish in the supplemental financial information the entities obligated under the guaranteed security from those that are not obligated. Along with some commenters, however, we believe investors focus largely on whether payment will be made in full on the dates specified in the guaranteed security, rather than whether payment comes from an issuer or one or more guarantors in the same consolidated group.[126] We therefore believe that it is appropriate for our disclosure rules to focus on the obligated entities as a group, and that the parent company should be able to provide financial disclosures that convey information about the Obligor Group on a combined, rather than disaggregated, basis. Accordingly, the proposed rule would permit the parent company to present the Summarized Financial Information of the parent company issuer or guarantor, each consolidated subsidiary issuer, and each consolidated subsidiary guarantor, on a combined basis. Proposed Rule 13–01(a)(4) would require intercompany transactions between issuers and guarantors presented on a combined basis to be eliminated.

We recognize that there may be circumstances in which separate financial information about certain issuers and guarantors is material to an investment decision. Accordingly, when information provided in response to proposed Rule 13–01 is applicable to one or more, but not all, issuers and guarantors, proposed Rule 13–01(a)(4) would require, to the extent it is material, separate disclosure of Summarized Financial Information for the issuers and guarantors to which the information applies. For example, if a subsidiary's guarantee were limited to a particular dollar amount, disclosure of that limitation would be required by proposed Rule 13–01(a)(2). In that case, separate disclosure of the Summarized Financial Information specified in proposed Rule 13–01(a)(4) would be required for that subsidiary guarantor, if material.

Because non-guarantor subsidiaries are not obligated to make payments as either issuer or guarantor, we do not believe separate supplemental disclosure of their financial information as required under the existing rule is likely to be material to an investment decision. As such, the proposed rule would no longer require separate disclosure of the financial information of non-guarantor subsidiaries.

In order to present the assets, liabilities, and operations of the Obligor Group accurately, it is necessary to exclude the financial information of subsidiaries not obligated under the guaranteed security. Within Consolidating Information under the existing rule, a parent company should present investments in all subsidiaries based upon their proportionate share of the subsidiary's net assets,[127] and subsidiary issuer or guarantor columns should present investments in certain subsidiaries, including but not limited to non-guarantor subsidiaries, under the equity method of accounting.[128] This presentation avoids presenting the financial information of a non-issuer or non-guarantor subsidiary as though it were an issuer or guarantor. We continue to believe that the financial information of non-issuer and non-guarantor subsidiaries should be excluded from the Summarized Financial Information of the Obligor Group, even if those non-issuer and non-guarantor subsidiaries would be consolidated by an issuer or guarantor. We have included a corresponding requirement in proposed Rule 13–01(a)(4). However, the proposed rule would allow the parent company to determine which method best meets the objective of excluding the financial information of non-issuer and non-guarantor subsidiaries from the Proposed Alternative Disclosures, so long as the selected method is disclosed and used for all non-issuer and non-guarantor subsidiaries for all classes of guaranteed securities for which the disclosure is required, and is reasonable in the circumstances.[129] For example, the parent company could exclude the assets, liabilities, and operations of non-issuer and non-guarantor subsidiaries by using the equity method of accounting for those subsidiaries.

As discussed above,[130] separate disclosure of the Summarized Financial Information of one or more subsidiary issuers or guarantors may be necessary under the proposed rule. In this case, the same method of excluding a non-issuer's or non-guarantor's financial information from the Summarized Financial Information of the Obligor Group would also be required for the subsidiary issuers or guarantors whose financial information is presented separately. For example, if a subsidiary's guarantee is limited and its Summarized Financial Information is presented separately from that of the combined Obligor Group, that subsidiary guarantor's financial information should be excluded from the Obligor Group information consistent with the method selected for excluding the financial information of non-issuer and non-guarantor subsidiaries from the Obligor Group information.

Request for Comment

42. Should we permit the financial disclosure of the Obligor Group to be combined within the proposed Summarized Financial Information? Why or why not? If not, what groupings of issuers and guarantors should be required or permitted, and why? How would this impact the information for investment decisions? Are there specific circumstances where separate information should be required?

43. Does presentation of the financial information of non-guarantor subsidiaries provide investors with information they need to make informed investment decisions? Do investors use the financial information of non-obligated entities as part of their investment analyses? For example, do investors consider ratios or any similar derivation of the information from the non-obligated entities? If so, how is it used and in what circumstances? Should Summarized Financial Information of the non-obligated entities also be provided? Why or why not?

44. Should we require a specific method of accounting (*e.g.,* the equity method) to be used to exclude the financial information of non-obligated subsidiaries from the Summarized Financial Information of the Obligor Group instead of permitting the parent company to choose? If so, what method should we require, and why? If not, why? If we do not prescribe a specific

[125] *See id.*

[126] *See, e.g.,* letters from BDO and EY.

[127] *See* Rule 3–10(i)(3) of Regulation S–X.

[128] *See* Rule 3–10(i)(5) of Regulation S–X.

[129] This proposed amendment may result in decreased comparability in the combined Summarized Financial Information of the Obligor Group between parent companies that elect to use different methods of excluding the financial information of their non-issuer and non-guarantor subsidiaries. In proposing this change, we considered the costs to the parent company of requiring the use of a specific method of accounting for non-issuer and non-guarantor subsidiaries to remove their financial information from the combined Obligor Group, particularly if that parent company's systems are not designed to readily produce such information. *See, e.g.,* letters from CAQ, EY, Grant, KPMG, and PwC (highlighting the challenges of this requirement under the existing rule). We expect any decrease of comparability to be limited, as most line items required to be disclosed in Summarized Financial Information would be unaffected by the use of different methods for this purpose (*e.g.,* current assets, current liabilities, net sales or gross revenues and gross profit).

[130] *See* Section III.C.2.a.ii, ''Presentation on a Combined Basis.''

method, should we limit the permissible methods to those concepts included within U.S. GAAP, or IFRS, as applicable? Alternatively, should we limit the permissible methods to concepts included within U.S. GAAP, or IFRS, as applicable, only when the Proposed Alternative Disclosures are placed in the parent company's financial statements? How would allowing different methods affect the disclosures for investors?

iii. Periods To Present

In addition to the parent company's consolidated information, the supplemental information included in the Proposed Alternative Disclosures would help facilitate an investor's evaluation of whether the entities in the Obligor Group have the ability to make payments as required under the guaranteed security, including what assets are available to satisfy those obligations. We believe the required periods of Summarized Financial Information of the Obligor Group should be based on the most recent financial information. Instead of the periods specified in 17 CFR 210.3–01 and 210.3–02 (''Rules 3–01 and 3–02 of Regulation S–X'') required by the existing rule, the proposed rule would require Summarized Financial Information only as of, and for, the most recently completed fiscal year and year-to-date interim period (''interim period''), if applicable. When used in conjunction with the parent company's consolidated financial statements, we believe the most recent full fiscal year and interim period should provide investors the additional information that is material to an investment decision in the guaranteed security and would eliminate unnecessary compliance costs for registrants.

Commenters recommended limiting disclosure to the current year, citing challenges recasting prior period information for circumstances such as legal-entity mergers and discontinued operations.[131] A number of commenters stated that interim reporting of the Proposed Alternative Disclosures should only be required if material changes have occurred since the most recent annual period that is required to be presented.[132] However, we believe that the most recent interim period should be provided so that investors can make decisions based on the most recent information available.

Lastly, because Item 1 of Part I of Form 10–Q[133] requires a registrant to provide the information required by Rule 10–01 of Regulation S–X, we are proposing to add Rule 10–01(b)(9) to require compliance with Rules 3–10 and 13–01.

Request for Comment

45. What periods of presentation are material for investors when evaluating the credit risk of the Obligor Group?

46. Should the required periods of Summarized Financial Information of the Obligor Group be based on the most recent financial information? Why or why not? If so, what periods should be considered ''most recent,'' and why?

47. Should we require additional periods of Summarized Financial Information beyond the most recent fiscal year and interim period? Why or why not? If yes, which periods and why?

48. Rather than requiring disclosure of the most recent interim period, should the proposed rule focus on significant changes similar to Rule 10–01(a)(5) of Regulation S–X, which allows registrants to apply judgment and omit details of accounts that have not changed significantly in amount or composition since the end of the most recently completed fiscal year? Why or why not?

b. Non-Financial Disclosures

When Consolidating Information is presented, the existing rule requires limited non-financial disclosures about the issuers and guarantors and the guarantees,[134] restricted net assets,[135] and certain types of restrictions on the ability of the parent company or any guarantor to obtain funds from their subsidiaries.[136] Although the Request for Comment asked if there is different or additional information that investors need about guarantors and issuers of guaranteed securities, we received no comments on non-financial disclosures.

In addition to proposing amendments to existing Rule 3–10 for financial disclosures, we are also proposing amendments to require specific non-financial disclosures. We are proposing these amendments to enhance the information provided about subsidiary issuers and guarantors, particularly in light of our proposal to require Summarized Financial Information for these subsidiaries. Proposed Rules 13–01(a)(1) through (3) would require certain disclosures, to the extent material,[137] about the issuers and guarantors, the terms and conditions of the guarantees, and how the issuer and guarantor structure and other factors may affect payments to holders of the guaranteed securities. Although a parent company must provide narrative disclosure under the existing requirements, we believe the proposed requirements would result in enhanced narrative disclosures that would improve investor understanding of the issuers, guarantors, and guarantees, and make the financial disclosures they accompany easier to understand. While the proposed requirements are composed of the items we believe are most likely to be material to an investor, there may be additional facts and circumstances specific to particular issuers and guarantors that would be material to holders of the guaranteed security. In that case, similar to existing Rule 3–10(i)(11),[138] proposed Rule 13–01(a)(5) would require disclosure of those facts and circumstances.[139] Additionally, when a non-financial disclosure is applicable to one or more, but not all, issuers and guarantors, proposed Rule 13–01(a)(4) would require, to the extent it is material, separate disclosure of Summarized Financial Information for the issuers and guarantors to which it applies.[140]

Request for Comment

49. Are the proposed non-financial disclosures material to an investment decision? Should we explicitly require any non-financial disclosures in addition to what is proposed? If so, what information and why?

c. When Disclosure Is Required

One of the conditions that must be met under existing Rule 3–10 to be eligible to omit the financial statements of a subsidiary issuer and guarantor is

[131] *See* letters from Medtronic and PwC.

[132] *See* letters from BDO, CAQ, CFA, Comcast, DT, EY, GM, Grant, KPMG, and Medtronic. In making this suggestion, several of these commenters made reference to Rule 10–01(a)(5) of Regulation S–X, which allows registrants to apply judgment and omit details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year. *See* Rule 10–01(a)(5) of Regulation S–X.

[133] 17 CFR 249.308a.

[134] Existing Rules 3–10(i)(8)(i)–(iii) requires disclosure, if true, that each subsidiary issuer or subsidiary guarantor is 100% owned by the parent company, that all guarantees are full and unconditional, and where there is more than one guarantor, that all guarantees are joint and several.

[135] Rule 3–10(i)(10) of Regulation S–X.

[136] Rule 3–10(i)(9) of Regulation S–X.

[137] *See* discussion within Section III.C.2.c, ''When Disclosure is Required.''

[138] Existing Rule 3–10(i)(11)(i) specifies that the parent company ''[m]ay not omit any financial and narrative information about each guarantor if the information would be material for investors to evaluate the sufficiency of the guarantee,'' and existing Rule 3–10(i)(11)(ii) states that the disclosure ''[s]hall include sufficient information so as to make the financial information presented not misleading.''

[139] *See* discussion within Section III.C.2.c, ''When Disclosure is Required.''

[140] *See* discussion within Section III.C.2.ii, ''Presentation on a Combined Basis.''

providing the Alternative Disclosures. If certain numerical thresholds are met, including that the parent company has ''no independent assets or operations'' and that all non-issuer and non-guarantor subsidiaries are ''minor,'' [141] the Alternative Disclosures may take the form of a brief narrative in lieu of detailed Consolidating Information, but some type of the Alternative Disclosures is always required.[142] Under these thresholds, minor changes in circumstances can result in dramatically different disclosures being required. A number of commenters indicated that these thresholds are unnecessarily restrictive.[143]

Instead of using the existing rule's numerical thresholds to determine the form and content of disclosure, we believe investors should receive all disclosures specified in the proposed rule, unless such information is immaterial. As such, the proposed amendments would eliminate the ''no independent assets or operations'' and ''minor'' numerical thresholds, as well as the brief narrative form of Alternative Disclosures, and instead require financial and non-financial disclosures to the extent material to holders of the guaranteed security.[144] For example, under the proposed rule, the Summarized Financial Information of the Obligor Group could be omitted if the parent company's consolidated financial statements do not differ in any material respects from the Obligor Group.[145] As another example, if a finance subsidiary issues securities that are guaranteed by its parent company, the Summarized Financial Information could be omitted because the finance subsidiary has no independent material debt-paying ability and has no material assets or operations other than those related to the issuance, administration, and repayment of the guaranteed security. While the disclosures specified in proposed Rule 13–01(a)(1) through (4) may be omitted if immaterial to holders of the guaranteed security, for clarity, proposed Rule 13–01(a)(4) requires the registrant to disclose a statement that those financial disclosures have been omitted and the reason(s) why the disclosures are not considered to be material.

Existing Rules 3–10(i)(11)(i) and (ii), respectively, require disclosure of any financial and narrative information about each guarantor if it would be material for investors to evaluate the sufficiency of the guarantee, and disclosure of sufficient information to make the financial information presented not misleading. This disclosure is required when Consolidating Information is disclosed.

While we have proposed specific financial and non-financial disclosures, there may be other information about the guarantees, issuers, and guarantors that could be material to holders of the guaranteed security. Accordingly, proposed Rule 13–01(a)(5) would require disclosure of any information that would be material to holders of the guaranteed security, rather than the sufficiency of the guarantee as stated in the existing rule. This requirement would apply in all cases, including when the proposed Summarized Financial Information is omitted in accordance with the proposed rule.

Request for Comment

50. Should we eliminate the existing numerical thresholds for disclosure, such as the parent company having ''no independent assets or operations'' and/or that all non-issuer and non-guarantor subsidiaries are ''minor,'' and instead use a materiality standard to determine the appropriate level of disclosure? Would this cause difficulty in practice? If so, what are those difficulties and how can they be avoided? Would further guidance be necessary? If so, please explain what guidance is needed. Would the elimination of the numerical thresholds and use of a materiality standard result in a loss of material information that investors currently use to analyze these securities? If so, what material information would be lost and would it be material information necessary for an investor's investment decision? Would this principles-based approach result in different levels of disclosure provided by issuers who, for example, may be in similar industries or have similar operations? If so, how would investors view such differences in making investment decisions?

51. Should any additional disclosures be specifically required if default on the guaranteed security reaches a certain level of likelihood? If so, what type of disclosures and when should they be provided?

52. Are the proposed rules sufficiently clear about what disclosures should be provided and when? If not, how should the rules be revised to ensure clarity?

d. Location of Proposed Alternative Disclosures and Audit Requirement

The primary source of financial information provided to investors—the consolidated financial statements of the parent company—is required to be audited as specified in Regulation S–X.[146] Existing Rule 3–10 requires the Alternative Disclosures to be included in the notes to the parent company's consolidated financial statements, thereby requiring them to be audited for the same periods. A few commenters specifically addressed whether the Alternative Disclosures, as revised by their suggestions, should be audited, and those recommendations were mixed.[147]

The Proposed Alternative Disclosures would provide incremental detail as a supplement to the parent company's audited annual and unaudited interim consolidated financial statements to facilitate an analysis of the parts of the consolidated enterprise that are obligated to make payments as issuers or guarantors. We believe the supplemental nature of this information supports providing parent companies with the flexibility to provide the Proposed Alternative Disclosures inside or outside of the consolidated financial statements in registration statements covering the offer and sale of the guaranteed debt securities and any

[141] Rules 3–10(h)(5) and (6) specify the numerical thresholds that must not be exceeded for a parent company to have ''no independent assets or operations,'' and for a subsidiary to be ''minor,'' respectively. *See* additional discussion above in Section II.F, ''Exceptions.''

[142] *See* discussion of existing requirements in Section II.F, ''Exception Paragraphs.''

[143] *See* letters from ABA-Committees, AB–NYC, CAQ, DT, EY, FedEx, KPMG, and PwC.

[144] This requirement is specified in proposed Rule 13–01(a). Whether a disclosure specified in proposed Rule 13–01 may be omitted or whether additional disclosure would be required by proposed Rule 13–01(a)(5), discussed below, depends on whether the disclosure would be material to a reasonable investor. The Supreme Court in *TSC* v. *Northway* held that a fact is material if there is ''a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'' *See TSC Indus., Inc.* v. *Northway, Inc.,* 426 U.S. 438, 449 (1976).

[145] For example, a parent company issuer could have guarantor subsidiaries as well as non-guarantor subsidiaries. If the non-guarantor subsidiaries are immaterial such that the combined Summarized Financial Information of the Obligor Group was not materially different from the corresponding amounts in the parent company's consolidated financial statements, Summarized Financial Information could be omitted. However, if at a later time, non-guarantor subsidiaries become a larger part of the parent company's business such that the combined Summarized Financial Information of the Obligor Group is materially different from the corresponding amounts in the parent company's consolidated financial statements, the parent company would then be required to provide such Summarized Financial Information.

[146] Rules 3–01 and 3–02 of Regulation S–X.

[147] For example, one commenter suggested its recommended disclosures be provided on an unaudited basis, *see* letter from WhiteWave, whereas another commenter suggested requiring, on an audited basis, the type of information typically included on an unaudited basis in offering memoranda for Rule 144A debt offerings. *See* letter from ABA-Committees.

related prospectus, as well as annual and quarterly Exchange Act periodic reports required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. This proposed optionality should reduce costs and burdens for parent companies and reduce the potential for delay in offerings that exists under the existing rule due to the need to prepare audited Alternative Disclosures. Parent companies using this proposed option to provide the disclosures outside the consolidated financial statements may be able to register guaranteed debt offerings and go to market more quickly than under the existing rule. This may allow parent companies to more promptly access favorable market conditions. If a parent company elects to provide the Proposed Alternative Disclosures outside its audited financial statements, the disclosures would be required in specified prominent locations in its offering documents and periodic reports.

Accordingly, the note to proposed Rule 13–01(a) would allow the parent company to provide the Proposed Alternative Disclosures in a footnote to its consolidated financial statements or, alternatively, in management's discussion and analysis of financial condition and results of operations (''MD&A''),[148] in its registration statement covering the offer and sale of the subject securities and any related prospectus, and in Exchange Act reports on Forms 10–K and 10–Q[149] required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. If a parent company elects to provide the disclosures in its audited financial statements, the Proposed Alternative Disclosures would be required to be audited.[150] If not otherwise included in the consolidated financial statements or in the MD&A, the parent company would be required to include the Proposed Alternative Disclosures in its prospectus immediately following ''Risk Factors,'' if any, or otherwise, immediately following pricing information described in 17 CFR 229.503(c) (''Item 503(c) of Regulation S–K''). Beginning with the parent company's annual report filed on Form 10–K for the fiscal year during which the first bona fide sale of the subject securities is completed, however, the parent company would be required to provide the Proposed Alternative Disclosures in a footnote to its consolidated financial statements in its annual and quarterly reports.

The increased flexibility that would be afforded to the parent company in choosing where to locate the Proposed Alternative Disclosures during the fiscal year in which the first bona fide sale of the subject securities is completed gives rise to certain disclosure location considerations. If the parent company were to elect to provide the Proposed Alternative Disclosures in its financial statements, consistent with the existing rule, the disclosures would be subject to annual audit, interim review, and internal control over financial reporting requirements. By doing so, investors and other users may benefit to the extent that they consider the information included in the financial statements more reliable because it is subject to these audit and other requirements. Also consistent with the existing rule, Proposed Alternative Disclosures located in the financial statements would be subject to XBRL tagging requirements.[151] The parent company may incur additional costs to comply with these tagging requirements, whereas investors and other users may benefit from more readily-available information in structured formats.

In contrast, if the parent company were to elect to provide the Proposed Alternative Disclosures outside its financial statements during this time period, it would not incur costs to comply with these requirements, but investors would not benefit from the enhanced reliability of information included in the financial statements. In addition, the safe harbor under the Private Securities Litigation Reform Act of 1995 (''PSLRA'') would not be available for the disclosures if provided in the financial statements, but would be available for disclosure provided in other sections of the filing, such as the MD&A.[152] If the safe harbor is available, a parent company may be more likely to supplement its disclosures, which would benefit investors. When provided outside of the financial statements, the Proposed Alternative Disclosures would be subject to the parent company's disclosure controls and procedures and related certification requirements.

Request for Comment

53. Should the proposed rule permit the parent company to provide the Proposed Alternative Disclosures outside its financial statements in the proposed circumstances described above? Alternatively, should the parent company be permitted to provide the Proposed Alternative Disclosures outside its financial statements in all circumstances? What are the potential benefits or concerns for investors and issuers with either approach?

54. Would requiring the Proposed Alternative Disclosures to be included in a footnote to the parent company's audited annual and unaudited interim financial statements beginning with its annual report filed on Form 10–K or Form 20–F for the fiscal year during which the first bona fide sale of the guaranteed securities is completed be useful to investors? If so, why? If not, why not? What are the potential benefits or concerns for investors and issuers with either approach?

55. Would requiring the Proposed Alternative Disclosures to be audited or reviewed present costs or challenges for parent companies? If so, what are they? For example, would it cause delays in the offering process?

56. Should the proposed rule specify where in a filing the Proposed Alternative Disclosures must appear if the parent company chooses not to include them in its financial statements? Why or why not? If yes, are the locations required by the note to proposed Rule 13–01(a) appropriate? If so, why? If not, why not? Where should the Proposed Alternative Disclosures be disclosed, and why is that location appropriate?

57. Would issuers be more likely to voluntarily provide supplemental information in addition to the required Proposed Alternative Disclosures to the extent the PSLRA applied to such supplemental information? Why or why not? What would that additional supplemental information be?

[148] *See* 17 CFR 229.303 (Item 303 of Regulation S–K).

[149] These proposed amendments also apply to foreign private issuers and issuers offering securities pursuant to 17 CFR 230.251 through 230.263 (''Regulation A'') and the forms applicable to such entities. *See* Section III.D, ''Application of Proposed Amendments to Certain Types of Issuers,'' below.

[150] Regardless of where the Proposed Alternative Disclosures are presented in the filing, U.S. GAAP requires disclosure in the financial statements of the pertinent rights and privileges of the various securities outstanding. *See* ASC 470–10–50–5 and ASC 505–10–50–3.

[151] On June 28, 2018, the Commission adopted rule and form amendments to require filers, on a phased in basis, to use the Inline XBRL format for financial statement information and risk/return summary information. *See Inline XBRL Filing of Tagged Data,* Release No. 33–10514 (Jun. 28, 2018).

[152] Public Law 104–67, 109 Stat. 737 (1995). Since the PSLRA does not provide a safe harbor for forward-looking information located within the financial statements, a parent company presenting the Proposed Alternative Disclosures in its financial statements may be less likely to voluntarily supplement those disclosures with forward-looking information as compared with disclosures made outside the financial statements. However, a parent company retains the option of providing forward-looking information outside its financial statements so that such information is covered by the safe harbor.

58. Should the proposed rule instead require the Proposed Alternative Disclosures to be provided in the parent company's financial statements in the subject registration statement and subsequent Exchange Act periodic reports for the fiscal year in which the first bona fide sale of the subject securities is completed, but permit the parent company to provide the Proposed Alternative Disclosures outside its financial statements in subsequent Exchange Act periodic reports? If so, why? If not, why not? Does the answer change the larger the parent company is? Why or why not? Would investors and issuers benefit from such a requirement? Why or why not? Should the Proposed Alternative Disclosures be required to be included in the parent company's financial statements for a different period of time before the parent company is permitted to provide them outside its financial statements? If so, what time period and why?

59. Should the note to proposed Rule 13–01(a) apply differently to emerging growth companies? [153] Why or why not? For example, should there be different filings or periods of time if the parent company is an emerging growth company? If so, what should be different and why? How would investors and issuers be affected?

e. Recently-Acquired Subsidiary Issuers and Guarantors

Existing Rule 3–10(g) requires pre-acquisition audited financial statements of a recently acquired subsidiary issuer or guarantor in certain circumstances. One commenter noted that the information provided for recently acquired subsidiary issuers and guarantors is more detailed than the information required for the other subsidiary issuers and guarantors.[154] Another commenter made a similar observation but also noted that these financial statements will only be included at the time the issuers and guarantors are first registering the guaranteed security, at which time the probability of the guarantee being invoked would usually be remote.[155] Several commenters recommended eliminating the requirement to provide audited pre-acquisition financial statements of recently-acquired issuers and guarantors but differed on whether any other disclosure should be provided, and, if so, what type.[156]

Commenters also noted that, in addition to being presented with a far greater level of detail than is required for existing subsidiary issuers and guarantors in the Alternative Disclosures under existing Rule 3–10, these pre-acquisition audited financial statements are burdensome and costly for preparers.[157] Additionally, Rule 3–05 of Regulation S–X already requires pre-acquisition audited financial statements of an acquired business to be provided if it exceeds specified thresholds of significance,[158] which one commenter indicated is sufficient for investors.[159]

Based on these observations, and our belief that existing requirements under Rule 3–05 of Regulation S–X provide sufficient information in this context, we do not believe the pre-acquisition financial statements of recently-acquired subsidiary issuers and guarantors required by existing Rule 3–10(g) are necessary. We are therefore proposing to delete existing Rule 3–10(g). Although we are not proposing to require specific disclosures about recently-acquired subsidiary issuers and guarantors in lieu of pre-acquisition financial statements, information about these recently-acquired subsidiaries would be required if material to an investment decision in the guaranteed security pursuant to proposed Rule 13–01(a)(5).

Due to the proposed deletion of Rule 3–10(g), we also propose a conforming change to remove paragraph (b) of Rule 12h–5.[160]

Request for Comment

60. Should we eliminate the existing requirement to provide pre-acquisition financial statements of recently-acquired subsidiary issuers and guarantors? Why or why not? Alternatively, should the proposed rule require some other type of disclosure about recently-acquired subsidiary issuers and guarantors instead of pre-acquisition financial statements? If so, what type of disclosure and in what instances should it be required? For example, should disclosure of pre-acquisition financial information about recently-acquired subsidiary issuers and guarantors mirror that of existing subsidiary issuers and guarantors?

f. Continuous Reporting Obligation

An issuer of securities is required to file Exchange Act reports with the Commission under Section 13(a), with respect to any class of securities registered pursuant to Sections 12(b) or 12(g), or for any class of securities for which it has a reporting obligation under Section 15(d) of the Exchange Act.[161] Section 12(b) registration is required only for so long as the class of securities is listed for trading on a

[153] 17 CFR 230.405 (''Rule 405'') under the Securities Act defines an emerging growth company as an issuer that had total gross revenues of less than $1.07 billion during its most recently completed fiscal year. It retains that status for five years after its initial public offering unless its revenues rise above $1.07 billion, it issues more than $1 billion of non-convertible debt in a three year period, or it qualifies as a large accelerated filer pursuant to 17 CFR 240.12b–2 (''Rule 12b–2'') under the Exchange Act.

[154] *See* letter from DT.

[155] *See* letter from PwC.

[156] *See, e.g.,* letters from CAQ, DT, EY, Grant, KPMG, PwC, and SIFMA. A few commenters recommended rescinding the requirement altogether. *See* letters from EY and SIFMA. Several commenters suggested requiring disclosure about recently acquired issuer and guarantor subsidiaries to mirror what is required for other issuer and guarantor subsidiaries (*i.e.,* form and content of Alternative Disclosures). *See* letters from CAQ, DT, Grant, KPMG, and PwC.

[157] *See, e.g.,* letters from PwC (stating that a ''company can incur significant costs and effort to prepare such financial statements that will never be required again'') and EY (''The requirements to provide separate pre-acquisition financial statements of recently acquired guarantors under S–X Rule 3–10(g) are unnecessary and potentially burdensome.''). *See also* letters from CAQ, DT, Grant, and KPMG.

[158] Rule 3–05 of Regulation S–X specifies requirements for pre-acquisition financial statements of an acquired or to be acquired significant ''business.'' Registrants determine whether a ''business'' has been acquired by applying Rule 11–01(d) of Regulation S–X, and whether an acquisition is significant by using the investment, asset, and income tests described in Rule 1–02(w) of Regulation S–X. If the parent company is a smaller reporting company, 17 CFR 210.8–04 (''Rule 8–04 of Regulation S–X'') specifies requirements for pre-acquisition financial statements of an acquired or to be acquired significant business, including the tests used to determine if an acquisition is significant. Recently-acquired subsidiary issuers and guarantors would typically be considered a ''business'' because separate entities, subsidiaries, or divisions are presumed to be businesses. The requirements of Rule 3–05 of Regulation S–X overlap with Rule 3–10(g) if a parent company files a registration statement in connection with the offering of guaranteed debt or debt-like securities and acquires a subsidiary issuer or guarantor. However, the significance test under Rule 3–10(g) measures significance based on the purchase price of the recently acquired subsidiary issuer or guarantor relative to the size of the offering, which often results in a requirement to provide financial statements at a far lower level of significance than under Rule 3–05 of Regulation S–X. The proposed elimination of Rule 3–10(g) would generally result in an investor receiving pre-acquisition financial statements of a recently-acquired subsidiary issuer or guarantor only if it exceeded the thresholds of significance specified in Rule 3–05 of Regulation S–X or 8–04 of Regulation S–X, as applicable.

[159] *See* letter from SIFMA.

[160] If the proposed removal of paragraph (b) of existing Rule 12h–5 is adopted, a subsidiary issuer or guarantor that was previously required to provide pre-acquisition financial statements pursuant to existing Rule 3–10(g) but was exempt from Exchange Act reporting by paragraph (b) of existing Rule 12h–5 would continue to be exempt from Exchange Act reporting through proposed Rule 12h–5.

[161] Section 12(g) registration is triggered when an issuer exceeds specified asset and ownership thresholds with respect to a class of equity securities and does not apply to securities subject to Rule 3–10.

national securities exchange.[162] An issuer incurs a Section 15(d) reporting obligation for each class of securities that is the subject of a Securities Act registration statement that becomes effective or is required to be updated under Securities Act Section 10(a)(3).[163] Section 15(d)(1)[164] provides that if, at the beginning of any subsequent fiscal year, the securities of any class to which the registration statement relates are held of record by fewer than 300 persons, or in the case of a bank, a savings and loan holding company,[165] or bank holding company,[166] by fewer than 1,200 persons, the registrant's Section 15(d) reporting obligation is automatically suspended with respect to that class.[167] Rule 12h–3 permits registrants to suspend a Section 15(d) reporting obligation at any time during a fiscal year provided the conditions of the rule are met.[168]

The Commission explained in the 2000 Release that the parent company must continue to provide the Alternative Disclosures in its periodic reports for as long as the subject securities are outstanding.[169] This disclosure requirement continues to apply to the parent company even if the reporting obligation of its subsidiary issuer or guarantor with respect to the subsidiary's guaranteed securities or subsidiary's guarantees could be suspended under either Section 15(d) or Rule 12h–3 of the Exchange Act.

A number of commenters indicated that a parent company should be able to cease providing the Alternative Disclosures for its subsidiary issuers and guarantors at the same time that a subsidiary's reporting obligation under Section 15(d) of the Exchange Act with respect to the subject security could be suspended.[170] Some of these commenters noted that requiring a parent company to continue providing the Alternative Disclosures once its subsidiary issuers' and guarantors' obligations to file reports could be suspended under Section 15(d) or Rule 12h–3 is inconsistent with other reporting rules.[171] One commenter stated, the ''disparate treatment is illogical, and should be harmonized by expressly allowing registrants to cease providing the information called for by the Rule 3–10 accommodations when the [reporting obligation related to the] guaranteed security is [suspended] pursuant to Section 15(d) of the Exchange Act.'' [172] Additionally, some commenters [173] stated that this requirement unnecessarily burdens registrants and ''acts as a disincentive for registrants to engage in public debt offerings as opposed to offerings under Rule l44A or pursuant to other Securities Act exceptions.'' [174]

We are proposing that a parent company be permitted to cease providing the Proposed Alternative Disclosures if the corresponding subsidiary issuer's or guarantor's Section 15(d) obligation is suspended automatically by operation of Section 15(d)(1) or through compliance with Rule 12h–3. To implement this change, the proposed rule would eliminate the statement in existing Rule 3–10(a) that ''[e]very issuer of a registered security that is guaranteed and every guarantor of a registered security must file the financial statements required for a registrant by Regulation S–X.'' As proposed, if a subsidiary issuer or guarantor is required to file financial statements required by Regulation S–X with respect to the guarantee or guaranteed security, the subsidiary may omit such financial statements if it complies with conditions set forth in proposed Rule 3–10. The parent company would be able to cease providing the Proposed Alternative Disclosures for a subsidiary issuer or guarantor that is not required to file financial statements required by Regulation S–X with respect to the guarantee or guaranteed security.

As described above, Section 12(b) registration is required for so long as a class of securities is listed for trading on a national securities exchange. As a continued condition of eligibility to omit the financial statements of a subsidiary issuer or guarantor, a parent company must continue providing the Proposed Alternative Disclosures for so long as the subsidiary issuer or guarantor has a Section 12(b) reporting obligation with respect to the guarantee or guaranteed security. If the subsidiary issuer's or guarantor's reporting obligation with respect to the guarantee or guaranteed security is terminated under Section 12(b), the parent may cease providing the Alternative Disclosures once the subsidiary issuer's and guarantor's Section 15(d) obligation is suspended automatically by operation of Section 15(d)(1) or through compliance with Rule 12h–3.

Under the proposed rule, which is consistent with the 2000 Release,[175] if a subsidiary issuer or guarantor with an Exchange Act reporting obligation for the guaranteed securities would initially be eligible to omit its financial statements, because it would meet the requirements of proposed Rule 3–10 and could rely on proposed Rule 12h–5, but later ceased to satisfy those requirements (*e.g.,* it ceases to be a consolidated subsidiary of the parent company), that subsidiary would then be required to begin filing Exchange Act reports for the period during which it ceased to satisfy the requirements of proposed Rule 3–10.[176] Also, the subsidiary would be required to present the financial statements that are required by Regulation S–X at the time a report is due, and would not be able to present the Proposed Alternative Disclosures that proposed Rule 3–10 would have allowed it to present for historical periods.

[162] Accordingly, Section 12(b) reporting obligations are terminated when, for example, the class no longer qualifies for exchange listing or the registrant determines to no longer list the securities on a national securities exchange.

[163] 15 U.S.C. 78 j(a)(3).

[164] 15 U.S.C. 78o(d)(1).

[165] As that term is defined in Section 10 of the Home Owners' Loan Act, 12 U.S.C. 1461.

[166] As that term is defined in Section 2 of the Bank Holding Company Act of 1956, 12 U.S.C. 1841.

[167] The automatic statutory suspension of an issuer's Section 15(d) reporting obligation is not available as to any fiscal year in which the issuer's Securities Act registration statement becomes effective or is required to be updated pursuant to Section 10(a)(3) of the Securities Act.

[168] Rule 12h–3 provides that the duty to file reports under Section 15(d) for a class of securities is suspended immediately upon the filing of a certification on Form 15, provided that the issuer has fewer than 300 holders of record, fewer than 500 holders of record where the issuer's total assets have not exceeded $10 million on the last day of each of the preceding three years, or, in the case of a bank, a savings and loan holding company, or a bank holding company, 1,200 holders of record; the issuer has filed its Section 13(a) reports for the most recent three completed fiscal years, and for the portion of the year immediately preceding the date of filing the Form 15 or the period since the issuer became subject to the reporting obligation; and a registration statement has not become effective or was required to be updated pursuant to Exchange Act Section 10(a)(3) during the fiscal year.

[169] *See* Section III.C.1 of the 2000 Release (''The parent company periodic reports must include the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10. The parent company periodic reports must contain this information for as long as the subject securities are outstanding.'').

[170] *See* letters from ABA-Committees, BDO, CAQ, Chamber, DT, EY, KPMG, PwC, SIFMA, and Simpson.

[171] *See* letters from ABA-Committees, DT, EY, PwC, SIFMA, and Simpson (noting that a continuous reporting obligation appears inconsistent with the reporting obligation of a registrant that provides separate financial statements because that registrant may stop providing the separate financial statements, even if the debt is outstanding).

[172] *See* letter from SIFMA.

[173] *See* letters from DT and Simpson.

[174] *See* letter from Simpson.

[175] *See* Section III.C.3. of the 2000 Release.

[176] Additionally, a subsidiary issuer or guarantor should consider promptly filing a Form 8–K or a Form 6–K to report this change in circumstance.

Request for Comment

61. Would the proposed changes to Rule 3–10(a) achieve the intended result of permitting a parent company to cease providing the Proposed Alternative Disclosures if each subsidiary issuer's and guarantor's reporting obligation is suspended automatically by operation of Section 15(d)(1) or through compliance with Rule 12h–3? If not, why, and what changes are necessary to achieve that result?

62. We expect that the proposed changes to both eligibility to provide the Proposed Alternative Disclosures and the content of the Proposed Alternative Disclosures would reduce the burden on a parent company's periodic reporting. In light of these proposed changes, should we continue to require the parent company to provide the Proposed Alternative Disclosures in its periodic reports for as long as the subject securities are outstanding? Why or why not?

63. If the proposed amendments are adopted, should there be a phase-in period for parent companies that provide the Alternative Disclosures under existing Rule 3–10 in reliance on Rule 12h–5? If so, why would such a phase-in be needed? How long should that phase-in period be? Should it begin with the beginning of the first fiscal year after adoption of the proposals? Should we permit early adoption? If so, why or why not?

64. Should the proposed rule include a requirement to provide current notification to investors when a subsidiary issuer or guarantor fails to meet the conditions of proposed Rule 3–10 and must begin reporting pursuant to the Exchange Act? If so, what should that requirement be? If not, why not?

D. Application of Proposed Amendments to Certain Types of Issuers

Rule 3–10's requirements apply to several categories of issuers, including foreign private issuers,[177] smaller reporting companies (''SRCs''),[178] and issuers offering securities pursuant to Regulation A. The proposed amendments also would apply to these types of issuers, because, for the reasons discussed above, we believe investors would benefit from the simplified and improved disclosures that would result from the proposed amendments and the cost of providing the disclosures would be reduced for these types of issuers. In certain circumstances, Rule 3–10 also applies to the financial information of third parties provided by issuers of asset-backed securities (''ABS''). We also believe the proposed amendments should be extended to the financial information of such third parties for the reasons discussed above.

Request for Comment

65. Should the proposed changes to Rule 3–10 also apply to these types of issuers? If so, why? If not, why not? Do investors in guaranteed securities issued by these types of issuers require additional, different, or less information to make informed investment decisions than would be required by the proposed rule? If so, what information and why?

66. How frequently do these types of issuers issue guaranteed securities? Is there a reason to believe they may offer them more often under the proposed rules? Why or why not?

67. Are other conforming changes to the proposed rules necessary for them to apply to these types of issuers? If so, what changes are necessary and why?

68. Should the proposed amendment that would permit the parent company to provide the Proposed Alternative Disclosures outside the footnotes to its audited annual and unaudited interim consolidated financial statements in its registration statement covering the offer and sale of the guaranteed securities and any related prospectus, and in Exchange Act annual and quarterly reports required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed apply differently to these types of issuers? Why or why not? For example, are there different filings or periods of time that the parent company should be permitted to provide the Proposed Alternative Disclosures outside of its financial statements for these types of issuers? As another example, should the proposed rule prescribe different locations outside the financial statements where the Proposed Alternative Disclosures should be provided for these types of issuers? In each case, what are they and why? How would investors and issuers be affected?

1. Foreign Private Issuers

Under the proposal, foreign private issuers would continue to be required to comply with Rule 3–10, and would also be required to comply with proposed Rule 13–01. As foreign private issuers would be required to provide the disclosures specified in proposed Rule 13–01, Instruction 1 to Item 8 of Form 20–F would be amended to specifically require compliance with proposed Rule 13–01. We are also proposing amendments to conform Forms F–1 and F–3 to the streamlined structure of proposed Rule 3–10(a). General Instruction I.B of Form F–1 and the note to General Instruction I.A.5 of Form F–3 contain eligibility requirements for the use of these forms applicable to issuers and guarantors of guaranteed securities that are majority-owned subsidiaries. Rather than the current form language stating that Rule 3–10 specifies the financial statements that are required, we are proposing to amend these forms to instead state that the requirements of Rule 3–10 are applicable to financial statements for those subsidiary issuers or guarantors.

Existing Rule 3–10(a)(3) includes a reference, solely for convenience, directing foreign private issuers to Item 8.A of Form 20–F rather than having them go first to Rules 3–01 and 3–02 of Regulation S–X to determine the periods for which financial statements are required.[179] We propose to simplify the rule by deleting this reference.

Also, existing Rule 3–10(i)(12) requires a parent company that prepares its financial statements on a comprehensive basis other than U.S. GAAP or IFRS as issued by the International Accounting Standards Board to reconcile Consolidating Information to U.S. GAAP. Because of the supplemental nature of the Proposed Alternative Disclosures and the requirement in Item 18 of Form 20–F that the parent company's consolidated financial statements be reconciled to U.S. GAAP, we do not believe continuing to include a requirement to reconcile the financial information included in the Proposed Alternative Disclosures to U.S. GAAP is necessary. Although the reconciliation requirement would be eliminated, proposed Rule 13–01(a)(5) would require the parent company to disclose any other quantitative or qualitative information that would be material to making an investment decision with respect to the guaranteed security.

Request for Comment

69. Should a parent company that prepares its financial statements on a comprehensive basis other than U.S. GAAP or IFRS as issued by the International Accounting Standards Board be required to reconcile the proposed financial disclosures specified in proposed Rule 13–01(a)(4) to U.S. GAAP, similar to the requirement of existing Rule 3–10(i)(12)? If so, why? If not, why not?

[177] *See* 17 CFR 230.405, 240.3b–4 (defining ''foreign private issuer'').

[178] *See* 17 CFR 230.405, 240.12b–2 (defining ''smaller reporting company'').

[179] Rule 3–01(h) of Regulation S–X and Rule 3–02(d) of Regulation S–X direct foreign private issuers to Item 8.A of Form 20–F.

2. Smaller Reporting Companies

Note 3 to Rule 8–01 of Regulation S–X requires compliance with existing Rule 3–10 if the subsidiary of an SRC issues securities guaranteed by the SRC or the subsidiary guarantees securities issued by the SRC, except that the periods presented are those required by 17 CFR 210.8–02 (''Rule 8–02 of Regulation S–X''). Because the subsidiary issuer or guarantor is itself a registrant, it is required to file financial statements meeting the requirements of Regulation S–X. Such financial statements may be prepared in accordance with 17 CFR 210.8–01 through 210.8–08 (Article 8 of Regulation S–X) so long as the subsidiary issuer or guarantor qualifies as an SRC.[180] Consistent with the existing rule, if the conditions of proposed Rule 3–10 are satisfied, the subsidiary issuer's or guarantor's financial statements may be omitted. While the substance of this requirement would not change, we are proposing amendments to Note 3 to Rule 8–01 to conform it to the streamlined structure of proposed Rule 3–10(a). Rather than stating that the subsidiary issuer or guarantor of the SRC issuer or guarantor must present financial statements as required by existing Rule 3–10, Note 3 to Rule 8–01 would instead state that the requirements of proposed Rule 3–10 are applicable to financial statements of the subsidiary issuer or guarantor. In addition, we are proposing to add a sentence to Note 3 to Rule 8–01 to require an SRC to provide the disclosures specified in proposed Rule 13–01. Lastly, because Item 1 of Part I of Form 10–Q permits an SRC to provide the information required by Rule 8–03 of Regulation S–X if it does not provide the information required by Rule 10–01, we are proposing to add Rule 8–03(b)(7) to require compliance with Rules 3–10 and 13–01.

3. Offerings Pursuant to Regulation A

In connection with offerings made pursuant to Regulation A,[181] Forms 1–A,[182] 1–K,[183] and 1–SA [184] direct an entity (''Regulation A Issuer'') to present financial statements of a subsidiary that issues securities guaranteed by the parent company or guarantees securities issued by the parent company as required by Rule 3–10 for the same periods as the Regulation A Issuer's financial statements,[185] because under these circumstances such subsidiary issuers or guarantors would themselves be Regulation A Issuers. Consistent with existing requirements, if the conditions of proposed Rule 3–10 are satisfied, the subsidiary issuer's or guarantor's financial statements may be omitted. While the substance of this requirement would not change, we are proposing amendments to Forms 1–A, 1–K, and 1–SA to conform the requirements to the streamlined structure of proposed Rule 3–10(a). Rather than stating that the subsidiary issuer or guarantor of the parent company must present financial statements as required by existing Rule 3–10, Forms 1–A, 1–K, and 1–SA would instead state that the requirements of proposed Rule 3–10 are applicable to financial statements of the subsidiary issuer or guarantor. Additionally, the proposed amendments would modify each form to require the disclosures specified in proposed Rule 13–01 and specify the location of the disclosures, similar to the proposed note to Rule 13–01(a) but consistent with the requirements of Regulation A. However, if a parent company elects to provide the disclosures in its audited financial statements, the Proposed Alternative Disclosures would be required to be audited.

4. Issuers of Asset-Backed Securities—Third Party Financial Statements

The disclosure items for issuers of ABS, set forth in Regulation AB,[186] specify circumstances when an ABS issuer must provide financial information for certain third parties [187] in its filings. For example, under Regulation AB, financial information about significant obligors of pool assets and guarantors of those pool assets may be required. In lieu of providing the financial information of certain unrelated significant obligors, if certain conditions are met, Item 1100(c)(2) of Regulation AB permits the ABS issuer to reference the significant obligor's Exchange Act reports (or, for certain circumstances, its parent's Exchange Act reports) on file with the Commission. One of these conditions is that the significant obligor meets one of the categories of eligible significant obligors specified in Item 1100(c)(2)(ii) of Regulation AB. Of these eligible categories, two relate to pool assets guaranteed by a parent or subsidiary of the significant obligor, as outlined in Items 1100(c)(2)(ii)(C) and (D). For these two categories, Item 1100(c)(2)(ii) permits an ABS issuer to reference Exchange Act reports containing the parent's consolidated financial statements if the information requirements of Rule 3–10 of Regulation S–X and certain other conditions are satisfied.

We are proposing conforming amendments to Items 1100(c)(2)(ii)(C) and (D) of Regulation AB because we are proposing to relocate the disclosure requirements associated with issuers and guarantors of guaranteed securities to proposed Rule 13–01. Thus, rather than refer to the information requirements of Rule 3–10, Items 1100(c)(2)(ii)(C) and (D) would instead state that disclosures specified in proposed Rule 13–01 must be provided in the reports to be referenced and that financial statements of the subsidiary third party or subsidiary guarantor, as applicable, may be omitted if the requirements of proposed Rule 3–10 are satisfied. The function of the eligible categories in Items 1100(c)(2)(ii)(C) and (D) would not change under the proposed revisions.

Additionally, we are proposing conforming amendments to Items 1112, 1114, and 1115 of Regulation AB and Item 504 of Regulation S–K because the citations to Regulation S–X in those item requirements refer to Regulation S–X as encompassing ''210.1–01 through 210.12–29.'' Those citations would be updated to include proposed Rules 13–01 and 13–02 of Regulation S–X.

IV. Rule 3–16 of Regulation S–X

Rule 3–16 contains requirements for affiliates whose securities are pledged as collateral for securities registered or being registered. Existing Rule 3–16 requires a registrant to provide separate annual and interim [188] financial statements for each affiliate whose

[180] 17 CFR 229.10(f).

[181] 17 CFR 230.251–230.263.

[182] 17 CFR 239.90.

[183] 17 CFR 239.91.

[184] 17 CFR 239.92.

[185] Forms 1–A and 1–K also specify the audit requirements applicable to financial statements of other entities, which includes those of subsidiary issuers and guarantors of an issuer offering guaranteed securities pursuant to Regulation A. We are not proposing any changes to these audit requirements for circumstances where the separate financial statements of subsidiary issuers and guarantors are filed.

[186] 17 CFR 229.1100 through 229.1125.

[187] These third parties include: (1) Significant obligors of pool assets, 17 CFR 229.1112(b); (2) entities that provide credit enhancement and other support, except for certain derivative instruments, 17 CFR 229.1114(b)(2); and (3) certain derivative instrument counterparties, 17 CFR 229.1115(b). Depending on the specified measures of significance, the financial information required for these third parties ranges from selected financial data required by 17 CFR 229.301 (Item 301 of Regulation S–K) to audited financial statements meeting the requirements of Regulation S–X (except Rule 3–05 of Regulation S–X and 17 CFR 210.11–01 through 210.11–03 (Article 11 of Regulation S–X)).

[188] Rule 3–16 Financial Statements are not required in quarterly reports, such as on Form 10–Q. *See* Section III.A.6. of the 2000 Release.

securities constitute a ''substantial portion'' of the collateral for any class of securities registered or being registered as if the affiliate were a separate registrant (''Rule 3–16 Financial Statements'').[189] Rule 1–02(b) of Regulation S–X defines an ''affiliate'' by stating that an ''*affiliate* of, or a person *affiliated* with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified'' (emphasis in original).[190] In practice, affiliates whose securities collateralize a registered security are almost always consolidated subsidiaries of that registrant.

Whether an affiliate's portion of the collateral is a ''substantial portion'' is determined by comparing the highest amount among the aggregate principal amount, par value, book value, or market value of the affiliate's securities to the principal amount of the securities registered or being registered. If the highest of those values equals or exceeds 20 percent of the principal amount of the securities registered or being registered for any fiscal year presented by the registrant, Rule 3–16 Financial Statements are required.[191]

The requirements in existing Rule 3–16 have remained unchanged for many years,[192] and we are proposing changes to improve the disclosures required by the rule.

V. Proposed Amendments to Rule 3–16 and Relocation to Rule 13–02

A. Overarching Principle

Our proposed amendments to Rule 3–10 are based on the principle that investors in guaranteed securities rely primarily on the consolidated financial statements of the parent company as supplemented by details about the subsidiary issuers and guarantors when making investment decisions. Similarly, we believe that the consolidated financial statements of the registrant are the most relevant information for investors when making investment decisions about that registrant's securities that are collateralized by securities of its affiliate(s). The pledge of collateral is a residual equity interest that could potentially be foreclosed upon only in the event of default and almost always relates to an affiliate whose financial information is already included in the registrant's consolidated financial statements.[193] While we believe information about the affiliate(s) whose securities are pledged as collateral is material for an investor to consider potential outcomes in the event of foreclosure, we believe that separate financial statements of each such affiliate are not material in most situations. Rather, we believe the nature and extent of disclosures about the affiliate(s) and the related collateral arrangement should be consistent with the supplemental nature of the information and better balanced with the cost of providing such disclosures.

B. Overview of the Proposed Changes

Although affiliates whose securities are pledged as collateral are not registrants with respect to the collateralized security, and are not generally subject to the related reporting requirements, existing Rule 3–16 requires financial statements as if the affiliates were registrants. This requirement is more onerous than those that apply to other forms of credit enhancements, such as the Alternative Disclosures permitted under existing Rule 3–10 or the disclosures required by 17 CFR 210.4–08(b) (''Rule 4–08(b) of Regulation S–X'') for assets that are pledged.[194] Additionally, while the importance of the collateral to an investor may vary widely from situation to situation, the existing rule requires full, audited financial statements for the affiliate in all circumstances when the ''substantial portion'' threshold is met, but no disclosure if the threshold is not met. For example, Rule 3–16 Financial Statements may be required if a registrant issues a small amount of debt securities, even though an affiliate may be only a small percentage of the registrant's assets and operations, but may not be required if a registrant issues a substantial amount of debt securities, even though an affiliate constitutes a large percentage of a registrant's assets and operations.

A number of commenters stated that debt offerings are often structured to avoid or limit Rule 3–16 disclosures by reducing the amount of collateral an investor might receive in the event of default, resulting in reduced collateral packages, or are otherwise structured as unregistered offerings.[195] Other commenters indicated that debt agreements may be structured to specifically release an affiliate's securities from collateral if and when their inclusion would trigger the requirements of existing Rule 3–16.[196] Another commenter indicated that the requirements of existing Rule 3–16 often make it uneconomical to secure publicly-offered bonds with pledges of stock.[197]

We are proposing to replace the existing requirement—that a registrant provide separate financial statements for each affiliate whose securities are pledged as collateral—with a requirement that a registrant provide financial and non-financial disclosures about the affiliate(s) and the collateral arrangement as a supplement to the registrant's consolidated financial statements. The supplemental nature of this information, similar to the proposed disclosures for issuers and guarantors of guaranteed securities discussed above, supports providing registrants with the flexibility to provide the proposed disclosures inside or outside the registrant's audited annual and unaudited interim financial statements in registration statements covering the offer and sale of the collateralized securities and any related prospectus, as well as annual and quarterly Exchange Act periodic reports required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed.[198] Accordingly, the

[189] Rule 3–16(a) of Regulation S–X. These financial statements are required to be provided for the periods required by Rules 3–01 and 3–02 of Regulation S–X.

[190] Rule 1–02(b) of Regulation S–X.

[191] Rule 3–16(b) of Regulation S–X.

[192] *See Separate Financial Statements Required by Regulation S–X,* Release No. 33–6359 (Nov. 6, 1981) [46 FR 56171 (Nov. 16, 1981)].

[193] Generally, in the event of default, the holders of debt without the benefit of a pledge of collateral are comparatively disadvantaged. In the event of default, a holder of a debt security can make claims for payment directly against the issuer. Unpledged assets of an issuer's subsidiaries would generally only be indirectly accessible to the holder through bankruptcy proceedings, subordinate to direct claims against those subsidiaries or their assets. A debt security that is secured by a pledge of collateral typically allows a holder to make direct claims to that collateral in the event of default.

[194] Rule 4–08(b) of Regulation S–X requires disclosure of the approximate amounts of assets mortgaged, pledged, or otherwise subject to lien and a brief identification of the obligations collateralized.

[195] *See, e.g.,* letters from ABA-Committees, Cahill, Chamber, Davis Polk, DT, and EY.

[196] *See, e.g.,* letters from Covenant, Davis Polk, KPMG, and PwC.

[197] *See* letter from Davis Polk.

[198] Similar to the proposed disclosures for issuers and guarantors of guaranteed securities discussed above, the note to proposed Rule 13–02(a) would allow the registrant to provide the disclosures required by this section in a footnote to its consolidated financial statements or alternatively, in MD&A in its registration statement covering the offer and sale of the subject securities and any related prospectus, and in Exchange Act reports on Form 10–K, Form 20–F, and Form 10–Q required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. If not otherwise included in the consolidated financial statements or in MD&A, the registrant would be required to include the disclosures in its prospectus immediately following ''Risk Factors,'' if any, or otherwise, immediately following pricing information described in Item 503(c) of Regulation S–K. The registrant, however, would be required to provide the disclosures in a footnote to its

Continued

disclosure requirements in Rule 3–16 would be amended and relocated to proposed Rule 13–02.

Additionally, instead of requiring disclosure only when the pledged securities meet or exceed a numerical threshold relative to the securities registered or being registered under the existing rule's ''substantial portion'' test, the proposed amendments would require disclosure unless they are immaterial to holders of the collateralized security. Further, the proposed changes would require disclosure of any additional information about the collateral arrangement and each affiliate whose security is pledged as collateral that would be material to holders of the collateralized securities. We believe these proposed disclosures would enable an investor to evaluate the potential outcomes in the event of foreclosure, would reduce costs and burdens on registrants, and may facilitate the use of debt structures that include pledges of affiliate securities, resulting in improved collateral packages being available to investors. The proposed disclosure requirements are discussed further below.

Request for Comment

70. Should the proposed amendments to Rule 3–16 be based on the approach described above? If so, why? If not, what approach should be used and why?

71. Would the proposed amendments to existing Rule 3–16 result in an increase in the number of registered debt offerings that include pledges of affiliate securities as collateral? Why or why not? How would increasing the number of registered debt offerings that include pledges of affiliate securities affect investors and issuers?

72. Do issuers structure registered debt offerings to not include pledges of affiliate securities as collateral because of concerns about compliance with existing Rule 3–16? If so, what are the specific concerns? Are issuers choosing to engage in private debt offerings that include pledges of affiliate securities as collateral?

73. What factors do issuers consider in determining whether to structure a debt offering to include pledges of affiliate securities as collateral, and how are they considered?

74. How do investors use the Rule 3–16 Financial Statements? For example, how do retail investors, institutional investors, or third parties, such as financial analysts, use the information? How would these investors use the proposed disclosures specified in proposed Rule 13–02?

75. Would the proposed amendments to existing Rule 3–16 improve the disclosures provided to investors? If so, how? Are there other changes to the rule that we should consider that would improve disclosures to investors? If so, what are they and how would they improve disclosure?

76. Would the proposed amendments to existing Rule 3–16 make the rule less burdensome and, thereby, encourage issuers to structure debt offerings to include pledges of affiliate securities as collateral? Are there other changes to the rule that we should consider that would reduce compliance burdens for issuers but continue to provide the material information investors need to make informed investment decisions?

77. Would the proposed amendments to existing Rule 3–16 result in issuers omitting disclosures that investors or financial analysts rely on? If so, which disclosures? Would such a change in the disclosures have an effect on investor participation in registered debt offerings that include pledges of affiliate securities as collateral?

78. Are there alternative approaches to disclosures about affiliates whose securities are pledged as collateral that would benefit investors? If so, what are they and why? How would investors use the disclosures under these alternative approaches? How would such approaches impact issuers?

79. Should the proposed rule permit the registrant to provide the proposed disclosures outside its financial statements in the proposed circumstances described? Alternatively, should the registrant be permitted to provide the proposed disclosures outside its financial statements in all circumstances? What are the potential benefits or concerns for investors and issuers with either approach?

80. Would requiring the proposed disclosures to be included in a footnote to the registrant's audited annual and unaudited interim financial statements beginning with its annual report filed on Form 10–K or Form 20–F for the fiscal year during which the first bona fide sale of the guaranteed securities is completed be useful to investors? If so, why? If not, why not? What are the potential benefits or concerns for investors and issuers with either approach?

81. Would requiring the proposed disclosures to be audited or reviewed present costs or challenges for registrants? If so, what are they? For example, would it cause delays in the offering process?

82. Should the proposed rule specify where in a filing the disclosures required by proposed Rule 13–02 must appear if the registrant chooses not to include them in its financial statements? Why or why not? If yes, are the locations required by the Note to proposed Rule 13–02(a) appropriate? If so, why? If not, why not? Where should these disclosures be located and why is that location appropriate?

83. Would issuers be more likely to voluntarily provide supplemental information in addition to the required proposed disclosures to the extent the PSLRA applied to such supplemental information? Why or why not?

84. Should the note to proposed Rule 13–02(a) apply differently to emerging growth companies? Why or why not? For example, should there be different filings or periods of time if the registrant is an emerging growth company? If so, what should be different and why? How would investors and issuers be affected?

C. Financial Disclosures

1. Level of Detail

Existing Rule 3–16 requires separate financial statements of each affiliate whose securities constitute a substantial portion of the collateral. Commenter recommendations for the type of financial disclosure that should be provided about such affiliates were varied. For example, one commenter expressed its support for the existing requirements,[199] and another suggested elimination of the existing rule.[200] A number of commenters recommended allowing disclosures other than separate financial statements,[201] and some specifically suggested requiring summarized financial information.[202]

The affiliates whose securities are pledged as collateral are almost always

consolidated financial statements in its annual and quarterly reports beginning with its annual report filed on Form 10–K or Form 20–F for the fiscal year during which the first bona fide sale of the subject securities is completed. If the registrant elects to provide the proposed disclosures in its financial statements, the disclosures would be subject to annual audit, interim review, internal control over financial reporting, and XBRL tagging requirements. *See* Section III.C.2.d, ''Location of Proposed Alternative Disclosures and Audit Requirement.'' These proposed amendments would also apply to foreign private issuers and issuers offering securities pursuant to Regulation A and the forms applicable to such entities. *See* Section V.F, ''Application of Proposed Amendments to Certain Types of Issuers,'' below.

[199] This commenter supported requiring financial statements as though the affiliate were a registrant, despite the fact that the collateral pledge is not considered a separate security. *See* letter from CalPERS.

[200] This commenter stated that it is not aware of a single Rule 144A offering that has included Rule 3–16 financial statements that were not otherwise already available. *See* letter from Davis Polk.

[201] *See, e.g.,* letters from BDO, CAQ, Chamber, Covenant, DT, EY, KPMG, and PwC.

[202] *See, e.g.,* letters from ABA-Committees, BDO, Chamber, and EY.

consolidated subsidiaries of the registrant, and their financial information is thus already reflected in the registrant's consolidated financial statements. We therefore believe the required supplemental financial information about such affiliates should be focused on the information that is most likely to be material to an investment decision. As such, proposed Rule 13–02(a)(4) would require Summarized Financial Information, a widely understood and common set of requirements, for each such affiliate, which would include select balance sheet and income statement line items.[203] Disclosure of additional line items of financial information beyond what is specified in proposed Rule 13–02(a)(4) would be required by proposed Rule 13–02(a)(5) if they are material to an investment decision. For example, if a material amount of reported revenues of the affiliate(s) are derived from transactions with related parties, such as other subsidiaries of the registrant whose securities are not pledged as collateral, disclosure of such related party revenues would be required. When used in conjunction with the consolidated financial statements of the registrant, we believe this supplemental disclosure of select balance sheet and income statement line items of the affiliate(s) whose securities are pledged would provide the information investors need to evaluate the potential outcomes in the event of foreclosure. We believe this proposed amendment also would significantly simplify compliance efforts and reduce costs for preparers.

One commenter suggested retaining a financial statement requirement when the affiliate is not a guarantor and is either a non-subsidiary controlled affiliate of the registrant or a controlling affiliate of the issuer.[204] We are not proposing to retain such a requirement because practice has demonstrated that affiliates whose securities are pledged as collateral are almost always consolidated subsidiaries of the registrant. In the rare circumstances where the affiliate is not a consolidated subsidiary of the registrant, proposed Rule 13–02(a)(5) would require the registrant to provide any other quantitative or qualitative information that would be material to making an investment decision with respect to the collateralized security.[205] Because the unconsolidated affiliate's financial information is not included in the registrant's consolidated financial statements, we would expect disclosure beyond what is specified in proposed Rule 13–02(a)(1) through (4) to be provided in these circumstances. In this regard, separate financial statements of the unconsolidated affiliate may be necessary if material to an investment decision.[206]

Request for Comment

85. Should the proposed rule require Summarized Financial Information about the affiliates whose securities are pledged as collateral rather than separate financial statements of each such affiliate? Why or why not? Would the Summarized Financial Information, along with the other disclosures required by proposed Rule 13–02, provide the financial information investors need to make an informed investment decision with respect to the collateralized security? Should the proposed rule require a different type of information be provided about such affiliates? How would investors use this information to assess the value of affiliate securities pledged as collateral?

86. How would issuers and investors be affected by requiring Summarized Financial Information? Are there particular items in Rule 3–16 Financial Statements that investors need to make informed investment decisions that would not be provided separately through Summarized Financial Information? Is there any such financial information that underwriters would still require? If so, what would be the effect on the costs associated with the offering?

87. An affiliate whose securities are pledged as collateral for a registrant's securities is almost always a consolidated subsidiary of the registrant. Should our requirements specifically address the rare circumstances where the affiliate is not a consolidated subsidiary of a registrant? If so, what should those requirements be and why? For example, should we require separate financial statements of such unconsolidated affiliates?

88. Would additional line items of financial information beyond what would be required by Summarized Financial Information help investors make informed investment decisions? If so, what line items and why? For example, should the proposed rule specifically require supplemental summarized cash flow information resulting from operating, financing, and investing activities? Would issuers face challenges in providing such information?

89. Do investors need summarized cash flow information about affiliates whose securities are pledged as collateral in addition to the registrant's consolidated cash flow statements to make informed investment decisions about collateralized securities? If so, how is it used? If not, why not?

2. Presentation on a Combined Basis

The existing test used to determine whether the securities of an affiliate constitute a ''substantial portion'' of the collateral for securities registered or being registered is required to be performed for each affiliate whose securities are pledged. The views of commenters were mixed regarding whether financial disclosures about affiliates whose securities are pledges should be combined. For example, one commenter recommended financial disclosures of each affiliate be required,[207] another recommended that we permit financial information to be combined in certain circumstances,[208] and another recommended separate or combined presentation.[209]

When the securities of more than one affiliate that is consolidated in the registrant's financial statements are pledged as collateral, we believe disclosure of the financial information of such affiliates on a combined basis would provide investors with the material information they need to assess the value of possible recoveries from the pledged securities in a more clear and streamlined manner than if individual sets of financial information were required for each such affiliate. We note that the existing requirements can result in potentially confusing disclosure about the extent of collateral. For example, when the securities of a registrant's subsidiary (''Subsidiary A'') are pledged as collateral and the securities of an entity consolidated by Subsidiary A (''Subsidiary B'') are also pledged, separate Rule 3–16 Financial Statements may be required for both Subsidiary A and Subsidiary B. In such a scenario, Subsidiary B's assets, liabilities, operations, and cash flows would be included twice (*i.e.,* in the financial statements of both Subsidiary A and Subsidiary B). We believe disclosure on a combined basis of all consolidated affiliates whose securities are pledged would address this

[203] As with proposed Rule 13–01(a)(4), the Summarized Financial Information is the information specified in Rule 1–02(bb)(1) of Regulation S–X.

[204] *See* letter from Cahill.

[205] *See* Section V.E, ''When Disclosure is Required.''

[206] *See* proposed Rule 13–02(a)(5). *See also* Rule 3–13 of Regulation S–X.

[207] *See* letter from PwC.

[208] This commenter recommended that we permit the combining of the financial information of affiliates whose ownership percentages are essentially the same. *See* letter from EY.

[209] *See* letter from DT.

potential confusion. Furthermore, in the event of default by the registrant, we would expect an investor to make claims to all of the affiliate securities that are pledged.

Accordingly, we believe an investor could more effectively and efficiently assess the value of possible recoveries from the securities pledged as collateral by evaluating the combined financial information of the group of consolidated affiliates whose securities are pledged as opposed to performing this assessment for each such affiliate individually. As such, our proposed amendments would permit a registrant to disclose the financial information of such consolidated affiliates on a combined rather than individual basis. Proposed Rule 13–02(a)(4) would require intercompany transactions between affiliates presented on a combined basis to be eliminated. Unlike the proposed amendments to Rule 13–01, because the securities pledged as collateral are an equity interest in that pledgor affiliate, the financial information of all subsidiaries that would be consolidated by that affiliate would be included in the Summarized Financial Information presented pursuant to proposed Rule 13–02(a)(4), even if the securities of those subsidiaries are not pledged as collateral.[210]

We recognize that there may be circumstances where separate financial information about certain affiliates is material to an investment decision. Accordingly, when the information provided in response to proposed Rule 13–02 is applicable to one or more, but not all, affiliates, proposed Rule 13–02(a)(4) would require, if it is material, separate disclosure of Summarized Financial Information for the affiliates to which it is applicable. For example, if securities of one, but not all, of the affiliates that are pledged as collateral are subject to a contractual or statutory delay from being transferred to the holder of the collateralized security in the event of default, disclosure of these facts and circumstances would be required by proposed Rule 13–02(a)(2). In that case, proposed Rule 13–02(a)(4) would require separate disclosure of the Summarized Financial Information specified in proposed Rule 13–02(a)(4) for that affiliate, if material.

Generally, a pledge of an affiliate's securities as collateral includes all of the outstanding ownership interests in that affiliate, which are held directly or indirectly by the entity issuing the debt securities. There could be circumstances where either the pledge of collateral does not include all of the outstanding ownership interests in the affiliate held by the issuing entity, or certain ownership interests in the affiliate are held by a third party and therefore unpledged. In such cases, disclosure of these facts and circumstances would be required by proposed Rule 13–02(a)(5). If such circumstances are applicable to one or more, but not all, affiliates, proposed Rule 13–02(a)(4) would require, if it is material, separate disclosure of Summarized Financial Information for the affiliates to which it is applicable.

Request for Comment

90. Is separate financial information of each affiliate whose securities are pledged as collateral material information necessary for an investor to assess the value of the collateral? If so, why? If not, why not? How would providing the information of each such affiliate on a combined basis affect this assessment? Are there specific circumstances where separate information should be required?

91. Should we permit the financial disclosure of the consolidated affiliates whose securities are pledged as collateral to be combined within the proposed Summarized Financial Information? Why or why not? Alternatively, should combined disclosure of the proposed Summarized Financial Information only be permitted under certain circumstances? If so, under which circumstances should it be permitted and why?

3. Periods to Present

Proposed Rule 13–02(a)(4) would require the disclosure of Summarized Financial Information as of, and for, the most recently ended fiscal year and interim period included in the registrant's consolidated financial statements. When used in connection with the registrant's consolidated financial statements, we believe the most recent full fiscal year and interim period should provide investors the information that is material in evaluating possible recoveries from the pledged securities of affiliate(s) in the event of default. Under the existing rule, Rule 3–16 Financial Statements are not required in quarterly reports, such as on Form 10–Q.[211] One commenter suggested that interim information may not be meaningful given it is currently only required in certain registration statements but not in subsequent Forms 10–Q.[212] However, we believe that the most recent interim period should be provided so that investors can make decisions based on the most recent information available. As such, the disclosures would be required in quarterly filings, such as Form 10–Q. Because Item 1 of Part I of Form 10–Q requires a registrant to provide the information required by Rule 10–01 of Regulation S–X, we are proposing to add Rule 10–01(b)(10) to require compliance with proposed Rule 13–02.

Request for Comment

92. What periods of presentation of supplemental financial information about affiliates whose securities are pledged as collateral are material for investors when evaluating the collateralized security?

93. Should the required periods of supplemental financial information of affiliates whose securities are pledged as collateral be based on the most recent financial information? Why or why not? If so, what periods should be considered ''most recent,'' and why?

94. Should the proposed rule require any additional periods of Summarized Financial Information beyond the most recent fiscal year and interim period? Why or why not? If yes, which periods and why?

95. Rather than requiring disclosure of the most recent interim period, should the proposed rule focus on significant changes similar to Rule 10–01(a)(5) of Regulation S–X, which allows registrants to apply judgment and omit details of accounts that have not changed significantly in amount or composition since the end of the most recently completed fiscal year? Why or why not?

D. Non-Financial Disclosures

Under the existing rule, a registrant is not required to provide non-financial disclosures about the affiliates and the collateral arrangement unless they would be included as part of the Rule 3–16 Financial Statements. Although the Request for Comment asked if there is different or additional information that investors need about affiliates whose securities collateralize registered securities, we received no commentary on non-financial disclosures.

In addition to proposing amendments to the financial information required about the affiliates whose securities are pledged as collateral, the proposed rule

[210] Proposed Rule 13–01 prohibits combining the financial information of non-issuer and non-guarantor subsidiaries of issuers and guarantors with that of issuers and guarantors in the Proposed Alternative Disclosures in order to distinguish the financial information of entities that are legally obligated to pay from those that are not. Proposed Rule 13–02 relates to pledged residual equity interests in affiliates as opposed to guarantees to pay, and as such, no similar prohibition is necessary.

[211] *See* Section III.A.6 of the 2000 Release.

[212] *See* letter from DT.

would also require specific non-financial disclosures to be provided. We are proposing these changes to enhance the material information provided about the affiliates whose securities are pledged and the pledged securities, particularly in light of our proposal to require Summarized Financial Information for these affiliates. Proposed Rules 13–02(a)(1) through (3) would require certain non-financial disclosures, to the extent material,[213] about the securities pledged as collateral, each affiliate whose securities are pledged, the terms and conditions of the collateral arrangement, and whether a trading market exists for the pledged securities.

We believe the proposed requirements would result in enhanced narrative disclosures that would improve investor understanding of the affiliates and the collateral arrangement(s), and make the financial disclosures they accompany easier to understand. While the proposed requirements comprise the items we believe are most likely to be material to an investor, there may be additional facts and circumstances specific to particular affiliates that would be material to holders of the collateralized security. In that case, proposed Rule 13–02(a)(5) would require disclosure of those facts and circumstances.[214] Additionally, when a non-financial disclosure is applicable to one or more, but not all, affiliates, proposed Rule 13–02(a)(4) would require, if it is material, separate disclosure of Summarized Financial Information for the affiliates to which it is applicable.[215]

Request for Comment

96. Are the proposed non-financial disclosures material to an investment decision? Should we explicitly require any non-financial disclosures in addition to what is proposed? If so, what information and why?

E. When Disclosure Is Required

As discussed above,[216] existing Rule 3–16 requires separate financial statements for each affiliate whose securities are pledged as collateral when those securities constitute a ''substantial portion'' of the collateral. If the numerical thresholds specified in the rule are not met, no disclosure is required. At the same time, if the numerical thresholds are met, Rule 3–16 Financial Statements may be required even though the affiliate represents an insignificant portion of the registrant's consolidated financial statements. Several commenters recommended revising the existing ''substantial portion'' test by making the denominator the amount of the collateralized securities originally issued, not the amount outstanding as of the reassessment date,[217] or raising the threshold from 20% to 50%.[218] Another commenter suggested considering whether other indicators of significance besides ''market value'' [219] may be appropriate given the challenges of performing the ''market value'' calculation as part of determining whether the collateral constitutes a ''substantial portion.'' [220]

Instead of revising the existing ''substantial portion'' of collateral test, we propose to replace this test with one based on materiality, similar to the framework in proposed Rule 13–01.[221] Under this approach, investors would be provided with disclosure unless it is immaterial, whereas under the existing rule, no disclosure would be provided unless the collateral represented a ''substantial portion.'' We believe any incremental burden to registrants of being required to provide the disclosures specified in proposed Rule 13–02 in instances where the securities pledged as collateral did not meet the ''substantial portion'' numerical threshold under the existing rule is justified by the benefit of investors receiving the disclosures specified in proposed Rule 13–02 and the reduced costs to registrants of providing such proposed disclosures as compared to the existing Rule 3–16 Financial Statements.

Proposed Rule 13–02(a) would require the disclosures specified in proposed Rule 13–02(a)(1) through (4) to the extent material to holders of the collateralized security. For example, under the proposed rule, if the Summarized Financial Information of the combined affiliates required by proposed Rule 13–02(a)(4) is not materially different from corresponding amounts in the registrant's consolidated financial statements, the information could be omitted. As another example, if the securities of an affiliate pledged as collateral do not represent a material amount of collateral to an investor, the investor would likely not require detailed disclosures about that affiliate or the collateral arrangement because the collateral provides little, if any, credit support, and therefore such information could be omitted. While the disclosures specified in proposed Rule 13–02(a)(1) through (4) may be omitted if not material to holders of the collateralized security, for clarity, proposed Rule 13–02(a)(4) requires the registrant to disclose a statement that those financial disclosures have been omitted and the reasons why the disclosures are not material.

Conversely, there may be additional information about the collateral arrangement and affiliates beyond the financial disclosures specified in proposed Rule 13–02(a)(4) or the non-financial disclosures specified in proposed Rules 13–02(a)(1) through (3) that would be material to holders of the collateralized security. Accordingly, proposed Rule 13–02(a)(5) would require disclosure of any quantitative or qualitative information that would be material to making an investment decision with respect to the collateralized security. For example, additional financial information beyond what is required by Summarized Financial Information would be required if that information is material to an investor that holds the collateralized security.

Request for Comment

97. Should we eliminate the existing ''substantial portion'' test for determining whether disclosure is necessary and instead use a materiality standard to determine the appropriate level of disclosure? Would this cause difficulty in practice? If so, what are those difficulties and how can they be avoided? Would further guidance be necessary? If so, please explain what guidance is needed. Would the elimination of the ''substantial portion'' test and use of a materiality standard result in a loss of information that investors currently use to analyze these securities? If so, what information would be lost and would it be material for an investor's understanding or an investment decision?

[213] *See* discussion within Section V.E, ''When Disclosure is Required.''

[214] *See* discussion within Section V.E, ''When Disclosure is Required.''

[215] *See* discussion within Section V.C.2, ''Presentation on a Combined Basis.''

[216] *See* Section IV, ''Rule 3–16 of Regulation S–X.''

[217] *See, e.g.,* letters from BDO, CAQ, DT, EY, KPMG, and PwC. Several of these commenters noted that, because the denominator of the ''substantial portion of the collateral'' test is based on the outstanding principal balance of the registered debt, the significance of the tested affiliates will tend to increase as the principal obligation is reduced.

[218] *See* letter from SIFMA. This commenter noted that the introduction to existing Rule 3–16(a) states that the rule shall apply to affiliates whose securities constitute a ''substantial'' portion of the collateral and asserted that, in other contexts, ''substantial'' is understood to be well above 20%.

[219] Rule 3–16(b) of Regulation S–X.

[220] *See* letter from DT.

[221] Whether a disclosure specified in proposed Rule 13–02 may be omitted or whether additional disclosure would be required by proposed Rule 13–02(a)(5), as discussed below, depends on whether it would be material to a reasonable investor. *See* Section III.C.2.i, ''Level of Detail,'' above.

98. Should the proposed rule also permit the financial disclosures specified in proposed Rule 13–02(a)(4) to be omitted if the amount of collateral pledged does not exceed a specified level of significance? Why or why not? If so, how should significance be determined, and what should the level of significance be?

99. Should any additional disclosures be specifically required if default on the collateralized security reaches a certain level of likelihood? If so, what type of disclosure and when should it be provided?

100. Are the proposed rules sufficiently clear about what disclosures should be provided and when? If not, how should the rules be revised to ensure clarity?

F. Application of Proposed Amendments to Certain Types of Issuers

Rule 3–16's requirements apply to several categories of issuers, including foreign private issuers, SRCs, and issuers offering securities pursuant to Regulation A. The proposed amendments would also apply to these types of issuers, because, for the reasons discussed above, we believe investors would benefit from the simplified and improved disclosures that would result from the proposed amendments and the cost of providing the disclosures would be reduced for these types of issuers.

Request for Comment

101. Should the proposed changes to Rule 3–16 also apply to these types of issuers? If so, why? If not, why not? Do investors in securities that include pledges of affiliate securities as collateral issued by these types of issuers require additional, different, or less information to make informed investment decisions than would be required by the proposed rule? If so, what information and why?

102. How frequently do these types of issuers issue securities that include pledges of affiliate securities as collateral? Is there a reason to believe they may offer them more often under the proposed rules? Why or why not?

103. Are other conforming changes to the proposed rules necessary for them to apply to these types of issuers? If so, what changes are necessary and why?

104. Should the proposed amendment that would permit the registrant to provide the proposed disclosures outside the footnotes to its audited annual and unaudited interim consolidated financial statements in its registration statement covering the offer and sale of the collateralized securities and any related prospectus, and in Exchange Act annual and quarterly reports required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed apply differently to these types of issuers? Why or why not? For example, are there different filings or periods of time that the registrant should be permitted to provide the proposed disclosures outside of its financial statements for these types of issuers? As another example, should the proposed rule prescribe different locations outside the financial statements where the proposed disclosures should be provided for these types of issuers? In each case, what are they and why? How would investors and issuers be affected?

1. Foreign Private Issuers

Foreign private issuers are required to comply with existing Rule 3–16, and would continue to be required to comply with the disclosures specified in proposed Rule 13–02. Instruction 1 to Item 8 of Form 20–F would be amended to specifically require compliance with proposed Rule 13–02.

2. Smaller Reporting Companies

Note 4 to Rule 8–01 of Regulation S–X requires financial statements to be presented as required by Rule 3–16 for an SRC's affiliate whose securities constitute a substantial portion of the collateral for securities registered or being registered, except that the periods presented are those required by Rule 8–02 of Regulation S–X. As we are proposing to eliminate Rule 3–16 and require the disclosures specified in proposed Rule 13–02, SRCs would be required to comply with proposed Rule 13–02. A corresponding change to Note 4 to Rule 8–01 is therefore being proposed. Additionally, as proposed Rule 13–02(a)(4) specifies the periods of Summarized Financial Information that would be required to be presented, no reference in Note 4 to Rule 8–01 to the periods required by Rule 8–02 of Regulation S–X is necessary and would be removed. Lastly, because Item 1 of Part I of Form 10–Q permits a SRC to provide the information required by Rule 8–03 of Regulation S–X if it does not provide the information required by Rule 10–01, we are proposing to add Rule 8–03(b)(8) to require compliance with proposed Rule 13–02.

3. Offerings Pursuant to Regulation A

In connection with offerings made pursuant to Regulation A, Forms 1–A and 1–K direct a Regulation A Issuer to comply with Rule 3–16 for the same periods as the Regulation A Issuer's financial statements and specifies the applicable audit requirements. Accordingly, we propose to replace the existing requirement in the forms that Regulation A Issuers comply with Rule 3–16 with a requirement to provide the disclosures specified in proposed Rule 13–02 and specify the location of the disclosures, similar to the proposed note to Rule 13–02(a) but consistent with the requirements of Regulation A.[222] Additionally, consistent with the discussion above about requiring registrants to comply with proposed Rule 13–02 in filings made on Form 10–Q, a requirement to comply with proposed Rule 13–02 would be added to Form 1–SA.

VI. General Request for Comment

We request and encourage any interested person to submit comments on any aspect of the proposal, other matters that might have an impact on the amendments and any suggestions for additional changes. Comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis, particularly quantitative information as to the costs and benefits, and by alternatives to the proposals where appropriate. Where alternatives to the proposals are suggested, please include information as to the costs and benefits of those alternatives.

VII. Economic Analysis

A. Introduction

As discussed above, we are proposing amendments to the financial disclosure requirements in Rules 3–10 and 3–16 of Regulation S–X to improve those requirements for both investors and registrants. These proposed amendments may result in simplified disclosures that highlight information that is material to investment decisions. They may also serve to reduce existing regulatory burdens that otherwise inhibit registrants from engaging in registered debt offerings that are backed by guarantees or collateral and may unnecessarily restrict the set of investment opportunities available to some investors. The discussion below addresses the potential economic effects of the proposed amendments, including the likely benefits and costs, as well as the likely effects on efficiency, competition, and capital formation, measured against a baseline that includes both current regulatory requirements and current market practices. We also discuss the potential economic effects of certain alternatives

[222] If a Regulation A Issuer elects to provide the proposed disclosures in its audited financial statements, such disclosures would be required to be audited.

to the proposed amendments. Throughout this analysis, we draw on academic studies and incorporate public comments, where appropriate.

We are mindful of the costs and benefits of our rules. Section 2(b) of the Securities Act, Section 3(f) of the Exchange Act, Section 2(c) of the Investment Company Act, and Section 202(c) of the Investment Advisers Act require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[223] Additionally, Exchange Act Section 23(a)(2) requires us, when adopting rules under the Exchange Act, to consider, among other things, the impact that any new rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.[224]

B. Baseline and Affected Parties

The existing regulatory requirements of Rules 3–10 and 3–16 under Regulation S–X have been described above [225] and have prompted registrants to adopt disclosure practices and business practices specifically designed to comply with or avoid these requirements. We analyze the economic effects of the proposed amendments by assessing their impact on affected parties as compared to the current state of the disclosure regime, including both existing disclosure requirements and available exemptions, where applicable. The parties that are likely to be affected by the proposed amendments include issuers and guarantors of guaranteed debt securities, issuers of debt securities collateralized by securities of issuers' affiliate(s), and investors in each of these types of securities.[226]

1. Market Participants

The first main group of market participants affected by the proposed amendments consists of issuers and guarantors of guaranteed debt securities and issuers of debt securities collateralized by securities of the issuer's affiliates. These issuers would be affected because the disclosure called for by the proposed amendments would differ from the content and format of financial information currently required to be presented in registered debt offerings and in certain ongoing reporting. The proposed amendments may also alter the capital raising decisions of potential issuers.

The second group of market participants affected by the proposed amendments consists of investors in these securities. These investors can be divided into three main categories: (1) QIBs; [227] (2) institutional investors (other than QIBs); and (3) non-institutional (retail) investors. In addition to the change in content and location of the disclosed information presented to them, which is discussed below in Section VII.C.1.b, the impact on these investors would also depend on whether there is a change in the number of registered debt offerings by new issuers, issuers that previously offered debt securities under Rule 144A, or both, as a result of the proposed amendments. Currently, there are four approaches that issuers often use when issuing guaranteed or collateralized debt securities. First, issuers may offer registered guaranteed and/or collateralized debt securities and provide the required disclosures under existing Rules 3–10 and 3–16. Second, issuers may opt to privately offer the debt securities with guarantees or pledges of affiliate securities as collateral under Rule 144A with registration rights. This may allow issuers to access the capital markets more quickly than if they had to comply with existing requirements at initial issuance. Issuers do, however, have to provide the disclosures required by existing Rules 3–10 and 3–16 when the privately issued notes are exchanged for registered notes. Third, issuers may opt to privately offer securities under Rule 144A without registration rights. Under this approach, issuers do not have to provide disclosures required by existing Rules 3–10 and 3–16, but issuers and investors are not afforded the benefits of registration. Fourth, issuers may structure a registered offering to not include guarantees or pledges of affiliated securities as collateral. Here, while issuers would not have to provide disclosures required by existing Rules 3–10 and 3–16, they may incur a higher cost of capital than if they had structured their debt agreements with these credit enhancements.

Only QIBs can participate in Rule 144A offerings; retail and institutional investors are unable to participate in such offerings. Furthermore, collateralized debt offerings are often structured to avoid or limit Rule 3–16 disclosures by reducing the amount of collateral investors might receive in the event of default, resulting in reduced collateral packages. Overall, investors may experience both a change in the number of investment opportunities available, as well as a change in the information presented to them in registered offerings.

2. Market Conditions

To provide context for debt securities offerings likely to be impacted by this proposal, Table 1 provides estimates of the number and dollar amount of all registered debt offerings and Rule 144A debt offerings per year since 2013.[228] The dollar volume of registered debt and Rule 144A offerings appears to have increased in recent years, which may be a result of improving macroeconomic conditions and a low interest rate environment.[229]

[223] 15 U.S.C. 77b(b), 78c(f), 80a–2(c), and 80b–2(c).

[224] 15 U.S.C. 78w(a)(2).

[225] *See* Section II for Rule 3–10 and Section IV for Rule 3–16.

[226] While the proposed amendments would apply to registered investment companies, and could thereby affect registered investment advisers, based on staff experience, we believe registered investment companies are unlikely to engage in the activities addressed by the proposed amendments. Accordingly, we also we believe the proposed amendments are unlikely to affect registered investment advisers.

[227] 17 CFR 230.144A(a)(1).

[228] These estimates are based on staff analysis of data from the Mergent database. Data specific to offerings of guaranteed securities and offerings of securities collateralized by the securities of an issuer's affiliate(s) is unavailable. We begin our sample in the post-financial crisis timeframe in order to exclude capital raising concerns, liquidity shocks, and other constraints that are exogenous to our baseline analysis.

For perspective, the amount of funding obtained through the registered debt market on an annual basis is much larger than that obtained through the registered equity market. *See Access to Capital and Market Liquidity Report.*

[229] *See id.*

TABLE 1—REGISTERED DEBT AND RULE 144A DEBT OFFERINGS FROM 2013–2017

Year	Registered debt		Rule 144A	
	Number of offerings [230]	$ Amount (bil)	Number of offerings	$ Amount (bil)
2013	1,509	1,052	969	512
2014	1,597	1,113	920	530
2015	1,560	1,206	808	575
2016	1,639	1,329	785	526
2017	1,853	1,298	995	657

Source: DERA staff analysis.

Studies looking at registered debt offerings and debt offerings made under Rule 144A find that the two offerings have distinct characteristics. Issuers offering debt securities under Rule 144A have, on average, lower credit quality and higher information asymmetry than registered debt offerings,[231] conditions that may increase the likelihood that investors require guarantees and collateral relative to investment grade issuers who may not need such credit enhancements. This is consistent with studies that have found the cost of capital associated with debt offerings made under Rule 144A to be higher than the cost of capital in registered debt offerings.[232] According to these studies, there are two main benefits of Rule 144A offerings: (1) The speed of issuance, given the absence of a registration requirement; and (2) relative high liquidity, given the possibility to exchange the securities for registered securities.[233]

As discussed above,[234] Rule 3–10 requires that every issuer of a registered security that is guaranteed and every guarantor of a registered security file the financial statements required for a registrant by Regulation S–X, except under certain circumstances when Alternative Disclosures are permitted. There are two forms of Alternative Disclosures prescribed by the rule: (1) Consolidating Information; and (2) a brief narrative. Consolidating Information is the most common type of alternative disclosure under Rule 3–10. Table 2 presents data on the number of unique registrants and filings that included Consolidating Information under Rule 3–10 for the period 2013–2017;[235] the data is consistent with estimates provided by one commenter.[236]

TABLE 2—ESTIMATED NUMBER OF UNIQUE REGISTRANTS AND FILINGS INCLUDING CONSOLIDATING INFORMATION UNDER RULE 3–10

Year	Number of unique registrants	Number of total filings	10–K	10–Q	20–F	40–F	S–1	S–4	F–4
2013	533	1,834	431	1,339	12	0	15	34	3
2014	530	1,861	461	1,360	10	0	9	21	0
2015	500	1,750	437	1,288	9	0	5	11	0
2016	469	1,641	417	1,199	8	0	1	16	0
2017	403	1,430	369	1,043	5	1	1	11	0

Source: DERA staff analysis of Edgar Filings.

The second and less common form of Alternative Disclosures under existing Rule 3–10 is a brief narrative. While we believe the number of filings including the brief narrative form of Alternative Disclosure is smaller than the number of filings using Consolidating Information,[237] we are unable to determine that number due to methodological and data extraction challenges.[238]

[230] Number of offerings does not include registered exchanges of debt securities previously issued privately with registration rights.

[231] *See, e.g.,* Matteo P. Arena, *The Corporate Choice Between Public Debt, Bank Loans, Traditional Private Debt Placements, and 144A Debt Issues,* 36 Rev. of Quantitative Fin. & Acct. 391 (2011).

[232] *See* George W. Fenn, *Speed of Issuance and the Adequacy of Disclosure in the 144A High-Yield Debt Market,* 56 J. of Fin. Econ. 383 (2000); Miles Livingston & Lei Zhou, *The Impact of Rule 144A Debt Offerings Upon Bond Yields and Underwriter Fees,* 31 Fin. Mgmt. 5 (2002); Susan Chaplinsky & Latha Ramchand, *The Impact of SEC Rule 144A on Corporate Debt Issuance by International Firms,* 77 J. of Bus. 1073 (2004); Usha R. Mittoo & Zhou Zhang, *The Evolving World of Rule 144A Market: A Cross-Country Analysis* (2010) (unpublished working paper) (University of Manitoba, Winnipeg MD). The studies of Fenn (2000) and Chaplinsky and Ramchand (2004) find the yield premium decreased over time, whereas the study of Livingston and Zhou (2002) and unpublished working paper of Mittoo and Zhang (2011) do not observe that trend. Mittoo and Zhang (2011), however, find that the yield premium increased after the Sarbanes-Oxley Act was enacted.

[233] *See, e.g.,* Fenn, note 232 above.

[234] *See* Section II.A, ''Background.''

[235] To identify these disclosures, we searched all Forms 10–K, 10–Q, 20–F, 40–F, S–1, S–4, and F–4 and their amendments using XBRL tags most commonly associated with Consolidating Information. The amounts in the table represent the number of annual, quarterly, and periodic filings including amendments that are unique for the covered period in each calendar year from 2013–2017.

[236] *See* letter from EY. The commenter identified 494 registrants that provided Consolidating Information by searching for keywords on Form 10–K filings only. If we limit our search to Form 10–K filings in 2013, we reach a similar number, which we believe provides validity to our methodology.

[237] As described in Section II.F, ''Exceptions,'' the brief narrative form of Alternative Disclosures is available for three situations. One of these situations is when a parent company uses a finance subsidiary to issue securities that the parent company guarantees, which in our experience is limited and generally for convenience purposes. As several commenters noted, the other situations permitting the brief narrative form of Alternative Disclosures require additional restrictive conditions to be met, which greatly limit the circumstances in which they can be used. *See, e.g.,* letters from ABA-Committees, AB–NYC, CAQ, DT, EY, FedEx, KPMG, and PwC. Based on our experience, we believe there are fewer instances of the brief narrative form of Alternative Disclosures than Consolidating Information.

[238] These narrative disclosures are typically no more than a paragraph in length and vary in content based on the three scenarios under which the brief narrative can be provided. We conducted text searches of EDGAR filings in an attempt to accurately identify issuers providing narrative disclosure under Rule 3–10. However, given the variation in phrasing in these paragraphs, the search did not produce meaningful results.

As discussed above,[239] under existing Rule 3–16, a registrant is required to provide Rule 3–16 Financial Statements for each affiliate whose securities, which are pledged as collateral, constitute a substantial portion of the collateral for any class of securities registered or being registered. Table 3 presents data on the number of filings and unique registrants that included Rule 3–16 Financial Statements since 2013. The number of registrants remained steady over this period. Due to the manual process by which we attained these estimates, there are likely more registrants providing Rule 3–16 Financial Statements than are reflected here.[240] However, based on the comments we received, we do not expect the number to be significantly larger.[241]

TABLE 3—ESTIMATED NUMBER OF UNIQUE REGISTRANTS AND FILINGS INCLUDING RULE 3–16 FINANCIAL STATEMENTS

Year	Number of unique registrants	Number of total filings	10–K	20–F
2013	7	7	6	1
2014	7	7	6	1
2015	7	7	6	1
2016	7	7	6	1
2017	7	7	6	1

Source: DERA staff analysis of EDGAR filings.

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105. Are there reliable sources of information or robust means of estimating the proportion of Rule 144A offerings that do not include registration rights versus those that do include registration rights? If so, please describe these sources and methods.

106. What is the current level of participation of non-QIB and retail investors in registered offerings of corporate debt? Are there reliable sources of information or robust means of estimating the proportion of registered versus unregistered debt offerings held by different investor types such as QIBs and non-QIBs? If so, please describe these sources and methods.

107. How do investors and other market participants currently use the information required to be disclosed by Rules 3–10 and 3–16? Are these disclosures generally consumed directly by investors? Is information derived from these disclosures made available to investors by financial analysts or other third party service providers?

C. Anticipated Economic Effects

In this section we discuss the anticipated economic benefits and costs of the proposed amendments to Rules 3–10 and 3–16.

1. Proposed Amendments to Rule 3–10 and Partial Relocation to Rule 13–01

We received a number of comments indicating that the existing requirements often lead registered debt agreements to be structured in such a way as to avoid compliance with Rule 3–10,[242] thereby depriving certain investors of the opportunity to invest in guaranteed securities. Similarly, others noted that issuers who have not previously issued guaranteed debt securities often are deterred by the associated compliance costs and prefer instead to issue securities privately through Rule 144A.[243] In light of these comments, we expect the proposed amendments to benefit issuers and investors. For example, as a result of the overall reduced burdens associated with the proposed amendments, investors may benefit from access to more registered offerings that are structured to include guarantees and, accordingly, the additional protections that come with Section 11 liability for disclosures made in those offerings. Also, an increase in the overall use of guarantees could reduce structural subordination issues that arise. Typically, all of a parent company's subsidiaries support the parent company's debt-paying ability. However, in the event of default, the holders of debt without the benefit of guarantees are comparatively disadvantaged. In the event of default, a holder of a guaranteed debt security issued by a parent company can make claims for payment directly against the issuer and its subsidiary guarantors. The assets of non-guarantor subsidiaries typically would be accessible by the debtholder only indirectly through a bankruptcy proceeding. In such a proceeding, absent a guarantee, the claims of the debtholder would be structurally subordinate to the claims of other creditors, including trade creditors of the non-guarantor subsidiaries. The less burdensome disclosures under the proposed amendments may lead to greater use of guarantees to address these structural subordination issues, which could result in more efficient risk sharing within corporate groups and potentially a lower cost of capital for registrants.

Furthermore, the less burdensome disclosures may lead issuers to register the initial offerings of guaranteed securities rather than opting to issue them under Rule 144A with registration rights. Issuers may be able to comply with the proposed rule and access the capital markets more quickly than under the existing Rule 3–10 requirements. These issuers would not incur costs associated with exchanging the privately issued debt securities for registered guaranteed debt securities.

a. Eligibility Conditions To Omit Financial Statements of Subsidiary Issuer or Guarantor

As detailed in Section III.C.1.b, ''Consolidated Subsidiary,'' we propose to replace one of the conditions that must be met to be eligible to omit the separate financial statements of a subsidiary issuer or guarantor—that the

[239] *See* Section IV, ''Rule 3–16 of Regulation S–X.''

[240] There are no XBRL tags specific to Rule 3–16. To identify these disclosures, we searched all Forms 10–K, 10–Q, 20–F, 40–F, S–1, S–3, S–4, S–11, F–1, F–3, F–4, 10, 1–A, 1–K, and 1–SA and their amendments using a text search on the word combination ''Rule 3–16.'' We applied different text search combinations and found that using ''Rule 3–16'' offered the most accurate search results. Even so, we received hundreds of false hit returns. These were mainly registrants mentioning ''Rule 3–16'' as part of a description of collateral release provisions. That is, if Rule 3–16 were triggered, the debt agreement would release the collateral that triggered Rule 3–16. This is consistent with one commenter who noted that issuers use such release provisions to avoid compliance with Rule 3–16. *See* letter from PwC. We manually sifted through these false returns to identify the positive results listed in Table 3.

[241] One commenter noted that Rule 3–16 application is rarely seen in practice, *see* letter from BDO, while another commenter noted that many deals are intentionally structured to avoid Rule 3–16 by using Rule 144A and not providing registration rights. *See* letter from Covenant.

[242] *See, e.g.,* letters from CAQ and KPMG.

[243] *See, e.g.,* letter from Cahill.

subsidiary issuer or guarantor be 100% owned by the parent company—with a condition that the subsidiary issuer or guarantor be consolidated in the parent company's consolidated financial statements. This proposed change would permit the parent company to omit the separate financial statements of a consolidated subsidiary issuer or guarantor even if third parties hold non-controlling ownership interests in that subsidiary issuer or guarantor. However, the proposed rule would require, to the extent material, a description of any factors that may affect payments to holders of the guaranteed security, such as the rights of a non-controlling interest holder.

In addition to the proposed change from 100% owned to consolidation, we are proposing changes to simplify the Rule's eligibility conditions. Namely, as discussed in Section III.C.1.d, ''Eligible Issuer and Guarantor Structures Condition,'' the proposed amendments would replace the five specific issuer and guarantor structures currently eligible under the existing rule with a broader two-category framework. Under these changes, separate financial statements of consolidated subsidiary guarantors may be omitted for each issuer and guarantor structure that is eligible. Additionally, unlike the existing rule, the nature of the subsidiary guarantees, including whether the guarantee is full and unconditional or joint and several, would no longer impact the eligibility to omit separate subsidiary financial statements and instead would only impact the extent of disclosure in the Proposed Alternative Disclosures.

Overall, these proposed amendments would permit a broader scope of issuers and guarantors to be eligible to provide the Proposed Alternative Disclosures in lieu of separate financial statements of each subsidiary issuer and guarantor than under existing Rule 3–10. This, in turn, would reduce the compliance costs associated with preparation of disclosures for these registered debt offerings and ongoing periodic reporting.[244] To the extent there are more issuers and guarantors that are eligible to provide the less burdensome Proposed Alternative Disclosures in lieu of separate financial statements of each subsidiary issuer and guarantor under proposed Rule 3–10, these entities may be more likely to register their debt offerings, either at the outset or through an exempt offering with registration rights. As a result, some issuers may realize a lower cost of capital. Such an outcome would be consistent with previous studies that have found the cost of capital associated with registered debt offerings to be lower than that of private offerings made under Rule 144A,[245] although other issuer characteristics indicative of creditworthiness would remain relevant with respect to the cost of capital, regardless of offering method. Additionally, subsidiary issuers and guarantors that are currently required to file separate financial statements because they do not meet existing Rule 3–10's eligibility criteria would have reduced compliance costs to the extent they meet the revised eligibility criteria under proposed Rule 3–10 and the Proposed Alternative Disclosures are provided in lieu of their separate financial statements.

Certain investors could also benefit from the proposed amendments to the eligibility conditions. If issuers opt to register debt offerings, rather than structure them as private offerings using Rule 144A, then new investors—namely, non-QIB institutional investors and retail investors who cannot participate in Rule 144A offerings—would be eligible to participate in the offerings. To the extent that the proposed amendments to the eligibility conditions encourage additional registered debt offerings, more investment opportunities would be made available, and a resulting increase in market participation would improve the overall competitiveness and efficiency of the capital markets. Furthermore, these debt offerings would benefit investors by extending to them the protections associated with registration.

We expect little, if any, adverse effect on issuers and guarantors of guaranteed debt securities from these proposed amendments. We also believe the adverse effects on investors, if any, are likely to be limited. Under the existing rule, investors receive separate financial statements of subsidiary issuers and guarantors if these entities are not 100% owned by the parent company. If these subsidiaries are consolidated in the parent company's financial statements and all other conditions of proposed Rule 3–10 are met, investors may no longer receive the separate financial statements of these subsidiary issuers and guarantors. In such cases, although investors would not receive the detailed information about each such subsidiary issuer or guarantor included in the separate financial statements, a parent company would be required to provide, to the extent material, financial and non-financial information for consolidated subsidiary issuers and guarantors with non-controlling interests, as well as a description of any factors associated with non-controlling interest holders that may affect payments to holders of the guaranteed security. Where all eligibility conditions of the proposed rule are met, we believe the Proposed Alternative Disclosures would provide the information investors need to make informed investment decisions with respect to a guaranteed security.

Several commenters supported modifying the 100% owned condition in the existing rule for reasons consistent with the analysis above.[246] One commenter recommended we eliminate this condition and instead require separate disclosure of subsidiaries providing lesser guarantees,[247] whereas another commenter stated that the existing requirement should remain unchanged.[248]

b. Disclosure Requirements

As detailed in Section III.C.2, ''Disclosure Requirements,'' one of the conditions in the existing rule for omitting separate financial statements of a subsidiary issuer or guarantor is providing the Alternative Disclosures in the footnotes to the parent company's consolidated financial statements. The proposed rule would retain the requirement to provide the Alternative Disclosures, but with modifications. We address below the proposed amendments related to the Alternative

[244] Commenters highlighted the significant time and cost associated with preparing the Alternative Disclosures. *See, e.g.,* letters from Cahill, FedEx, and Noble-UK. Noble-UK estimated that compliance with Rule 3–10 requires the equivalent of approximately two full time employees across its organization. FedEx estimated that compliance requires approximately 280 hours per year. Based on this commenter's estimate of compliance hours, estimated compliance costs under the existing rule amount to $97,000 per year (calculated as 280 hours × Compliance Attorney at $348 per hour = $97,440 per year). The per hour figure for a Compliance Attorney is taken from SIFMA's 2013 Management & Professional Earnings in the Securities Industry, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead and adjusted for inflation. *See* Sec. Indus. and Fin. Mkts. Ass'n (SIFMA), *Management & Professional Earnings in the Securities Industry* (2013), *https://www.sifma.org/resources/research/management-and-professional-earnings-in-the-securities-industry-2013.* For purposes of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* we estimate that the proposed amendments to Rule 3–10 would result in an overall reduction of 30 burden hours for each form affected by the proposed amendments. *See* Section VIII.B.1, ''Rule 3–10,'' below.

[245] *See* discussion and references within Section VII.B.2, ''Market Conditions.''

[246] *See, e.g.,* letters from ABA-Committees, AB–NYC, Chamber, EY, SIFMA, and PwC.

[247] *See* letter from SIFMA.

[248] *See* letter from CalPERS.

Disclosures (the Proposed Alternative Disclosures).

i. Financial and Non-Financial Disclosures

As described in Section III.C.2.a, ''Financial Disclosures,'' we propose to simplify the financial disclosures required by current Rule 3–10 by replacing Consolidating Information with a requirement to provide Summarized Financial Information. The level of detail currently required in Consolidating Information often contributes to multiple pages of detail in the parent company's financial statements. The proposed Summarized Financial Information would focus on the information that is most likely to be material to an investment decision. If additional line items, beyond what is required in the Summarized Financial Information are material, they would be required to be disclosed.

The proposed amendments should simplify the disclosures and reduce the cost of compliance and could engender further benefits. For example, academic literature finds that simplified financial statements are associated with more efficient price discovery,[249] and that investors underreact more to firms with less readable financial disclosures.[250] More generally, we believe the proposed amendments would provide investors with streamlined and easier to understand financial information that we believe is material to an investment decision. Thus, to the extent that the proposed amendments have their intended effect, reducing complexity while maintaining the material completeness of financial disclosures, we anticipate that the financial disclosures that result from the proposed amendments would improve price discovery, enhance the allocative efficiency of markets, and facilitate capital formation.

We are also proposing that a parent company be permitted to provide financial disclosures about the Obligor Group on a combined basis rather than on a disaggregated basis. Additionally, if non-financial disclosure provided in response to proposed Rule 13–01 were applicable to one or more, but not all, guarantors, such as where a subsidiary's guarantee is limited to a particular dollar amount, separate disclosure of Summarized Financial Information for one or more issuers and guarantors would be required, to the extent material.

To the extent that investors are indifferent about whether payment under the guaranteed security comes from the issuer or one or more guarantors in the same consolidated group, or both, the disclosure resulting from the proposed amendments would not adversely impact investment decisions and could offer investors more readable, streamlined financial information. To the extent that increased readability without loss of material information would facilitate investor evaluation of whether the entities in the Obligor Group have the ability to make payments as required under the guaranteed security, the proposed amendments would promote the efficiency of security prices and investor portfolios. Consistent with potential benefits from these changes, a growing body of academic literature finds that financial statement readability affects the information environment and that more readable statements are associated with lower cost of debt capital and reduced bond rating agency disagreement.[251]

The proposed rule also requires that Summarized Financial Information be provided only for the most recently completed fiscal year and year-to-date interim period, if applicable, included in the parent company's consolidated financial statements, rather than for the additional periods specified under existing Rules 3–01 and 3–02 of Regulation S–X. This is intended to preserve information that is material to an investment decision while reducing compliance costs for registrants. This proposed change is consistent with commenter views. The commenters that discussed the number of annual periods for disclosure recommended limiting disclosure to the current year, citing challenges recasting prior period information for circumstances such as legal entity mergers and discontinued operations. Others cited significant costs to issuers from requiring additional periods.[252]

In addition, we are proposing to require non-financial disclosures to supplement the proposed financial disclosures with additional information that may be material to an investment decision. This would include material information about how payments to holders of guaranteed securities may be affected by such things as the issuer and guarantor structure, the terms and conditions of the guarantees, the impact of non-controlling ownership interests, or other factors specific to the offering. These proposed amendments should enhance the information provided to investors about the investment without imposing significant burdens on registrants. Overall, this should lead to greater transparency and reduce information asymmetries between issuers and investors.

Despite being unable to estimate the number of filings that provide brief narrative disclosures under the existing Alternative Disclosure, we do not expect parent companies to incur significant costs to provide the Proposed Alternative Disclosures. For example, where Alternative Disclosures under the current rule would constitute only a brief narrative, we generally believe separate financial disclosures about the issuers and guarantors of the guaranteed securities likely would not be material and therefore could be omitted under the proposed amendments. Finally, as with any change to reporting format and presentation of information, the recommended proposals may lead companies and investors to incur costs to adjust to the new disclosures. As further discussed below, we do not expect such costs to be substantial.

ii. When Disclosure Is Required

As explained in Section III.C.2.c, ''When Disclosure is Required,'' we propose eliminating the numerical thresholds of existing Rule 3–10 that are used to determine the form and content of disclosure. Instead, all proposed disclosures would be required unless such information would not be material to holders of the guaranteed security. While numerical thresholds may be easier to apply than a materiality standard that requires judgment, this change would allow for a more principles-based disclosure approach that is more tailored to the specific circumstances and the needs of investors.[253] Allowing the parent

[249] *See* Brian P. Miller, *The Effects of Reporting Complexity on Small and Large Investor Trading,* 85 Acct. Rev. 2107 (2010).

[250] *See* Haifeng You & Xiao-jun Zhang, *Financial Reporting Complexity and Investor Underreaction to 10–K Information,* 14 Rev. of Acct. Stud. 559 (2009); Alastair Lawrence, *Individual Investors and Financial Disclosure,* 56 J. of Acct. & Econ. 130 (2013).

[251] *See* Samuel B. Bonsall & Brian P. Miller, *The Impact of Narrative Disclosure Readability on Bond Ratings and the Cost of Debt,* 22 Rev. of Acct. Stud. 608 (2017).

[252] *See, e.g.,* letters form BDO, Headwaters, Medtronic, and PwC. Headwaters noted that Alternative Disclosure composed approximately 15% of the entire financial disclosure in its most recent Form 10–K and approximately 28% of the entire financial disclosure in its most recent Form 10–Q. Medtronic indicated that it has one staff person on its external reporting team that spends over 80% of his or her time preparing Rule 3–10 related information in support of quarterly filings.

[253] A number of academic studies have explored the use of bright-line thresholds and ''when material'' disclosure standards. The majority of these papers highlight a preference for principles-based ''when material'' standard. *See generally, e.g.,* Eugene A. Imhoff Jr. & Jacob K. Thomas, *Economic*

Continued

company to omit immaterial information would lower the costs of disclosure relative to existing requirements and may help focus investor attention on decision-relevant information. However, this change could also increase the risk that a parent company would omit, potentially inadvertently, value-relevant information. In such instances, investors may make suboptimal investment decisions. Omitting material information, however, would subject issuers and guarantors to increased litigation risk, providing incentive for issuers to make careful determinations on the form and content of disclosures.

In certain settings, there is academic evidence that allowing issuers to make principles-based disclosure decisions using a materiality criterion is consistent with investor preferences.[254] However, there is also evidence of investor benefits from rules-based reporting standards.[255] While the proposed amendments could result in reduced comparability across registrants and transactions, using a principles-based standard could benefit investors by allowing registrants to tailor their disclosure to provide material information to them. The proposed amendment also accords with a number of commenters who indicated that existing thresholds are overly restrictive.[256]

iii. Location of Proposed Alternative Disclosures and Audit Requirement

The proposed amendments would allow the parent company the choice of whether to provide the Proposed Alternative Disclosures in the financial statement footnotes or elsewhere in the registration statement covering the offer and sale of the guaranteed debt and any related prospectus, as well as annual and quarterly Exchange Act periodic reports required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. If the parent company were to provide the Proposed Alternative Disclosures in its financial statements in its registration statement and in certain Exchange Act periodic reports required to be filed during fiscal year in which the first bona fide sale of the subject securities is completed, consistent with the existing rule, the disclosures would be subject to annual audit, interim review, and internal control over financial reporting requirements. Investors may perceive this choice of placement to mean the disclosures are more reliable than if they were not in the financial statements at the time of registration.

In contrast, if the parent company were to provide the Proposed Alternative Disclosures outside its financial statements in its registration statement and in certain Exchange Act periodic reports required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed, lower compliance costs would likely result with respect to these filings. While we generally would expect lower compliance costs, disclosures outside the financial statements may result in certain costs to parent companies, such as legal costs or due diligence activities (*e.g.,* comfort letters). Additionally, this proposed optionality may reduce the potential for delay in offerings that exists under the current rule due to the need to prepare audited Alternative Disclosures. Parent companies using this proposed option to provide the disclosures outside the consolidated financial statements may be able to register guaranteed debt offerings and go to market more quickly than under the existing rule. This may allow parent companies to more promptly access favorable market conditions. Although these disclosures are supplemental in nature, investors may nevertheless be adversely impacted as these disclosures would not immediately benefit from the enhanced accuracy and reliability associated with information that is included in the financial statements at registration. To the extent that investors prefer these initial disclosures to be included in the parent company's financial statements, their willingness to invest may be influenced or they may discount the information provided in the unaudited portion of the disclosure, potentially reducing the amount of information incorporated into security prices and increasing the issuer's cost of capital.[257]

Additionally, the amount of information that investors receive in the registration statement and in certain Exchange Act periodic reports required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed could be affected by the choice of placement. The safe harbor for forward-looking information under PSLRA is not available for disclosures provided in the financial statements. A parent company providing the Proposed Alternative Disclosures outside its financial statements may be more likely to voluntarily supplement those required disclosures with forward-looking information, as compared to a parent company that provides the Proposed Alternative Disclosures in its financial statements. Such supplemental forward-looking information, if provided, could benefit investors. The relocation of disclosures may also affect the prominence of the disclosures. Some academic research provides indirect evidence that users may treat information differently depending on the location of the disclosure.[258]

If a parent company provides the Proposed Alternative Disclosures in its financial statements, consistent with the existing rule, such disclosures would be subject to XBRL requirements. Because the machine-readable nature of XBRL disclosures facilitates aggregation, comparison, and large-scale analysis of reported information through automated means, investors stand to benefit from enhanced analysis capabilities, particularly in the comparison of disclosures across issuers and time periods. The parent company may incur

Consequences of Accounting Standards: The Lease Disclosure Rule Change, 10 J. of Acct. & Econ. 277 (1988) (providing evidence that management modifies existing lease agreements to avoid crossing bright-line threshold for lease capitalization).

[254] *See* Usha Rodrigues & Mike Stegemoller, *An Inconsistency in SEC Disclosure Requirements? The Case of the ''Insignificant'' Private Target,* 13 J. of Corp. Fin. 251 (2007) (providing evidence, in the context of mergers and acquisitions, that bright-line thresholds can deviate from investor preferences).

[255] *See* Mark W. Nelson, *Behavioral Evidence on the Effects of Principles- and Rules-Based Standards,* 17 Acct. Horizons 91 (2003); *see also* Katherine Schipper, *Principles-Based Accounting Standards,* 17 Acct. Horizons 61 (2003). These studies note potential advantages of rules-based accounting standards, including: Increased comparability among firms, increased verifiability for auditors, and reduced litigation for firms.

[256] *See* letters from ABA-Committees, AB–NYC, CAQ, DT, EY, FedEx, KPMG, and PwC.

[257] One commenter noted that supplemental information typically included in offering memoranda for Rule 144A debt offerings, including revenues, operating income, assets and liabilities of the non-guarantor group, is provided on an unaudited basis. *See* letter from ABA-Committees. If QIBs currently do not require such supplemental disclosures to be audited in 144A debt offerings, the costs outlined above would not be expected to apply to this group of investors.

[258] For instance, research shows a weaker relation between equity prices and disclosed items in the notes to the financial statements versus recognized items on the face of the financial statements. *See, e.g.,* Maximilian A. Müller, Edward J. Riedl & Thorsten Sellhorn, *Recognition versus Disclosure of Fair Values,* 90 Acct. Rev. 2411 (2015) (showing a lower association between equity prices and disclosed investment property fair values relative to recognized investment property fair values and finding that reduced information processing costs and higher readability mitigates the discount applied to disclosed fair values); Hassan Espahbodi et al., *Stock Price Reaction and Value Relevance of Recognition versus Disclosure: The Case of Stock-Based Compensation,* 33 J. of Acct. & Econ. 343 (2002) (examining the equity price reaction to the announcements related to accounting for stock-based compensation to assess the value relevance of recognition (on the face of the financial statements) versus disclosure (in the notes to the financial statements) and concluding that recognition and disclosure are not substitutes).

additional costs to comply with these tagging requirements. In contrast, Proposed Alternative Disclosures provided outside the financial statements would not be subject to XBRL tagging requirements. Investors would not benefit from the enhanced analysis capabilities and the parent company would not incur the related costs to comply with the tagging requirements. In general, we believe the incremental cost of tagging the Proposed Alternative Disclosures in XBRL, and hence the incremental cost savings of not having to tag the proposed Alternative Disclosures likely would be relatively low, as issuers already would have software or processes in place for tagging financial statement information.

Finally, while a parent company is afforded a choice of where to locate disclosures in its registration statement and in certain Exchange Act periodic reports required to be filed during fiscal year in which the first bona fide sale of the subject securities is completed, beginning with its annual report filed on Form 10–K or Form 20–F for the fiscal year during which the first bona fide sale of the subject securities is completed, the parent company would be required to locate the disclosures within the footnotes to its consolidated financial statements, which are subject to applicable annual audit, interim review, and internal control over financial reporting. Because this requirement would be consistent with existing location requirements, we do not anticipate economic effects from this requirement as compared to the current state except, as discussed above that there may be decreases in costs attributable to the more simplified and streamlined proposed disclosures.

iv. Recently Acquired Subsidiary Issuers and Guarantors

We are proposing to delete the requirement to provide pre-acquisition audited financial statements of a recently acquired subsidiary issuer or guarantors. The existing requirement for pre-acquisition financial statements of recently-acquired subsidiary issuers or guarantors calls for far greater detail than what is required for any other subsidiary issuer and guarantor.[259] As discussed in Section III.C.2.e, ''Recently-Acquired Subsidiary Issuers and Guarantors,'' we believe Rule 3–05 of Regulation S–X, which requires audited pre-acquisition financial statements of an acquired business to be provided if the acquired subsidiary exceeds specified thresholds of significance, provides sufficient information in this context such that the pre-acquisition financial statements of recently-acquired subsidiary issuers and guarantors required by existing Rule 3–10(g) are unnecessary.

In addition, the trigger for pre-acquisition financial statements of a recently-acquired subsidiary issuer or guarantor under existing Rule 3–10(g) is based on the significance of the acquired subsidiary compared to the size of the offering. This may lead issuers to provide audited financial statements of a recently-acquired subsidiary that is small relative to its consolidated parent company. The proposed changes would address these circumstances.

We believe the proposed amendment would reduce the compliance burden for preparers without reducing material information for investors, since material information about recently acquired subsidiaries would be required by Rule 3–05 of Regulation S–X and proposed Rule 13–01(a)(5). Furthermore, to the extent that investors find the information provided under the existing requirement redundant, as it overlaps with Rule 3–05 of Regulation S–X, eliminating the existing requirement would streamline disclosures. Academic research suggests that individuals invest more in firms with more concise financial disclosures.[260] Thus, to the extent that the proposed amendments alleviate duplication and do not affect the completeness of financial disclosures, the resulting disclosures could result in improved price discovery, enhance the allocative efficiency of the market, and facilitate capital formation.

v. Continuous Reporting Obligation

As discussed in Section III.C.2.f, ''Continuous Reporting Obligation,'' we are proposing that a parent company be permitted to cease providing the Proposed Alternative Disclosures in its ongoing reporting if the corresponding subsidiary issuer's or guarantor's reporting obligation under Section 13 and/or Section 15(d) of the Exchange Act with respect to the guaranteed securities is terminated or suspended. This amendment would reduce compliance costs without loss of material information for investors. To the extent that the existing requirements impose unnecessary burdens by requiring a parent company to continue providing the Alternative Disclosures beyond when the subsidiary would have to report with respect to the guaranteed securities,[261] or otherwise deter issuers and guarantors from engaging in public debt offerings to avoid such reporting obligations,[262] this amendment would remove such inefficiencies. Commenters generally supported the proposed amendment, noting inconsistencies between the existing requirement and other reporting rules,[263] and suggesting that it likely deters registration of debt offerings.[264]

2. Proposed Amendments to Rule 3–16 and Relocation to Rule 13–02

As discussed in detail in Section V.B, ''Overview of the Proposed Changes,'' although affiliates whose securities are pledged as collateral are not registrants with respect to the collateralized security, Rule 3–16, when triggered, requires financial statements as if such affiliates were registrants. We are proposing to replace the existing requirement to provide separate financial statements for each affiliate whose securities are pledged as collateral with financial and non-financial disclosures about the affiliate(s) and the collateral arrangement, where material, as a supplement to the consolidated financial statements of the registrant that issues the collateralized security.

Debt agreements are often structured to avoid the requirements of Rule 3–16 by either structuring the debt agreement to release any pledge of affiliate securities as collateral if and when such pledge triggers the requirements under Rule 3–16, or by not including pledges of affiliate securities as collateral altogether.[265] In such circumstances, investors may demand a higher interest rate from issuers to compensate for the absence of collateral, potentially increasing the cost of capital to issuers. The proposed amendments would reduce the burden of having to provide separate financial statements of affiliates under the existing rule and provide issuers with the flexibility to structure their debt agreements with pledges of affiliate securities. If, as a result of the proposed amendments, debt agreements are no longer structured to avoid Rule 3–16 requirements, investors would obtain the benefit of both the collateral and the related disclosures, all of which would be subject to Section 11 liability. This flexibility may also permit issuers

[259] Some commenters also noted the inconsistency in that information required for recently acquired subsidiary issuers and guarantors is more detailed than information required for other subsidiary issuers and guarantors. *See, e.g.,* letters from DT and PwC.

[260] *See* Lawrence, note 250 above.

[261] *See* letters from DT and Simpson.

[262] *See* letter from Simpson.

[263] *See* letters from ABA-Committees, DT, EY, PwC, SIFMA, and Simpson.

[264] *See* letters from DT and Simpson.

[265] *See* letters from ABA-Committees, Cahill, Chamber, Covenant, Davis, DT, and EY.

to attract investors that prefer to invest in obligations where collateral is fully available and not subject to the release mechanisms designed to avoid Rule 3–16 requirements. By appealing to a broader range of investors and providing more attractive collateral arrangements, registrants may be able to obtain a lower cost of capital.

As discussed above for the Proposed Amendments to Rule 3–10, Proposed Rule 13–02 would provide flexibility to place the proposed disclosures within the notes to the financial statements or in specified prominent locations outside the financial statements in registration statements covering the offer and sale of the collateralized debt securities and any related prospectus, as well as annual and quarterly Exchange Act periodic reports required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. For registrants that include the proposed disclosures in their financial statements, such information would be subject to applicable annual audit, interim review, and internal control over financial reporting requirements. Investors may perceive this choice of placement as making the disclosure more reliable than if it were placed outside of the financial statements. To the extent that investors prefer these disclosures to be located in the registrant's financial statements, this choice may influence their willingness to invest. Registrants could attempt to influence such willingness by including the proposed disclosures in their financial statements. Also consistent with the proposed amendments to Rule 3–10, the registrant would, however, be required to provide the proposed disclosures in a footnote to its consolidated financial statements in its annual and quarterly reports beginning with its annual report filed for the fiscal year during which the first bona fide sale of the subject securities is completed. This requirement would be consistent with existing location requirements, and we do not anticipate economic effects as compared to the current state.

Finally, as with any change to reporting format and presentation of information, the proposed amendments may lead companies and investors to incur costs to adjust to the new disclosures, as further discussed below.

a. Financial Disclosures

i. Level of Detail

As discussed in Section V.C.1, ''Level of Detail,'' affiliates whose securities are pledged as collateral are almost always consolidated subsidiaries of the registrant,[266] and their financial information is thus already reflected in the registrant's consolidated financial statements. We propose to require Summarized Financial Information for each such affiliate and disclosure of additional financial information if material to holders of the collateralized security. For registrants, this would reduce compliance costs by reducing the amount of information needed to be prepared and disclosed.[267] For investors, we do not anticipate significant costs since material information would still be required to be provided. The simplified disclosures would highlight material information needed to make informed investment decisions and therefore would enable investors to process information more efficiently and make more informed investment decisions.

ii. Presentation on a Combined Basis

We are proposing to permit a registrant to provide the Summarized Financial Information of consolidated affiliates that are pledged as collateral on a combined rather than individual basis. Additional disclosure specific to an affiliate would be required, if material. As with the effects of the proposed amendments to Rule 3–10 discussed above, we believe the simplified disclosures in the proposed amendments to Rule 3–16 would both lower compliance costs for issuers and provide investors with more streamlined and concise disclosures that would promote more efficient decision-making by investors. We do not anticipate significant costs to investors since material information would still be required to be provided.

iii. Periods to Present

The proposed amendments would require the disclosure of Summarized Financial Information for the most recently ended fiscal year and year-to-date interim period included in the registrant's consolidated financial statements. Rule 3–16 financial statements are not currently required in quarterly reports, and as such, registrants would incur costs to provide this additional interim disclosure.[268] We believe the proposed amendments would benefit investors by providing them with the most recent information to ensure informed investment decisions.

b. Non-Financial Disclosures

We are proposing to require non-financial information about affiliates whose securities are pledged as collateral and the collateral arrangements, to the extent material. While we did not receive comments on non-financial disclosures, we do not believe this proposed amendment would impose undue costs for issuers, as the majority of the information required to be disclosed under the proposed amendments should be readily available or attainable.[269] We believe investors would benefit because the proposed amendment would supplement the financial disclosures with additional, material information, thereby rendering the combined financial and non-financial disclosures more informative for investment decisions.

c. When Disclosure Is Required

Rather than utilizing existing numerical thresholds, disclosure of the proposed financial and non-financial disclosures would be required if material to holders of the collateralized security. To the extent the numerical thresholds under the existing rule result in disclosure of unnecessary or immaterial information, investors may benefit from reduced search costs and the facilitation of more efficient information processing.[270] Further, we believe that, compared to existing rule requirements, the proposed amendments to Rule 3–16 would reduce compliance costs for issuers and increase the likelihood of registration.

[266] In the rare circumstances where the affiliate is not a consolidated subsidiary of the registrant, proposed Rule 13–02(a)(5) would require the registrant to provide any other quantitative or qualitative information that would be material to making an investment decision with respect to the collateralized security. In this regard, separate financial statements of the unconsolidated affiliate may be necessary if material to an investment decision. *See* additional discussion in Section V.C.1, ''Level of Detail.''

[267] For purposes of the PRA, we estimate that the proposed amendments to Rule 3–16 would result in an overall reduction of 30 burden hours for each form (other than Form 10–Q) affected by the proposed amendments. *See* Section VIII.B.2, ''Rule 3–16,'' below.

[268] For purposes of the PRA, we estimate that the proposed amendments to Rule 3–16 would result in an increase of 70 burden hours per Form 10–Q filing. *See* Section VIII.B.2, ''Rule 3–16,'' below.

[269] The content of the proposed non-financial disclosures consists of basic information about the collateral arrangement and the entities involved. We do not expect such information, which is generally available from debt agreements, would impose a significant burden on a registrant to prepare.

[270] *See* David Hirschleifer & Siew Hong Teoh, *Limited Attention, Information Disclosure, and Financial Reporting,* 36 J. of Acct. and Econ. 337 (2003) (developing a theoretical model where investors have limited attention and processing power). The authors show that with partially attentive investors, means of presenting information may have an impact on stock price reactions, misvaluation, long-run abnormal returns, and corporate decisions.

D. Anticipated Effects on Efficiency, Competition, and Capital Formation

Several commenters noted that the need to comply with existing disclosure requirements often makes issuers structure registered offerings to avoid triggering Rules 3–10 or 3–16, or avoid registration altogether.[271] As discussed above, and as a general matter, we believe the proposed amendments would improve the content, format, and focus of required registrant disclosures. This should both reduce the compliance cost for issuers and allow more efficient decision-making by investors. This may be true particularly to the extent that the proposed amendments result in more efficient and effective dissemination of material information to investors and increase the efficiency of investor processing and usage of this information. Further, the proposed rule amendments may affect issuers' registration choices. This, in turn, could broaden the investment opportunities available for different types of investors and may allow for more efficient matching of investors with assets that meet their investment objectives and preferences. Retail investors could additionally be indirectly affected through their investments managed by institutional investors, who would have greater access to a broader range of investment opportunities in the registered debt market. To the extent that the proposed amendments ease registration burdens for issuers, there could be an increase in the number of registered offerings. If such issuers would not have otherwise issued debt securities under Rule 144A, this would result in an increase in capital formation. If such issuers would have otherwise issued debt under Rule 144A, it is possible that a switch to a registered offering would lower the issuers' cost of capital while also providing investors with the enhanced protections afforded by registered offerings.

Finally, rather than be 100% owned by the parent company, the proposed amendments allow for the subsidiary issuer or guarantor to be consolidated in the parent company's consolidated financial statements as one of the conditions that must be met in order to be eligible to omit separate subsidiary issuer and guarantor financial statements. To the extent that the proposed amendments expand the scope of subsidiary issuers and guarantors that meet Rule 3–10 eligibility requirements, the proposed amendments may promote greater competition among issuers and guarantors of guaranteed debt securities. This may enable more registrants, especially those on the margins, to compete on better terms. However, we do not anticipate the overall impact on competition to be substantial.

E. Consideration of Reasonable Alternatives

We discuss below potential alternatives to the proposed amendments to existing Rules 3–10 and 3–16.

1. Alternative to Proposed Amendments to Existing Rule 3–10

An alternative to the proposed amendments to Rule 3–10 would be to permit the Proposed Alternative Disclosures be provided if the subsidiary issuers and/or guarantors were ''wholly owned'' by the parent company, as defined in Rule 1–02(aa) of Regulation S–X.[272] Using ''wholly owned'' as the parent company ownership threshold, rather than the existing 100% ownership requirement, would likely permit more subsidiary issuers and guarantors to use the Alternative Disclosures as compared to the existing rule, but would be less flexible than the proposed amendments, as detailed above. As a result, we believe the proposed amendments would better serve to enhance efficiency, competition, and capital formation.

2. Alternatives Common to Proposed Amendments to Existing Rule 3–10 and Existing Rule 3–16

One alternative to each set of proposed amendments would be to require that the Proposed Alternative Disclosures, or the disclosures specified in proposed Rule 13–02, as applicable, be located in the audited annual and unaudited interim financial statement footnotes of the parent company, or registrant, as applicable, in all filings. Under this alternative, the parent company or registrant would not have a choice of whether to locate the proposed disclosures outside its consolidated financial statements in registration statements covering the offer and sale of the guaranteed or collateralized debt securities and any related prospectus, or in annual and quarterly Exchange Act periodic reports required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. On the one hand, this could increase investor confidence in the disclosed information and provide the benefits of XBRL tagging. On the other hand, the cost to a parent company or registrant associated with preparing registration statements and certain periodic reports would be higher with this alternative than if the disclosures were provided outside of the financial statements. Furthermore, the flexibility of going to market more quickly would not be available under this alternative. This could limit the incentives to pursue registered offerings compared to the proposed amendments, and those registrants that do pursue registered offerings may be less likely to issue guarantees, or pledge affiliate securities as collateral, given the additional cost associated with including the proposed disclosures in the financial statements. Additionally, a parent company or registrant may be less likely to voluntarily supplement the disclosures with forward-looking information because the safe harbor for forward-looking information under PSLRA is not available for disclosures provided in the financial statements. As discussed above,[273] guarantees and pledges of affiliate securities as collateral serve, in part, to reduce investor risk of structural subordination. Overall, we believe the benefits to investors of enhanced access to registered offerings with guarantees and pledges of affiliate securities as collateral, together with the benefits of reduced compliance burdens for issuers, justify forgoing the benefits of requiring these disclosures to be located in the financial statements of the parent company, or registrant, as applicable, included in registration statements covering the offer and sale of the guaranteed or collateralized debt securities and any related prospectus, as well as annual and quarterly Exchange Act periodic reports required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. However, we solicit comment on this point and the potential benefits and concerns for registrants and investors of requiring the proposed disclosures to be located in the notes to the financial statements in all filings.

A second related alternative to each set of the proposed rules would be to allow the parent company or registrant to provide the Proposed Alternative Disclosures, or the disclosures specified in proposed Rule 13–02, as applicable, outside the financial statement footnotes in all filings. On the one hand, if the

[271] *See, e.g.,* letters from BDO, Cahill, Covenant, and PwC.

[272] Rule 1–02(aa) of Regulation S–X (''The term *wholly owned subsidiary* means a subsidiary substantially all of whose outstanding voting shares are owned by its parent and/or the parent's other wholly owned subsidiaries.'' (Emphasis in original.)).

[273] *See* Section VII.C.1, ''Proposed Amendments to Rule 3–10 and Partial Relocation to Rule 13–01.''

parent company or registrant opts to disclose the information outside the financial statements, the cost to a parent company or registrant associated with preparing the information would be lower with this alternative than if the disclosures were provided in the financial statements. This could incentivize the pursuit of registered offerings with guarantees or collateral, given the flexibility and associated reduced costs. While we generally would expect lower compliance costs, disclosures outside the financial statements may result in certain costs to parent companies and registrants, such as legal costs or due diligence activities (*e.g.,* comfort letters). Additionally, a parent company or registrant may be more likely to voluntarily supplement the disclosures with forward-looking information because the safe harbor for forward-looking information under PSLRA is not available for disclosures provided in the financial statements. On the other hand, allowing the parent company or registrant the flexibility of disclosing outside the financial statements may reduce investor confidence in the disclosed information, as this information would not be subject to annual audit, interim review, and internal control over financial reporting requirements. As a result, this alternative could reduce investor confidence in the disclosed information and may affect their willingness to invest.

While we acknowledge that providing additional flexibility to the parent company or registrant in the location of the disclosures would likely further reduce the compliance burdens associated with registered offerings with guarantees or collateral, investors may demand a higher expected return if they perceive reduced reliability of the Proposed Alternative Disclosure. The potential for higher borrowing costs may encourage issuers to voluntarily include the Proposed Alternative Disclosures or proposed disclosures, as applicable, in the financial statements of the parent company, or registrant, as applicable. We solicit comment on this point and the potential benefits and concerns for registrants and investors of providing flexibility to locate the Proposed Alternative Disclosures outside the financial statements in all filings.

Finally, a third alternative relevant to each set of proposed amendments would be to require Summarized Financial Information to be provided for the same periods as the parent company or registrant, as applicable, instead of the most recent annual and interim period as proposed. While this alternative would increase the amount of information available to investors, the additional information may not be material in making informed investment decisions. As discussed above,[274] prior studies have suggested that simpler disclosures may benefit investors by reducing search costs and facilitating more efficient information processing. Moreover, including additional historical periods would result in higher costs to registrants when preparing registration information and ongoing reporting. We do not believe the potential benefit to investors of this additional historical information justifies the potential cost to the registrants.

F. Request for Comment

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed amendments and alternatives thereto, and whether the rules, if adopted, would promote efficiency, competition, and capital formation or have an impact on investor protection. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates.

VIII. Paperwork Reduction Act

A. Background

Certain provisions of our rules and forms that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the PRA.[275] The Commission is submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[276] The hours and costs associated with preparing and filing the forms and reports constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the affected collections of information are:[277]

- ''Regulation S–K'' (OMB Control No. 3235–0071);[278]
- ''Regulation S–X'' (OMB Control No. 3235–0009);
- ''Form S–1''[279] (OMB Control No. 3235–0065);
- ''Form S–3''[280] (OMB Control No. 3235–0073);[281]
- ''Form S–4''[282] (OMB Control No. 3235–0324);
- ''Form S–11''[283] (OBM Control No. 3235–0067);
- ''Form F–1'' (OMB Control No. 3235–0258);
- ''Form F–3'' (OMB Control No. 3235–0256);
- ''Form F–4''[284] (OMB Control No. 3235–0325);
- ''Form 10''[285] (OMB Control No. 3235–0064);
- ''Form 20–F'' (OMB Control No. 3235–0288);
- ''Form 40–F''[286] (OMB Control No. 3235–0381);
- ''Form 10–K''[287] (OMB Control No. 3235–0063);
- ''Form 8–K''[288] (OMB Control No. 3235–0060);[289]
- ''Regulation 14A''[290] and ''Schedule 14A''[291] (OMB Control No. 3235–0059);[292]

[274] *See* note 249 and accompanying text.

[275] *See* note 244 above.

[276] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[277] As noted above, while the proposed amendments would apply to registered investment companies, and could thereby affect registered investment advisers, based on staff experience, we believe registered investment companies are unlikely to engage in the activities addressed by the proposed amendments. Accordingly, we are not revising the burden estimates for the forms and reports filed by these types of entities.

[278] The paperwork burdens for Regulation S–K and Regulation S–X are imposed through the forms that are subject to the requirements in these regulations and are reflected in the analysis of those forms. To avoid a PRA inventory reflecting duplicative burdens, and for administrative convenience, we estimate that the proposed amendments would not impose an incremental burden for these regulations.

[279] 17 CFR 239.11.

[280] 17 CFR 239.13.

[281] The paperwork burdens for Form S–3 and Form F–3 are imposed through the forms from which they incorporate by reference and are reflected in the analysis of those forms. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to each of these forms.

[282] 17 CFR 239.25.

[283] 17 CFR 239.18.

[284] 17 CFR 239.34.

[285] 17 CFR 249.210.

[286] 17 CFR 249.240f.

[287] 17 CFR 249.310.

[288] 17 CFR 249.308.

[289] The paperwork burdens for Form 8–K is imposed through the forms from which they incorporate by reference and are reflected in the analysis of those forms. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we estimate that the proposed amendments would not impose an incremental burden for this form.

[290] 17 CFR 240.14a-1 through 240.14a–104.

[291] 17 CFR 240.14a–101.

[292] As described below, our estimates for Form 10–K take into account the burden that would be incurred by including the proposed disclosure in the annual report directly or incorporating by

• ''Regulation 14C'' [293] and ''Schedule 14C'' [294] (OMB Control No. 3235–0057); [295]
• ''Form 10–Q'' (OMB Control No. 3235–0070);
• ''Form SF–1'' [296] (OMB Control No. 3235–0707);
• ''Form SF–3'' [297] (OMB Control No. 3235–0690);
• ''Form 1–A'' [298] (OMB Control No. 3235–0286);
• ''Form 1–K'' [299] (OMB Control No. 3235–0720); and
• ''Form 1–SA'' [300] (OMB Control No. 3235–0721).

The regulations, schedules, and forms listed above were adopted under the Securities Act and/or the Exchange Act. These regulations, schedules, and forms set forth the disclosure requirements for registration statements, periodic and current reports, distribution reports, and proxy and information statements filed by registrants to help investors make informed investment and voting decisions.

We are proposing amendments to the disclosure requirements in Rules 3–10 and 3–16 of Regulation S–X to better align those requirements with the needs of investors and to simplify and streamline the disclosure obligations of registrants. We are proposing to amend both rules and relocate part of Rule 3–10 and all of Rule 3–16 to proposed Rules 13–01 and 13–02, respectively. We also are proposing to make conforming amendments to Items 504, 1100, 1112, 1114, and 1115 of Regulation S–K; Forms F–1, F–3, 1–A, 1–K, and 1–SA under the Securities Act; and Rule 12h-5 and Form 20–F under the Exchange Act. These amendments are intended to provide investors with the information that is important given the specific facts and circumstances, make the disclosures easier to understand, and reduce the costs and burdens to registrants.

B. Summary of the Proposed Amendments Impact on Collection of Information

In this section, we summarize the proposed amendments and their general impact on the paperwork burdens associated with the forms listed above. In the subsequent section below, we provide the revised burden estimates of each affected form.

1. Rule 3–10

The proposed amendments to Rule 3–10 would replace the Consolidating Information required by existing Rule 3–10 with Summarized Financial Information of the Obligor Group. Several commenters noted that preparing and providing Consolidated Information is particularly challenging, complex, and costly.[301] Among other things, the Proposed Alternative Disclosures would permit a parent company to: (1) Exclude the financial information of non-obligated entities; (2) reduce the number of periods to be presented; and (3) provide the information of each issuer and guarantor on a combined, rather than disaggregated, basis. These changes would reduce a parent company's paperwork burden by permitting the parent company to exclude information unnecessary to an investment decision as compared to the existing rule. In certain circumstances, the paperwork burden could be reduced even further because registrants would not be required to recast prior period information, which commenters noted can be particularly challenging.[302]

Existing Rule 3–10 requires the Alternative Disclosures to be included in the notes to the parent company's consolidated financial statements, thereby requiring the Alternative Disclosures to be audited for the same periods. The proposed amendments would revise this requirement so that parent companies may provide the Proposed Alternative Disclosures outside their financial statement footnotes in a registration statement covering the offer and sale of the subject securities and any related prospectus, and in Exchange Act annual and quarterly reports required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed, but require the Proposed Alternative Disclosures to be included in the footnotes to the parent company's consolidated financial statements for annual and quarterly reports beginning with the annual report for the fiscal year during which the first bona fide sale of the subject securities is completed. This amendment could reduce the burdens associated with preparing the Proposed Alternative Disclosures because the information would not need to be immediately audited or tagged. However, this amendment could result in certain legal and due diligence costs (*e.g.,* comfort letters).

Whether a parent company would elect to provide the Proposed Alternative Disclosures outside its financial statement footnotes likely would depend on the company's specific facts and circumstances and, as discussed above,[303] we believe there could be reasons for companies to elect either option. In addition, any reduction in paperwork burden associated with such an election would be incremental, as the parent company would still incur expenses to prepare audited financial information. Given these considerations, and to avoid overestimating the overall paperwork burden reduction associated with the proposed amendments, we are not estimating a specific burden reduction for this aspect of the proposed amendments. However, we solicit comment on whether it would be appropriate to do so, and, if so, how we might estimate such a reduction.

The existing rule also requires a parent company to provide the Alternative Disclosures as a condition to omitting the separate financial statements of a subsidiary issuer or guarantor. In most cases, the Alternative Disclosures consist of Consolidating Information, but the Alternative Disclosures may consist of a brief narrative if certain numerical thresholds are met. The proposed amendments would eliminate these separate categories of Alternative Disclosures. Instead, the proposed amendments would require a parent company to provide all financial and non-financial disclosures specified in proposed Rule 13–01 to the extent they are material to a holder of the guaranteed security. The proposed amendments would also require disclosure of any additional information that would be material to a holder of the guaranteed security.

While the proposed amendments would eliminate some disclosure that may be required by the existing rule, they would also require other disclosure that may not be required by the existing rule. For example, if a numerical

reference from a proxy or information statement. To avoid a PRA inventory reflecting duplicative burdens, we estimate that the proposed disclosure would not impose an incremental burden for proxy statements on Schedule 14A.

[293] 17 CFR 240.14c–1 through 240. 14c–7.

[294] 17 CFR 240.14c–101.

[295] As described below, our estimates for Form 10–K take into account the burden that would be incurred by including the proposed disclosure in the annual report directly or incorporating by reference from a proxy or information statement. To avoid a PRA inventory reflecting duplicative burdens, we estimate that the proposed disclosure would not impose an incremental burden for information statements on 14C.

[296] 17 CFR 239.44.

[297] 17 CFR 239.45.

[298] 17 CFR 239.90.

[299] 17 CFR 239.91.

[300] 17 CFR 239.92.

[301] *See, e.g.,* letters from ABA-Committees, Anuradha, BDO, Cahill, CAQ, DT, EY, FedEx, GM, Grant, Headwaters, KPMG, Medtronic, and Noble-UK.

[302] *See, e.g.,* letters from Medtronic and PwC.

[303] *See* Sections III.C.2.d, ''Location of Proposed Alternative Disclosures and Audit Requirement,'' and VII.C.1.b.iii, ''Location of Proposed Alternative Disclosures and Audit Requirement.''

threshold is met under the existing rule, disclosure is required even if that disclosure is immaterial to an investment decision. The proposed amendments would not require that disclosure if it was not material, which would reduce the parent company's paperwork burden. Conversely, if a numerical threshold is not met under the existing rule, disclosure is not required unless that information is necessary to make the disclosure provided not misleading.[304] The proposed amendments would require that disclosure in all cases, to the extent material, which could increase the parent company's paperwork burden.

We have estimated the number of filings that include Consolidating Information under Rule 3–10, but we are unable to identify accurately the issuers providing narrative disclosures under Rule 3–10 because the language of those disclosures varies based on facts and circumstances.[305] However, we do not believe that the proposed amendments would affect the paperwork burden for filings that include the narrative disclosures under existing Rule 3–10 because registrants that provide these narrative disclosures would be permitted to provide similar information under the proposed amendments.

Further, under the proposed amendments, parent companies would no longer be required to provide the pre-acquisition financial statements of recently-acquired subsidiary issuers and guarantors, as is currently required by existing Rule 3–10(g). Disclosure may be required under the proposed rule, however, if it is material to an investment decision in the guaranteed security. This aspect of the proposed amendments would decrease the overall paperwork burden of the affected forms. This reduction would be mitigated somewhat, however, because parent companies would still be required to provide information about any recently-acquired subsidiaries when it is material.

Finally, we are proposing amendments to require specific non-financial disclosures, where material, about the issuers and guarantors, the terms and conditions of the guarantees, and how the issuer and guarantor structure and other factors may affect payments to holders of the guaranteed securities. These disclosures would enhance the information provided about subsidiary issuers and guarantors and would be more comprehensive than the similar disclosures a parent company must provide under existing Rule 3–10. These additional disclosures, therefore, could incrementally increase a parent company's existing paperwork burden.

Considering the various impacts to the existing collection of information requirements outlined above, we estimate that the proposed amendments to Rule 3–10 would reduce the overall paperwork burden for registrants. Moreover, some aspects of the proposed amendments could reduce the paperwork burden significantly. For example, Consolidating Information, which includes multiple columns and typically occupies several pages of a parent company's filing, would be replaced with the Proposed Alternative Disclosures, which we expect in most cases would consist of one or two pages of disclosure in a parent company's filing. Overall, therefore, we estimate that the proposed amendments would reduce the paperwork burden for registrants by approximately 30 hours for each filing that includes the Proposed Alternative Disclosures in lieu of the existing Alternative Disclosures.

Although the proposed amendments would reduce the paperwork burden for any particular filing on an affected form that includes the existing Alternative Disclosures, not all filings on the affected forms include these disclosures because they are provided only in certain instances.[306] Therefore, to estimate the overall paperwork burden reduction from the proposed amendments, we estimated the number of filings that include the Alternative Disclosures. To do so, we used a number of methods that varied based on the affected form.

As an initial step, we examined the XBRL tags most commonly associated with Consolidating Information. Not all filings include XBRL tags, so we estimated the number of all the affected forms that included XBRL tags and extrapolated the number of affected forms based on the percentage of filings that include XBRL tags. For example, in Section VII.B.2, ''Market Conditions,'' using XBRL tags, we estimated that registrants filed 1,223 Form 10–Ks with the Alternative Disclosures in the last three calendar years from 2015 to 2017, which averages approximately 407.67 filings per year. However, over those three years, only approximately 86 percent of Forms 10–K included XBRL tags. For PRA purposes, therefore, we divided 407.67 by 0.86 to estimate that 474 filings per year included Alternative Disclosures over the last three years.

We were able to use this extrapolation method for Forms 10–K, 10–Q, S–1, 20–F, and 40–F, because the percentage of filings made on those forms that included XBRL tags was sufficient to make the extrapolation meaningful. The table below sets forth our estimates of the number of filings on these forms that included the Alternative Disclosures based on the XBRL tagging extrapolation method.

TABLE 4—CALCULATION OF THE NUMBER OF FILINGS ON AFFECTED FORMS WITH THE ALTERNATIVE DISCLOSURES BASED ON XBRL TAGGING EXTRAPOLATION

	Number of responses over three-year period using XBRL data (A)	Annual average of responses using XBRL data (B)	Percentage of responses tagged using XBRL (C)	Annual average of responses (D) = (B) / (C)	Estimated average annual responses (E)
10–K	1,223	407.67	.86	474.03	474
10–Q	3,530	1,176.67	.94	1,251.77	1,252
S–1	7	2.33	.24	9.71	10
20–F	17	5.67	.41	12.82	14
40–F	1	.33	.16	8.31	8

[304] *See* 17 CFR 230.408(a), 240.12b–20.

[305] *See* Section VII.B.2, ''Baseline and Affected Parties—Market Conditions.''

[306] We were not able to determine the number of filings that included the Alternative Disclosures with certainty because registrants are not required to state explicitly that the disclosures they are providing are meant to satisfy the requirements of Rule 3–10.

We also searched Forms S–4, S–11, 10, F–1, F–4, SF–1, SF–3, 1–A, 1–K, and 1–SA using XBRL tags most commonly associated with Consolidating Information. However, this extrapolation method did not provide meaningful results because registrants rarely include XBRL tags for these affected forms. For example, only one percent of Form S–4 filings include XBRL tags.[307] Therefore, to provide a more meaningful estimate of the number of these forms that include the Alternative Disclosures, we conducted separate database searches for filings of those forms over the last three calendar years using search terms similar to those used by a commenter.[308]

Based on these searches, we estimate that, over the last three calendar years from 2015 to 2017, there were on average 300 filings on Form S–4, 15 filings on Form S–11, 20 filings on Form 10, 15 filings on Form F–1, and 20 filings on Form F–4 that included the Alternative Disclosures. We were unable to find any filings on the remaining affected forms that included the Alternative Disclosures. Therefore, we estimate that no filings on those forms included the Alternative Disclosures. The table below sets forth our estimates of the number of filings on these forms that included the Alternative Disclosures based on the other database searches.

TABLE 5—CALCULATION OF THE NUMBER OF FILINGS ON AFFECTED FORMS WITH THE ALTERNATIVE DISCLOSURES BASED ON DATABASE SEARCHES

	Number of responses over three-year period using database searches (A)	Annual average of responses using database searches (B) = (A) / 3	Estimated average annual responses (C)
S–4	300	100	100
S–11	15	5	5
10	20	6.67	7
F–1	15	5	5
F–4	20	6.67	7
1–A	0	0	0
1–K	0	0	0
1–SA	0	0	0
SF–1	0	0	0
SF–3	0	0	0

Although the proposed amendments to Rule 3–10 would reduce the paperwork burden for each individual affected form, the proposed amendments could cause the number of affected forms filed to change over a period of time. One commenter[309] stated that the high compliance costs associated with preparing the Rule 3–10 financial information leads many companies to issue debt securities privately. Again, we believe that the proposed amendments would encourage potential issuers to conduct registered debt offerings or private offerings with registration rights. Therefore, we believe that the number of registration statements and periodic reports filed on affected forms that include the Proposed Alternative Disclosures would increase.

For example, we believe the number of issuers and guarantors eligible to provide the Proposed Alternative Disclosures would increase in lieu of providing separate financial statements of each subsidiary issuer and guarantor because the proposed amendments would replace the 100%-owned condition with one requiring that the subsidiary issuer/guarantor be a consolidated subsidiary of the parent company pursuant to the relevant accounting standards it already uses and eliminate the requirement that guarantees of subsidiary guarantors be full and unconditional. If some of those eligible issuers and guarantors conduct registered debt offerings or private offerings with registration rights instead of conducting offerings privately and without registration rights, the number of registration statements and associated periodic reports filed on affected forms would necessarily increase when measured over a period of time.

Conversely, other aspects of the proposed amendments would lead to a decrease in the number of periodic reports filed on affected forms when measured over time. For example, under existing Rule 3–10, if a parent company conducts a registered debt offering or private offering with registration rights and the subsidiary issuer or guarantor is not 100%-owned, but is instead consolidated into the parent company's financial statements, or if the subsidiary guarantor's guarantee is not full and unconditional, the subsidiary must file its own periodic reports. The subsidiary is required to file a registration statement for the transaction, which is usually combined with its parent's registration statement, so the number of registration statements filed with the Proposed Alternative Disclosures would not decrease as a result of this aspect of the proposed amendments. However, under the proposed amendments, if that parent company provides the Proposed Alternative Disclosures, and meets the other conditions of proposed Rule 3–10, its subsidiaries would be exempt from periodic reporting under Rule 12h–5. Therefore, fewer periodic reports on affected forms would be filed, which would decrease those forms' paperwork burden when measured over a period of time.

As another example, existing Rule 3–10 requires a parent company to include the Alternative Disclosures of its subsidiary issuers and guarantors in its periodic reports for so long as the guaranteed securities are outstanding. The proposed amendments would permit the parent company to cease providing the Proposed Alternative Disclosures in its periodic reports if the corresponding Section 15(d) obligations of its subsidiary issuers and guarantors are suspended. Therefore, we expect that parent companies would provide

[307] Similarly, only six percent of Form S–11, three percent of Form F–1, and three percent of Form 10 filings include XBRL tags.

[308] *See* letter from EY.

[309] Letter from Cahill.

the Proposed Alternative Disclosures in fewer filings, which would reduce the paperwork burden for periodic reports on affected forms when measured over a period of time.

Overall, we believe that the decrease in the number of periodic reports filed on affected forms due to the change in ongoing reporting requirements would be largely mitigated, and perhaps offset, by the number of periodic reports that would increase due to the filing of new registration statements. Consequently, to avoid overestimating the paperwork reduction associated with the proposed amendments, we are not adjusting our existing estimate for the number of periodic reports filed on affected forms. However, we solicit comment on whether and, if so, how we should make an adjustment to this estimate in light of the proposed amendments.

Although we believe the number of periodic reports filed on affected forms would remain steady, we estimate that the number of registration statements that include the Proposed Alternative Disclosures, as opposed to those that presently include the existing Alternative Disclosures, would increase. As discussed in Section VII.B.2, ''Market Conditions,'' we note that issuers have conducted approximately half as many Rule 144A debt offerings as registered debt offerings. We do not believe that all the issuers that conducted Rule 144A would conduct registered debt offerings as a result of the proposed amendments, but we estimate that there would be a 33 percent increase in registration statements filed based on the proposed amendments. Therefore, we estimate that there would be an additional three filings on Form S–1,[310] 33 filings on Form S–4,[311] two filings on Form S–11,[312] two filings on Form 10,[313] two filings on Form F–1,[314] and two filings on Form F–4 per year.[315] Further, we estimated above that 14 filings on Form 20–F included the existing Alternative Disclosures. We estimate that half of those filings were registration statements. Therefore, we estimate there would be an additional two registration statements filed on Form 20–F per year.[316]

Finally, to determine the paperwork burden for an issuer to file a registration statement with the Proposed Alternative Disclosures, we first estimated the number of burden hours required for an issuer to provide the existing Alternative Disclosures. A number of commenters provided examples of the burdens required to prepare and process the existing Alternative Disclosures,[317] but only one commenter quantified the number of hours.[318] This commenter indicated that it required 280 hours per year to prepare and review its Alternative Disclosures.[319] We note that this commenter is relatively large and not necessarily representative of the size of all reporting companies. Therefore, for PRA purposes, we estimate that the existing Alternative Disclosures require an average of 100 burden hours to prepare and process. However, we solicit comment on the number of burden hours required to prepare the Alternative Disclosures. If the Proposed Alternative Disclosures would reduce an issuer's burden by 30 hours, as compared to the issuer providing the existing Alternative Disclosures, we estimate that the Proposed Alternative Disclosures would require 70 hours to prepare and process.

2. Rule 3–16

Existing Rule 3–16 requires separate Rule 3–16 Financial Statements for each affiliate whose securities constitute a ''substantial portion'' of the collateral for any class of registered securities as if the affiliate were a separate registrant. The proposed amendments related to Rule 3–16 would replace this requirement with a requirement for a registrant to provide Summarized Financial Information of those affiliates on a combined basis, pursuant to proposed Rule 13–02, if the affiliates are consolidated subsidiaries of the registrant. If additional line items of financial information are material to an investment decision, the registrant would be required to disclose that information as well. In addition, the proposed amendments would require, to the extent material, certain non-financial disclosures about the securities pledged as collateral, each affiliate whose securities are pledged, the terms and conditions of the collateral arrangement, and whether a trading market exists for the pledged securities.

We believe that these amendments would reduce the paperwork burden for the affected forms because Summarized Financial Information is less detailed than separate financial statements and, therefore, is less costly and burdensome to prepare. Further, we believe the registrant's ability to present Summarized Financial Information on a combined basis with its consolidated affiliates would reduce the registrant's paperwork burden because the registrant would not be required to prepare and disclose each of its affiliates' financial statements separately. However, because proposed Rule 13–02 requires certain financial information that may not otherwise be required in the Summarized Financial Information and additional non-financial disclosures, when material, the expected paperwork burden reduction may be somewhat mitigated.

Existing Rule 3–16 requires the Rule 3–16 Financial Statements of an affiliate to be audited for the periods required by Rules 3–01 and 3–02 of Regulation S–X. Similar to the proposed amendments to Rule 3–10, the proposed amendments related to Rule 3–16 would permit a registrant to provide the disclosures in proposed Rule 13–02 outside its financial statements in a registration statement covering the offer and sale of the subject securities and any related prospectus, and in Exchange Act annual and quarterly reports required to be filed during the fiscal year in which the first sale of the subject securities is completed, but require the proposed disclosures to be included in the footnotes to the registrant's consolidated financial statements for annual and quarterly reports beginning with the annual report for the fiscal year during which the first bona fide sale of the subject securities is completed. Therefore, if provided outside the registrant's financial statements, the proposed Rule 13–02 disclosures would not be audited or tagged, which could reduce the burdens associated with preparing this information. Whether a registrant would elect to provide the disclosures outside its financial statement footnotes likely would depend on the company's specific facts and circumstances and, as discussed

[310] Ten current filings on Form S–1 × 0.33 = 3.3 filings, which rounds to 3 filings.

[311] One hundred current filings on Form S–4 × 0.33 = 33 filings.

[312] Five current filings on Form S–11 × 0.33 = 1.65 filings, which rounds to two filings.

[313] Seven current filings on Form 10 × 0.33 = 2.31 filings, which rounds to two filings.

[314] Five current filings on Form F–1 × 0.33 = 1.65 filings, which rounds to two filings.

[315] Seven current filings on Form F–4 × 0.33 = 2.31 filings, which rounds to two filings.

[316] Seven current fillings on Form 20–F × .033 = 2.31 filings, which rounds to two filings.

[317] *See, e.g.,* letters from EY, FedEx, Medtronic, and Noble-UK.

[318] Letter from FedEx.

[319] *Id.* The commenter noted that it would require 280 hours to prepare and review its Consolidating Information. As discussed above, the existing Alternative Disclosures may include either Consolidating Information or brief narrative disclosure, and we do not believe that the proposed amendments would affect the paperwork burden for filings that include the narrative disclosure under existing Rule 3–10 because registrants that provide these narrative disclosures would be permitted to provide similar information under the proposed amendments.

above,[320] we believe there could be reasons for companies to elect either option. In addition, any reduction in paperwork burden associated with such an election would be incremental, as the registrant would still incur expenses to prepare audited financial information. Given these considerations, and to avoid overestimating the overall paperwork burden reduction associated with the proposed amendments, we are not estimating a specific additional burden reduction for this aspect of the proposed amendments. However, we solicit comment on whether it would be appropriate to do so and, if so, how we might estimate such a reduction.

The proposed amendments would require registrants to provide Summarized Financial Information of affiliates as of, and for, the most recently-ended fiscal year and interim period included in their consolidated financial statements. Under existing Rule 3–16, financial statements of affiliates are required for the periods specified in Rules 3–01 and 3–02 of Regulation S–X. This aspect of the proposed amendments, therefore, would reduce the paperwork burden for registrants by reducing the number of periods required to be presented.

Overall, we estimate that the proposed amendments related to Rule 3–16 would reduce the current paperwork burden by approximately 30 hours for each affected form except for quarterly reports on Form 10–Q. Existing Rule 3–16 requires registrants to include interim period Rule 3–16 Financial Statements when the financial statements are presented in registration statements, but it does not require Rule 3–16 Financial Statements in quarterly reports on Form 10–Q. The proposed amendments related to Rule 3–16 would require financial information in quarterly reports on Form 10–Q, which would increase registrants' paperwork burden for that form. We estimate that the proposed amendments related to Rule 3–16 would increase the current paperwork burden by approximately 70 hours [321] for each affected quarterly report on Form 10–Q.

As with the proposed amendments to Rule 3–10, although the proposed amendments related to Rule 3–16 would reduce the paperwork burden for each individual affected form, except for Form 10–Q, the proposed amendments could cause the number of affected forms filed over a period of time to change. A number of commenters stated that, due to the costs and burdens associated with preparing the information, collateralized debt offerings are often unregistered or structured to avoid or limit Rule 3–16 disclosures.[322] We believe that the proposed amendments would encourage potential issuers to conduct additional registered collateralized debt offerings because the costs of complying with proposed Rule 13–02 could be less than the costs required to comply with existing Rule 3–16. As the number of these registered offerings increases, the number of affected forms filed would also increase over a period of time.

As discussed in Section VII.B.2, ''Market Conditions,'' over the last three calendar years from 2015 to 2017, approximately seven filings per year have included Rule 3–16 Financial Statements, with six of those filings on Form 10–K and one on Form 20–F. However, a number of filings on affected forms include references to Rule 3–16 even though they do not include Rule 3–16 Financial Statements.[323] As commenters indicated, indenture agreements frequently include provisions that release collateral requirements if their inclusion would trigger Rule 3–16 Financial Statements.[324]

We do not believe that all the filings on affected forms that reference Rule 3–16 but do not include Rule 3–16 Financial Statements would include the proposed Rule 13–02 information, but we believe many would include this information. For PRA purposes, we estimate that the proposed amendments would result in approximately 33 percent of the registration statements that reference Rule 3–16 but do not include Rule 3–16 Financial Statements providing the proposed Rule 13–02 information. As such, we estimate that approximately ten additional registration statements would include the proposed Rule 13–02 information, with four of those filings on Form S–4 [325] and one each on Forms S–1,[326] S–11, 10, 1–A, F–1, and F–4.[327]

Further, we do not believe that all registrants that file additional registration statements with the proposed Rule 13–02 information would be new registrants, so we do not believe there would be an additional ten filings on Form 10–K. We estimate that 33 percent of the registrants that file additional registration statements with the proposed Rule 13–02 information would be new registrants, so an additional three filings on Form 10–K would include the proposed Rule 13–02 information.[328] Also, we estimate that two additional filings on Form 20–F, one registration statement and one annual report, would include the proposed Rule 13–02 information.

Estimating the number of additional filings on Form 10–Q requires a separate determination because the proposed amendments would require that proposed Rule 13–02 information be included in quarterly reports on Form 10–Q. Rule 3–16 Financial Statements are not required in quarterly reports on Form 10–Q under existing Rule 3–16. To estimate the number of additional filings on Form 10–Q that would include the proposed Rule 13–02 information, we look to the estimated number of filings on Form 10–K. For every Form 10–K, a registrant would be required to file three quarterly reports on Form 10–Q. Assuming that six filings on Form 10–K would be made each year with the proposed Rule 13–02

[320] Sections V.B., ''Overview of the Proposed Changes,'' and VII.C.2 ''Proposed Amendments to Rule 3–16 and Relocation to Rule 13–02.''

[321] This figure corresponds to the 70 burden hours we estimate will be required to prepare and process the proposed Rule 13–02 information in connection with the filing of a registration statement. *See* discussion below.

[322] *See, e.g.,* letters from ABA-Committees, Cahill, Chamber, Covenant, Davis Polk, DT, KPMG, EY, and PwC.

[323] We estimate that, over the last three calendar years, approximately 21 filings on Form 10–K included Rule 3–16 Financial Statements and an additional 15 filings on that form referenced Rule 3–16 but did not include Rule 3–16 Financial Statements. Also, three filings on Form 20–F included Rule 3–16 Financial Statements and no other filings on that form referenced Form 3–16. Further, 25 filings on Form 10–Q, 11 filings on Form S–1, 35 filings on Form S–4, one filing on Form S–11, one filing on Form 10, and one filing on Form 1–A referred to Rule 3–16 but did not include Rule 3–16 Financial Statements. No filings on the other affected forms referenced the rule.

[324] *See, e.g.,* letters from Davis, KPMG, and PwC.

[325] We estimated this figure by multiplying the average number of filings per year from the last three calendar years on Form S–4 that referenced Rule 3–16 but did not include the Rule 3–16 Financial Statements (12 filings) by 0.33. The average annual number of filings on Form S–4 that referenced Rule 3–16 but did not include the Rule 3–16 Financial Statements is 11.67, which rounds to 12.

[326] We estimated this figure by multiplying the average number of filings per year from the last three calendar years on Form S–1 that referenced Rule 3–16 but did not include the Rule 3–16 Financial Statements (four filings) by 0.33. The average annual number of filings on Form S–1 that referenced Rule 3–16 but did not include the Rule 3–16 Financial Statements is 1.33, which rounds to one.

[327] Over the last three calendar years, one filing on Form S–11, one filing on Form 10, and one filing on Form 1–A referred to Rule 3–16 but did not include Rule 3–16 Financial Statements. Therefore, we estimate that one additional filing on each of these forms would include the proposed Rule 13–02 information. Also, although there were no filings on Forms F–1 and F–4 that referenced Rule 3–16 in the last three calendar years, one filing on Form F–1 and two filings on Form F–4 referenced Rule 3–16 in calendar years 2013 and 2014, so we estimated that one additional filing on each of these forms would include the proposed Rule 13–02 information.

[328] Thirty-three percent of ten is 3.33, which rounds to three.

information,[329] we estimate that 18 quarterly reports on Form 10–Q per year would be filed with the proposed Rule 13–02 information.

Finally, to determine the paperwork burden for a registrant to file a registration statement with the proposed Rule 13–02 information, we estimated the number of burden hours required for an issuer to provide the existing Rule 3–16 Financial Statements. Unlike for Rule 3–10, no commenter provided an estimate for the cost of Rule 3–16 Financial Statements. For PRA purposes, we estimate that the Rule 3–16 Financial Statements require an average of 100 burden hours, which is the same estimate we use for the hours required to prepare and process the Alternative Disclosures under existing Rule 3–10. However, we solicit comment on the number of burden hours required to prepare the Rule 3–16 Financial Statements. If proposed Rule 13–02 would reduce a registrant's burden by 30 hours, as compared to the registrant providing the existing Rule 3–16 Financial Statements, we estimate that the proposed Rule 13–02 information would require 70 hours to prepare and process.

C. Burden and Cost Estimates for the Proposed Amendments

Below we estimate the aggregate change in paperwork burden as a result of the proposed amendments, both in terms of the change to existing responses as well as the effect of additional responses. These estimates represent the average burden for all registrants, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the nature of their business. 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. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the registrant internally is reflected in hours.

For purposes of the PRA, we estimate that 75% of the burden of preparation of Forms 10–K, 10–Q, 1–A, and 1–K is carried by the registrant internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour.[330] Additionally, we estimate that 25% of the burden of preparation for Forms 10, S–1, S–3, S–4, S–11, SF–3, F–1, F–3, F–4, 20–F, and 40–F and is carried by the registrant internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour. Finally, we estimate that 85% of the burden of preparation of Form 1–SA is carried by the registrant internally and that 15% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour.

The tables below illustrate the change to the total annual compliance burden of affected forms, in hours and in costs, as a result of the proposed amendments.

TABLE 6—CALCULATIONS OF CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES DUE TO PROPOSED AMENDMENTS TO RULE 3–10

	Number of current affected responses (A)	Burden hour change per current affected response (B)	Change in burden hours for current affected responses (C) = (A) × (B)	Change in company hours for current affected responses (D) = (C) × 0.75, 0.25, or 0.85	Change in professional hours for current affected responses (E) = (C) × 0.25, 0.75, or 0.15	Change in professional costs for current affected responses (F) = (E) × $400
10–K	474	(30)	(14,220)	(10,665)	(3,555)	($1,422,000)
10–Q	1,252	(30)	(37,560)	(28,170)	(9,390)	(3,756,000)
S–1	10	(30)	(300)	(75)	(225)	(90,000)
20–F	14	(30)	(420)	(105)	(315)	(126,000)
40–F	8	(30)	(240)	(60)	(180)	(72,000)
S–4	100	(30)	(3,000)	(750)	(2,250)	(900,000)
S–11	5	(30)	(150)	(37.5)	(112.5)	(45,000)
10	7	(30)	(210)	(52.5)	(157.5)	(63,000)
F–1	5	(30)	(150)	(37.5)	(112.5)	(45,000)
F–4	7	(30)	(210)	(52.5)	(157.5)	(63,000)
1–A	0					
1–K	0					
1–SA	0					
SF–1	0					
SF–3	0					

[329] This figure was determined by adding the two current filings on Form 10–K that include Rule 3–16 Financial Statements with the estimated four additional filings on Form 10–K that would include proposed Rule 13–02 information.

[330] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This estimate is based on consultations with several registrants, law firms and other persons who regularly assist registrants in preparing and filing reports with the Commission.

TABLE 7—CALCULATIONS OF CHANGE IN BURDEN ESTIMATES OF ADDITIONAL RESPONSES DUE TO PROPOSED AMENDMENTS TO RULE 3–10

	Number of additional affected responses (A)	Burden hour change per additional affected response (B)	Change in burden hours for additional affected responses (C) = (A) × (B)	Change in company hours for additional affected responses (D) = (C) × 0.75, 0.25, or 0.85	Change in professional hours for additional affected responses (E) = (C) × 0.25, 0.75, or 0.15	Change in professional costs for additional affected responses (F) = (E) × $400
10–K	0					
10–Q	0					
S–1	3	70	210	52.5	157.5	$63,000
20–F	2	70	140	35	105	42,000
40–F	0					
S–4	33	70	2,310	577.5	1,732.5	693,000
S–11	2	70	140	35	105	42,000
10	2	70	140	35	105	42,000
F–1	2	70	140	35	105	42,000
F–4	2	70	140	35	105	42,000
1–A	0					
1–K	0					
1–SA	0					
SF–1	0					
SF–3	0					

TABLE 8—CALCULATIONS OF CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES DUE TO PROPOSED AMENDMENTS TO RULE 3–16

	Number of current affected responses (A)	Burden hour change per current affected response (B)	Change in burden hours for current affected responses (C) = (A) × (B)	Change in company hours for current affected responses (D) = (C) × 0.75, 0.25, or 0.85	Change in professional hours for current affected responses (E) = (C) × 0.25, 0.75, or 0.15	Change in professional costs for current affected responses (F) = (E) × $400
10–K	7	(30)	(210)	(157.5)	(52.5)	($21,000)
10–Q	0					
S–1	0					
20–F	1	(30)	(30)	(7.5)	(22.5)	(9,000)
40–F	0					
S–4	0					
S–11	0					
10	0					
F–1	0					
F–4	0					
1–A	0					
1–K	0					
1–SA	0					
SF–1	0					
SF–3	0					

TABLE 9—CALCULATIONS OF CHANGE IN BURDEN ESTIMATES OF ADDITIONAL RESPONSES DUE TO PROPOSED AMENDMENTS TO RULE 3–16

	Number of additional affected responses (A)	Burden hour change per additional affected response (B)	Change in burden hours for additional affected responses (C) = (A) × (B)	Change in company hours for additional affected responses (D) = (C) × 0.75, 0.25, or 0.85	Change in professional hours for additional affected responses (E) = (C) × 0.25, 0.75, or 0.15	Change in professional costs for additional affected responses (F) = (E) × $400
10–K	3	70	210	157.5	52.5	$21,000
10–Q	18	70	1,260	945	315	126,000

TABLE 9—CALCULATIONS OF CHANGE IN BURDEN ESTIMATES OF ADDITIONAL RESPONSES DUE TO PROPOSED AMENDMENTS TO RULE 3–16—Continued

	Number of additional affected responses (A)	Burden hour change per additional affected response (B)	Change in burden hours for additional affected responses (C) = (A) × (B)	Change in company hours for additional affected responses (D) = (C) × 0.75, 0.25, or 0.85	Change in professional hours for additional affected responses (E) = (C) × 0.25, 0.75, or 0.15	Change in professional costs for additional affected responses (F) = (E) × $400
S–1	1	70	70	17.5	52.5	21,000
20–F	2	70	140	35	105	42,000
40–F	0					
S–4	4	70	280	70	210	84,000
S–11	1	70	70	17.5	52.5	21,000
10	1	70	70	17.5	52.5	21,000
F–1	1	70	70	17.5	52.5	21,000
F–4	1	70	70	17.5	52.5	21,000
1–A	1	70	70	52.5	17.5	7,000
1–K	0					
1–SA	0					
SF–1	0					
SF–3	0					

TABLE 10—CALCULATIONS FOR INCREMENTAL PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS TO RULES 3–10 AND 3–16

[Current Responses + Additional Responses]

	Number of total affected responses under Proposed Rule 3–10 (A) [331]	Number of total affected responses under Proposed Rule 3–16 (B) [332]	Change in burden hours for total affected responses under Proposed Rule 3–10 (C) [333]	Change in burden hours for total affected responses under Proposed Rule 3–16 (D) [334]	Change in company hours for total affected responses under Proposed Rule 3–10 (E) [335]	Change in company hours for total affected responses under Proposed Rule 3–16 (F) [336]	Change in professional hours for total affected responses under Proposed Rule 3–10 (G) [337]	Change in professional hours for total affected responses under Proposed Rule 3–16 (H) [338]	Change in professional costs for total affected responses under Rule 3–10 (I) [339]	Change in professional costs for total affected responses under Rule 3–16 (J) [340]
10–K	474	10	(14,220)	0	(10,665)	0	(3,555)	0	($1,422,000)	$0
10–Q	1,252	18	(37,560)	1,260	(28,170)	945	(9,390)	315	(3,756,000)	126,000
S–1	13	1	(90)	70	(22.5)	17.5	(67.5)	52.5	(27,000)	21,000
20–F	16	3	(280)	110	(70)	27.5	(210)	82.5	(84,000)	33,000
40–F	8	0	(240)		(60)		(180)		(72,000)	
S–4	133	4	(690)	280	(172.5)	70	(517.5)	210	(207,000)	84,000
S–11	7	1	(10)	70	(2.5)	17.5	(7.5)	52.5	(3,000)	21,000
10	9	1	(70)	70	(17.5)	17.5	(52.5)	52.5	(21,000)	21,000
F–1	7	1	(10)	70	(2.5)	17.5	(7.5)	52.5	(3,000)	21,000
F–4	9	1	(70)	70	(17.5)	17.5	(52.5)	52.5	(21,000)	21,000
1–A	0	1		70		52.5		17.5		7,000
1–K	0	0								
1–SA	0	0								
SF–1	0	0								
SF–3	0	0								

TABLE 11—INCREMENTAL PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS TO RULES 3–10 AND 3–16

	Number of affected responses (A) [341]	Change in burden hours of affected response (B) [342]	Change in company hours (C) [343]	Change in professional hours (D) [344]	Change in professional costs (E) [345]
10–K	484	(14,220)	(10,665)	(3,555)	($1,422,000)
10–Q	1,270	(36,300)	(27,225)	(9,075)	(3,630,000)
S–1	14	(20)	(5)	(15)	(6,000)
20–F	19	(170)	(42.5)	(127.5)	(51,000)
40–F	8	(240)	(60)	(180)	(72,000)

[331] Table 6, Column (A) + Table 7, Column (A).
[332] Table 8, Column (A) + Table 9, Column (A).
[333] Table 6, Column (C) + Table 6, Column (C).
[334] Table 8, Column (C) + Table 9, Column (C).
[335] Table 6, Column (D) + Table 7, Column (D).
[336] Table 8, Column (D) + Table 9, Column (D).
[337] Table 6, Column (E) + Table 7, Column (E).
[338] Table 8, Column (E) + Table 9, Column (E).
[339] Table 6, Column (F) + Table 7, Column (F).
[340] Table 8, Column (F) + Table 9, Column (F).

TABLE 11—INCREMENTAL PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS TO RULES 3–10 AND 3–16—Continued

	Number of affected responses (A) [341]	Change in burden hours of affected response (B) [342]	Change in company hours (C) [343]	Change in professional hours (D) [344]	Change in professional costs (E) [345]
S–4	137	(410)	(102.5)	(307.5)	(123,000)
S–11	8	60	15	45	18,000
10	10	0	0	0	0
F–1	8	60	15	45	18,000
F–4	10	0	0	0	0
1–A	1	70	52.5	17.5	7,000
1–K	0				
1–SA	0				
SF–1	0				
SF–3	0				

TABLE 12—REQUESTED PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS TO RULES 3–10 AND 3–16 [346]

	Current burden			Program change			Requested change in burden		
	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Number of affected responses (D) [347]	Change in company hours (E) [348]	Change in professional costs (F) [349]	Annual responses (G) = (A) + (D)	Burden hours (H) = (B) + (E)	Cost burden (I) = (C) + (F)
10–K	8,137	14,596,183	$1,950,114,190	484	(10,665)	($1,422,000)	8,621	14,585,518	$1,948,692,190
10–Q	22,907	3,271,578	436,240,908	1,270	(27,225)	(3,630,000)	24,117	3,244,353	432,610,908
S–1	901	151,143	181,371,300	14	(5)	(6,000)	915	151,138	181,365,300
20–F	725	480,226	576,270,600	19	(42.5)	(51,000)	744	480,184	576,219,600
40–F	160	17,197	20,636,800	8	(60)	(72,000)	168	17,137	20,564,800
S–4	551	565,282	678,338,304	137	(102.5)	(123,000)	688	565,180	678,215,304
S–11	64	12,529	15,034,368	8	15	18,000	72	12,544	15,052,368
10	216	11,783	14,140,051	10	0	0	226	11,783	14,140,051
F–1	63	26,980	32,375,700	8	15	18,000	71	26,995	32,393,700
F–4	39	14,245	17,093,700	10	0	0	49	14,245	17,093,700
1–A	250	140,813	18,775,200	1	52.5	7,000	251	140,866	18,782,200
1–K	188	84,600	11,280,000	0			188	84,600	11,280,000
1–SA	188	29,952	2,113,872	0			188	29,952	2,113,872
SF–1	6	2,076	2,491,200	0			6	2,076	2,491,200
SF–3	71	24,548	29,457,900	0			71	24,548	29,457,900

D. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our assumptions and estimates of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, with reference to File No. S7–19–18. Requests for materials submitted to OMB by the Commission with regard to the collection of information requirements should be in writing, refer to File No. S7–19–18 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549. OMB is required to make a decision concerning the collection of information requirements between 30 and 60 days after publication of the proposed amendments. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of

[341] Table 10, Columns (A) + (B).

[342] Table 10, Columns (C) + (D).

[343] Table 10, Columns (E) + (F).

[344] Table 10, Columns (G) + (H).

[345] Table 10, Columns (I) + (J).

[346] The figures in Table 12, Columns (G), (H), and (I) have been rounded to the nearest whole number.

[347] From Table 11, Column (A).

[348] From Table 11, Column (C).

[349] From Table 11, Column (F).

1996 (''SBREFA''),[350] we solicit data to determine whether the proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

Commenters should provide comment and empirical data on (a) the potential annual effect on the U.S. economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment, or innovation.

X. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with the Regulatory Flexibility Act.[351] It relates to the proposed amendments to the financial disclosure requirements in Rules 3–10 and 3–16 of Regulation S–X to improve those requirements for both investors and registrants.

A. Reasons for, and Objectives of, the Proposing Action

The purpose of the proposed amendments to Rules 3–10 and 3–16 is to better align those requirements with the needs of investors and to simplify and streamline the disclosure obligations of registrants. The proposed changes would include amending both rules and relocating part of Rule 3–10 and all of Rule 3–16 to proposed Rules 13–01 and 13–02 in Regulation S–X, respectively. These changes are intended to provide investors with the information that is important given the specific facts and circumstances, make the disclosures easier to understand, and reduce the costs and burdens to registrants. The reasons for, and objectives of, the proposed amendments are discussed in more detail in Sections I through III above.

B. Legal Basis

We are proposing the rule and form amendments contained in this release under the authority set forth in Sections 3, 6, 7, 8, 9, 10, 19(a), and 28 of the Securities Act of 1933, as amended and Sections 3(b), 12, 13, 15(d), 23(a), and 36 of the Securities Exchange Act of 1934, as amended.

[350] Public Law 104–121, tit. II, 110 Stat. 857 (1996).

[351] 5 U.S.C. 601 *et seq.*

C. Small Entities Subject to the Proposed Rules

The proposed changes would affect some registrants that are small entities. The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[352] For purposes of the Regulatory Flexibility Act, under our rules, an issuer, other than an investment company or an investment adviser, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed $5 million.[353] We estimate that there are 1,196 issuers that file with the Commission, other than investment companies and investment advisers, that may be considered small entities and are potentially subject to the proposed amendments.[354]

D. Reporting, Recordkeeping, and Other Compliance Requirements

As noted above, the purpose of the proposed amendments to Rules 3–10 and 3–16 is to better align those requirements with the needs of investors and to simplify and streamline the disclosure obligations of registrants. Proposed Rule 3–10 would continue to permit the omission of separate financial statements of subsidiary issuers and guarantors when certain conditions are met and the parent company provides the Proposed Alternative Disclosures. While the conditions that must be met to omit separate subsidiary issuer or guarantor financial statements would continue to be located in proposed Rule 3–10, the disclosure requirements would be relocated to proposed Rule 13–01. The proposed amendments would:

- Replace the condition that a subsidiary issuer or guarantor be 100% owned by the parent company with a condition that it be consolidated in the parent company's consolidated financial statements;
- replace Consolidating Information with Summarized Financial Information of the Obligor Group, which may be presented on a combined basis, and reduce the number of periods presented;
- expand the qualitative disclosures about the guarantees and the issuers and guarantors;
- eliminate quantitative thresholds for disclosure and require disclosure of additional information that would be material to a holder of the guaranteed security;
- permit the Proposed Alternative Disclosures to be provided outside the footnotes to the parent company's audited annual and unaudited interim consolidated financial statements in a registration statement covering the offer and sale of the subject securities and any related prospectus, and in certain Exchange Act reports filed shortly thereafter;
- require that the Proposed Alternative Disclosures be included in the footnotes to the parent company's consolidated financial statements for annual and quarterly reports beginning with the annual report for the fiscal year during which the first bona fide sale of the subject securities is completed;
- eliminate the requirement to provide pre-acquisition financial statements of recently-acquired subsidiary issuers and guarantors; and
- require the Proposed Alternative Disclosures for as long as the issuers and guarantors have an Exchange Act reporting obligation with respect to the guaranteed securities rather than for so long as the guaranteed securities are outstanding.

The proposed amendments to Rule 3–10 would simplify and streamline the rule structure in several ways. Most significantly, under proposed Rules 3–10(a) and 3–10(a)(1) there would be only a single set of eligibility criteria that would apply to all issuer and guarantor structures instead of having separate sets of criteria contained in each of the five exceptions in existing Rules 3–10(b) through (f). Similarly, the requirements for the Proposed Alternative Disclosures would be included in a single location within proposed Rule 13–01, rather than spread among the multiple paragraphs of existing Rule 3–10.

Proposed Rule 3–16 would replace the rule's existing requirement to provide separate financial statements for each affiliate whose securities are pledged as collateral with financial and non-financial disclosures about the affiliate(s) and the collateral arrangement as a supplement to the consolidated financial statements of the registrant that issues the collateralized security. Similar to the proposed disclosures for issuers and guarantors of guaranteed securities under Rule 3–10, the disclosure requirements in Rule 3–16 would be amended and relocated to proposed Rule 13–02.

[352] 5 U.S.C. 601(6).

[353] *See* 17 CFR 230.157 under the Securities Act and 17 CFR 240.0–10(a) under the Exchange Act.

[354] This estimate is based on staff analysis of XBRL data submitted by filers, other than co-registrants, with EDGAR filings of Forms 10–K, 20–F, and 40–F and amendments filed during the calendar year 2017 and a staff analysis of Forms 1–A and 1–K filed during the calendar year 2017.

Additionally, instead of requiring disclosure only when the pledged securities meet or exceed a numerical threshold relative to the securities registered or being registered under the existing rule's ''substantial portion'' test, the proposed amendments would require disclosure to the extent material to a holder of the collateralized security. Further, the proposed amendments would require disclosure of any additional information about the collateral arrangement and each affiliate whose security is pledged as collateral that would be material to a holder of the collateralized securities. We believe these proposed disclosures would enable an investor to evaluate the potential outcomes in the event of foreclosure, would reduce costs and burdens on registrants, and may facilitate the use of debt structures that include pledges of affiliate securities, resulting in improved collateral packages being available to investors.

Many of the proposed changes would simplify and streamline existing disclosure requirements in ways that are expected to reduce compliance burdens for all registrants, including small entities. Some of the proposed changes would incrementally increase compliance costs for registrants, although we do not expect these additional costs to be significant. In addition, compliance with the proposed amendments would require the use of professional skills, including accounting and legal skills. The proposed amendments are discussed in detail in Sections II and III above. We discuss the economic impact including the estimated costs and burdens, of the proposed amendments to all registrants, including small entities, in Sections VII and VIII above.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

We believe the proposed amendments would simplify and streamline disclosure requirements in ways that are expected to reduce compliance burdens for all registrants, including small entities. We do not believe that the proposed amendments would impose any significant new compliance obligations. Accordingly, we do not believe it is necessary to exempt small entities from all or part of the proposed amendments. We note in this regard that the Commission's existing disclosure requirements provide for scaled disclosure requirements and other accommodations for small entities, and the proposed amendments would not alter these existing accommodations. We are, however, soliciting comment on whether the amendments should permit additional or different flexibility for SRCs and other types of issuers to locate the Proposed Alternative Disclosures outside the financial statements in light of the burdens associated with annual audit, interim review, and internal control over financial reporting requirements.

Finally, with respect to using performance rather than design standards, the proposed amendments generally contain elements similar to performance standards, which we believe is appropriate because it would allow registrants to omit financial information that is not necessary for an investment decision based on facts and circumstances applicable to that registrant and offering. For example, under the proposed amendments, the Summarized Financial Information of the Obligor Group that generally would be required could be omitted if it is not materially different from corresponding amounts in the parent company's consolidated financial statements. This and other performance standards included in the proposed amendments would reduce compliance burdens for all registrants, including small entities.

Request for Comment

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- How the proposed rule and form amendments can achieve their objective while lowering the burden on small entities;
- the number of small entity companies that may be affected by the proposed rule and form amendments;
- the existence or nature of the potential effects of the proposed amendments on small entity companies discussed in the analysis; and
- how to quantify the effects of the proposed amendments.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of that effect. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules themselves.

XI. Statutory Authority

The amendments contained in this release are being proposed under the authority set forth in Sections 3, 6, 7, 8, 10, 19(a), and 28 of the Securities Act, as amended, and Sections 3(b), 12, 13, 15(d), 23(a), and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 210, 229, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to reads as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78ll, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012), unless otherwise noted.

■ 2. Revise § 210.3–10 to read as follows:

§ 210.3–10 Financial statements of guarantors and issuers of guaranteed securities registered or being registered.

(a) If an issuer or guarantor of a guaranteed security that is registered or being registered is required to file financial statements required by Regulation S–X with respect to the

guarantee or guaranteed security, such financial statements may be omitted if the issuer or guarantor is a consolidated subsidiary of the parent company, the parent company's consolidated financial statements have been filed, and the conditions in paragraphs (a)(1) and (2) of this section have been met:

(1) The guaranteed security is debt or debt-like; and

(i) The parent company issues the security or co-issues the security, jointly and severally, with one or more of its consolidated subsidiaries; or

(ii) A consolidated subsidiary issues the security or co-issues the security with one or more other consolidated subsidiaries of the parent company, and the security is guaranteed fully and unconditionally by the parent company.

(2) The parent company provides the disclosures specified in § 210.13–01.

(b) For the purposes of this section and § 210.13–01:

(1) The ''parent company'' is the entity that:

(i) Is an issuer or guarantor of the guaranteed security;

(ii) Is, or as a result of the subject Securities Act registration statement will be, an Exchange Act reporting company; and

(iii) Consolidates each subsidiary issuer and/or subsidiary guarantor of the guaranteed security in its consolidated financial statements.

(2) A security is ''debt or debt-like'' if it has the following characteristics:

(i) The issuer has a contractual obligation to pay a fixed sum at a fixed time; and

(ii) Where the obligation to make such payments is cumulative, a set amount of interest must be paid.

Note 1 to paragraph (b)(2). Neither the form of the security nor its title will determine whether a security is debt or debt like. Instead, the substance of the obligation created by the security will be determinative.

Note 2 to paragraph (b)(2). The phrase ''set amount of interest'' is not intended to mean ''fixed amount of interest.'' Floating and adjustable rate securities, as well as indexed securities, may meet the criteria specified in paragraph (b)(2)(ii) of this section as long as the payment obligation is set in the debt instrument and can be determined from objective indices or other factors that are outside the discretion of the obligor.

(3) A guarantee is ''full and unconditional,'' if, when an issuer of a guaranteed security has failed to make a scheduled payment, the guarantor is obligated to make the scheduled payment immediately and, if it does not, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable.

§ 210.3–16 [Removed and Reserved]

■ 3. Remove and reserve § 210.3–16.

■ 4. Amend § 210.8–01 by revising Note 3 and Note 4 to read as follows:

§ 210.8–01 Preliminary Notes to Article 8.

* * * * *

Note 3 to § 210.8. The requirements of § 210.3–10 are applicable to financial statements for a subsidiary of a smaller reporting company that issues securities guaranteed by the smaller reporting company or guarantees securities issued by the smaller reporting company. Disclosures about guarantors and issuers of guaranteed securities registered or being registered must be presented as required by § 210.13–01.

Note 4 to § 210.8. Disclosures about a smaller reporting company's affiliates whose securities collateralize any class of securities registered or being registered and the related collateral arrangement must be presented as required by § 210.13–02.

* * * * *

■ 5. Amend § 210.8–03 by adding paragraphs (b)(7) and (8) to read as follows:

§ 210.8–03 Interim financial statements.

* * * * *

(b) * * *

(7) *Financial statements of and disclosures about guarantors and issuers of guaranteed securities.* The requirements of § 210.3–10 are applicable to financial statements for a subsidiary of a smaller reporting company that issues securities guaranteed by the smaller reporting company or guarantees securities issued by the smaller reporting company. Disclosures about guarantors and issuers of guaranteed securities registered or being registered must be presented as required by § 210.13–01.

(8) *Disclosures about affiliates whose securities collateralize an issuance.* Disclosures about a smaller reporting company's affiliates whose securities collateralize any class of securities registered or being registered and the related collateral arrangement must be presented as required by § 210.13–02.

* * * * *

■ 6. Amend § 210.10–01 by adding paragraphs (b)(9) and (10) to read as follows:

§ 210.10–01 Interim financial statements.

* * * * *

(b) * * *

(9) The requirements of § 210.3–10 are applicable to financial statements for a subsidiary of the registrant that issues securities guaranteed by the registrant or guarantees securities issued by the registrant. Disclosures about guarantors and issuers of guaranteed securities registered or being registered must be presented as required by § 210.13–01.

(10) Disclosures about a registrant's affiliates whose securities collateralize any class of securities registered or being registered and the related collateral arrangement must be presented as required by § 210.13–02.

* * * * *

■ 7. Add an undesignated center heading and §§ 210.13–01 and 210.13–02 to read as follows:

Financial and Non-Financial Disclosures for Certain Securities Registered or Being Registered

§ 210.13–01 Guarantors and issuers of guaranteed securities registered or being registered.

(a) For each class of guaranteed security registered or being registered for which the registrant is the parent company (as that term is defined in § 210.3–10(b)(1)), provide the following disclosures to the extent material to holders of the guaranteed security:

(1) Identification of the issuers and guarantors of the guaranteed security;

(2) A description of the terms and conditions of the guarantees, and how payments to holders of the guaranteed security may be affected by the composition of and relationships among the issuers, guarantors, and subsidiaries of the parent company that are not issuers or guarantors of the guaranteed security;

(3) A description of other factors that may affect payments to holders of the guaranteed security, such as contractual or statutory restrictions on dividends, guarantee enforceability, or the rights of a noncontrolling interest holder;

(4) Summarized financial information as specified in § 210.1–02(bb)(1) of each issuer and guarantor of the guaranteed security. The summarized financial information of each such issuer and guarantor consolidated in the parent company's consolidated financial statements may be presented on a combined basis with the summarized financial information of the parent company. Intercompany transactions between issuers and guarantors whose summarized financial information is presented on a combined basis shall be eliminated. If the information provided in response to the requirements of this section is applicable to one or more, but not all, issuers and/or guarantors, separately disclose the summarized financial information applicable to those issuers and/or guarantors. The financial information of subsidiaries that are not issuers or guarantors shall not be combined with that of issuers and guarantors. The method selected to

present investments in subsidiaries that are not issuers or guarantors shall be disclosed and used for all such subsidiaries for all of the classes of guaranteed securities for which disclosure is required by this section, and shall be reasonable in the circumstances. Disclose this summarized financial information as of and for the most recently ended fiscal year and interim period included in the parent company's consolidated financial statements. If the disclosure required by this paragraph (a)(4) is omitted because it is not material to holders of the guaranteed security, disclose a statement to that effect and the reasons therefore; and

(5) Any other quantitative or qualitative information that would be material to making an investment decision with respect to the guaranteed security.

Note 1 to paragraph (a). The parent company may elect to provide the disclosures required by this section in a footnote to its consolidated financial statements or alternatively, in management's discussion and analysis of financial condition and results of operations described in § 229.303 (Item 303 of Regulation S–K) of this chapter in its registration statement covering the offer and sale of the subject securities and any related prospectus, and in Exchange Act reports on the forms described in §§ 249.310 (Form 10–K), 249.220f (Form 20–F), and 249.308a (Form 10–Q) of this chapter required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. If not otherwise included in the consolidated financial statements or in management's discussion and analysis of financial condition and results of operations, the parent company must include the disclosures in its prospectus immediately following ''Risk Factors,'' if any, or otherwise, immediately following pricing information described in § 229.503(c) (Item 503(c) of Regulation S–K) of this chapter. However, the parent company must provide the disclosures in a footnote to its consolidated financial statements in its annual and quarterly reports beginning with its annual report filed on the forms described in §§ 249.310 (Form 10–K) and 249.220f (Form 20–F) of this chapter for the fiscal year during which the first bona fide sale of the subject securities is completed.

(b) [Reserved]

§ 210.13–02 Affiliates whose securities collateralize securities registered or being registered.

(a) For each class of security registered or being registered that is collateralized by a security of the registrant's affiliate or affiliates, provide the following disclosures to the extent material to holders of the collateralized security:

(1) A description of the security pledged as collateral and each affiliate whose security is pledged as collateral;

(2) A description of the terms and conditions of the collateral arrangement, including the events or circumstances that would require delivery of the collateral;

(3) A description of the trading market for the affiliate's security pledged as collateral or a statement that there is no market;

(4) Summarized financial information as specified in § 210.1–02(bb)(1) of each affiliate whose securities are pledged as collateral. The summarized financial information of each such affiliate consolidated in the registrant's financial statements may be presented on a combined basis. Intercompany transactions between affiliates whose summarized financial information is presented on a combined basis shall be eliminated. If the information provided in response to the requirements of this section is applicable to one or more, but not all, affiliates, separately disclose the summarized financial information applicable to those affiliates. Disclose this summarized financial information as of and for the most recently ended fiscal year and interim period included in the registrant's consolidated financial statements. If the disclosure required by this paragraph (a)(4) is omitted because it is not material to holders of the collateralized security, disclose a statement to that effect and the reasons therefore; and

(5) Any other quantitative or qualitative information that would be material to making an investment decision with respect to the collateralized security.

Note 1 to paragraph (a). The registrant may elect to provide the disclosures required by this section in a footnote to its consolidated financial statements or alternatively, in management's discussion and analysis of financial condition and results of operations described in § 229.303 (Item 303 of Regulation S–K) of this chapter in its registration statement covering the offer and sale of the subject securities and any related prospectus, and in Exchange Act reports on the forms described in §§ 249.310 (Form 10–K), 249.220f (Form 20–F), and 249.308a (Form 10–Q) of this chapter required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. If not otherwise included in the consolidated financial statements or in management's discussion and analysis of financial condition and results of operations, the registrant must include the disclosures in its prospectus immediately following ''Risk Factors,'' if any, or otherwise, immediately following pricing information described in § 229.503(c) (Item 503(c) of Regulation S–K) of this chapter. However, the registrant must provide the disclosures in a footnote to its consolidated financial statements in its annual and quarterly reports beginning with its annual report filed on the forms described in §§ 249.310 (Form 10–K) and 249.220f (Form 20–F) of this chapter for the fiscal year during which the first bona fide sale of the subject securities is completed.

(b) [Reserved]

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

■ 8. The authority citation for part 229 reads 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).

■ 9. Amend § 229.504 by revising Instruction 6 to read as follows:

§ 229.504 (Item 504) Use of proceeds.

* * * * *

6. Where the registrant indicates that the proceeds may, or will, be used to finance acquisitions of other businesses, the identity of such businesses, if known, or, if not known, the nature of the businesses to be sought, the status of any negotiations with respect to the acquisition, and a brief description of such business shall be included. Where, however, pro forma financial statements reflecting such acquisition are not required by §§ 210.1–01 through 210.13–02 (Regulation S–X) of this chapter, including § 210.8–05 (Rule 8–05 of Regulation S–X) of this chapter for smaller reporting companies, to be included in the registration statement, the possible terms of any transaction, the identification of the parties thereto or the nature of the business sought need not be disclosed, to the extent that the registrant reasonably determines that public disclosure of such information would jeopardize the acquisition. Where §§ 210.1–01 through 210.13–02 (Regulation S–X) of this chapter, including § 210.8–04 (Rule 8–04 of Regulation S–X) of this chapter for smaller reporting companies, as applicable, would require financial statements of the business to be acquired to be included, the description of the business to be acquired shall be more detailed.

* * * * *

■ 10. Amend § 229.1100 by revising paragraphs (c)(2)(ii)(C), (D), and (F) to read as follows:

§ 229.1100 (Item 1100) General.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) If the third party does not meet the conditions of paragraph (c)(2)(ii)(A) or (B) of this section and the pool assets relating to the third party are fully and unconditionally guaranteed by a direct or indirect parent of the third party, General Instruction I.C.3 of the form described in § 239.13 (Form S–3) of this chapter or General Instruction I.A.5(iii) of the form described in § 239.33 (Form F–3) of this chapter is met with respect to the pool assets relating to such third party and the disclosures specified in § 210.13–01 (Rule 13–01 of Regulation S–X) of this chapter have been provided in the reports to be referenced. Financial statements of the third party may be omitted if the requirements of § 210.3–10 (Rule 3–10 of Regulation S–X) of this chapter are satisfied.

(D) If the pool assets relating to the third party are guaranteed by a wholly owned subsidiary of the third party and the subsidiary does not meet the conditions of paragraph (c)(2)(ii)(A) or (B) of this section, the criteria in either paragraph (c)(2)(ii)(A) or (B) of this section are met with respect to the third party and the disclosures specified in Rule 13–01 of Regulation S–X have been provided in the reports to be referenced. Financial statements of the subsidiary guarantor may be omitted if the requirements of Rule 3–10 of Regulation S–X are satisfied.

* * * * *

(F) The third party is a U.S. government-sponsored enterprise, has outstanding securities held by non-affiliates with an aggregate market value of $75 million or more, and makes information publicly available on an annual and quarterly basis, including audited financial statements prepared in accordance with generally accepted accounting principles covering the same periods that would be required for audited financial statements under §§ 210.1–01 through 210.13–02 (Regulation S–X) of this chapter and non-financial information consistent with that required by §§ 229.10 through 229.1208 (Regulation S–K).

* * * * *

■ 11. Amend § 229.1112 by revising paragraph (b)(2) to read as follows:

§ 229.1112 (Item 1112) Significant obligors of pool assets.

* * * * *

(b) * * *

(2) If pool assets relating to a significant obligor represent 20% or more of the asset pool, provide financial statements meeting the requirements of §§ 210.1–01 through 210.13–02 (Regulation S–X) of this chapter, except §§ 210.3–05 (Rule 3–05) and 210.11–01 through 210.11–03 (Article 11 of Regulation S–X) of this chapter, of the significant obligor. Financial statements of such obligor and its subsidiaries consolidated (as required by § 240.14a-3(b) of this chapter) shall be filed under this item.

* * * * *

■ 12. Amend § 229.1114 by revising paragraph (b)(2)(ii) to read as follows:

§ 229.1114 (Item 1114) Credit enhancement and other support, except for certain derivatives instruments.

* * * * *

(b) * * *

(2) * * *

(ii) If any entity or group of affiliated entities providing enhancement or other support described in paragraph (a) of this section is liable or contingently liable to provide payments representing 20% or more of the cash flow supporting any offered class of the asset-backed securities, provide financial statements meeting the requirements of §§ 210.1–01 through 210.13–02 (Regulation S–X) of this chapter, except §§ 210.3–05 (Rule 3–05) and 210.11–01 through 210.11–03 (Article 11 of Regulation S–X) of this chapter, of such entity or group of affiliated entities. Financial statements of such enhancement provider and its subsidiaries consolidated (as required by § 240.14a–3(b) of this chapter) shall be filed under this item.

* * * * *

■ 13. Amend § 229.1115 by revising paragraph (b)(2) to read as follows:

§ 229.1115 (Item 1115) Certain derivatives instruments.

* * * * *

(b) * * *

(2) If the aggregate significance percentage related to any entity or group of affiliated entities providing derivative instruments contemplated by this section is 20% or more, provide financial statements meeting the requirements of §§ 210.1–01 through 210.13–02 (Regulation S–X) of this chapter, except §§ 210.3–05 (Rule 3–05) and 210.11–01 through 210.11–03 (Article 11 of Regulation S–X) of this chapter, of such entity or group of affiliated entities. Financial statements of such entity and its subsidiaries consolidated (as required by § 240.14a–3(b) of this chapter) shall be filed under this item.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 14. The authority citation for part 239 is revised to read 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, 78u–5, 78w(a), 78ll, 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.

■ 15. Amend § 239.31 by revising paragraph (b) to read as follows:

§ 239.31 Form F–1, registration statement under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(b) If a registrant is a majority-owned subsidiary, which does not itself meet the conditions of these eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on the form described in § 249.229f (Form 20–F) of this chapter after the effective date of the registration statement, then it shall disclose the information specified in the form described in § 239.11 (Form S–1) of this chapter. The requirements of § 210.3–10 (Rule 3–10 of Regulation S–X) of this chapter are applicable to financial statements for a subsidiary of a parent company that issues securities guaranteed by the parent company.

■ 16. Amend Form F–1 (referenced in § 239.31) by revising Instruction I.B under ''General Instructions'' 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

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–1

* * * * *

B. If a registrant is a majority-owned subsidiary, which does not itself meet the conditions of these eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20–F after the effective date of the registration statement, then it shall disclose the information specified in Forms S–1 (§ 239.11 of this chapter). The requirements of Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) are applicable to financial statements for a subsidiary of a parent company that issues securities guaranteed by the parent company.

* * * * *

■ 17. Amend § 239.33 by revising Note to paragraph (a)(5) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

Note to paragraph (a)(5). In the situations described in paragraphs (a)(5)(iii), (iv), and (v) of this section, the parent or majority-owned subsidiary guarantor is the issuer of a separate security consisting of the guarantee, which must be concurrently registered, but may be registered on the same registration statement as are the guaranteed non-convertible securities. Both the parent and majority-owned subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the majority-owned subsidiary will not be eligible to file annual reports on the forms described in § 249.220f (Form 20–F) or § 249.240f (Form 40–F) of this chapter after the effective date of the registration statement, then it shall disclose the information specified in the form described in § 239.13 (Form S–3) of this chapter. The requirements of § 210.3–10 (Rule 3–10 of Regulation S–X) of this chapter are applicable to financial statements of a subsidiary of a parent company that issues securities guaranteed by the parent company or guarantees securities issued by the parent company.

* * * * *

■ 18. Amend Form F–3 (referenced in § 239.33) by revising the note to Instruction I.A.5 under ''General Instructions'' 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

* * * * *

I. Eligibility Requirements for Use of Form F–3

* * * * *

A. Registration Requirements

* * * * *

5. Majority-owned Subsidiaries. If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

* * * * *

Note: In the situation described in paragraphs I.A.5(iii), I.A.5(iv), and I.A.5(v) above, the parent or majority-owned subsidiary guarantor is the issuer of a separate security consisting of the guarantee, which must be concurrently registered, but may be registered on the same registration statement as are the guaranteed non-convertible securities. Both the parent or majority-owned subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the majority-owned subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–3. The requirements of Rule 3–10 of Regulation S–X are applicable to financial statements for a subsidiary of a parent company that issues securities guaranteed by the parent company or guarantees securities issued by the parent company.

* * * * *

■ 19. Amend Form 1–A (referenced in § 239.90) by revising paragraph (b)(7) of Part F/S to read as follows:

Note: The text of Form 1–A does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 1–A

REGULATION A OFFERING STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Part F/S

* * * * *

(b) Financial Statements for Tier 1 Offerings

* * * * *

(7) *Financial Statements of and Disclosures About Other Entities.* The circumstances described below may require you to file financial statements of, or provide disclosures about, other entities in the offering statement. The financial statements of other entities must be presented for the same periods as if the other entity was the issuer as described above in paragraphs (b)(3) and (b)(4) unless a shorter period is specified by the rules below. The financial statements of other entities shall follow the same audit requirement as paragraph (b)(2) of this Part F/S:

(i) *Financial Statements of and Disclosures About Guarantors and Issuers of Guaranteed Securities.* The requirements of Rule 3–10 of Regulation S–X are applicable to financial statements of a subsidiary that issues securities guaranteed by the ''parent company,'' as that term is defined in Rule 3–10 of Regulation S–X, or guarantees securities issued by the parent company. However, the reference in Rule 3–10(a) of Regulation S–X to ''an issuer or guarantor of a guaranteed security that is registered or being registered is required to file financial statements required by Regulation S–X with respect to the guarantee or guaranteed security'' instead refers to ''an issuer or guarantor of a guaranteed security that is qualified or being qualified pursuant to Regulation A is required to file financial statements required by Part F/S of Form 1–A with respect to the guarantee or guaranteed security.'' The parent company must also provide the disclosures required by Rule 13–01 of Regulation S–X. The parent company may elect to provide these disclosures in a footnote to its consolidated financial statements or alternatively, in management's discussion and analysis of financial condition and results of operations described in Item 9 of Form 1–A in its

offering statement on Form 1–A filed in connection with the offer and sale of the subject securities.

(ii) *Disclosures About Affiliates Whose Securities Collateralize an Issuance.* Disclosures about an issuer's affiliates whose securities collateralize any class of securities being offered must be provided as required by Rule 13–02 of Regulation S–X. The issuer may elect to provide these disclosures in a footnote to its consolidated financial statements or alternatively, in management's discussion and analysis of financial condition and results of operations described in Item 9 of Form 1–A in its offering statement on Form 1–A filed in connection with the offer and sale of the subject securities.

* * * * *

■ 20. Amend Form 1–K (referenced in § 239.91) by revising paragraph Item 7(g) of Part II to read as follows:

Note: The text of Form 1–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 1–K

* * * * *

PART II

* * * * *

Item 7. Financial Statements

* * * * *

(g) *Financial Statements of and Disclosures About Other Entities.* The circumstances described below may require you to file financial statements of, or provide disclosures about, other entities. The financial statements of other entities must be presented for the same periods as the issuer's financial statements described above in paragraphs (d) and (e) unless a shorter period is specified by the rules below.

(1) *Financial Statements of and Disclosures About Guarantors and Issuers of Guaranteed Securities.* The requirements of Rule 3–10 of Regulation S–X are applicable to financial statements of a subsidiary that issues securities guaranteed by the ''parent company,'' as that term is defined in Rule 3–10 of Regulation S–X, or guarantees securities issued by the parent company. However, the reference in Rule 3–10(a) of Regulation S–X to ''an issuer or guarantor of a guaranteed security that is registered or being registered is required to file financial statements required by Regulation S–X with respect to the guarantee or guaranteed security'' instead refers to ''an issuer or guarantor of a guaranteed security that is qualified or being qualified pursuant to Regulation A is required to file financial statements required by Item 7 of Part II of Form 1–K with respect to the guarantee or guaranteed security.'' The parent company must also provide the disclosures required by Rule 13–01 of Regulation S–X. The parent company may elect to provide these disclosures in a footnote to its consolidated financial statements or alternatively, in management's discussion and analysis of financial condition and results of operations described in Item 9 of Form 1–A in reports on Form 1–K and Form 1–SA required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. However, the parent company must provide the disclosures in a footnote to its consolidated financial statements in its annual and semiannual reports beginning with its annual report filed on Form 1–K for the fiscal year during which the first bona fide sale of the subject securities is completed.

(2) *Disclosures About Affiliates Whose Securities Collateralize an Issuance.* Disclosures about an issuer's affiliates whose securities collateralize any class of securities being offered must be provided as required by Rule 13–02 of Regulation S–X. The issuer may elect to provide these disclosures in a footnote to its consolidated financial statements or alternatively, in management's discussion and analysis of financial condition and results of operations described in Item 9 of Form 1–A in reports on Form 1–K and Form 1–SA required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. However, the issuer must provide the disclosures in a footnote to its consolidated financial statements in its annual and semiannual reports beginning with its annual report filed on Form 1–K for the fiscal year during which the first bona fide sale of the subject securities is completed.

* * * * *

■ 21. Amend Form 1–SA (referenced in § 239.92) by revising Item 3(e) to read as follows:

Note: The text of Form 1–SA does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 1–SA

* * * * *

INFORMATION TO BE INCLUDED IN REPORT

* * * * *

Item 3. Financial Statements

* * * * *

(e) Financial Statements of and Disclosures About Other Entities. The circumstances described below may require you to file financial statements of, or provide disclosures about, other entities. These financial statements and disclosures may be unaudited.

(1) Financial Statements of and Disclosures About Guarantors and Issuers of Guaranteed Securities. The requirements of Rule 3–10 of Regulation S–X are applicable to financial statements of a subsidiary that issues securities guaranteed by the ''parent company,'' as that term is defined in Rule 3–10 of Regulation S–X, or guarantees securities issued by the parent company. However, the reference in Rule 3–10(a) of Regulation S–X to ''an issuer or guarantor of a guaranteed security that is registered or being registered is required to file financial statements required by Regulation S–X with respect to the guarantee or guaranteed security'' instead refers to ''an issuer or guarantor of a guaranteed security that is qualified or being qualified pursuant to Regulation A is required to file financial statements required by Item 3 of Form 1–SA with respect to the guarantee or guaranteed security.'' The parent company must also provide the disclosures required by Rule 13–01 of Regulation S–X. The parent company may elect to provide these disclosures in a footnote to its consolidated financial statements or alternatively, in management's discussion and analysis of financial condition and results of operations described in Item 9 of Form 1–A in reports on Form 1–K and Form 1–SA required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. However, the parent company must provide the disclosures in a footnote to its consolidated financial statements in its annual and semiannual reports beginning with its annual report filed on Form 1–K for the fiscal year during which the first bona fide sale of the subject securities is completed.

(2) Disclosures About Affiliates Whose Securities Collateralize an Issuance. Disclosures about an issuer's affiliates whose securities collateralize any class of securities being offered must be provided as required by Rule 13–02 of Regulation S–X. The issuer may elect to provide these disclosures in a footnote to its consolidated

financial statements or alternatively, in management's discussion and analysis of financial condition and results of operations described in Item 9 of Form 1–A in reports on Form 1–K and Form 1–SA required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. However, the issuer must provide the disclosures in a footnote to its consolidated financial statements in its annual and semiannual reports beginning with its annual report filed on Form 1–K for the fiscal year during which the first bona fide sale of the subject securities is completed.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 22. The authority citation for part 240 continues to read in part 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, 78*ll,* 78mm, 80a-20, 80a–3, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 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; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 23. Revise § 240.12h–5 to read as follows:

§ 240.12h–5 Exemption for subsidiary issuers of guaranteed securities and subsidiary guarantors.

Any issuer of a guaranteed security, or guarantor of a security, that is permitted to omit financial statements by § 210.3–10 (Rule 3–10 of Regulation S–X) of this chapter is exempt from the requirements of 15 U.S.C. 78m(a) (Section 13(a) of the Act) or 78o(d) (Section 15(d) of the Act).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 24. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

■ 25. Amend Form 20–F (referenced in § 249.220f) by revising Instruction 1 to Item 8 to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 20–F

* * * * *

Instructions to Item 8:

1. This item refers to the company, but note that under Rules 3–05, 3–09, 3–10, 3–14, 13–01, and 13–02 of Regulation S–X, you also may have to provide financial statements or financial information for entities other than the issuer. In some cases, you may have to provide financial statements for a predecessor. See the definition of ''predecessor'' in Exchange Act Rule 12b-2 and Securities Act Rule 405.

* * * * *

By the Commission.

Dated: July 24, 2018.

Brent J. Fields,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities

For ease of reference, set forth below is a table summarizing the main features of existing Rule 3–10 and Rule 3–16 and the proposed rules. This is only a summary of certain requirements contained in the Commission's rules and regulations, as well as a summary of certain proposed rules; it is not a substitute for the rules and regulations or for the proposed rules. Registrants should refer to the existing rules and to the proposed rule text for the full requirements and the description of those requirements in the release. The changes we are proposing include amending both rules and relocating part of Rule 3–10 and all of Rule 3–16 to proposed Rules 13–01 and 13–02, respectively.

	Summary of existing Rule 3–10	Summary of proposed rules
Financial Statement Requirement & Omission of Subsidiary Issuer and Guarantor Financial Statements.	Rule 3–10(a) states that every issuer of a registered security that is guaranteed and every guarantor of a registered security must file the financial statements required for a registrant by Regulation S–X. Rules 3–10(b)–(f) set forth five exceptions to this general rule, which permit the omission of separate financial statements of subsidiary issuers and guarantors when certain conditions are met, including that the parent company provides the Alternative Disclosures.	Each issuer of a registered security that is guaranteed and each guarantor of a registered security must file the financial statements required for a registrant by Regulation S–X; however, proposed Rule 3–10(a) would no longer contain this express statement. Proposed Rule 3–10(a) would continue to permit the omission of separate financial statements of subsidiary issuers and guarantors when certain conditions are met, including that the parent company provides the Proposed Alternative Disclosures.
Rule Structure & Eligible Issuer and Guarantor Structures.	Rules 3–10(b) through (f) set forth the five exceptions. Each exception specifies the eligible structures to which it applies, and the conditions that must be met. In each case, the parent company must provide the Alternative Disclosures. Eligible issuer and guarantor structures: • A finance subsidiary issues securities that its parent company guarantees (Rule 3–10(b)); • an operating subsidiary issues securities that its parent company guarantees (Rule 3–10(c)); • a subsidiary issues securities that its parent company and one or more other subsidiaries of its parent company guarantee (Rule 3–10(d)); • a parent company issues securities that one of its subsidiaries guarantees (Rule 3–10(e)); or • a parent company issues securities that more than one of its subsidiaries guarantees (Rule 3–10(f)).	The proposed rules would replace the exceptions in existing Rule 3–10(b) through (f). Proposed Rule 3–10(a) would permit the separate financial statements of a subsidiary issuer or guarantor to be omitted if the eligibility conditions in proposed Rules 3–10(a) and 3–10(a)(1) are met and the Proposed Alternative Disclosures specified in proposed Rule 13–01 are provided in the filing, as required by proposed Rule 3–10(a)(2). Proposed Rule 3–10(a)(1) sets forth the eligible structures. Eligible issuer and guarantor structures: • The parent company issues the security or co-issues the security, jointly and severally, with one or more of its consolidated subsidiaries (Proposed Rule 3–10(a)(1)(i)); or • a consolidated subsidiary issues the security, or co-issues it with one or more other consolidated subsidiaries of the parent company, and the security is guaranteed fully and unconditionally by the parent company (Proposed Rule 3–10(a)(1)(ii)). The role of subsidiary guarantors would not be specified in the proposed categories of structures; however, the proposed rules are intended to cover the structures permitted in existing Rules 3–10(b) through (f).

	Summary of existing Rule 3–10	Summary of proposed rules
Conditions to Omit Separate Subsidiary Issuer and Guarantor Financial Statements.	If an issuer and guarantor structure matches one of the exceptions in Rules 3–10(b) through (f), the conditions in the applicable exception paragraph must be met, including: • Consolidated financial statements of the parent company have been filed; • each subsidiary issuer and guarantor is ''100% owned'' by the parent company; • each guarantee is ''full and unconditional'' and, where there are multiple guarantees, joint and several; and • the parent company provides the Alternative Disclosures in its financial statement footnotes. Additionally, the 2000 Release states the guaranteed security must be debt or debt-like.	The applicable conditions, set forth in proposed Rule 3–10, include: • Consolidated financial statements of the parent company have been filed (proposed Rule 3–10(a)); • the subsidiary issuer or guarantor is a consolidated subsidiary of the parent company (proposed Rule 3–10(a)); • the guaranteed security is debt or debt-like (proposed Rule 3–10(a)(1)); • the issuer and guarantor structure must match one of the eligible issuer and guarantor structures (proposed Rule 3–10(a)(1)(i) or (ii)); and • the parent company provides the Proposed Alternative Disclosures (proposed Rule 3–10(a)(2)).
Parent Company Financial Statements Condition.	The identity of the parent company will vary based on the particular corporate structure; however, the 2000 Release stated three conditions must be met before an entity can be considered a ''parent company,'' including that the entity: • Is an issuer or guarantor of the subject securities; • is an Exchange Act reporting company, or will be one as a result of the subject Securities Act registration statement; and • owns 100% of each subsidiary issuer or guarantor directly or indirectly.	''Parent company'' would be defined in proposed Rule 3–10(b)(1) and require that the entity: • Is an issuer or guarantor of the guaranteed security; • is an Exchange Act reporting company, or will become one as a result of the subject Securities Act registration statement; and • consolidates each subsidiary issuer and/or guarantor in its consolidated financial statements.
Ownership Condition ...	The exceptions in Rules 3–10(b) through (f) require that each subsidiary issuer or guarantor must be 100% owned by the parent company to omit its separate financial statements.	Proposed Rule 3–10(a) would require that the subsidiary issuer or guarantor be a consolidated subsidiary of the parent company pursuant to the relevant accounting standards already in use. Proposed Rule 13–01(a)(3) would require, to the extent material, a description of any factors that may affect payments to holders of the guaranteed security, such as the rights of a non-controlling interest holder. Proposed Rule 13–01(a)(4) would require separate disclosure of Summarized Financial Information for subsidiary issuers and guarantors affected by those factors.
Debt or Debt-Like Security Definition:	Rule 3–10 does not define when a security is ''debt or debt-like;'' however, the 2000 Release described characteristics of a debt or debt-like security, including: • The issuer has a contractual obligation to pay a fixed sum at a fixed time; and • where the obligation to make such payments is cumulative, a set amount of interest must be paid.	Proposed Rule 3–10(a)(1) would state explicitly that the guaranteed security must be ''debt or debt-like'' and proposed Rule 3–10(b)(2) would state that a guaranteed security would be considered ''debt or debt-like'' if: • The issuer has a contractual obligation to pay a fixed sum at a fixed time; and • where the obligation to make such payments is cumulative, a set amount of interest must be paid.
Subsidiary Guarantee Eligibility Requirements.	The exceptions in Rule 3–10(b) through (f) specify that a guarantee be full and unconditional and, when there are multiple guarantees, be joint and several. The requirements are imposed on the guarantee regardless of whether the guarantor is the parent company or a subsidiary.	The parent company's role with respect to the guaranteed security would determine whether the structure is eligible to provide the Proposed Alternative Disclosures. The parent company must be the issuer or full and unconditional guarantor of the guaranteed security (proposed Rules 3–10(a)(1)(i) and (ii)). If a subsidiary guarantee is not full and unconditional, or where there are multiple guarantees, not joint and several, disclosure of such terms and conditions would be required by proposed Rule 13–01(a)(2), to the extent material. Proposed Rule 13–01(a)(4) would require separate disclosure of the Summarized Financial Information for subsidiary guarantor(s) to which such terms and conditions apply, to the extent material.
Alternative Disclosures & Proposed Alternative Disclosures.	To be eligible to omit the separate financial statements of a subsidiary issuer or guarantor, each exception in Rules 3–10(b) through (f) requires that the parent company must provide the Alternative Disclosures in the footnotes to its consolidated financial statements. The form and content of the Alternative Disclosures are determined based on the facts and circumstances and are either a brief narrative or Consolidating Information. Specific elements of Consolidating Information are discussed below. Alternative Disclosures may consist of a brief narrative instead of Consolidating Information when: • The subsidiary is a finance subsidiary, and the parent company is the only guarantor of the securities; • the parent company of the subsidiary issuer has no independent assets or operations, the parent company guarantees the securities, no subsidiary of the parent company guarantees the securities, and any subsidiaries of the parent company other than the issuer are minor; and • the parent company issuer has no independent assets or operations and all of the parent company's subsidiaries, other than minor subsidiaries, guarantee the securities.	The proposed rule would replace the brief narrative form and Consolidating Information form of Alternative Disclosure with the Proposed Alternative Disclosures specified in proposed Rule 13–01. Specific elements of the Proposed Alternative Disclosures are discussed below. The Proposed Alternative Disclosures would be required in all cases, to the extent material to holders of the guaranteed security (proposed Rule 13–01(a)). Additionally, proposed Rule 13–01(a)(5) would require disclosure of any quantitative or qualitative information that would be material to making an investment decision with respect to the guaranteed security.
Consolidating Information and Proposed Alternative Disclosures—Level of Detail.	The instructions for preparing Consolidating Information are specified in Rule 3–10(i). Consolidating Information includes all major captions of the balance sheet, income statement, and cash flow statement that are required to be shown separately in interim financial statements prepared under Article 10 of Regulation S–X. Rules 3–10(i)(11)(i) and (ii), respectively, require disclosure of any financial and narrative information about each guarantor if it would be material for investors to evaluate the sufficiency of the guarantee, and disclosure of sufficient information to make the financial information presented not misleading.	The proposed rule would require the Proposed Alternative Disclosures specified in proposed Rule 13–01. Proposed Rule 13–01(a)(4) would require, for each issuer and guarantor, Summarized Financial Information, as specified in Rule 1–02(bb) of Regulation S–X, which would include select balance sheet and income statement line items. Disclosure of additional line items of financial information beyond what is specified in proposed Rule 13–01(a)(4) would be required by proposed Rule 13–01(a)(5), to the extent material. If the disclosures required by proposed Rule 13–01(a)(4) are omitted because they are immaterial, proposed Rule 13–01(a)(4) requires disclosure to that effect and the reasons.

	Summary of existing Rule 3–10	Summary of proposed rules
Consolidating Information and Proposed Alternative Disclosures—Combined Basis.	The applicable exception in Rule 3–10(c) through (f) specifies the columns of information that must be presented, and Rule 3–10(i)(6) describes circumstances when additional columns are required. To distinguish the assets, liabilities, operations, and cash flows of the entities that are legally obligated to make payments under the guarantee from those that are not, the columnar presentation must show: • A parent company's investments in all consolidated subsidiaries based upon its proportionate share of their net assets (Rule 3–10(i)(3)); and • subsidiary issuer and guarantor investments in certain consolidated subsidiaries using the equity method of accounting (Rule 3–10(i)(5).	Proposed Rule 13–01(a)(4) would permit the Summarized Financial Information of each issuer and guarantor consolidated in the parent company's consolidated financial statements to be presented on a combined basis with the Summarized Financial Information of the parent company. However, if information provided in response to disclosures specified in proposed Rule 13–01 is applicable to one or more, but not all, issuers and guarantors, proposed Rule 13–01(a)(4) would require, to the extent it is material, separate disclosure of Summarized Financial Information for the issuers and guarantors to which the information applies. The proposed rule would no longer require separate disclosure of the financial information of non-guarantor subsidiaries. Proposed Rule 13–01(a)(4) would allow the parent company to determine which method best meets the objective of excluding the financial information of non-issuer and non-guarantor subsidiaries from the Proposed Alternative Disclosures, so long as the selected method is disclosed and used for all non-issuer and non-guarantor subsidiaries for all classes of guaranteed securities for which the disclosure is required, and is reasonable in the circumstances.
Consolidating Information and Proposed Alternative Disclosures—Periods to Present.	Consolidating Information must be provided as of, and for, the same periods as the parent company's consolidated financial statements (Rule 3–10(i)(2)).	Proposed Rule 13–01(a)(4) would require Summarized Financial Information to be provided as of, and for, the most recently ended fiscal year and year-to-date interim period, if applicable, included in the parent company's consolidated financial statements.
Consolidating Information and Proposed Alternative Disclosures—Non-Financial Disclosures.	Rule 3–10 requires certain non-financial disclosures, including: • Disclosure, if true, that each subsidiary issuer or subsidiary guarantor is 100% owned by the parent company, that all guarantees are full and unconditional, and where there is more than one guarantor, that all guarantees are joint and several (Rules 3–10(i)(8)(i)–(iii); • restricted net assets (Rule 3–10(i)(10); and • certain types of restrictions on the ability of the parent company or any guarantor to obtain funds from their subsidiaries (Rule 3–10(i)(9). Rules 3–10(i)(11)(i) and (ii), respectively, require disclosure of any financial and narrative information about each guarantor if it would be material for investors to evaluate the sufficiency of the guarantee, and disclosure of sufficient information to make the financial information presented not misleading.	Proposed Rules 13–01(a)(1) through (3) would require disclosures, to the extent material, about the issuers and guarantors, the terms and conditions of the guarantees, and how the issuer and guarantor structure and other factors may affect payments to holder of the guaranteed securities. Additionally, proposed Rule 13–01(a)(5) would require disclosure of any facts and circumstances specific to particular issuers and guarantors that would be material to holders of the guaranteed security that are not specifically required by proposed Rules 13–01(a)(1) through (3).
Location and Audit Requirement of Alternative Disclosures and Proposed Alternative Disclosure.	The exceptions in Rules 3–10(b) through (f) require the Alternative Disclosures to be included in the notes to the parent company's consolidated financial statements. Rule 3–10(i)(2) requires Consolidating Information to be audited for the same periods that the parent company financial statements are required to be audited.	The note to proposed Rule 13–01(a) would allow the parent company to provide the Proposed Alternative Disclosures in a footnote to its consolidated financial statements or alternatively, in MD&A in its registration statement covering the offer and sale of the subject securities and any related prospectus, and in Exchange Act reports on Form 10–K, Form 20–F, and Form 10–Q required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. If a parent company elects to provide the disclosures in its audited financial statements, the Proposed Alternative Disclosures would be required to be audited. If not otherwise included in the consolidated financial statements or in MD&A, the parent company would be required to include the Proposed Alternative Disclosures in its prospectus immediately following ''Risk Factors,'' if any, or otherwise, immediately following pricing information described in Item 503(c) of Regulation S–K. The parent company would be required to provide the Proposed Alternative Disclosures in a footnote to its consolidated financial statements in its annual and quarterly reports beginning with its annual report filed on Form 10–K or Form 20–F for the fiscal year during which the first bona fide sale of the subject securities is completed.
Recently-Acquired Subsidiary Issuers and Guarantors.	If a parent company acquires a new subsidiary issuer or guarantor, Rule 3–10(g) requires the parent company to provide one year of audited pre-acquisition financial statements of the newly-acquired issuer or guarantor (and, if applicable, unaudited interim financial statements) when the: • Parent company acquires the new subsidiary during or subsequent to one of the periods for which financial statements are presented in a Securities Act registration statement filed in connection with the offer and sale of the debt securities; • subsidiary is deemed ''significant'' (Rule 3–10(g)(1)(ii); and • subsidiary is not reflected in the audited consolidated results of the parent company for at least nine months of the most recent fiscal year (Rule 3–10(g)(1)).	The proposed rule would not include this requirement. Proposed Rule 13–01(a)(5) would require information about recently-acquired subsidiary issuers and guarantors if it would be material to an investment decision in the guaranteed security.

	Summary of existing Rule 3–10	Summary of proposed rules
Exchange Act Reporting and Continuous Reporting Obligation.	Subsidiary issuers and guarantors that avail themselves of an exception that allows for the Alternative Disclosures in lieu of separate financial statements are exempt from Exchange Act reporting by Rule 12h–5. The parent company, however, must continue to provide the Alternative Disclosures for as long as the guaranteed securities are outstanding. This obligation continues even if the subsidiary issuers and guarantors could have suspended their reporting obligations under Exchange Act Rule 12h–3 or Section 15(d) of the Exchange Act, had they chosen not to avail themselves of a Rule 3–10 exception and reported separately from the parent company.	Subsidiary issuers and guarantors that are permitted to omit their financial statements under proposed Rule 3–10 would continue to be exempt from Exchange Act reporting under Rule 12h–5. The proposed rule would permit a parent company to cease providing the Proposed Alternative Disclosures if the corresponding subsidiary issuer's or guarantor's Section 15(d) obligation is suspended automatically by operation of Section 15(d)(1) or through compliance with Rule 12h–3. As a continued condition of eligibility to omit the financial statements of a subsidiary issuer or guarantor, a parent company must continue providing the Proposed Alternative Disclosures for so long as the subsidiary issuer or guarantor has a Section 12(b) reporting obligation with respect to the guarantee or guaranteed security.
	Summary of existing Rule 3–16	Summary of proposed rules
Rule 3–16 Financial Statements and Proposed Disclosures.	Rule 3–16(a) requires a registrant to provide separate annual and interim financial statements for each affiliate whose securities constitute a ''substantial portion'' of the collateral for any class of securities registered or being registered as if the affiliate were a separate registrant.	Under the proposed amendments, Rule 3–16 Financial Statements would be replaced with a requirement that a registrant provide the financial and non-financial disclosures about the affiliate(s) and the collateral arrangement specified in proposed Rule 13–02(a).
When Disclosure is Required.	Rule 3–16 Financial Statements are required when an affiliate's securities constitute a ''substantial portion'' of the collateral for the securities registered or being registered. An affiliate's securities shall be deemed to constitute a ''substantial portion'' if the aggregate principal amount, par value, or book value of the securities as carried by the registrant, or the market value of such securities, whichever is the greatest, equals 20 percent or more of the principal amount of the secured class of securities (Rule 3–16(b)).	Proposed Rule 13–02(a) would require the disclosures specified in proposed Rule 13–02(a)(1) through (4) in all cases, to the extent material to holders of the collateralized security. Additionally, proposed Rule 13–02(a)(5) would require disclosure of any quantitative or qualitative information that would be material to making an investment decision with respect to the collateralized security.
Financial and Non-Financial Disclosures.	Rule 3–16 Financial Statements are those that would be required if the affiliate were a separate registrant.	Proposed Rule 13–02(a)(4) would require, for each affiliate whose securities are pledged as collateral, Summarized Financial Information, as specified in Rule 1–02(bb) of Regulation S–X, which would include select balance sheet and income statement line items. Disclosure of additional line items of financial information beyond what is specified in proposed Rule 13–02(a)(4) would be required by proposed Rule 13–02(a)(5), to the extent material. If the disclosures required by proposed Rule 13–02(a)(4) are omitted because they are immaterial, proposed Rule 13–02(a)(4) requires disclosure to that effect and the reasons therefore. Proposed Rules 13–02(a)(1) through (3) would require certain non-financial disclosures, to the extent material, about the securities pledged as collateral, each affiliate whose securities are pledged, the terms and conditions of the collateral arrangement, and whether a trading market exists for the pledged securities. Additionally, proposed Rule 13–02(a)(5) would require disclosure of any other quantitative or qualitative information that would be material to making an investment decision with respect to the collateralized security.
Combined Basis	Separate Rule 3–16 Financial Statements are required for each affiliate whose securities constitute a ''substantial portion'' of the collateral for securities registered or being registered.	Proposed Rule 13–02(a)(4) would permit the Summarized Financial Information of each affiliate consolidated in the registrant's consolidated financial statements to be presented on a combined basis. However, if information provided in response to disclosures specified in proposed Rule 13–02 is applicable to one or more, but not all, affiliates, proposed Rule 13–02(a)(4) would require, to the extent it is material, separate disclosure of Summarized Financial Information for the affiliates to which the information applies.
Periods Presented	Rule 3–16 Financial Statements are required for the same annual and interim periods as if the affiliate were a separate registrant. As such, the financial statements are required to be provided for the periods required by Rules 3–01 and 3–02 of Regulation S–X. However, Rule 3–16 Financial Statements are not required in quarterly reports, such as Form 10–Q.	Proposed Rule 13–02(a)(4) would require disclosure as of and for the most recently ended fiscal year and interim period included in the registrant's consolidated financial statements. Disclosure would be required in quarterly reports, such as Form 10–Q (proposed Rule 10–01(b)(10)).
Location and Audit Requirement of the Disclosure.	Rule 3–16 Financial Statements are required to be audited for the periods required by Rules 3–01 and 3–02 of Regulation S–X.	The note to proposed Rule 13–02(a) would allow the registrant to provide the disclosures required by this section in a footnote to its consolidated financial statements or alternatively, in MD&A in its registration statement covering the offer and sale of the subject securities and any related prospectus, and in Exchange Act reports on Form 10–K, Form 20–F, and Form 10–Q required to be filed during the fiscal year in which the first bona fide sale of the subject securities is completed. If a registrant elects to provide the disclosures in its audited financial statements, the proposed disclosures would be required to be audited. If not otherwise included in the consolidated financial statements or in MD&A, the registrant would be required to include the disclosures in its prospectus immediately following ''Risk Factors,'' if any, or otherwise, immediately following pricing information described in Item 503(c) of Regulation S–K. The registrant would be required to provide the disclosures in a footnote to its consolidated financial statements in its annual and quarterly reports beginning with its annual report filed on Form 10–K or Form 20–F for the fiscal year during which the first bona fide sale of the subject securities is completed.

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Part III

National Credit Union Administration

The NCUA Staff Draft 2019–2020 Budget Justification; Notice

NATIONAL CREDIT UNION ADMINISTRATION

The NCUA Staff Draft 2019–2020 Budget Justification

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The NCUA draft detailed business-type budget is being made available for public review as required by federal statute. The proposed resources will support the agency's annual operations and continue implementation of the agency's reorganization plan. The briefing schedule and comment instructions are included in the supplementary information section.

DATES: Requests to deliver a statement at the budget briefing must be received on or before Tuesday, October 9, 2018. Written statements and presentations for those scheduled to appear at the budget briefing must be received on or before Monday, October 15, 2018.

Written comments without public presentation at the budget briefing may be submitted by Friday, October 26, 2018.

ADDRESSES: You may submit comments by any of the following methods *(Please send comments by one method only)*:

- *Presentation at public budget briefing:* Submit requests to deliver a statement at the briefing to *BudgetBriefing@ncua.gov* by Tuesday, October 9, 2018. Include your name, title, affiliation, mailing address, email address, and telephone number. Copies of your presentation must be submitted to the same email address by Monday, October 15, 2018.
- *Written comments:* Submit comments to *BudgetComments@ncua.gov* by Friday, October 26, 2018. Include your name and the following subject line ''Comments on the NCUA Draft 2019–2020 Budget Justification.''

Public Inspection: Copies of the NCUA Draft 2019–2020 Budget Justification and associated materials are also available on the NCUA website at *https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx*. Printed copies will be available at the October 17, 2018 budget briefing.

FOR FURTHER INFORMATION CONTACT: Rendell Jones, Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6571.

SUPPLEMENTARY INFORMATION:

I. The NCUA Budget in Brief
II. Introduction and Strategic Context
III. Forecast and Enterprise Challenges
IV. Key Themes of the 2019–2020 Budget
V. Operating Budget
VI. Capital Budget
VII. Share Insurance Fund Administrative Budget
VIII. Financing the NCUA Budget
IX. Appendix A: Supplemental Budget Information
X: Appendix B: Capital Projects

Section 212 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115–174) amended 12 U.S.C. 1789(b)(1)(A) to require the NCUA Board (Board) to ''make publicly available and publish in the **Federal Register** a draft of the detailed business-type budget.'' Although 12 U.S.C. 1789(b)(1)(A) requires publication of a ''business-type budget'' only for the agency operations arising under the Federal Credit Union Act's subchapter on insurance activities, in the interest of transparency the Board is providing the agency's entire staff draft 2019–2020 Budget Justification (budget) in this Notice.

The draft budget details the resources required to support NCUA's mission as outlined in its 2018–2022 Strategic Plan. The draft budget includes personnel and dollar estimates for three major budget components: (1) The Operating Budget; (2) the Capital Budget; and (3) the Share Insurance Fund Administrative Budget. The resources proposed in the draft budget will be used to carry out the agency's annual operations and to continue implementation of the agency's reorganization plan.

The NCUA staff will present its draft budget to the Board at a budget briefing open to the public and scheduled for Wednesday, October 17, 2018 at 10 a.m. Eastern. The budget briefing will be held in the NCUA Board meeting room and run for approximately two hours. A livestream of the briefing also will be available through a link on *ncua.gov*.

If you wish to attend the briefing and deliver a statement, you must email a request to *BudgetBriefing@ncua.gov* by Tuesday, October 9, 2018. Your request must include your name, title, affiliation, mailing address, email address, and telephone number. The NCUA will work to accommodate as many public statements as possible at the October 17, 2018 budget briefing. The Board Secretary will inform you if you have been approved to make a presentation and how much time you will be allotted. A written copy of your presentation must be delivered to the Board Secretary via email at *BudgetBriefing@ncua.gov* by Monday, October 15, 2018.

Written comments on the draft budget will also be accepted by email at *BudgetComments@ncua.gov* until Friday, October 26, 2018. Include your name and the following subject line with your comments: ''Comments on the NCUA Draft 2019–2020 Budget Justification.''

All comments should provide specific, actionable recommendations rather than general remarks. The Board will review and consider any comments from the public prior to approving the budget.

I. The NCUA Budget in Brief

Proposed 2019 and 2020 Budgets

The goals and objectives set forth in the National Credit Union Administration's (NCUA) *Strategic Plan 2018–2022* (*https://www.ncua.gov/About/Documents/AgendaItems/AG20160721Item2b.pdf*) form the basis for determining agency resource needs and allocations. The annual budget provides the resources to execute the strategic plan, to implement the agency reorganization, and to undertake the NCUA's major programs: Examination and supervision, insurance, credit union development, consumer financial protection, and asset management.

2019 - 2020 NCUA BUDGET RESOURCES										
Budget	2019 Board Approved Budget	2019 Revised Budget	Change (2019)	Change Percent (2019)	2020 Requested Budget	Change (2019-20)	Change Percent (2019-20)	2019 FTE	2020 FTE	FTE Change 2019 - 2020
Operating Budget	$ 302,688,000	$ 304,398,000	1,710,000	0.6%	$ 316,164,000	$ 11,766,000	3.9%	1,173	1,173	-
Capital Budget	21,146,000	22,005,000	859,000	4.1%	18,608,000	$ (3,397,000)	-15.4%	-	-	
Share Insurance Fund Admin. Budget	7,454,000	8,371,000	917,000	12.3%	9,121,000	$ 750,000	9.0%	5	5	
					-					
Total	$ 331,288,000	$ 334,774,000	$ 3,486,000	1.1%	$ 343,893,000	$ 9,119,000	2.7%	1,178	1,178	-

The NCUA's 2019–2020 budget justification consists of three separate budgets: The Operating Budget, the Capital Budget, and the Share Insurance Fund Administrative Budget. Combined, these three budgets total $334.8 million for 2019, which is 1.1 percent more than the 2019 funding level approved by the NCUA Board (the Board) in November 2017, and 4.3 percent more than the comparable 2018 Board Approved Budget. Personnel levels for 2019 and 2020 reflect the agency's expected staffing after completing implementation of its reorganization plan, and are lower than the 2018 levels by 10 positions.

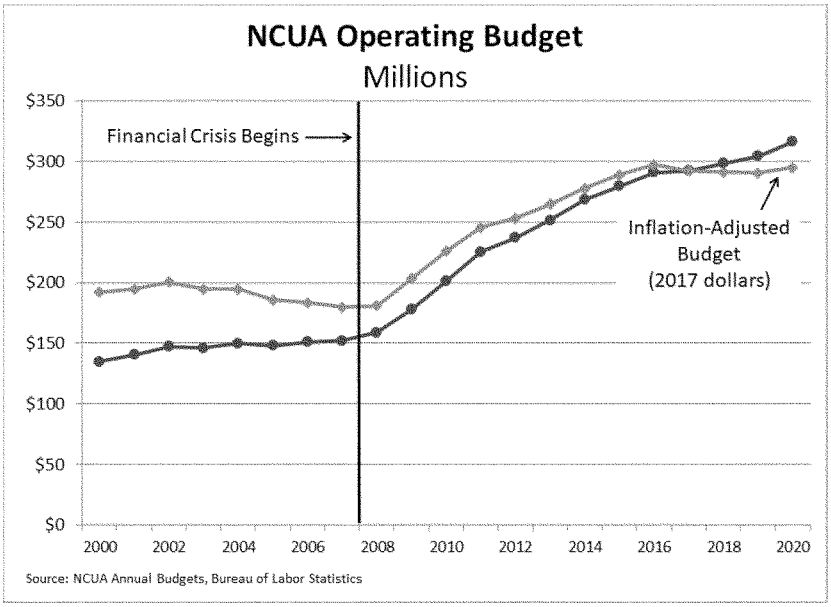
Operating Budget

The proposed 2019 Operating Budget is $304.4 million. Personnel levels decrease by ten full-time equivalents (FTE) compared to the 2018 Board Approved Budget.

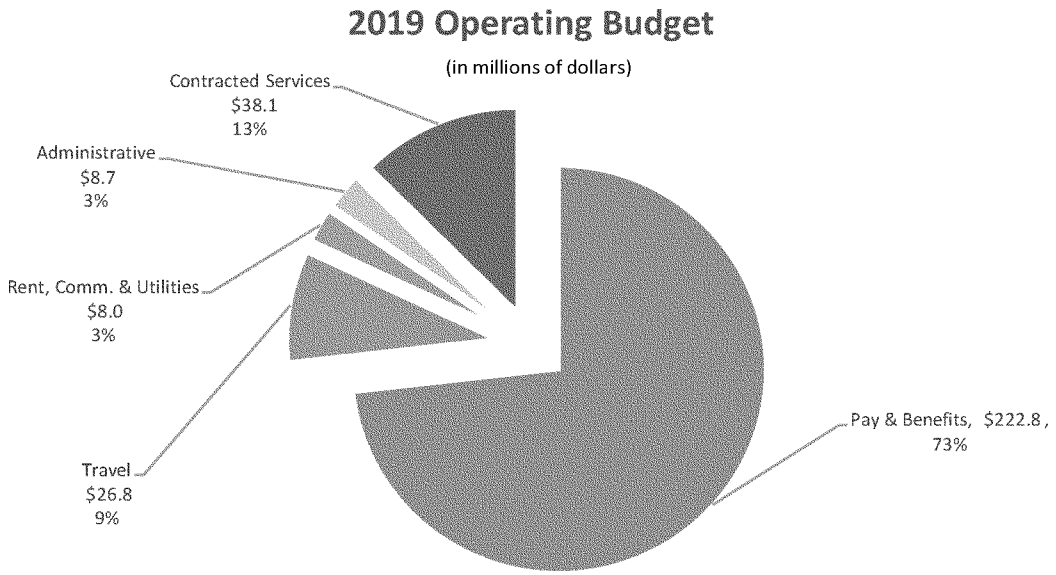
The 2019 Operating Budget, when adjusted for inflation, represents a real dollar decrease of approximately $624,000, or 0.2 percent, compared to the 2018 Board Approved Budget. In nominal dollars, the 2019 Budget increases by $6.3 million, or 2.1 percent, over the 2018 Board Approved Budget of $298.1 million.

The Operating Budget estimate for 2020 is $316.2 million and reflects no change to authorized positions.

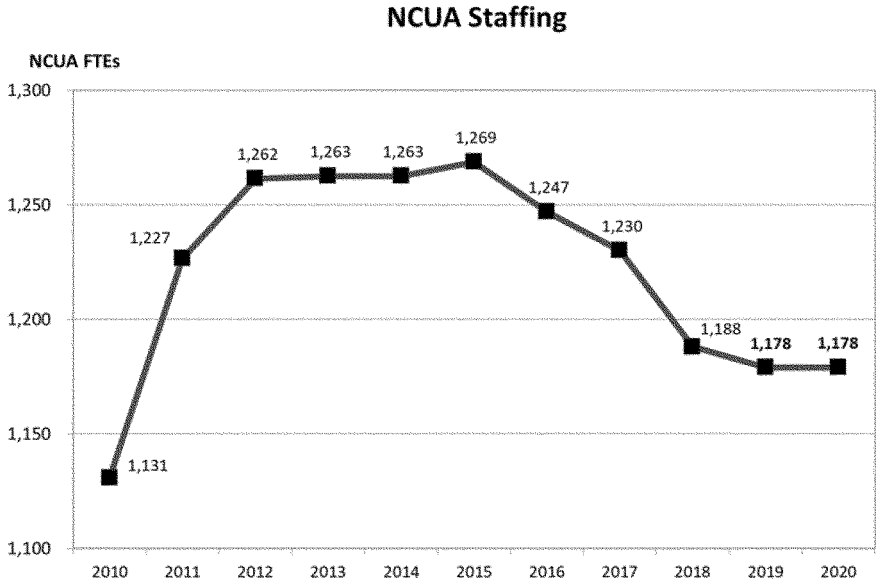
The following chart shows recent year-on-year trends for the NCUA Operating Budget, in both nominal (green line) and real dollar (blue line, inflation-adjusted) terms:



The following chart presents the major categories of spending supported by the 2019 budget, while specific adjustments to the 2018 Board Approved Budget are discussed in further detail, below:



Staffing. The budget supports 1,178 FTE in 2019, a decrease of ten FTEs from 2018. For 2019, the reorganization plan eliminated 15 positions in the NCUA's regional offices, and the budget proposes five new positions in the Offices of Examination and Insurance, the Chief Economist, and the General Counsel. Three positions focused on Business Innovation will be filled by reallocating vacancies. As shown in the chart below, the NCUA staffing has decreased in recent years despite significant credit union asset growth.



Pay and Benefits. Pay and benefits increase by $2.1 million in 2019, or one percent, for a budget of $222.8 million. This increase supports the merit and locality pay adjustments required by the NCUA's current collective bargaining agreement, the new positions described above, anticipated staff promotions, position changes, and increased costs for other mandatory employer contributions such as health insurance and retirement contributions. The 2020 pay and benefits budget is estimated at $233.6 million, which reflects increases associated with merit and locality pay inflation, the full cost of new positions added in 2019, and an increase in required retirement fund payments to the Office of Personnel Management (OPM), which manages government employees' retirement programs for nearly all federal agencies.

The Federal Employees Retirement System (FERS) covers most NCUA employees and includes a defined pension benefit, which is funded by both employee and employer contributions. OPM will charge the NCUA a mandatory employer contribution of 13.7 percent of total FERS employee salaries in 2019, which will increase to 16 percent in 2020, a change of 230 basis points. This increase will require the NCUA to pay OPM approximately $3.5 million more in retirement contributions in 2020. Excluding additional employer contributions from the 2020 budget, total personnel compensation growth would be 3.3 percent instead of 4.8 percent, and total Operating Budget growth would be 2.7 percent instead of 3.9 percent.

Travel. The travel budget increases by $326,000 in 2019, or one percent, for a

budget of $26.8 million. The NCUA has constrained the growth of travel costs by continuing to expand offsite examination work and use technology-driven training. Government-wide per diem rates published by the General Services Administration (GSA) are expected to increase by almost eight percent in 2019, accounting for a significant share of the travel budget growth. The NCUA plans to hold a national program examination training event in 2020 that will coincide with full deployment of the new Examination and Supervision Solution system.

Rent, Communications, and Utilities. Rent, communications, and utilities will decrease by $445,000 in 2019, or five percent, for a budget of $8.0 million. This funding pays for essential telecommunications services, data capacity contracts, and information technology network support. The decrease is primarily due to a reduction in leased office space as a result of regional consolidation.

Administrative Expenses. Administrative expenses increase by $1.2 million in 2019, or 16 percent, for a total budget of $8.7 million. Increases are attributable to recurring cost items such as shared Federal Financial Institutions Examination Council fees, relocation expenses, and software licenses.

Contracted Services. Contracted services expenses increase by $3.1 million in 2019, or nine percent, for a total budget of $38.1 million. This funding pays for products and services acquired in the commercial marketplace, and includes critical mission support services such as information technology hardware and software support, accounting and auditing services, and specialized subject matter expertise. The increase of information technology operations and maintenance, and mandatory accounting system service provider costs are the primary drivers of the increase.

Capital Budget

The proposed 2019 Capital Budget is $22.0 million.

The 2019 Capital Budget is $0.9 million more than the 2019 funding level approved by the Board in November 2017, and $6.6 million more than the 2018 Board Approved Budget.

The Capital Budget pays for continued investments in technology and infrastructure projects, as well as several new initiatives that will start in 2019, including a replacement of the agency's antiquated AIRES examination software, which is used by both federal and state examiners in almost all credit union examinations. The NCUA's Information Technology Prioritization Council recommended $17.1 million for IT software development projects that continue to replace the NCUA's decades-old and functionally obsolete information technology systems, and $4 million in other IT investments for 2019. The NCUA facilities require $0.9 million in capital investments.

Share Insurance Fund Administrative Expenses

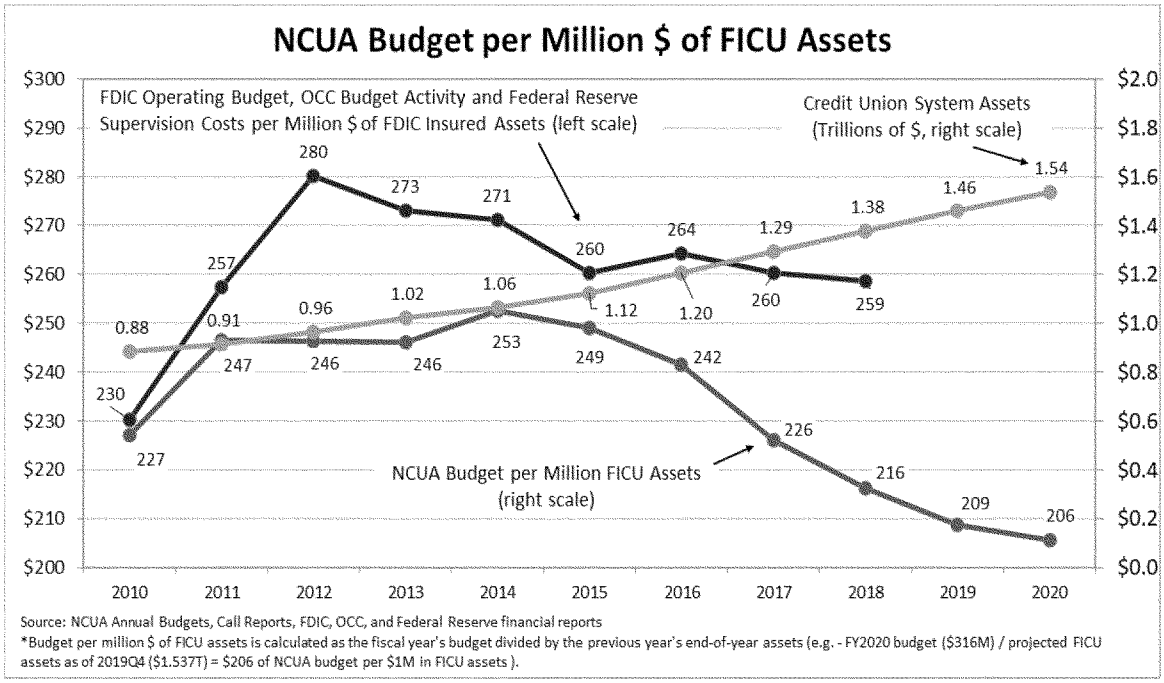
The proposed 2019 Share Insurance Fund Administrative budget is $8.4 million.

The 2019 Share Insurance Fund Administrative Budget is $0.9 million more than the 2019 funding level approved by the Board in November, 2017, and $0.3 million more than the 2018 Board Approved Budget. The increase is primarily attributed to increased use of consultants and contractor support for credit union stress testing. Direct charges within this budget include administration of the NCUA Guaranteed Note (NGN) program, state examiner training and laptop leases, as well as financial audit support.

Budget Trends

Since 2017, inflation has matched or outpaced the growth of the NCUA budget. While the NCUA's annual Operating Budget is projected to increase 2.1 percent from 2018 to 2019, inflation is forecast to be 2.3 percent. Therefore, in real dollar terms, the NCUA Operating Budget is 0.2 percent lower in 2019 than in 2018 (*i.e.,* 2.1 percent budgetary growth less 2.3 percent inflation). Likewise, the projected 2.7 percent total budget growth between 2019 and 2020 represents an inflation-adjusted increase of only 0.4 percent, based on the assumption that 2020 economic inflation remains constant at 2.3 percent (*i.e.,* 2.7 percent budgetary growth less 2.3 percent inflation).

In addition, as shown in the chart below, the relative size of the NCUA budget (red line) continues to decline when compared to balance sheets at federally-insured credit unions (gray line). This trend illustrates the greater operating efficiencies the NCUA has attained in the last several years. Additionally, the NCUA has improved its operating efficiencies more aggressively than other financial industry regulators (red line compared to blue line).



It is also notable that the NCUA's operations have become more efficient relative to the size of the credit union system because consolidation in the industry has led to growth in the number of large credit unions, specifically those with more than $10 billion in assets. This results in additional complexity in the balance sheets of such credit unions, and a corresponding increase in the supervisory review required to ensure the safety and soundness of such large institutions. The NCUA has responded to this increasing complexity through several initiatives: Creation of the specialized Office of National Examination and Supervision (ONES), development of an improved analytic model for large credit unions' financial condition, and improved quality of examination reports through enhanced quality review processes.

2019 Budget in Brief: Summary Table

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2019 Budget in Brief: Summary Table

(dollars in millions)	Budget	Change from 2018 Budget	% Change	Description
2019 Operating Budget	**$304.4**	↑ **$6.3**	**+2.1%**	The 2019 budget provides the resources required to execute the priorities outlined in the NCUA's Strategic Plan (2018-2022).
Total Staffing (FTE)	**1,178.0**	↓ **10**	**-0.8%**	The 2019 FTE level decreases by a net change of ten positions from 1,188 authorized in 2018.
Budget Category				
Pay & Benefits	**$222.8**	↑ **$ 2.1**	**+1.0%**	The pay and benefits adjustment covers merit and locality pay changes required by the Collective Bargaining Agreement. The increase also funds mandatory employer contributions for health insurance and retirement, and new FTEs.
Travel	**$26.8**	↑ **$ 0.3**	**+1.2%**	The travel budget increases by $326,000. Travel requirements align with program examination workload. GSA 2019 per diem increases also account for the growth in estimated travel.
Rent, Communications & Utilities	**$8.0**	↓ **$0.4**	**-5.2%**	Rent, communications, and utilities budget maintains essential telecommunications, data capacity, and network support.
Administration	**$8.7**	↑ **$1.2**	**+16.0%**	Administration expenses primarily support operational requirements, FFIEC fees, relocation expenses, and employee supplies.
Contracted Services	**$38.1**	↑ **$3.1**	**+8.9%**	Contracted services reflect costs incurred when products and services are acquired in the commercial marketplace and include critical mission support services such as information technology hardware and software development support, accounting and auditing services, and specialized subject matter expertise.

2020 Budget in Brief: Summary Table

Dollars in millions	Budget	Change from 2019 Budget	% Change	Description
2020 Operating Budget	**$316.2**	**↑ $11.8**	**+3.9%**	The 2020 budget provides the resources required to execute the priorities outlined in the NCUA's Strategic Plan (2018-2022).
Total Staffing (FTE)	**1,178.0**	**0**	**0%**	The 2020 budget includes no change from the 2019 FTE levels.
Budget Category				
Pay & Benefits	**$233.6**	**↑ $10.8**	**+4.8%**	The pay and benefits adjustment covers merit and locality pay changes required by the Collective Bargaining Agreement. The increase also funds mandatory employer contributions for health insurance and retirement. Other 2020 cost drivers include full cost for new FTEs added in 2019, and increased mandatory FERS contributions estimated at $3.5 million.
Travel	**$27.8**	**↑ $1.0**	**+3.7%**	Travel increase for the national program exam training that coincides with full deployment of the new Examination and Supervision Solution system.
Rent Communications & Utilities	**$8.0**	**$0.0**	**0%**	Rent, communications, and utilities expenses include utilities, space rental, software licenses and other recurring costs.
Administration	**$8.7**	**$0.0**	**0%**	Administration expenses primarily support operational requirements, FFIEC fees, relocation expenses, and employee supplies.
Contracted Services	**$38.1**	**$0.0**	**0%**	Contracted services reflect costs incurred for products and services acquired in the commercial marketplace. These services include critical mission support such as information technology hardware and software development support, accounting and auditing services, and specialized subject matter expertise.

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II. Introduction and Strategic Context

History

For more than 100 years, credit unions have provided financial services to their members in the United States. Credit unions are unique depository institutions created not for profit, but to serve their members as credit cooperatives.

The NCUA is the independent federal agency created by the U.S. Congress to regulate, charter, and supervise federal credit unions. With the backing of the full faith and credit of the U.S. Government, the NCUA operates and manages the National Credit Union Share Insurance Fund (NCUSIF), insuring the deposits of the account holders in all federal credit unions and the vast majority of state-chartered credit unions.

The NCUA, through its predecessors, was created in 1934 with the passage of the Federal Credit Union Act. As the products and services provided to members of credit unions changed over the years, the NCUA's supervision and regulation evolved as well. In 1970, Congress created the NCUSIF to protect deposits by providing the backing of the full faith and credit of the U.S. Government to credit union accounts. No credit union member has ever lost a penny of deposits insured by the NCUSIF.

The NCUA is responsible for the regulation and supervision of 5,480 federally insured credit unions [1] with approximately 114.1 million members [1] and more than $1.4 trillion [1] in assets across all states and U.S. territories.

Authority

Pursuant to the Federal Credit Union Act, authority for management of the NCUA is vested in the NCUA Board (the Board). It is the Board's responsibility to determine the resources necessary to carry out the NCUA's responsibilities under the Act.[2] The Board is authorized to expend such funds and perform such other functions or acts as it deems necessary or appropriate in accordance with the rules, regulations, or policies it establishes.[3]

Upon determination of the budgeted annual expenses for the agency's

[1] Source: The NCUA quarterly call report data, Q2 2018.

[2] *See* 12 U.S.C. 1752a(a).

[3] *See* 12 U.S.C. 1766(i)(2).

operations, the Board determines a fee schedule to assess federal credit unions. The Board gives consideration to the ability of federal credit unions to pay such a fee, and the necessity of the expenses the NCUA will incur in carrying out its responsibilities in connection with federal credit unions.[4] Pursuant to the law, fees collected are deposited in the agency's Operating Fund at the Treasury of the United States, and those fees are expended by the Board to defray the cost of carrying out the agency's operations, including the examination and supervision of federal credit unions.[5] In accordance with its authority to use the NCUSIF to carry out a portion of its responsibilities, the Board approves an annual Overhead Transfer Rate and transfers resources from the Share Insurance Fund to the Operating Fund on a monthly basis to account for insurance-related expenses.[6]

Mission, Goals, and Strategy

The NCUA's 2019–2020 Budget Submission supports the agency's second year implementing its *2018–2022 Strategic Plan* (*https://www.ncua.gov/About/Documents/AgendaItems/AG20160721Item2b.pdf*) to achieve its priorities and improve program performance.

Throughout 2019 and 2020, the NCUA will continue fulfilling its mission to ''*provide, through regulation and supervision, a safe and sound credit union system which promotes confidence in the national system of cooperative credit,*'' and its vision to ensure that the ''*NCUA protects credit unions and consumers who own them through effective supervision, regulation and insurance.*'' This budget commits the resources necessary to implement the NCUA's plans to identify key challenges facing the credit union industry and leverage agency strengths to help credit unions address those challenges.

The budget supports the NCUA's programs, which are focused on achieving the agency's three strategic goals:

- *Ensure a safe and sound credit union system;*
- *Provide a regulatory framework that is transparent, efficient, and improves consumer access; and*
- *Maximize organizational performance to enable mission success.*

Additional information about alignment of the budget to the NCUA's strategic goals is in Appendix A.

In support of its first strategic goal—*ensure a safe and sound credit union system*—the NCUA will continue to supervise federally insured credit unions effectively while insuring a growing and evolving credit union system. As highlighted in the Strategic Plan, the credit union system faces several key risks, including:

- How credit unions respond to a changing economic environment,
- technological changes in how consumers interact with financial institutions, in addition to more general technological advances,
- increasing competition and consolidation within the financial services industry,
- demographic shifts, such as aging credit union membership,
- forecasts that the U.S. population will become more diverse, implying changes in the services needed by credit union members, and
- generational shifts in consumer preferences.

Each risk requires continual monitoring and, where prudent, risk-mitigation strategies to protect the overall credit union system from preventable losses or failures. The NCUA staff of credit union examiners are the agency's most important assets for identifying and addressing risks before they threaten members' deposits. To do their jobs effectively in this complex and dynamic financial environment, the NCUA staff require the advanced skills, training, and tools supported by the budget.

To fulfill the NCUA's second strategic goal—*provide a regulatory framework that is transparent, efficient, and improves customer access*—the agency strives to issue balanced, clear, and straightforward regulations while addressing emerging adverse trends in a timely manner. The NCUA also seeks to improve consumer access and ensure consumer compliance, financial protection, and consumer education. The budget allocates resources to agency programs that keep regulations up to date and consistent with current law, assist existing and prospective credit unions with expansion and new chartering activities, and promote consumer awareness of sound financial practices.

Accomplishing the third strategic goal—*maximize organizational performance to enable mission success*—ensures the NCUA employees achieve the agency's mission by supporting them through efficient and effective business processes, modern and secure technology, and suitable tools and workspaces necessary to perform their duties. The budget makes investments in better process management and internal controls, improved tools and facilities for the NCUA staff, and technological enhancements including new systems that will improve operational effectiveness and efficiency.

Organization, Major Agency Programs, and Workforce

The NCUA employs regional offices to perform all the tasks in the agency's major program areas and support functions, a central office to administer and oversee its programs, and an Asset Management and Assistance Center (AMAC) to liquidate failed credit unions and recover assets.

Effective January 2019, the NCUA plans to consolidate its five regional offices into three—Eastern, Southern, and Western—as part of its on-going effort to strengthen agency operations while increasing efficiency. Reporting to these regional offices, the NCUA has credit union examiners responsible for a portfolio of credit unions covering all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. One-time costs associated with the NCUA reorganization are being funded by reprioritizing unspent balances from 2017 and 2018 budgets. These costs include: Salaries and benefits for current employees whose positions will be eliminated after their separation from the agency, leased office space in Albany, New York and Atlanta, Georgia that will be vacated at the end of 2018, central office renovation costs necessary to consolidate the former Region II office staff into the NCUA-owned central office building, and other miscellaneous one-time relocation, separation, and other contractual payments.

The NCUA organizational chart below reflects the new regional structure, and the map shows the new regions' geographical alignment:

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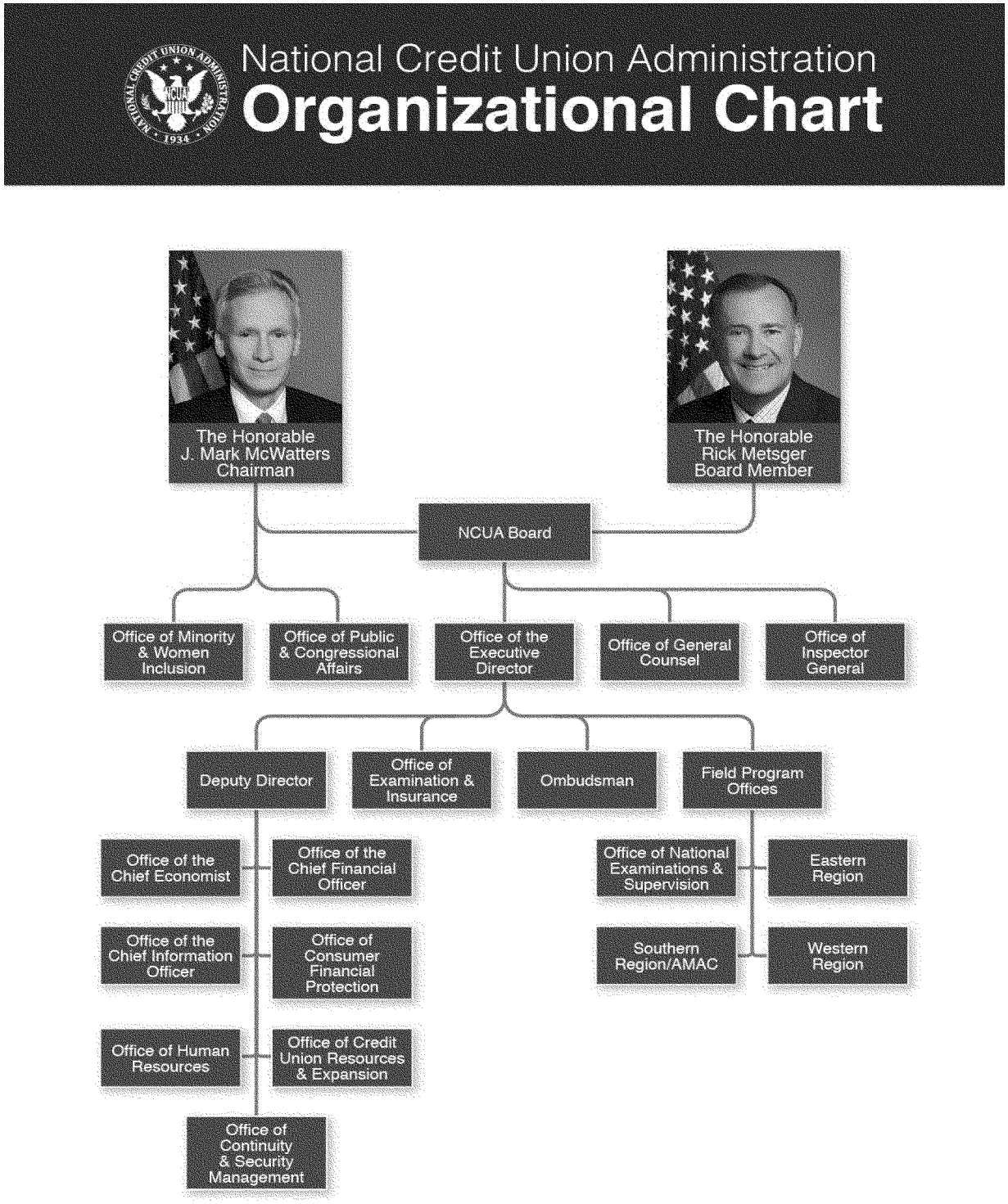
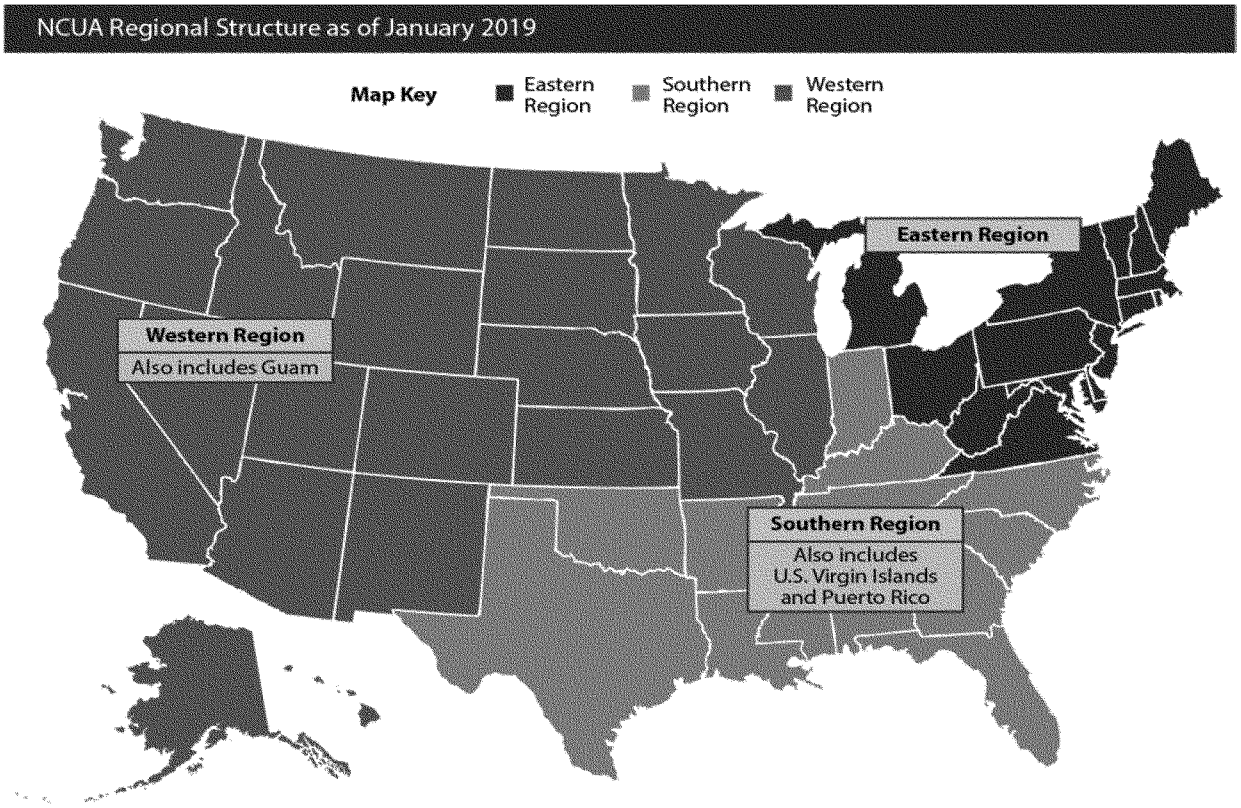
[4] *See* 12 U.S.C. 1755(a)–(b).

[5] *See* 12 U.S.C. 1755(d).

[6] *See* 12 U.S.C. 1783(a).


National Credit Union Administration
Organizational Chart
The Honorable
J. Mark McWatters
Chairman
The Honorable
Rick Metsger
Board Member
NCUA Board
Office of Minority & Women Inclusion
Office of Public & Congressional Affairs
Office of the Executive Director
Office of General Counsel
Office of Inspector General
Deputy Director
Office of Examination & Insurance
Ombudsman
Field Program Offices
Office of the Chief Economist
Office of the Chief Financial Officer
Office of the Chief Information Officer
Office of Consumer Financial Protection
Office of Human Resources
Office of Credit Union Resources & Expansion
Office of Continuity & Security Management
Office of National Examinations & Supervision
Eastern Region
Southern Region/AMAC
Western Region



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The NCUA's new regional office structure will carry out the agency's 2019 examination workload. Based on second quarter statistics from call reports, the number of credit unions, members, and assets shows a rough estimate of the how the workload will be divided among the new regional offices:

• *Eastern Region:* 2,055 credit unions with 30.6 million members and $386 billion in assets.

• *Southern Region:* 1,668 credit unions with 31.2 million members and $340 billion in assets.

• *Western Region:* 1,751 credit unions with 37.4 million members and $504 billion in assets.

In addition, the Office of National Examination and Supervision (ONES) will continue to examine credit unions with assets that total over $10 billion and that are located throughout the United States. Based on 2018 second quarter call report statistics, there are currently six such credit unions with 14.8 million members, accounting for $200 billion in credit union assets.

In 2019 and 2020, the agency's workforce will undertake tasks in all of the NCUA's major programs:

• *Supervision:* The NCUA supervises federally insured credit unions through examinations and regulatory enforcement including providing guidance through various publications, taking administrative actions and conserving, liquidating, or merging severely troubled institutions as necessary to manage risk.

• *Insurance:* The NCUA manages the $16 billion NCUSIF, which provides insurance for deposits up to $250,000 that are held at federally insured credit unions. The fund is capitalized by credit unions and through retained earnings.

• *Credit Union Development:* The NCUA charters new federal credit unions, as well as approves modifications to existing charters and fields of membership. Through training, partnerships and resource assistance, the NCUA fosters credit union development, particularly the expansion of services to eligible members provided by small, minority, newly chartered, and low-income designated credit unions.

• *Consumer Financial Protection:* The NCUA protects consumers' rights through effective enforcement of federal consumer financial protection laws, regulations, and requirements. The NCUA also develops and promotes financial education programs for credit unions to assist members in making smarter financial decisions.

• *Asset Management:* The NCUA conducts credit union liquidations and performs management and recovery of assets through the AMAC. The new Southern Region includes AMAC.

• *Stakeholder Outreach:* In order to clearly understand the needs of the credit union system, the NCUA seeks input from all of its stakeholders, including Congress, State Supervisory Authorities, credit union members, credit unions and their associations.

• *Cross-Agency Collaboration:* The NCUA is involved in numerous cross-agency initiatives by collaborating with the other financial regulatory agencies including through participation in several councils. Significant councils include the Financial Stability Oversight Council (FSOC), the Federal Financial Institutions Examination Council (FFIEC), and the Financial and Banking Information Infrastructure Committee (FBIIC).

Budget Process—Strategy to Budget

The NCUA's budget process starts with a review of the agency's goals and objectives set forth in the Strategic Plan (*https://www.ncua.gov/About/Documents/AgendaItems/AG20160721Item2b.pdf*). The Strategic Plan is a framework that sets the agency's direction and guides resource requests, so that the agency's resources and workforce are allocated and aligned to agency priorities and initiatives.

Each regional and central office director at the NCUA develops an initial budget request identifying the resources for their office to support the NCUA's

mission, strategic goals, and strategic objectives. These budgets are developed to ensure each office's requirements are individually justified and remain consistent with the agency's overall Strategic Plan.

For regional offices, one of the primary inputs in the development process is a comprehensive workload analysis that estimates the amount of time necessary to conduct examinations and to supervise federally insured credit unions in order to carry out the NCUA's dual mission as insurer and regulator. This analysis starts with a field-level review of every federally insured credit union to estimate the number of workload hours needed for the current year. The workload estimates are then refined by regional managers and submitted to the NCUA central office for the annual budget proposal. The workload analysis accounts for the efforts of nearly seventy percent of the NCUA workforce and is the foundation for budget requests from regional offices and the Office of National Examinations and Supervision (ONES).

In addition to the workload analysis, from which central office budget staff derive related personnel and travel cost estimates, each of the NCUA offices submit estimates for fixed and recurring expenses, such as rental payments for leased property, operations and maintenance for owned facilities or equipment, supplies, telecommunications services, major capital investments, and other administrative and contracted services costs.

Because information technology investments impact all offices within the agency, the NCUA has established an Information Technology Prioritization Council (ITPC). The ITPC meets several times each year to consider, analyze, and prioritize major information technology investments to ensure they are aligned with the NCUA's Strategic Plan. These focused reviews result in a mutually agreed-upon budget recommendation to support the NCUA's top short-term and long-term information technology needs and investment priorities.

Once compiled for the entire agency, all office budget submissions undergo thorough reviews by the responsible regional and central office directors, the Chief Financial Officer, and the NCUA executive leadership. Through a series of presentations and briefings by the relevant office executives, the NCUA Executive Director formulates an agency-wide budget recommendation for approval by the Board.

In recent years, the Board has emphasized the need for increased transparency of the NCUA's finances and its budgeting processes. In response, the Office of the Chief Financial Officer has made draft budgets available for public comment via the NCUA's website, and solicited public comments before presenting final budget recommendations for the Board's approval. Furthermore, the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, enacted May 24, 2018, requires in Section 212 that the NCUA ''make publicly available and publish in the **Federal Register** a draft of the detailed business-type budget.'' To fulfill this requirement, the Board delegated to the Executive Director the authority to publish the draft budget before submitting it for Board review.

This budget justification document includes comparisons to the Board approved budget for 2018—2019. As in the 2018 budget, this document includes a summary description of the major spending items in each budget category to provide transparency and understanding of the use of budgeted resources. Estimates are provided by major budget category, office, and cost element.

The NCUA also posts supporting documentation for its budget request on the NCUA website (*https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx*) to assist the public in understanding its budget development process. The budget request for 2019 represents the NCUA's projections of operating and capital costs for the year, and is subject to approval by the Board.

Commitment to Financial Stewardship

The NCUA funds its activities through operating fees levied on all federal credit unions and through reimbursements from the Share Insurance Fund, funded by both federal credit unions and federally insured state-chartered credit unions. The Overhead Transfer Rate (OTR) calculation determines the annual amount that the Share Insurance Fund reimburses the Operating Fund to pay for the NCUA's insurance-related activities. At the end of each calendar year, the NCUA's financial transactions are subject to audit in accordance with Generally Accepted Accounting Principles.[7]

Since nearly all of the revenue to finance the NCUA's programs comes from non-profit credit unions, the Board and the agency are committed to providing sound financial stewardship. In recent years, the NCUA Chief Financial Officer, with support and direction from the Executive Director and Board, has worked to improve the NCUA's financial management, financial reporting, and budget processes. In addition, through prudent management of the Corporate System Resolution Program, in July 2018 the NCUA paid nearly $736 million in dividends to over 5,700 credit unions—an amount larger than the cumulative total of all previous cash distributions made since the agency's Share Insurance Fund was created.

In the 2018 budget, the NCUA revised its financial presentations to conform to Federal budgetary concepts and increase transparency of the agency's planned financial activity. The 2019 budget continues this presentation. The NCUA is the only Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) agency that publishes a detailed, draft budget and solicits public comments on it at a meeting with its Board or other agency leadership.

The NCUA works diligently to strengthen its internal controls for financial transactions, in accordance with sound financial management policies and practices. Based on the results of the NCUA's assessments conducted through the course of 2017, the agency provided an unmodified Statement of Assurance (signed 2/15/2018) that its management had established and maintained effective controls to achieve the objectives of the Federal Managers Financial Integrity Act (FMFIA) and Office of Management and Budget (OMB) Circular A–123. Specifically, the NCUA supports the internal control objectives of reporting, operations, and compliance, as well as its integration with overarching risk management activities. Within the Office of the Chief Financial Officer, the Internal Controls Assessment Team (ICAT) continues to mature the agency-wide internal control program and continues to strengthen the overall system of internal control, further promote the importance of identifying risk, and ensure that the agency has identified appropriate responses to mitigate identified risks, in accordance with the Government Accountability Office (GAO) Standards for Internal Controls in Federal Government (Green Book) requirements.

III. Forecast and Enterprise Challenges

Economic Outlook

The NCUA's mission is to provide, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit.

[7] *See* 12 U.S.C. 1783(b) and 1789(b).

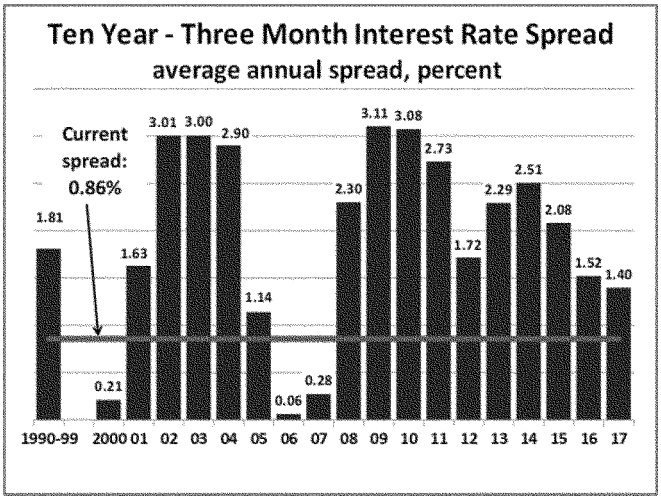
The challenges that the NCUA faces, and the resources the NCUA requires to fulfill its mission, depend on a variety of factors that directly or indirectly affect the health of the credit union system. The NCUA must anticipate, to the extent possible, developments that will affect the system, develop strategies, plans and processes to meet both the current and anticipated needs, and assemble the resources, including staff, necessary to ensure a safe and sound system.

One key determinant of credit union performance is the underlying economic environment in which they must operate. In general, for the past few years, the economy has supported solid financial system performance. The economy performed well in the first half of 2018. Real GDP grew at a relatively strong 3.2 percent annual rate, and the unemployment rate dipped below 4.0 percent—near or below the full-employment rate. Inflation edged higher, moving closer to the Federal Reserve's 2-percent inflation target, and Federal Reserve policymakers raised short-term interest rates. Longer-term rates also increased but a variety of factors have kept them from moving in lock-step with shorter-term rates.

With the support of a solid economic foundation, credit union lending, membership growth, and credit quality remained strong through the second quarter of 2018. Federally insured credit unions added 4.8 million members over the year, boosting credit union membership to 114.1 million in the second quarter of 2018. Credit union shares and deposits rose 5.4 percent over the year to $1.2 trillion. Total loans outstanding at federally insured credit unions increased 9.8 percent to $1.0 trillion, and the system-wide loan delinquency rate fell to 67 basis points, down from 75 basis points a year earlier. The credit union system's return on average assets rose to 90 basis points, and the system's net worth ratio increased to just over 11 percent in the second quarter.

The consensus of forecasters suggests the economic environment will continue to be a solid support to credit union performance over the 2019–2020 budget horizon. Forecasts for the next two years call for somewhat slower economic growth. Employment is projected to continue to rise and the unemployment rate—already below the level associated with full employment—is expected to remain low. Tight labor market conditions are projected to keep inflation near the Federal Reserve's 2.0 percent target. Solid economic conditions should remain a positive force for credit union lending, membership growth, and credit quality over the budget horizon.

However, analysts caution that the tight labor market conditions and higher inflation could be associated with higher interest rates. Federal Reserve policymakers indicate that the federal funds rate could move higher over the next three years to fulfill their dual mandate of maintaining maximum employment and low inflation. Analysts are projecting that short term interest rates—which largely determine interest payments credit unions make—could rise relative to longer term interest rates, which largely determine the interest payments credit unions receive.



In the consensus projected economic environment, credit unions' ability to manage and mitigate interest rate risk will become increasingly important to their success. On the liability side, rising deposit rates, if realized, could force credit unions to adapt more quickly than in the past, since many members have a number of financial institution alternatives and can move funds quickly between institutions.

On the asset side, the low interest rate environment of the past decade has led some credit unions to lengthen the term of investments to boost their portfolio's earnings or to lock in relatively low rates on long-term loans like mortgages. For affected credit unions, higher deposit rates will push up against low loan rates, which would compress net interest margins.

While the overall forecast appears largely supportive of credit unions, forecasts of the economic environment are far from perfect. Some analysts are suggesting the long expansion could end during the NCUA 2019–2020 budget period; a recession would pose significant challenges to the system in terms of rising delinquencies, reduced loan demand, and, potentially, an increase in shares as consumers move funds from riskier investments into safer, insured credit union deposits. The NCUA, like the credit unions themselves, needs to plan and prepare for a range of economic outcomes that could affect credit union performance and determine resource needs.

In addition to risks associated with movements in the general economy, the NCUA and credit unions will need to understand their increasing exposure to, and address risks associated with, the technological and structural changes facing the system. Over the longer-term, increased concentration of loan portfolios, development of alternative loan and deposit products, technology-driven changes in the financial landscape, continued industry

consolidation, and ongoing demographic changes will continue to shape the environment facing credit unions and will determine the resource needs of the NCUA.

Cybersecurity: Credit unions' increasing use of technology is making the credit union system more vulnerable to cyber-attacks. The prevalence of malware, ransomware, distributed denial of service (DDOS) attacks, and other forms of cyber intrusion are creating challenges at credit unions of all sizes, and will require ongoing measures for containment. These trends are likely to continue, and even accelerate, over the next two years.

Lending trends: Increasing concentrations in member business loans and private student loans, in addition to other new types of lending by credit unions, emphasize the need for long-term risk diversification and effective risk management tools and practices, along with expertise to properly manage increasing concentrations of risk.

Financial Landscape and Technology: New financial products that mimic deposit and loan accounts, such as Apple Pay, Walmart pre-paid cards and peer-to-peer lending, are emerging. These new products pose a competitive challenge to credit unions and banks alike. Credit unions also face a range of challenges from financial technology (fintech) companies in the areas of lending and the provision of other services. For example, underwriting and lending may be automated at a cost below levels associated with more traditional financial institutions, but may not be subject to the same regulations and safeguards that credit unions and other traditional financial institutions face. The emergence and increasing importance of digital currencies may pose both risks and opportunities for credit unions. As these institutions and products gain popularity, credit unions may have to be more active in marketing and rethink their business models.

Technological changes outside the financial sector may also lead to changes in consumer behavior that indirectly affect credit unions. For example, the increase in on-demand use of auto services and the potential for pay-as-you-go on-demand vehicle rental, could reduce purchases of consumer-owned vehicles. That could lead to a slowdown or reduction in the demand for vehicle loans, now slightly more than a third of the credit union system loan portfolio.

Membership trends: While overall credit union membership continues to grow strongly, 50 percent of federally insured credit unions had fewer members at the end of the second quarter of 2018 than a year earlier. Demographic and field of membership changes are likely to continue to result in declining membership at many credit unions. All credit unions need to consider whether their product mix is consistent with their members' needs and demographic profile. For example, in some areas, to be effective, credit unions may need to explore how to meet the needs of an aging population or of a growing Hispanic population.

Smaller credit unions' challenges and industry consolidation: Small credit unions face challenges to their long-term viability for a variety of reasons, including weak earnings, declining membership, high loan delinquencies, and elevated non-interest expenses. If current consolidation trends persist, there will be fewer credit unions in operation and those that remain will be considerably larger and more complex. As of June 30, 2018, there were 542 federally insured credit unions with assets of at least $500 million, 28 percent more than just five years earlier. These 542 credit unions accounted for 71 percent of credit union members and 77 percent of credit union assets. Large credit unions tend offer more complex products, services and investments. Increasingly complex institutions will pose management challenges for the institutions themselves, as well as the NCUA; consolidation means the risks posed by individual institutions will become more significant to the Share Insurance Fund.

Enterprise Risk Management

In light of the strategic direction and the challenges and issues described above, the NCUA employs an Enterprise Risk Management (ERM) program. The ERM program is a means by which agency leadership evaluates the various factors (both internal to the agency and external in the industry) that can impact the agency's performance relative to its mission, vision, and performance outcomes. Agency priority risks include both internal consideration such as the agency's internal controls framework, to external factors such as credit union concentration risk. All of these risks can materially impact the agency's ability to achieve its mission.

The NCUA's ERM Council provides oversight of the agency's enterprise risk management activities. Through the ERM program, the agency is identifying and managing risks that could affect the achievement of its mission. The ERM program was established in 2015 to include an enterprise risk appetite statement and risk taxonomy. In 2018, the NCUA identified a number of enterprise risks that helped inform the agency's planning and budget processes, and assigned roles and responsibilities for monitoring risks in several specific activities. Overall, the NCUA's ERM program promotes effective internal controls, which, when combined with robust measurement and communication, are central to cost-effective decision-making and risk optimization within the agency.

In its 2018–2022 iteration of its Strategic Plan, the NCUA adopted its first agency enterprise risk appetite statement, which is:

> The NCUA is vigilant and has an overall judicious risk appetite. The NCUA's primary goal is to ensure the safety and soundness of the credit union system and the agency recognizes it is not desirable or practical to avoid all risk. Acceptance of some risk is often necessary to foster innovation and agility. This risk appetite will guide the NCUA's actions to achieve its strategic objectives in support of providing, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit.

The agency's risk appetite will help align risks with opportunities when making decisions and allocating resources to achieve the agency's strategic goals and objectives. This enterprise risk appetite statement is part of the NCUA's overall management approach and is supported by detailed appetite statements for individual risk areas.

In practice, this means that the NCUA recognizes that risk is unavoidable and sometimes inherent in carrying out the agency's mandate. The NCUA is positioned to accept greater risks in some areas than in others; however, when consolidated, the risk appetite should be within the boundaries established for the entire agency. Cross-collaboration across programs and functions is a fundamental piece of ensuring the agency stays within its risk appetite boundaries. The NCUA will identify, assess, prioritize, respond to and monitor risks to an acceptable level. This budget proposal for 2019/2020 incorporates the NCUA's enterprise risk management program and agency risk appetite in recommending how best to allocate its resources.

IV. Key Themes of the 2019–2020 Budget

Overview

The budget supports the priorities and goals outlined in the agency's annual performance plan and the NCUA Strategic Plan 2018–2022 (*https://www.ncua.gov/About/Documents/*

AgendaItems/AG20160721Item2b.pdf). The resources and new initiatives proposed in the budget support the NCUA's mission to maintain a safe and sound credit union system.

The 2019–2020 budget carries forward a number of key ongoing initiatives, which include: The Exam Flexibility Initiative; the increased use of off-site examinations work and data analytics; the modernization of information technology systems; regulatory reform initiatives; and efforts to implement organizational efficiencies. Over the course of the next five years, these efforts will result in a more effective and efficient organization.

In the 2019–2020 budget, the NCUA continues to reduce its staffing, reflecting greater operational efficiency at the agency. The NCUA employees are the agency's most valuable resource for achieving its mission, and the agency is committed to a workplace and a workforce with integrity, accountability, transparency, inclusivity, and proficiency. As the NCUA continues its efforts to curb expenses and reduce overhead costs, we will continue investing in the workforce through training and development, helping employees develop the tools they need to do their work effectively.

At the same time, managing the size of the workforce is important from a budgetary standpoint, because employment-related costs are the single largest driver of the NCUA budget. As discussed in this document, the NCUA continues to use workload models to estimate the amount of time necessary to conduct examinations and supervise federally insured credit unions. This analysis results in an estimate of the staffing level required to carry out the NCUA's dual mission as insurer and regulator. The NCUA continues to assess and balance its mission workload needs with the financial costs the agency imposes on the credit union system. Although the number of credit unions continues to decline nationwide, the NCUA must also consider the increasing complexity and growing asset base of the entire credit union system.

The efficiency and effectiveness of the agency's workforce is dependent upon the resiliency of the NCUA's information technology infrastructure and availability of technological applications. The NCUA is committed to implementing new technology responsibly and delivering secure, reliable and innovative technological solutions to support its mission. This necessitates investments funded in the Capital Budget, to provide the analytical tools and technology the workforce needs to achieve the NCUA mission.

Reorganization/Restructuring

In July 2017, the NCUA's executive leadership committed to a bold plan that would invest in the agency's future, make critical organizational alignment changes, and reduce overall staffing of the agency. The Board approved a series of operational actions to improve the NCUA's efficiency, effectiveness, and focus on its core mission responsibilities.

The NCUA's reform plan positioned the agency to meet the ongoing changes in the industry it regulates and insures. The U.S. financial sector is subject to continuing advancements and emerging risks, which necessitate changes in the way the NCUA conducts its business. Advancements in the type and quantity of data available also demands a fresh way of thinking about our business model. At the same time, the continuing reality of smaller credit unions merging with larger ones, while existing credit unions grow significantly in size and complexity, requires an even more strategic, nimble and innovative way to carry out our responsibilities as established in the Federal Credit Union Act.

As a result of the NCUA's on-going implementation of its reform plan:

- The NCUA created an office focused exclusively on new charters and credit union expansion—the Credit Union Resources and Expansion (CURE) Office.
- The NCUA is lowering the agency's authorized staffing level from 1,247 positions in the 2016 approved budget, down to 1,178 in the 2019 budget, a reduction of 69 positions, or nearly 6 percent.
- Leased office space is being reduced by 80 percent.
- Examination reports are being improved through implementing enhanced quality measures.
- Two regional offices will close in January 2019.
- AMAC's staffing has been reduced, and support functions are now carried out by the central office.

The agency is on-track to meet the staffing reduction targets and other key outcomes identified in the reform plan. These actions are predicated on the understanding that the industry is consolidating and becoming more complex at the same time. The NCUA continues to examine how to best reshape its workforce to meet future needs, and to look for ways to contain operating costs to create a more efficient organization.

Modernizing the Examinations Process

In August 2018, the NCUA issued Letter to Credit Unions: 18–CU–01– ''Examination Modernization Initiatives.'' This letter outlined five initiatives the NCUA Board approved to modernize the agency's examinations processes. Some of the intended benefits of these initiatives are:

- More efficient examinations and supervision
- Reduced burden on credit unions
- More consistent and accurate supervisory determinations
- Greater ability to adapt to changes in the marketplace and credit union business models
- Enhanced coordination with State Supervisory Authorities
- Reduced travel costs
- Improved quality of life for examiners
- More secure, reliable, and flexible technology foundation able to support future expansion capabilities

These five initiatives are interrelated and complement each other. As these initiatives support and build upon each other, they will ultimately result in a fully modernized examination and supervision program with various incremental improvements occurring along the way. Throughout this budget, the NCUA aligns its resources in support of these improvements. Below is a more in-depth discussion of each of the initiatives:

Flexible Examination Program (FLEX). FLEX is a pilot program in the Southern Region. FLEX is evaluating conducting offsite certain existing exam procedures. The pilot was developed to assess examiners working remotely on elements of examinations of well-run credit unions that have the technology and platforms to provide electronic data securely. This program reflects the NCUA's most immediate solution to the agency's efforts to reduce, but not eliminate, onsite presence during exams.

In 2017, the NCUA tested the pilot with five examiner groups in 28 credit unions located in a variety of geographical locations. The pilot was tested on credit unions as small as $4 million in assets to those as large as $9.4 billion in assets.

Preliminary results from the pilot show cost savings to the NCUA, realized in part by reducing travel time and costs for examiners. In designated FLEX reviews, over 35 percent of the total exam hours were performed offsite. Credit union feedback has also been positive, with the majority of credit unions reporting positive experiences with the modified exam approach.

However, the pilot identified the need for the NCUA to have a secure file transfer portal to support much of this offsite work efficiently. The secure file

transfer portal was fully deployed in July 2018. The agency is currently testing the portal and expects to move forward developing plans to increase agency use of offsite procedures.

ONES Data-Driven Supervision. This initiative began in 2018 as an effort to move to a continuous supervision model for the large, natural-person credit unions supervised by the Office of National Examinations and Supervision. The continuous supervision model will use data-driven analytics to monitor and identify credit union risk while supporting the transition to credit union-driven stress testing. The data-driven supervision initiative may lead to analytical advancements that can be adapted for supervising some or all other insured credit unions.

Shared NCUA-State Regulator Federally-Insured State Credit Unions (FISCU) Program. In 2017, the NCUA created the Joint NCUA-State Supervisor Working Group (working group), which is tasked with improving coordination and scheduling for joint exams, providing scheduling flexibility, and reducing redundancy where possible. The group's goal is to minimize the burden on FISCUs resulting from having a separate financial regulator and insurer.

In addition, the working group is evaluating the efficacy, appropriateness, and feasibility of adopting an alternating-year examination approach for FISCUs. A pilot program is under development and will allow the NCUA, state regulators, and stakeholders to evaluate the benefits and challenges of an alternate-year examination program. The pilot will need to run about three years in order to evaluate one full alternating-year exam cycle, and will provide valuable insight into the advantages and risks of such an approach prior to finalizing a decision about a permanent alternating-year exam cycle.

For joint examinations of FISCUs, the working group is also exploring ways to minimize duplication and overlap through process improvements and greater use of technology. In addition, the working group is evaluating other areas of potential duplication that can be reduced or eliminated, such as loan participations, CUSO and third party vendor reviews, and other supervisory matters. The goal of these reviews is to better leverage the work of each regulatory party in examining and supervising FISCUs.

Enterprise Solution Modernization (ESM). In November 2015, the NCUA Board authorized the ESM program. This effort will replace legacy applications such as the examination system (AIRES) and the Call Report data collection tool (CU Online). ESM will also introduce emerging and secure technology that supports the NCUA's examination, data collection, and reporting efforts. The result will be a flexible technology architecture that integrates modernized systems and tools across the agency. The new systems will streamline processes and procedures helping create a more effective, less burdensome process.

ESM will also provide essential upgrades to the NCUA's technology foundation that supports the FLEX and Virtual Exam efforts with:

- More efficient ways to securely communicate with credit unions.
- Updated tools such as workflow management, data integration, document management, and customer relationship management capabilities.
- A flexible framework that will allow for integration of new solutions so the NCUA's supervisory systems can evolve with changes to regulations, data and analytical needs, and activities credit unions engage in.

The first of a series of technology upgrades from ESM are scheduled to begin in 2019. Throughout the multi-year implementation phase of this initiative, the NCUA will continue to provide updates and engage stakeholders.

Virtual Examination Program. In 2017, the NCUA Board approved the project and associated resources to research methods to conduct offsite as many aspects of the examination and supervision processes as possible. The virtual exam project team is researching ways to harness new and emerging data, advancements in analytical techniques, innovative technology, and improvements in supervisory approaches.

By identifying and adopting alternative methods to remotely analyze much of the financial and operational condition of a credit union, with equivalent or improved effectiveness relative to current examinations, it may be possible to significantly reduce the frequency and scope of onsite examinations. Onsite examination activities could potentially be limited to periodic data quality and governance reviews, interventions for material problems, and meetings or other examination activities that need to be handled in person.

The virtual exam should lead to greater use of standardized interaction protocols, advanced analytical capabilities, and more-informed subject matter experts. This should result in more consistent and accurate supervisory determinations, provide greater clarity and consistency with respect to how the agency conducts supervisory oversight, and reduce coordination challenges between agency and institution staff.

To be successful, it is likely examination staff will need to analyze more information about the credit union being examined and communicate more frequently with management at the credit union. However, it is not the agency's intent to intervene in credit unions' day-to-day operations or strategic planning.

The virtual examination team will deliver to the NCUA board by the end of 2020 a report discussing alternative methods identified to remotely analyze aspects of the financial and operational condition of a credit union. For credit unions that are compatible with this approach, the agency's goal is to transform the examination and supervision program into a predominately virtual one within the next five to ten years. The transformation is expected to occur through incremental adoption of the corresponding new techniques and approaches.

Reducing Regulatory Burden

The NCUA established a Regulatory Reform Task Force (Task Force) in March 2017 to oversee implementation of the agency's regulatory reform agenda. This is consistent with the spirit of Executive Order 13777 and the Trump administration's regulatory reform agenda. Although the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the agency chose to review all of the NCUA's regulations, consistent with the spirit of initiative and the public benefit of periodic regulatory review. The Task Force published and sought comment on its first report in August 2017.

The NCUA has undertaken a series of regulatory changes as part of this effort, and continues to pursue a regulatory reform agenda, including matters such as advertising, field of membership, equity distribution, and securitization. The task force is in the process of preparing its second report, which should be issued in late 2018 or early 2019.

V. Operating Budget

Overview

The NCUA Operating Budget is the annual resource plan for the NCUA to conduct activities prescribed by the Federal Credit Union Act of 1934. These activities include: (1) Chartering new Federal credit unions; (2) approving

field of membership applications of Federal credit unions; (3) promulgating regulations and providing guidance; (4) performing regulatory compliance and safety and soundness examinations; (5) implementing and administering enforcement actions, such as prohibition orders, orders to cease and desist, orders of conservatorship and orders of liquidation; and (6) administering the National Credit Union Share Insurance Fund (NCUSIF or the Share Insurance Fund).

The NCUA funds its activities through operating fees levied on all Federal credit unions and through reimbursements from the Share Insurance Fund, which is funded by both Federal credit unions and federally-insured state-chartered credit unions.

As outlined in the NCUA Letter to Credit Unions 18–CU–01, dated August, 2018, there are several examination modernization initiatives in process to improve how the agency conducts examinations and supervision. The goals of these initiatives are to replace outdated, end-of-life examination systems, streamline processes, adopt enhanced examination techniques, and leverage new technology and data to maintain high quality supervision of insured credit unions with less on site presence. Modernizing agency systems and processes will reduce the burden on the credit union community and increase the effectiveness of the NCUA.

Staffing

The staffing levels proposed for 2019 reflect the resource requirements for steady state operations at the NCUA as it implements the agency reform plan and modernizes the examination process. The estimated resource level will fund the appropriate workload balance that supports extended exam cycles and enhanced examinations. The new positions supported by the budget include a Business Data Lead, two Business Innovation Officers, a Bank Secrecy Act Specialist, a Financial Technology Analyst, two Enforcement and litigation attorneys, and one Regulations and Legislation attorney. There will be a realignment of three regional office vacancies to offset three of the new positions.

In 2019, the agency is also establishing the Office of Business Innovation to lead the Enterprise Solution Modernization (ESM) program, as well as other modernization and business enterprise initiatives outside the scope of ESM. This includes the agency's initiative to modernize the member loan and share download, advance the information security program, and enhance analytics through data management. Previously, the employees assigned to Business Innovation were included in the Office of the Executive Director. By creating the new office structure, the budget will more clearly delineate these expenses and be more transparent to interested parties.

The budget for 2019 supports a total agency staffing level of 1,178 personnel. This is a net decrease of ten positions from the Board-approved level for 2018, or a decrease of 0.8 percent.

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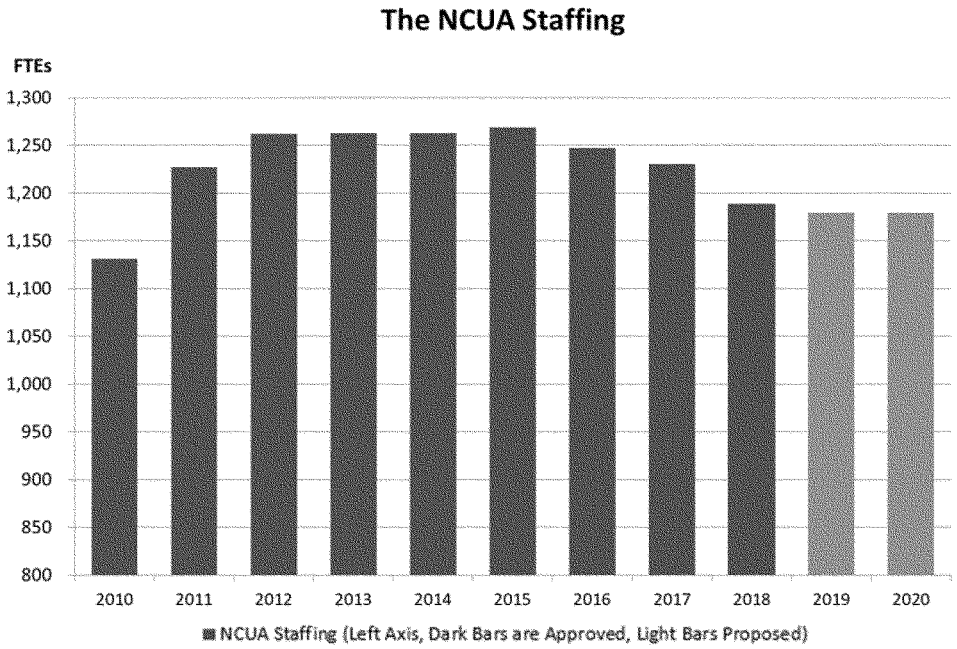

Actual Regional Examiner and Specialist Positions*	2013	2014	2015	2016	2017	2018
Credit Union Examiner	598	548	535	505	469	472
Regional Capital Market Specialist	15	19	23	25	23	24
Regional Information System Officer	6	11	14	18	17	18
Problem Case Officer	38	37	32	31	30	32
Regional Lending Specialist	22	25	31	31	28	30
Director of Special Actions	8	9	9	10	10	10
Supervisory CU Examiner	69	70	68	65	63	50
TOTAL	**756**	**719**	**712**	**685**	**640**	**636**

* 2013 - 2017 actual positions on board as of December 31. 2018 actual on board as of August 31.

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Request for New Staff in 2019

Business Data Lead (1 Position Reallocated From Regional Vacancies)

The Office of Business Innovation requires one full-time position to serve as the Business Data leader who will drive implementation of an agency-wide analytic data strategy and governance framework. This work will include: (1) Chairing an enterprise analytic data council; (2) supervising three enterprise data stewards; (3) working with contract consultants to assist the council and data stewards; (4) piloting the enterprise data strategy and governance framework; (5) initiating the enterprise data office study; and (6) recommending and running a future state for enterprise data management.

Business Innovation Officers (2 Positions Reallocated From Regional Vacancies)

The Office of Business Innovation requires two Business Innovation Officers to conduct the daily work to support development of an agency-wide analytic data strategy and governance framework, including: (1) Creating and executing a data governance framework, (2) defining business requirements to ensure initial proper configuration of the NCUA's analytic data repository, (3) researching data information to update the NCUA's data dictionary and develop data lineage requirements, and (4) working with system owners and other stakeholders to resolve conflicts and facilitate acceptance into the data framework.

Bank Secrecy Act Specialist (+1 New Position)

The Office of Examination and Insurance requires a full-time position to support Bank Secrecy Act (BSA) policies and workload requirements. The BSA has consumed considerable attention within the NCUA and throughout the government's regulatory responsibilities for the financial services industry. Interagency planning and policy development groups have already created significant new workload for the NCUA. This additional workload is expected to continue as the interagency groups develops new supervisory policies, coordinate BSA-related rulemaking, implement industry and supervisory guidance, and conduct industry outreach.

Financial Technology Analyst (+1 New Position)

The Office of the Chief Economist requires one new employee to research new financial technology innovations and organize and lead a working group to review these emerging technologies. This position will also expand the NCUA's policy expertise in cryptocurrencies.

Enforcement and Litigation Attorneys (+2 New Positions)

The Office of General Counsel requires two additional attorneys in the Enforcement and Litigation Division to support the agency and enable attorneys to work more collaboratively as supervisory offices' formal enforcement actions are being considered and planned. These additional employees will help improve the NCUA's overall enforcement process by focusing support and investigatory efforts more strategically and earlier in the enforcement process.

Regulations and Legislation Attorney (+1 New Position)

The Office of General Counsel requires an additional attorney for the Division of Regulations and Legislation. This attorney will focus on the review of legislation, provide technical drafting assistance for legislation when necessary, write responses to Congressional and interagency inquiries, and assist in drafting both oral and written testimony for Congressional hearings. The new attorney will also coordinate legislative efforts with other public and Congressional Affairs staff at the NCUA.

Budget Category Descriptions and Major Changes

There are five major expenditure categories in the NCUA's budget. This section explains how these expenditures support the NCUA's operations, and presents a transparent and comprehensive accounting of the Operating Budget.

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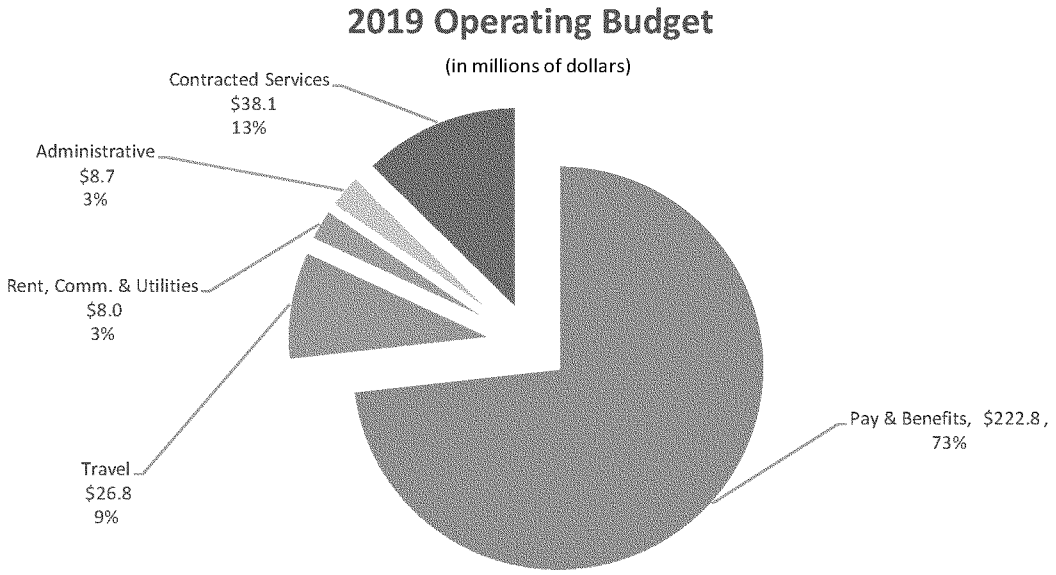
2019 - 2020 NCUA OPERATING BUDGET SUMMARY							
Budget Cost Category	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	2020 Requested Budget	2019-2020 Change	Change Percent
Employee compensation	220,700,000	222,827,000	2,127,000	1.0%	233,593,000	10,766,000	4.8%
Salaries	158,826,000	159,686,000	860,000	0.5%	166,952,000	7,266,000	4.6%
Benefits	61,874,000	63,141,000	1,267,000	2.0%	66,641,000	3,500,000	5.5%
Travel	26,448,000	26,774,000	326,000	1.2%	27,774,000	1,000,000	3.7%
Rent /Comm/Utilities	8,489,000	8,044,000	(445,000)	-5.2%	8,044,000	-	0.0%
Administrative	7,477,000	8,672,000	1,195,000	16.0%	8,672,000	-	0.0%
Contracted Services	34,983,000	38,081,000	3,098,000	8.9%	38,081,000	-	0.0%
Total	**$ 298,097,000**	**$ 304,398,000**	6,301,000	2.1%	**$ 316,164,000**	11,766,000	3.9%



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Salaries and Benefits

The budget includes $222.8 million for employee salaries and benefits in 2019. This change is a $2.1 million, or 1.0 percent, increase from the 2018 Board Approved Budget.

Salaries and benefits make up 73 percent of the total budget. The primary driver of increased costs in the Salaries and Benefits category is merit and locality pay increases for the NCUA's 1,173 personnel paid from the Operating Budget, in accordance with the agency's current Collective Bargaining Agreement (CBA) and its merit-based pay system. In 2019, the NCUA's compensation levels will continue to ''maintain comparability with other federal bank regulatory agencies,'' as required by the Federal Credit Union

Act.[8] The Salaries and Benefits category of the budget includes all employee pay raises for 2019, such as merit and locality increases, and those for promotions, reassignments, and other changes, as described below.

Consistent with other federal pay systems, the NCUA's compensation includes base pay and locality pay components. The NCUA staff will be eligible to receive an average merit-based increase of 3.0 percent, and an additional locality adjustment ranging from zero to 3.0 percent, depending on location. The average increase in locality pay is estimated to be 1.4 percent. Starting in 2019, the NCUA discontinued the annual, general pay scale increase of 1.25 percent in accordance with recent CBA negotiations. By merging the general pay scale increase into the annual merit-based pay increase, the NCUA expects to better reward employee performance while reducing future year payroll growth.

The first-year cost of the new positions added in 2019 is estimated to be $1.0 million, or approximately half the annual salaries and benefits associated with the positions since these new employees will be hired throughout the year. The full-year salaries and benefits costs of these employees will approximately double in 2020. Specific increases to individual offices' pay and benefits budgets will vary based on current pay levels, position changes, and promotions.

Personnel compensation at the NCUA varies among every office and region depending on work experience, skills, years of service, supervisory or non-supervisory responsibilities, and geographic locations. In general, more than 85 percent of the NCUA workforce has earned a bachelor's degree or higher, compared to approximately 35 percent of the private-sector workforce. This high level of educational achievement ensures the NCUA workforce is able to fulfill its mission effectively and efficiently, and attracting a well-qualified workforce requires the agency to pay employees competitive salaries.

Individual employees' compensation varies, depending on the cost of living in the location where the employee is stationed. The federal government sets locality pay standards, which are managed by the President's Pay Agent—a council established to make recommendations on federal pay. The council uses data from the Occupational Employment Statistics program, collected by the Bureau of Labor Statistics, to compare salaries in over 30 metropolitan areas, and establishes recommendations for equitable adjustments to employee salaries to account for cost-of-living differences between localities.

The Office of Personnel Management (OPM) economic assumptions for actuarial valuation of the Federal Employees Retirement System (FERS) remains unchanged in 2019, so all federal agencies are expected to contribute 13.7 percent of FERS employees' salary to the OPM retirement system. This mandatary contribution is expected to increase to 16.0 percent, or +230 basis points, in 2020, consistent with published actuarial updates. This change will result in an estimated $3.5 million in additional, mandatory retirement-related payments by the NCUA to OPM.

The average health insurance costs for the Federal Employees Health Benefits program for 2019 are consistent with historical actual expenses. The employee pay and benefits category also includes costs associated with other mandatory employer contributions such as Social Security, Medicare, transportation subsidies, unemployment, and workers' compensation. Notably, charges from the U.S. Department of Labor (DOL) for the NCUA's workers' compensation claims increased by nearly $250,000 between 2018 and 2019. DOL manages the workers' compensation system for all federal agencies.

The 2019 budget reflects a $4.0 million reduction, or the equivalent of a two percent vacancy rate (21 positions) during the year. This aligns with the NCUA's most recent attrition rates and the recruitment and retention challenges the agency expects to face in the current, high-employment labor market. The effect of this adjustment lowers the NCUA budget and results in reduced fees collected from credit unions.

The 2020 budget request for salaries and benefits is estimated at $233.6 million, a $10.8 million increase from the 2019 level, which accounts for merit and locality increases consistent with the CBA (approximately $6.3 million), the full-year cost impact of new positions (approximately $1 million), and the mandatory FERS retirement contributions to OPM (approximately $3.5 million).

Travel

The 2019 budget includes $26.8 million for Travel. This change is a $326,000, or 1.2 percent, increase to the 2018 Board Approved Budget. Travel comprises approximately nine percent of the overall 2019 budget. The cumulative reduction of the credit union examiner positions compared to past years, extended examination cycles, and increased use of offsite examinations all help contain the NCUA's travel costs. However, the General Services Administration has announced an increase of nearly eight percent for per diem rates in 2019, which drives the growth of estimated travel expenses in 2019.

The Travel cost category includes expenses for employees' airfare, lodging, meals, auto rentals, reimbursements for privately owned vehicle usage, and other travel-related expenses. These are necessary expenses for examiners' onsite work in credit unions. Close to two-thirds of the NCUA's workforce is comprised of field staff who spend a significant part of their year traveling to conduct the examination and supervision program.

The NCUA staff also travel for training, and there will be minor increases to training-related travel expenses to support field exams. For example, technical experts such as payment system, capital market, and lending specialists will assist field examiners with program examinations and training, while consumer access analysts will provide support on field consumer compliance issues and follow-up field assessments of business marketing plans for field-of-membership expansions.

The 2020 budget request for travel is estimated at $27.8 million, a $1 million increase to the 2019 level, which accounts for a national program examination training event. This one-time training conference is anticipated to coincide with full deployment of the new Examination and Supervision Solution system.

The NCUA plans to evaluate future cost avoidance for travel through continued expansion of offsite examination work. In addition, agency personnel will continue to utilize more virtual training options, where appropriate, to help minimize travel expenses.

Rent, Communications, and Utilities

The 2019 budget includes $8.0 million for Rent, Communications, and Utilities. This is a $445,000 reduction, or five percent less than the 2018 Board Approved Budget. The Rent, Communications, and Utilities category is the smallest component of the NCUA's budget and funds the agency's telecommunications and information

[8] The Federal Credit Union Act states that, ''In setting and adjusting the total amount of compensation and benefits for employees of the Board, the Board shall seek to maintain comparability with other [f]ederal bank regulatory agencies.'' *See* 12 U.S.C. 1766(j)(2).

technology network expenses, and facility rental costs. The agency telecommunications expense for 2019 is $3.2 million. Office building leases, meeting rentals, office utilities, and postage expenses are also included in this budget category. Facility costs total $2.6 million for 2019, which is $600,000 less than the prior year budget due to the closure of regional offices in Atlanta, Georgia and Albany, New York. Facility costs also include the NCUA's annual payment of $1.3 million to the Share Insurance Fund for its central office note, which is scheduled to be fully repaid in 2023.

The 2020 budget request for the Rent, Communications, and Utilities category is $8.0 million, and is unchanged from 2019. Additional savings from lease terminations are expected in 2021, once Eastern Region personnel are co-located in the NCUA-owned central office building.

Administrative Expenses

The 2019 budget includes $8.7 million for Administrative Expenses. This is an increase of $1.2 million, or 16 percent, compared to the 2018 Board Approved Budget. Recurring costs in the Administrative Expenses category include the annual reimbursement to the Federal Financial Institutions Examination Council (FFIEC), employee relocation expenses, recruitment and advertising, shipping, printing, subscriptions, examiner training and meeting supplies, office furniture, and employee supplies and materials.

Service contracts, maintenance fees, and end-user licensing for computer software and database management applications will cost $3.8 million in 2019. This includes annual software licenses and maintenance support fees for the call center managed by the Office of Consumer Financial Protection. This line item represents a $435,000 increase over the prior year budget to support purchases of critical financial and information services subscription services to manage risk.

As part of the FFIEC, the NCUA shares in costs for joint actions and services that affect the financial services industry. These costs are largely outside of the NCUA's control and are estimated at $1.4 million in 2019, which is $100,000 more than 2018.

Employee relocation expenses are adjusted in 2019 to reflect the historical average annual expenditures of $750,000. This is a $500,000 increase over the 2018 Board Approved Budget, which was lower than historical averages because of one-time agency reorganization funding set aside for relocations in 2018.

Due to reformed business processes and improved financial controls, costs for printing. Meeting support costs are estimated to be $150,000 less than in 2018.

Contracted Services

The 2019 budget includes $38.1 million for Contracted Services. This is a $3.1 million, or nine percent, increase compared to the 2018 Board Approved Budget.

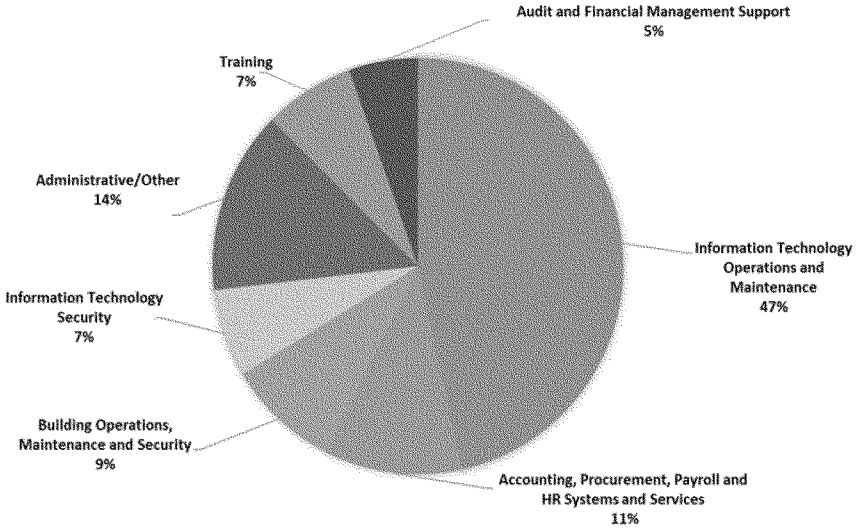
The Contracted Services budget category includes costs incurred when products and services are acquired in the commercial marketplace. Acquiring specific expertise or services from contract providers is often the most cost-effective approach to fulfill the NCUA's mission. Such services include critical mission support such as information technology hardware and software development, accounting and auditing services, and specialized subject matter expertise that enable staff to focus on core mission execution.

The majority of funding in the Contracted Services category is related to the NCUA's priority to implement a robust supervision framework by identifying and resolving traditional risk concerns such as interest rate risk, credit risk, and industry concentration risk, as well as by addressing new and evolving operational risks such as cybersecurity threats. Growth in the contracted services budget category results primarily from new operations and maintenance costs associated with ongoing capital investments, such as replacements for the Automated Integrated Regulatory Examination System (AIRES) and CU Online. Other costs include core agency business operation systems such as for payroll processing, and various recurring costs, as described in the seven major categories, below:

- Information Technology Operations and Maintenance (47 percent of contracted services)
  - —IT network support services and help desk support
  - —Contractor program and web support and network and equipment maintenance services
  - —Administration of software products such as Microsoft Office, Share Point and audio visual services
- Administrative Support and Other Services (14 percent of contracted services)
  - —Examination and Supervision program support
  - —Technical support for examination and cybersecurity training programs
  - —Equipment maintenance services
  - —Legal services and other expert consulting support
  - —Other administrative mission support services for the NCUA central office
- Accounting, Procurement, Payroll and Human Resources Systems (11 percent of contracted services)
  - —Accounting and procurement systems and support
  - —Human resources, payroll, and employee services
  - —Equal employment opportunity and diversity programs
- Building Operations, Maintenance, and Security (9 percent of contracted services)
  - —Central office facility operations and maintenance
  - —Building security and continuity programs
  - —Personnel security and administrative programs
- Information Technology Security (7 percent of contracted services)
  - —Enhanced secure data storage and operations
  - —Information security programs
  - —Security system assessment services
- Training (7 percent of contracted services)
  - —Examiner staff technical and specialized training and development
  - —Senior executive and mission support staff professional development
- Audit and Financial Management Support (5 percent of contracted services)
  - —Annual audit support services
  - —Material loss reviews
  - —Investigation support services
  - —Financial management support services

The following pie chart illustrates the breakout of the seven categories for the total contracted services budget of $38.1 million.

Contracted Services: $38.1 million



Major programs within the contracted services category include:

▪ *Training requirements for the examiner workforce.* The NCUA's most important resource is its highly educated, experienced, and skilled workforce. It is important that staff have the proper knowledge, skills, and abilities to perform assigned duties and meet emerging needs. Each year, Credit Union Examiners attend several levels of training, including in core areas such as capital markets, consumer compliance, and specialized lending. The training deliverables for 2019 include classes offered by the Federal Financial Institutions Examination Council, new examiner classes, and subject matter expert training sessions for the NCUA examiners and state regulators.

Contracted service providers will develop and design several subject matter expert training classes for examiners and conduct a triennial review of several modules of the NCUA's core course curriculum. Additionally, regional and central office staff will conduct change management and teambuilding training exercises to help integrate new operations as a result of the Agency reorganization.

▪ *The NCUA's information security program* supports ongoing efforts to strengthen cybersecurity and ensure compliance with the Federal Information System Management Act.

▪ *Agency financial management services, human resources technology support, and payroll services.* The NCUA contracts for these back-office support services with the U.S. Department of Transportation's Enterprise Service Center (DOT/ESC) and the General Services Administration. A new service provider offers the NCUA's human resource system, HR Links, also adopted by many federal agencies, the shared solution automates routine human resource tasks and improves time and attendance functionality.

▪ *Audit.* The NCUA Office of Inspector General contracts with an accounting firm to conduct the annual audit of the agency's four permanent funds. The results of these audits are posted annually on the NCUA website and also included as part of the agency's Annual Report.

A significant share of the budget for the Contracted Services category finances on-going infrastructure support for the agency. For example, the NCUA relies on recurring contracted services to maintain a number of the agency's systems including critical legacy systems such as AIRES and Credit Union Online. Several of the NCUA's core information technology systems and processes require additional contract support in 2019, which result in increased budgets in the Contracted Services category, as described below.

Within the budget for the Office of Chief Information Officer, an additional $3.2 million is required for various contractor support requirements in 2019, including:

• *Contract Realignment $1.5M.* Costs include transition to new Operations & Maintenance contract, increase in support skill set to cover service gap.

• *New Capabilities & Modernization $1.0M.* Costs include examination solution circuit's maintenance & program rent cost, new security tools implementation, and true-up for service management system licenses.

• *Cost Inflation $0.5M.* Costs include expected inflation for telecommunications, equipment repair and maintenance and contract services.

• *AMAC Support $0.2M.* Costs include establishing on-site information technology support for AMAC.

Within the budget for the Office of Chief Financial Officer, the annual fee paid to the Department of Transportation (DOT) for the NCUA's financial management system will increase by nearly $800,000 over the 2018 level. This is because DOT revised its cost allocation model for all of its financial system customers. In 2018, the NCUA also replaced its legacy human resources and time and attendance systems with a more modern platform called HR Links, which better supports the agency's workforce and personnel requirements. The 2019 cost for HR Links decreased from the 2018 level by $325,000 due to one-time start-up costs that were included in the 2018 Board Approved Budget.

VI. Capital Budget

Overview

The NCUA uses a rigorous process to identify the investment needs for information technology, facility improvements and repairs, and other

multi-year capital investments. The NCUA staff review the agency's inventory of owned facilities, equipment, information technology systems, and information technology hardware to determine what requires repair, major renovation, or replacement. The staff then make recommendations for prioritized investments to the Executive Director and the NCUA Board.

Routine repairs and lifecycle-driven property renovations are necessary to properly maintain the investments in the NCUA's central office building in Alexandria, Virginia and the agency's owned office building in Austin, Texas. The NCUA facility manager assesses the agency's properties to determine the need for essential repairs, replacement of building systems that have reached the end of their engineered lives, or renovations required to support changes in the agency's organizational structure or to address revisions to building standards and codes.

Information technology (IT) systems and hardware are another significant capital expenditure for modern organizations. The 2019 budget includes significant investment in current and replacement IT systems. The NCUA Examination and Supervision Solution (ESS) project, for example, will replace the legacy Automated Integrated Regulatory Examination System (AIRES) system, and is the largest single capital investment in the 2019 budget. Other IT investments include ongoing enhancements and upgrades to decades-old legacy systems, incident and vulnerability management systems to enhance the agency's cybersecurity posture, and various hardware investments to refresh agency networks and ensure staff have the tools necessary to maintain and increase their productivity.

The NCUA's 2019 capital budget is $22.0 million. The capital budget includes long-term investment projects. The Information Technology Prioritization Council recommended $17.1 million for IT software development projects and $4 million in other IT investments for 2019. The NCUA facilities require $0.9 million in capital investments. Detailed descriptions of all 2019 capital projects, including a discussion of how each project helps the agency achieve its strategic goals and objectives, are provided in Appendix C.

Summary of Capital Projects

Examination and Supervision Solution and Infrastructure Hosting (ESS&IH) ($8.4 million). The purpose of the ESS&IH project is to implement a new, flexible, technical foundation to enable current and future NCUA business process modernization initiatives, and replace the NCUA's legacy exam system, AIRES, with a new Commercial-Off-The-Shelf (COTS) solution.

Data Collection Solution (DCS)/ Enterprise Content Management (ECM) Analysis of Alternatives Study ($0.2 million). The purpose of this project is to award and complete an Analysis of Alternatives (AoA) to study the operational effectiveness, suitability, risks and life-cycle costs of alternative ECM solutions to support the NCUA's requirements for data collection, workflow, document management, customer relationship management and records management. An AoA needs to be completed to gather the requirements across these areas and to validate that the ECM solutions are the most effective and efficient way to meet the NCUA's data collection, document management, and records management needs.

Business Intelligence (BI) Tools and Capability Enhancement ($1.9 million). The purpose of this project is the collection, centralization, organization and storage of data collected by the Office of National Examination and Supervision (ONES) so that analysis is more accurate and efficient. This accessibility will integrate with BI tools to improve ONES's overall reporting and data analysis capabilities.

Enterprise Central Data Repository ($1.0 million). The Enterprise Central Data Repository (ECDR) project will implement a central data repository that will serve as the data integration point for Examination and Supervision Solution (ESS), ONES's analytic tools, the NCUA's legacy applications and the Data Collection Solution (DCS). The ECDR will become an enterprise solution for the NCUA allowing the agency to transition in a phased approach from the existing legacy databases to a cloud-based data repository serving the agency's needs.

Asset Management and Assistance Center (AMAC) Servicing System ($0.6 million). The purpose of this project is to enhance AMAC's legacy content management and servicing systems. Phase I of the project resulted in an enhanced, secure content management solution. During Phase II of the project, the NCUA will identify, acquire, and implement replacement solutions for AMAC's aging core data processor. The key project deliverables are the acquisition and deployment of a replacement core processing system.

Enterprise Data Analytics, Governance and Reporting Services ($0.6 million). The purpose of this project is the centralization, organization and storage of the NCUA data so analysis is more accurate, simple and easily distributed across the agency. This increased accessibility is combined with analytic tools to improve the NCUA's overall reporting and data analysis capabilities.

Asset and Liabilities Management Application ($3.2 million). The purpose of the Asset and Liabilities Management (ALM) application is for the NCUA to build internal analytical capabilities to run supervisory stress testing in house and to conduct regular quantitative risk assessments by procuring and configuring off-the-shelf analytical tools, models and software used commonly in stress testing and other risk management activities.

This effort delivers a complete solution that will focus on modernizing the NCUA's supervision tools and approaches, identifying material risks facing the covered credit unions, and tailoring resources to the material risks and risk focused exams. This effort will allow the NCUA to reduce the existing third party contractor's role to only consultation.

Enterprise Learning Management System Replacement ($0.6 million). The purpose of the Enterprise Learning Management System (LMS) Replacement project is to conduct market research, initiate an acquisition, create a project management plan, and execute the production and implementation of a cost-effective, cloud-based solution and training services that provides the NCUA with the full-range of eLearning functionality associated with a modern LMS. This will allow for enhanced examiner utilization and accessibility driven by quality content, ease of use and system reliability, role-based interface, ability to view personalized pages by role, centralized content, adherence to federally-mandated reporting requirements and records management adherence.

Governance, Risk Management, and Compliance (GRC) tool for Managing Compliance Information ($0.3 million). The purpose of the GRC Tool for Managing Compliance Information project is to acquire and implement a software platform that provides a structured repository for all system security and privacy documentation; security risk assessments; risk scoring; Plan of Actions and Milestones (POAM) management; and authorization workflow.

Financial Management Analysis of Alternatives ($0.35 million). The purpose of this project is to award and complete an Analysis of Alternatives

(AoA) for federal financial management system service providers. The NCUA's current financial management system service provider—the Department of Transportation's Enterprise Service Center (ESC)—will increase the fee it charges the NCUA in 2019 by approximately $800,000, or 40 percent more than the 2018 charge. As a result, the NCUA plans to review alternative service providers to determine whether it is possible to achieve similar or better financial management results in a cost-effective manner.

Enterprise Laptop Lease ($0.8 million). The purpose of the Enterprise Laptop Refresh project is to provide the NCUA with a more efficient, mobile friendly, and secure tool to help employees better perform their jobs at a reasonable cost.

Information Technology Infrastructure, Platform and Security Refresh ($2.4 million). The purpose of the Information Technology (IT) Infrastructure, Platform and Security Refresh project is to refresh and/or replace routers, switches virtual servers, wireless, virtual private network, end of life and end of service components in order to ensure that the NCUA data is secure and operations are stable.

Security Management Tool Upgrades ($0.7 million). The purpose of the Security Management Tool Upgrades (Security Event and Incident Management (SEIM)) project is to optimize event collection, monitoring, detection and response capabilities for information security and IT operations, which will enable data-driven proactive management of the agency's cybersecurity programs.

The purpose of the Security Management Tool Upgrade (Patch & Vulnerability Management) project is to comply with the Department of Homeland Security's requirements for its Continuous Diagnostics and Mitigation (CDM) program, which sets standards for effective IT cybersecurity service management for Federal agencies.

Refresh End of Life VOIP Phone System ($0.2 million). The purpose of the Refresh End of Life Voice over internet Protocol (VoIP) Phone System project is to replace the agency's phone system infrastructure and endpoints, which is at end of its service life. The new system will ensure voice communications capabilities via a cloud solution that provides business continuity and stable operations.

The NCUA Central Office Heating, Ventilation, and Air Conditioning (HVAC) System Replacement ($0.75 million). The NCUA central office HVAC system replacement project will recapitalize the HVAC system in the agency's central office building, including all cooling towers, air handlers, boilers and HVAC components. The current HVAC system is original to the facility, 24 years old and obsolete. The current system is at the end of its usable life and it is not working efficiently.

The NCUA Austin, Texas Office Building Modernization ($0.15 million). In 2019, the NCUA plans to repair or replace several priority projects at the Austin, Texas office building. These capital improvements are required for the facility to continue routine and safe operations, and align with the life cycle replacement required for critical infrastructure.

VII. Share Insurance Fund Administrative Budget

Overview

The Share Insurance Fund Administrative budget funds direct costs associated with authorized Share Insurance Fund activities. As in 2018, the 2019 budget has been developed to reflect the closure of the Temporary Corporate Credit Union Stabilization Fund into the Share Insurance Fund. The direct charges to the Share Insurance Fund are combined with the NGN program and administrative costs, and represent total estimated costs to the Share Insurance Fund.[9]

The cost of the NCUA Guaranteed Notes (NGN) program and the Corporate System Resolution Program, including costs associated with the administration of those programs, will be funded from the Share Insurance Fund Administrative Budget. These costs have no impact on the NCUA's current and future Operating Fund budgets. The budget for the Share Insurance Fund also includes funding for expenditures previously authorized as direct expenses of the Share Insurance Fund for items such as state examiner computer leases and training. Other direct expenses include contract support for stress testing for certain large credit unions and financial audit support.

The 2019 total Share Insurance Fund Administrative budget is estimated to be $8.4 million, $0.3 million, or 3.5 percent, more than 2018. The budget increase is primarily driven by increased support required for data-driven analytics on stress testing that large credit unions perform, partially offset by savings in other cost categories. The Share Insurance Fund Administrative budget also funds five positions that were formerly part of the Stabilization Fund budget. These costs will enable the NCUA to continue supporting the NGN program, which includes managing legacy assets within the NGN trusts. Legacy assets consist of over 1,000 investment securities that are secured by residential mortgages and other assets.

The 2020 requested budget supports similar workload and resources; however, one additional stress test would be added and is estimated to cost $750 thousand. The total administrative budget estimate is estimated to be $9.1 million.

Budget Category Descriptions and Major Changes

Salaries and Benefits

The employee pay and benefits expense category for the Share Insurance Fund Administrative budget is estimated to be $1.24 million, which represents a decrease of $22,000 compared to 2018. This decrease is due to aligning the budget to actual payroll costs for staff on board. Personnel compensation is 15 percent of the total budget. The financial analysts on the NGN team have specialized technical expertise to manage the remaining $7 billion of legacy assets. Personnel costs are estimated in a manner similar to the operating budget.

Travel

The estimated travel cost of $52,000 is less than one percent of the overall 2019 budget and decreases by 31 percent from last year's budget estimate. These costs cover all of the travel expenses for the five staff that manage and support the NGN program. Two of the five staff are remote employees and are expected to travel periodically to the NCUA's central office.

Administrative Training

Training expenses, which represent less than one percent of the budget, are estimated to be $27,000, a decrease of $3,000 from the 2018 budget based on updated projections of employee professional development plans and specialized training requirements.

Support for the NGN Program (Contract Support)

Contract costs to support the NGN program, which represent 35 percent of the budget, are estimated to be $2.9

[9] Note these direct costs are exclusive of any costs that are shared with the Operating Fund through the Overhead Transfer Rate, and with payments available upon requisition by the Board, without fiscal year limitation, for insurance under section 1787 of this title, and for providing assistance and making expenditures under section 1788 of this title in connection with the liquidation or threatened liquidation of insured credit unions as it may determine to be proper.

million, an increase of $0.3 million from the 2018 level. Funding is needed to fulfill Corporate System Resolution Program requirements and includes outside professional services such as external valuation experts, financial specialists, and accountants.

These experts are needed to assist the NCUA with the following types of services:

• *Consulting Services* in the amount of $1.0 million will support two NCUA offices: Examination and Insurance and the Chief Financial Officer. Services will include quarterly management reviews of asset valuations, as well as analyses of emerging issues. Support for the annual financial audit process and improvements in internal controls will also be provided by contractors. Tasks include: Supporting complex accounting and financial requirements for settlements, sale of legacy assets, parity payments, changing valuation model assumptions, and other asset disposition activities. Additionally, professional services will be used to assist with accounting, tax, financial reporting, and systems support for the corporate Asset Management Estates.

• *Valuation Services* in the amount of $1.1 million to fund valuation support for the NGN legacy assets. As supported by the NGN Oversight Committee, resources are also needed to conduct special analyses, including valuations for determining reasonable market prices for securities to be sold by auction.

• *Software and Data Subscription Services* in the amount of $0.8 million will support technical tools used to provide waterfall models, calculations, and metrics for the structured investment products underlying the NGN portfolio. The service provides coverage of all relevant asset classes, waterfall models that are seasoned and tested throughout the industry, and a broad array of calculations and metrics. Financial data analytics play a critical role in the surveillance, modeling, and pricing of the legacy assets that securitize the NGN Trusts, as well as supporting the management reviews that the NCUA performs on the cash flow projections. Now that some of the NCUA Guaranteed Notes have begun maturing, the NCUA has added data subscription services to provide additional valuation and has added support for the legacy asset disposition process.

• *Other annual subscriptions* provide important services related to surveillance of the portfolio of corporate bonds and mortgage-related bonds. *Independent credit research services* include fundamental capital structure research, credit analyses for surveillance of corporate bond portfolio and monoline insurer exposure, and direct access to various industry experts for discussion on specific credits.

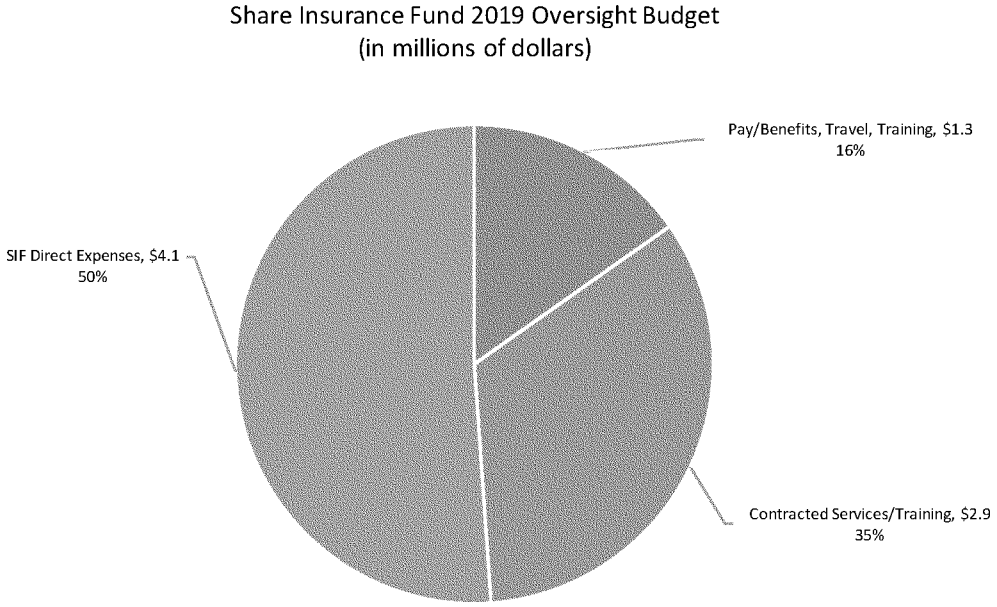
Other Direct Expenses

Other direct expenses of the Share Insurance Fund represent close to 50 percent of the budget, and are estimated to be $4.1 million. The estimated costs for state examiner computer leases and training in the amount of $1.2 million is slightly lower than prior years. This will allow the NCUA to analyze the stress testing that large credit unions perform. By 2020, additional credit unions are anticipated to be subject to stress testing. Financial audit support is also expected to remain the same as prior years.

2019 - 2020 SHARE INSURANCE FUND ADMINISTRATIVE BUDGET

By Cost Category	2018 Board Approved Budget	2019 Requested Budget	2020 Requested Budget	Change (2018- 19)	Change Percent (2018 -19)	2019 FTE	2020 FTE
Employee Pay and Benefits	$ 1,260,000	$ 1,238,000	$ 1,288,000	(22,000)	-1.7%	5	5
Travel	75,000	52,000	52,000	(23,000)	-30.7%		
Administrative (NGN Staff Training)	30,000	27,000	27,000	(3,000)	-10.0%		
Support for NCUA Guaranteed Note Program:	2,586,000	2,907,000	2,907,000	321,000	12.4%		
Consulting	695,000	1,015,000	1,015,000	320,000	46.0%		
Valuation Services	1,080,000	1,100,000	1,100,000	20,000	1.9%		
Software/Data Subscriptions	811,000	792,000	792,000	(19,000)	-2.3%		
Share Insurance Fund Direct Expenses:	4,140,000	4,147,000	4,847,000	7,000	0.2%		
State Examination computer leases	500,000	175,000	175,000	(325,000)	-65.0%		
State Examination Training	1,025,000	992,000	992,000	(33,000)	-3.2%		
Stress testing for large credit unions	2,165,000	2,500,000	3,200,000	335,000	15.5%		
Financial Audit Support	450,000	450,000	450,000	-	0.0%		
Bank Charges		30,000	30,000	30,000	100.0%		
Total	$ 8,091,000	$ 8,371,000	$ 9,121,000	$ 280,000	3.5%	5	5

The NCUA website has a dedicated section that provides financial reports for the Share Insurance Fund,[10] and a separate page that explains the NCUA Guaranteed Notes Program and provides comprehensive reporting and analysis on the legacy assets.[11]



VIII. Financing the NCUA Programs

Overview

As part of the annual budgetary process, the NCUA remains mindful that its operating funding comes directly from federal and state chartered credit unions. The agency strives to ensure that any allocation of these funds follows a thorough review of the necessity of the expenditures and whether programs are operating in an efficient, effective, transparent, and fully accountable manner.

To achieve its statutory mission, the NCUA incurs various expenses, including those involved in examining and supervising federally insured credit unions. The NCUA Board adopts an Operating Budget, including the Capital Budget, in the fall of each year to fund the vast majority of the costs of operating the agency.[12] The Federal Credit Union Act authorizes two primary sources to fund the Operating Budget:

(1) Requisitions from the Share Insurance Fund ''for such administrative and other expenses incurred in carrying out the purposes of [Title II of the Act] as [the Board] may determine to be proper'';[13] and

(2) ''fees and assessments (including income earned on insurance deposits) levied on insured credit unions under [the Act].''[14] Among the fees levied under the Act are annual Operating Fees, which are required for federal credit unions under 12 U.S.C. 1755 ''and may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the Act,] including the examination and supervision of [federal credit unions].''

Taken together, these dual authorities effectively require the Board to determine which expenses are appropriately paid from each source while giving the Board broad discretion in allocating expenses.

In 1972, the Government Accountability Office recommended the NCUA adopt a method for properly allocating Operating Budget costs—that is, the portion of the NCUA's budget funded by requisitions from the Share Insurance Fund and the portion covered by Operating Fees paid by federal credit unions.[15] The NCUA has since used an allocation methodology, known as the Overhead Transfer Rate (OTR), to determine how much of the Operating Budget to fund with a requisition from the Share Insurance Fund.

To allocate agency expenses between these two primary funding sources, the NCUA uses the OTR methodology. The OTR is the formula the NCUA uses to allocate insurance-related expenses to the Share Insurance Fund under Title II. Almost all other operating expenses are collected through annual Operating Fees paid by federal credit unions.[16]

Two statutory provisions directly limit the Board's discretion with respect to Share Insurance Fund requisitions for the NCUA's Operating Budget and, hence, the OTR. First, expenses funded from the Share Insurance Fund must carry out the purposes of Title II of the Act, which relate to share insurance.[17] Second, the NCUA may not fund its entire Operating Budget through charges to the Share Insurance Fund.[18] The NCUA has not imposed additional policy or regulatory limitations on its discretion for determining the OTR.

[10] See: *https://www.ncua.gov/services/Pages/share-insurance/reports.aspx.*

[11] See: *https://www.ncua.gov/regulation-supervision/Pages/guaranteed-notes.aspx.*

[12] Some costs are directly charged to the Share Insurance Fund when appropriate to do so. For example, costs for training and equipment provided to State Supervisory Authorities are directly charged to the Share Insurance Fund.

[13] 12 U.S.C. 1783(a).

[14] 12 U.S.C. 1766(j)(3). Other sources of income for the Operating Budget have included interest income, funds from publication sales, parking fee income, and rental income.

[15] *http://www.gao.gov/assets/210/203181.pdf.*

[16] Annual Operating Fees must ''be determined according to a schedule, or schedules, or other method determined by the NCUA Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [Act] and to the ability of [FCUs] to pay the fee.'' 1755(b).

[17] 12 U.S.C. 1783(a).

[18] The Act in 12 U.S.C. 1755(a) states, ''[i]n accordance with rules prescribed by the Board, each [federal credit union] shall pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.'' See also 12 U.S.C. 1766(j)(3).

Overhead Transfer Rate (OTR) Methodology

The NCUA undertook a multi-year process to simplify and make more transparent its OTR methodology.[19] The OTR is designed to cover the NCUA's costs of examining and supervising the risk to the Share Insurance Fund posed by all federally insured credit unions, as well as the costs of administering the fund. The OTR represents the percentage of the agency's operating budget paid for by a transfer from the Share Insurance Fund. Federally insured credit unions are not billed for, and do not have to remit, the OTR amount; instead, it is transferred directly to the Operating Fund from the Share Insurance Fund. This transfer, therefore, represents a cost to all federally insured credit unions.

The NCUA Board approved the current methodology for calculating the OTR at its November 2017 open meeting. The current methodology is principles-based, simpler, more equitable and transparent, and will result in lower administrative costs.

The OTR formula is based on the following underlying principles to allocate agency operating costs:

1. Time spent examining and supervising federal credit unions is allocated as 50 percent insurance related.[20]

2. All time and costs the NCUA spends supervising or evaluating the risks posed by federally insured state-chartered credit unions or other entities the NCUA does not charter or regulate (for example, third-party vendors and CUSOs) is allocated as 100 percent insurance related.[21]

3. Time and costs related to the NCUA's role as charterer and enforcer of consumer protection and other non-insurance based laws governing the operation of credit unions (like field of membership requirements) are allocated as 0 percent insurance related.[22]

4. Time and costs related to the NCUA's role in administering federal share insurance and the Share Insurance Fund are allocated as 100 percent insurance related.[23]

These four principles are applied to the activities and costs of the agency, which results in the portion of the agency's Operating Budget that is transferred from the Share Insurance Fund. Based on the Board-approved methodology, the OTR for 2019 is estimated to be 60.4 percent; thus, 60.4 percent of the total operating budget is estimated to be paid out of the Share Insurance Fund. The remaining 39.6 percent of the Operating Budget is estimated be paid for through the FCU Operating Fee. The explicit and implicit distribution of total Operating Budget costs for FCUs and federally insured, state-chartered credit unions (FISCUs) is as follows:

Est. share of the operating budget covered by:	FCUs	FISCUs
FCU Operating Fee	39.6%	0.0%
OTR × Percent of Insured Shares	31.0% (60.4% × 51.3%)	29.4% (60.4% × 48.7%)
Total	70.6%	29.4%

In terms of accounting for funds transferred from the Share Insurance Fund to the Operating Fund, the OTR is applied to actual expenses incurred each month. Therefore, the rate calculated by the OTR formula is multiplied by each month's actual operating expenses and charged to the Share Insurance Fund. Because of this monthly reconciliation to actual operating expenditures, when the NCUA's expenditures are less than budgeted, the amount charged to the Share Insurance Fund is also less—and those lower expenditures benefit both federally chartered and state charted credit unions.

The following chart illustrates the share of the Operating Budget paid by Federally Insured Credit Unions (FCUs, 70.6%) and Federally Insured, State-Chartered Credit Unions (FISCUs, 29.4%).

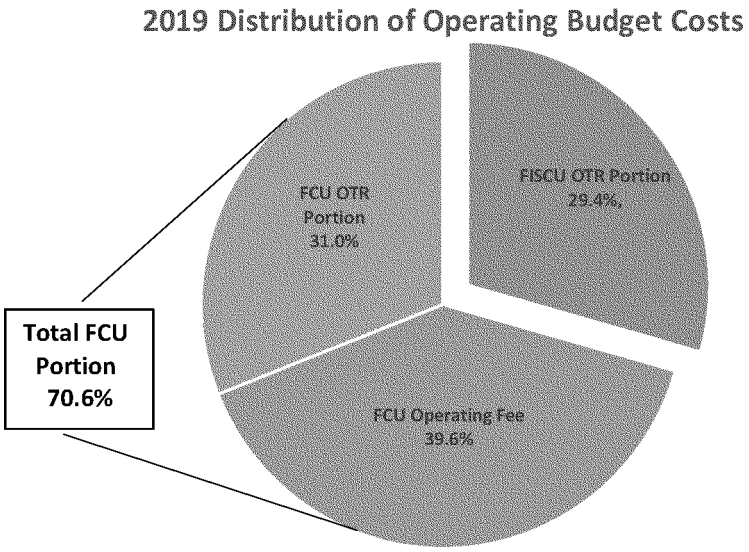
[19] 82 FR 55644 (Nov. 22, 2017).

[20] The 50 percent allocation mathematically emulates an examination and supervision program design where the NCUA would alternate examinations, and/or conduct joint examinations, between its insurance function and its prudential regulator function if they were separate units within the NCUA. It reflects an equal sharing of supervisory responsibilities between the NCUA's dual roles as charterer/prudential regulator and insurer given both roles have a vested interest in the safety and soundness of federal credit unions. It is consistent with the alternating examinations FDIC and state regulators conduct for insured state-chartered banks as mandated by Congress. Further, it reflects that the NCUA is responsible for managing risk to the Share Insurance Fund and therefore should not rely solely on examinations and supervision conducted by the prudential regulator.

[21] The NCUA does not charter state-chartered credit unions nor serve as their prudential regulator. The NCUA's role with respect to federally insured state-chartered credit unions is as insurer. Therefore, all examination and supervision work and other agency costs attributable to insured state-chartered credit unions is allocated as 100 percent insurance related.

[22] As the federal agency with the responsibility to charter federal credit unions and enforce non-insurance related laws governing how credit unions operate in the marketplace, the NCUA resources allocated to these functions are properly assigned to its role as charterer/prudential regulator.

[23] The NCUA conducts liquidations of credit unions, insured share payouts, and other resolution activities in its role as insurer. Also, activities related to share insurance, such as answering consumer inquiries about insurance coverage, are a function of the NCUA's role as insurer.



Operating Fee

The Board delegated authority to the Chief Financial Officer to administer the methodology approved by the Board for calculating the Operating Fees, and to set the fee schedule as calculated per the approved methodology outlined in this section. There is no change to the underlying approved Operating Fee methodology for 2019; the change in the assessments for 2019 are due to changes in the OTR rate and to indexing the fee schedule for projected asset growth.

For 2019, based on the OTR methodology discussed above, the resulting share of the budget that is funded from the Operating Fee is $140.859 million. This equates to 0.0185 percent of the estimated federal credit union assets for December 2018. The overall increase for the operating fee is 2.2 percent over 2018.

The Operating Fee will be assessed to federal credit unions based on estimated year-end assets. Credit unions with assets less than $1 million will not be assessed an Operating Fee. To set the assessment scale for 2019, federal credit union asset growth will be projected through December 31, 2018. Based on the June 30, 2018, Call Report data, annual growth is projected to be 6.2 percent at year end. The asset level dividing points will be increased by this same projected growth rate. Assets are indexed annually to preserve the same relative relationship of the scale to applicable asset base.

To establish the rate applicable to each asset level, the factors outlined in the table below result in an average Operating Fee rate increase of 2.2 percent for natural person federal credit unions. The corporate federal credit union rate scale remains unchanged from prior years.

To illustrate the rate impact for federal credit unions with assets under $1.5 billion, the fee increases from $264 per one million dollars of assets, to $270 per one million dollars of assets. This is an increase of $6 per million dollars of assets, or 2.2 percent.

Federal credit union assets between $1.5 billion and $4.5 billion would be assessed at a rate of $78.69 per million, and assets above $4.5 billion would be assessed at $26.28 per million. As noted above, these tiers were indexed to the 6.2 percent projected asset growth, and the rates are increased by 2.2 percent.

The following tables illustrate the methodology and calculations used to develop the Operating Fee.

PROPOSED 2019 OPERATING FEE SCALE

2018 Natural Person Federal Credit Union Scale

Asset Level		Operating Fee Assessment			
$0	$1,000,000	$0.00			
$1,000,000	$1,425,977,345	$0.00	+ 0.00026412	X total assets over	$0.00
$1,425,977,345	$4,314,986,023	$376,629	+ 0.00007698	X total assets over	$1,425,977,345
$4,314,986,023	and over	$599,025	+ 0.00002571	X total assets over	$4,314,986,023

2019 (Proposed) Natural Person Federal Credit Union Scale

Projected FCU asset growth rate	6.2%	Change in asset level dividing points
Operating fee rate change	2.2%	Change in assessment rate percentages

Asset Level		Operating Fee Assessment			
$0	$1,000,000	$0.00			
$1,000,000	$1,514,387,940	$0.00	+ 0.00026998	X total assets over	$0.00
$1,514,387,940	$4,582,515,156	$408,854	+ 0.00007869	X total assets over	$1,514,387,940
$4,582,515,156	and over	$650,285	+ 0.00002628	X total assets over	$4,582,515,156

FY2019 (Proposed) Corporate Federal Credit Union Scale

Asset Level		Operating Fee Assessment			
$50,000,000	$100,000,000	$11,034	+ 0.00019870	X total assets over	$50,000,000
$100,000,000	and over	$20,969	+ 0.00001230	X total assets over	$100,000,000

2019 OPERATING FEE REQUIREMENTS AND OPERATING FEE METHODOLOGY

Operating Fee Schedule explanation:

	Natural Person Federal Credit Union Operating Fee Calculation Factors and Explanation	Calculation Formula	2019 ($000s)
1	**Proposed Annual Operating Fund Budget** amount determines the baseline fee requirement.		**$ 304.398**
2	**Remove King Street Station Note from Calculation,** because the Share Insurance Fund cannot fund this expense since the building loan is from the Share Insurance Fund.	Subtract amount of KSS note payment	**$ (1.340)**
3	**Operating Fund Budget to apply OTR**	Sum lines 1 -2	**$ 303.058**
4	**Overhead Transfer Rate** determines the amount of the budget to be reimbursed by the Share Insurance Fund, pursuant to the Board-approved methodology. This amount is subtracted from the proposed budget amount.	OTR% x line 3	$ (183.047)
5	**Interest Income** projected for the year is estimated based on the latest financial statements, and is subtracted from the budget.		$ (1.500)
6	**Miscellaneous** (rents, publication fees, FOIA fees) is estimated based on the latest financial statements, and is subtracted from the budget.		$ (0.772)
7	**Net** Adjustment to Budget	Sum lines 3 - 6	**$ 117.739**
8	Reduction of any **Operating Fund** adjustment	*reduce cash collections*	
Removed non-cash items of depreciation and accrued annual leave previously adjusted since these non-cash line items are now excluded as part of the budget.			
9	**New investment projects requested in Capital Budget**	*increase cash collections*	$ 22.000
10	**Annual payment of King Street Station Note Payable** (scheduled principal payments)		$ 1.340
11	**Budgeted Operating Fee/Capital Requirements**	Sum lines 7 - 10	**$ 141.079**
12	Corporate federal credit union fees are collected and subtracted from natural person credit union fee requirement (based on corporate credit union scale)		$ (0.220)
13	**Natural Person Federal Credit Union Operating Fees Required**	Sum lines 11 - 12	**$ 140.859**
14	**Estimated Fee collections** for end of year (December 31). This projection uses the current operating fee scale with estimated asset growth from an internal NCUA economic forecasting model . Based on the June 30 assets, the year end assets are projected using the estimated asset growth to calculate fee collection estimates for the following year. The operating fee assessment is applied against the year end credit union asset value.		$ (137.800)
15	Difference between estimated operating fee collections and projected collections based on estimated asset growth.	Difference between lines 13 and 14	**$ 3.059**
16	**Average Rate Adjustment Indicated** (line 15 divided by line 14)	Line 15 divided by 14	**2.22%**

B: Operating Fee Scale explanation:

Projected federal credit union asset growth = change in asset level dividing points. Every year, the asset level scale is adjusted by the same percentage as the estimated growth rate.	Percent growth noted on line 14
Operating fee rate change = Change in assessment rate percentage	same as Line 16
The **Corporate Credit Union scale** remains unchanged from year to year as the number of CCUs and the collections continue to decrease to an immaterial amount.	

IX. Appendix A: Supplemental Budget Information

Operating Budget by Strategic Goal

Strategic Goal	2019 Proposeed Budget	
	Dollars (in millions)	Staffing (FTE*)
Goal 1: Ensure a safe and sound credit union system	$206.1	942.2
Goal 2:Provide a regulatory framework that is transparent, efficient and improves consumer access	$29.0	116.8
Goal 3: Maximize organizational performance to enable mission success	$69.3	119.0
Total	$304.4	1,178.0

Expenses for the Offices of the Board, Executive Director, Inspector General, Public and Congressional Affairs, and Chief Financial Officer are allocated across all strategic goals.
***NCUA's 2019/20 positions are funded by three different sources: the Central Liquidity Facility funds 3 full-time equivalents, and the Share Insurance Fund funds 5 full-time equivalents. NCUA's Operating Fund funds the remaining 1,173 full-time equivalents.**

Office Budget Summary

2019 - 2020 NCUA OPERATING BUDGET										
Office	2018 Board Approved Budget	2019 Requested Budget	2018 - 2019 Change		2020 Requested Budget	2019 - 2020 Change		Authorized Positions		
								2018	2019	2020
Eastern Region *	-	59,006,000	n/a		61,525,000	2,519,000	4.3%	303	288	288
Southern Region*	-	45,356,000	n/a		47,243,000	1,887,000	4.2%	320	231	231
Western Region*	-	49,363,000	n/a		51,405,000	2,042,000	4.1%	151	237	237
Office of National Examinations and Supervision	11,576,000	12,700,000	1,124,000	9.7%	13,224,000	524,000	4.1%	45	45	45
Supervision and Examination	***166,865,000***	***166,425,000***	***(440,000)***	***-0.3%***	***173,397,000***	***6,972,000***	***4.2%***	***819***	***801***	***801***
Office of the Board	2,695,000	2,742,000	47,000	1.7%	2,868,000	126,000	4.6%	11	11	11
Office of the Executive Director	2,047,000	1,931,000	(116,000)	-5.7%	2,013,000	82,000	4.2%	6	6	6
Federal Financial Institutions Examination Council	1,280,000	1,390,000	110,000	8.6%	1,390,000	-	0.0%			
Office of Business Innovations	1,782,000	2,975,000	1,193,000	66.9%	3,117,000	142,000	4.8%	9	12	12
Office of Continuity and Security Management	4,357,000	4,271,000	(86,000)	-2.0%	4,404,000	133,000	3.1%	12	12	12
Office of Minority and Women Inclusion	3,486,000	3,478,000	(8,000)	-0.2%	3,596,000	118,000	3.4%	10	10	10
Office of the Chief Economist	1,997,000	2,282,000	285,000	14.3%	2,387,000	105,000	4.6%	7	8	8
Office of Consumer Financial Protection	4,970,000	5,252,000	282,000	5.7%	5,494,000	242,000	4.6%	24	24	24
Office of the Chief Financial Officer	19,593,000	20,485,000	892,000	4.6%	21,008,000	523,000	2.6%	53	53	53
King Street Station Note	1,340,000	1,340,000	-	0.0%	1,340,000	-	0.0%			
Cross-cutting agency expenses	(603,000)	(1,420,000)	(817,000)	135.5%	(1,820,000)	(400,000)	28.2%			
Office of the Chief Information Officer	33,250,000	37,829,000	4,579,000	13.8%	38,348,000	519,000	1.4%	44	44	44
Credit Union Resources and Expansion	10,366,000	8,459,000	(1,907,000)	-18.4%	8,840,000	381,000	4.5%	36	36	36
Office of Examination & Insurance **	12,664,000	13,611,000	947,000	7.5%	14,197,000	586,000	4.3%	53	54	54
Office of General Counsel	10,725,000	11,973,000	1,248,000	11.6%	12,565,000	592,000	4.9%	44	47	47
Office of Inspector General	3,720,000	3,776,000	56,000	1.5%	3,903,000	127,000	3.4%	10	10	10
Office of Human Resources	15,752,000	15,757,000	5,000	0.0%	17,193,000	1,436,000	9.1%	43	43	43
Office of Public and Congressional Affairs	1,811,000	1,842,000	31,000	1.7%	1,924,000	82,000	4.5%	7	7	7
Mission Support	***131,232,000***	***137,973,000***	***6,741,000***	5.1%	***142,767,000***	***4,794,000***	***3.5%***	***369***	***377***	***377***
Total*	**$ 298,097,000**	**$ 304,398,000**	**$ 6,301,000**	**2.1%**	**$ 316,164,000**	**$ 11,766,000**	**3.9%**	**1,188**	**1,178**	**1,178**

* Regional budget comparisons from 2018 to 2019 are not comparable with agency reorganization. 2018 Board Approved Budget included $30.8 million for Region 1, $32.1 million for Region 2, $31.3 million for Region 3, $32.1 million for Region 4, and $33.7 million for Region 5.

** Budget includes 8 FTE related to other NCUA funds; 3 FTE are paid for by the Central Liquidity Facility and 5 FTE are paid for by the Share Insurance Fund.

Board Budgets

OFFICE OF THE CHAIRMAN: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	2020 Requested Budget	2019-2020 Change	Change Percent
FTE	**3.0**	**3.0**	**-**	**-**	**3.0**	**-**	**-**
Employee Compensation	705,859	713,780	7,920	1.1%	750,243	36,464	5.1%
Salaries	525,303	529,408	4,105	0.8%	554,440	25,032	4.7%
Benefits	180,557	184,372	3,815	2.1%	195,804	11,431	6.2%
Travel	70,000	60,000	(10,000)	-14.3%	60,000	-	0.0%
Rent /Comm/Util	150	250	100	66.7%	250	-	0.0%
Administrative	10,000	10,000	-	0.0%	10,000	-	0.0%
Contracted Services	42,000	27,000	(15,000)	-35.7%	27,000	-	0.0%
Total	**$ 828,009**	**$ 811,030**	**$ (16,980)**	**-2.1%**	**$ 847,493**	**$ 36,464**	**4.5%**

BOARD MEMBER A: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	2020 Requested Budget	2019-2020 Change	Change Percent
FTE	**3.0**	**3.0**	**-**	**-**	**3.0**	**-**	**-**
Employee Compensation	661,980	670,559	8,579	1.3%	704,611	34,052	5.1%
Salaries	489,288	494,397	5,109	1.0%	517,774	23,377	4.7%
Benefits	172,691	176,162	3,471	2.0%	186,838	10,676	6.1%
Travel	45,000	40,000	(5,000)	-11.1%	40,000	-	0.0%
Rent /Comm/Util	500	500	-	0.0%	500	-	0.0%
Administrative	6,000	9,000	3,000	50.0%	9,000	-	0.0%
Contracted Services	14,000	28,000	14,000	100.0%	28,000	-	0.0%
Total	**$ 727,480**	**$ 748,059**	**$ 20,579**	**2.8%**	**$ 782,111**	**$ 34,052**	**4.6%**

BOARD MEMBER B: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	2020 Requested Budget	2019-2020 Change	Change Percent
FTE	**3.0**	**3.0**	**-**	**-**	**3.0**	**-**	**-**
Employee Compensation	629,999	670,559	40,560	6.4%	704,611	34,052	5.1%
Salaries	460,000	494,397	34,397	7.5%	517,774	23,377	4.7%
Benefits	170,000	176,162	6,162	3.6%	186,838	10,676	6.1%
Travel	40,000	40,000	-	0.0%	40,000	-	0.0%
Rent /Comm/Util	500	500	-	0.0%	500	-	0.0%
Administrative	6,000	9,000	3,000	50.0%	9,000	-	0.0%
Contracted Services	40,000	28,000	(12,000)	-30.0%	28,000	-	0.0%
Total	**$ 716,499**	**$ 748,059**	**$ 31,560**	**4.4%**	**$ 782,111**	**$ 34,052**	**4.6%**

Note: minor rounding differences may occur in totals.

Office Budgets

EASTERN* REGION: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget^	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE		**288.0**	**N/A**	**N/A**	**288.0**	**-**	**-**
Employee Compensation		51,030,573	N/A	N/A	53,549,835	2,519,261	4.9%
Salaries		36,576,732	N/A	N/A	38,306,192	1,729,460	4.7%
Benefits		14,453,841	N/A	N/A	15,243,643	789,801	5.5%
Travel		6,800,000	N/A	N/A	6,800,000	-	0.0%
Rent /Comm/Util		726,163	N/A	N/A	726,163	-	0.0%
Administrative		252,080	N/A	N/A	252,080	-	0.0%
Contracted Services		197,450	N/A	N/A	197,450	-	0.0%
Total		**$ 59,006,266**	**N/A**	**N/A**	**$ 61,525,528**	**$ 2,519,261**	**4.3%**

SOUTHERN* REGION: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget^	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE		**231.0**	**N/A**	**N/A**	**231.0**	**-**	**-**
Employee Compensation		38,519,296	N/A	N/A	40,406,555	1,887,259	4.9%
Salaries		27,420,801	N/A	N/A	28,716,394	1,295,594	4.7%
Benefits		11,098,495	N/A	N/A	11,690,160	591,665	5.3%
Travel		6,100,000	N/A	N/A	6,100,000	-	0.0%
Rent /Comm/Util		178,738	N/A	N/A	178,738	-	0.0%
Administrative		193,075	N/A	N/A	193,075	-	0.0%
Contracted Services		364,500	N/A	N/A	364,500	-	0.0%
Total		**$ 45,355,609**	**N/A**	**N/A**	**$ 47,242,868**	**$ 1,887,259**	**4.2%**

WESTERN* REGION: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget^	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE		**237.0**	**N/A**	**N/A**	**237.0**	**-**	**-**
Employee Compensation		41,693,060	N/A	N/A	43,735,573	2,042,513	4.9%
Salaries		29,680,900	N/A	N/A	31,083,075	1,402,174	4.7%
Benefits		12,012,160	N/A	N/A	12,652,498	640,338	5.3%
Travel		6,550,000	N/A	N/A	6,550,000	-	0.0%
Rent /Comm/Util		625,000	N/A	N/A	625,000	-	0.0%
Administrative		290,000	N/A	N/A	290,000	-	0.0%
Contracted Services		205,000	N/A	N/A	205,000	-	0.0%
Total		**$ 49,363,060**	**N/A**	**N/A**	**$ 51,405,573**	**$ 2,042,513**	**4.1%**

** See above for a discussion of workload at Regional Offices. Note that Southern Region includes AMAC operations. ^ See above for explanation of Regional Office budgets in 2018*

Note: minor rounding differences may occur in totals.

OFFICE OF THE EXECUTIVE DIRECTOR: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE	**6.0**	**6.0**	**-**	**-**	**6.0**	**-**	**-**
Employee Compensation	1,746,709	1,621,460	(125,249)	-7.2%	1,703,702	82,242	5.1%
Salaries	1,317,470	1,194,062	(123,408)	-9.4%	1,250,521	56,459	4.7%
Benefits	429,239	427,398	(1,841)	0.0%	453,181	25,783	0.0%
Travel	35,000	45,000	10,000	28.6%	45,000	-	0.0%
Rent /Comm/Util	20,500	20,250	(250)	-1.2%	20,250	-	0.0%
Administrative	1,305,000	1,415,000	110,000	8.4%	1,415,000	-	0.0%
ED Core	25,000	25,000	-	0.0%	25,000	-	0.0%
FFIEC	1,280,000	1,390,000	110,000	8.6%	1,390,000	-	0.0%
Contracted Services	219,500	219,500	-	0.0%	219,500	-	0.0%
Total	**$ 3,326,709**	**$ 3,321,210**	**$ (5,499)**	**-0.2%**	**$ 3,403,452**	**$ 82,242**	**2.5%**

OFFICE OF BUSINESS INNOVATION: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE	**9.0**	**12.0**	**3.0**	**33%**	**12.0**	**-**	**-**
Employee Compensation	1,682,000	2,767,775	1,085,775	64.6%	2,910,465	142,690	5.2%
Salaries	1,232,000	2,071,694	839,694	68.2%	2,169,650	97,956	4.7%
Benefits	450,000	696,081	246,081	54.7%	740,815	44,734	6.4%
Travel	85,000	180,500	95,500	112.4%	180,500	-	0.0%
Rent /Comm/Util	-	2,400	2,400	0.0%	2,400	-	0.0%
Administrative	-	2,000	2,000	0.0%	2,000	-	0.0%
Contracted Services	15,000	22,000	7,000	0.0%	22,000	-	0.0%
Total	**$ 1,782,000**	**$ 2,974,675**	**$ 1,192,675**	**66.9%**	**$ 3,117,365**	**$ 142,690**	**4.8%**

OFFICE OF CONTINUITY AND SECURITY MANAGEMENT: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE	**12.0**	**12.0**	**-**	**-**	**12.0**	**-**	**-**
Employee Compensation	2,492,727	2,602,123	109,396	4.4%	2,734,423	132,300	5.1%
Salaries	1,840,595	1,920,838	80,243	4.4%	2,011,661	90,823	4.7%
Benefits	652,132	681,285	29,153	4.5%	722,762	41,477	6.1%
Travel	39,800	34,000	(5,800)	-14.6%	34,000	-	0.0%
Rent /Comm/Util	-	35,000	35,000	0.0%	35,000	-	0.0%
Administrative	30,000	30,000	-	0.0%	30,000	-	0.0%
Contracted Services	1,794,642	1,570,353	(224,289)	-12.5%	1,570,353	-	0.0%
Total	**$ 4,357,169**	**$ 4,271,476**	**$ (85,693)**	**-2.0%**	**$ 4,403,776**	**$ 132,300**	**3.1%**

Note: minor rounding differences may occur in totals

OFFICE OF MINORITY AND WOMEN INCLUSION: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE	**10.0**	**10.0**	**-**	**-**	**10.0**	**-**	**-**
Employee Compensation	2,159,801	2,300,654	140,853	6.5%	2,418,238.9	117,585	5.1%
Salaries	1,604,302	1,707,197	102,894	6.4%	1,787,918	80,721	4.7%
Benefits	555,499	593,457	37,959	6.8%	630,321	36,864	6.2%
Travel	74,399	75,000	601	0.8%	75,000	-	0.0%
Rent /Comm/Util	5,500	7,600	2,100	38.2%	7,600	-	0.0%
Administrative	115,650	141,658	26,008	22.5%	141,658	-	0.0%
Contracted Services	1,130,663	953,500	(177,163)	-15.7%	953,500	-	0.0%
Total	**$ 3,486,013**	**$ 3,478,412**	**$ (7,601)**	**-0.2%**	**$ 3,595,997**	**$ 117,585**	**3.4%**

OFFICE OF THE CHIEF ECONOMIST: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE	**7.0**	**8.0**	**1.0**	**14%**	**8.0**	**-**	**-**
Employee Compensation	1,748,956	2,035,603	286,647	16.4%	2,140,391	104,788	5.1%
Salaries	1,310,090	1,521,399	211,309	16.1%	1,593,335	71,936	4.7%
Benefits	438,866	514,204	75,338	17.2%	547,056	32,852	6.4%
Travel	28,000	27,000	(1,000)	-3.6%	27,000	-	0.0%
Rent /Comm/Util	500	500	-	0.0%	500	-	0.0%
Administrative	215,839	215,839	-	0.0%	215,839	-	0.0%
Contracted Services	3,375	3,000	(375)	-11.1%	3,000	-	0.0%
Total	**$ 1,996,670**	**$ 2,281,942**	**$ 285,272**	**14.3%**	**$ 2,386,730**	**$ 104,788**	**4.6%**

OFFICE OF CONSUMER FINANCIAL PROTECTION: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE	**24.0**	**24.0**	**-**	**-**	**24.0**	**-**	**-**
Employee Compensation	4,602,243	4,809,476	207,233	4.5%	5,051,502	242,026	5.0%
Salaries	3,361,813	3,513,939	152,126	4.5%	3,680,089	166,150	4.7%
Benefits	1,240,431	1,295,537	55,107	4.4%	1,371,413	75,876	5.9%
Travel	269,073	340,946	71,873	26.7%	340,946	-	0.0%
Rent /Comm/Util	24,245	38,250	14,005	57.8%	38,250	-	0.0%
Administrative	26,403	31,293	4,890	18.5%	31,293	-	0.0%
Contracted Services	48,572	32,004	(16,568)	-34.1%	32,004	-	0.0%
Total	**$ 4,970,537**	**$ 5,251,969**	**$ 281,433**	**5.7%**	**$ 5,493,996**	**$ 242,026**	**4.6%**

Note: minor rounding differences may occur in totals

OFFICE OF THE CHIEF FINANCIAL OFFICER: 2018-2019 BUDGET SUMMARY							
	2018 Board	2019 Requested	2018-2019	Change	2020	2019-2020	Change
FTE	**53.0**	**53.0**	**-**	**-**	**53.0**	**-**	**-**
Employee Compensation	10,160,644	10,394,574	233,930	2.3%	10,917,587	523,013	5.0%
Salaries	7,457,474	7,606,963	149,489	2.0%	7,966,243	359,280	4.7%
Benefits	2,703,171	2,787,611	84,440	3.1%	2,951,343	163,732	5.9%
Travel	65,000	74,000	9,000	13.8%	74,000	-	0.0%
Rent /Comm/Util	2,045,500	2,048,000	2,500	0.1%	2,048,000	-	0.0%
OCFO	705,500	708,000	2,500		708,000	-	
King Station Note	1,340,000	1,340,000	-		1,340,000	-	
Administrative	1,112,850	1,050,000	(62,850)	-5.6%	1,050,000	-	0.0%
Contracted Services	7,549,000	8,258,000	709,000	9.4%	8,258,000	-	0.0%
Crosscutting	(603,000)	(1,420,000)	(817,000)	135.5%	(1,820,000)	-	
Total	**$ 20,329,994**	**$ 20,404,574**	**$ 74,580**	**0.4%**	**$ 20,527,587**	**$ 123,013**	**0.6%**

OFFICE OF THE CHIEF INFORMATION OFFICER: 2018-2019 BUDGET SUMMARY CHECK							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE	**44.0**	**44.0**	**-**	**-**	**44.0**	**-**	**-**
Employee Compensation	9,362,994	10,204,039	841,045	9.0%	10,723,537	519,498	5.1%
Salaries	6,934,509	7,572,503	637,995	9.2%	7,929,136	356,633	4.7%
Benefits	2,428,486	2,631,536	203,050	8.4%	2,794,401	162,865	6.2%
Travel	161,950	165,000	3,050	1.9%	165,000	-	0.0%
Rent /Comm/Util	3,907,000	4,015,008	108,008	2.8%	4,015,008	-	0.0%
Administrative	2,563,870	2,978,445	414,575	16.2%	2,978,445	-	0.0%
Contracted Services	17,253,940	20,466,221	3,212,281	18.6%	20,466,221	-	0.0%
Total	**$ 33,249,754**	**$ 37,828,713**	**$ 4,578,959**	**13.8%**	**$ 38,348,211**	**$ 519,498**	**1.4%**

OFFICE OF NATIONAL EXAMINATIONS AND SUPERVISION: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE	**45.0**	**45.0**	**-**	**-**	**45.0**	**-**	**-**
Employee Compensation	9,094,944	10,402,148	1,307,204	14.4%	10,926,113	523,964	5.0%
Salaries	6,567,606	7,607,351	1,039,746	15.8%	7,967,050	359,699	4.7%
Benefits	2,527,339	2,794,797	267,458	10.6%	2,959,062	164,266	5.9%
Travel	1,808,189	1,600,000	(208,189)	-11.5%	1,600,000	-	0.0%
Rent /Comm/Util	16,805	21,012	4,207	25.0%	21,012	-	0.0%
Administrative	61,057	52,201	(8,856)	-14.5%	52,201	-	0.0%
Contracted Services	594,965	624,455	29,490	5.0%	624,455	-	0.0%
Total	**$ 11,575,960**	**$ 12,699,816**	**$ 1,123,856**	**9.7%**	**$ 13,223,781**	**$ 523,964**	**4.1%**

Note: minor rounding differences may occur in totals

OFFICE OF CREDIT UNION RESOURCE AND EXPANSION: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	2020 Requested Budget	2019-2020 Change	Change Percent
FTE	**36.0**	**36.0**	**-**	**-**	**36.0**	**-**	**-**
Employee Compensation	9,522,877	7,536,322	(1,986,554)	-20.9%	7,917,083	380,760	5.1%
Salaries	7,010,978	5,533,197	(1,477,781)	-21.1%	5,794,587	261,390	4.7%
Benefits	2,511,898	2,003,125	(508,773)	-20.3%	2,122,495	119,370	6.0%
Travel	538,000	620,000	82,000	15.2%	620,000	-	0.0%
Rent /Comm/Util	17,750	14,750	(3,000)	-16.9%	14,750	-	0.0%
Administrative	23,250	30,750	7,500	32.3%	30,750	-	0.0%
Contracted Services	264,400	257,000	(7,400)	-2.8%	257,000	-	0.0%
Total	**10,366,277**	**8,458,822**	**(1,907,454)**	**-18.4%**	**8,839,583**	**$ 380,760**	**4.5%**

OFFICE OF EXAMINATION AND INSURANCE: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	2020 Requested Budget	2019-2020 Change	Change Percent
FTE	**53.0**	**54.0**	**1.0**	**1.9%**	**54.0**	**-**	**-**
Employee Compensation	10,931,964	11,464,514	532,550	4.9%	12,050,629	586,115	5.1%
Salaries	8,124,044	8,509,711	385,667	4.7%	8,912,077	402,365	4.7%
Benefits	2,807,919	2,954,803	146,883	5.2%	3,138,553	183,750	6.2%
Travel	1,001,643	995,000	(6,643)	-0.7%	995,000	-	0.0%
Rent /Comm/Util	14,200	17,320	3,120	22.0%	17,320	-	0.0%
Administrative	267,216	621,500	354,284	132.6%	621,500	-	0.0%
Contracted Services	448,500	513,000	64,500	14.4%	513,000	-	0.0%
Total	**$ 12,663,523**	**$ 13,611,334**	**$ 947,811**	**7.5%**	**$ 14,197,449**	**$ 586,115**	**4.3%**

OFFICE OF GENERAL COUNSEL: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	2020 Requested Budget	2019-2020 Change	Change Percent
FTE	**44.0**	**47.0**	**3.0**	**6.8%**	**47.0**	**-**	**-**
Employee Compensation	10,226,711	11,496,869	1,270,158	12.4%	12,088,145	591,276	5.1%
Salaries	7,644,274	8,584,634	940,361	12.3%	8,990,542	405,908	4.7%
Benefits	2,582,437	2,912,235	329,797	12.8%	3,097,603	185,368	6.4%
Travel	156,000	150,000	(6,000)	-3.8%	150,000	-	0.0%
Rent /Comm/Util	-	-	-	-	-	-	0.0%
Administrative	6,000	1,500	(4,500)	-75.0%	1,500	-	0.0%
Contracted Services	336,000	325,000	(11,000)	-3.3%	325,000	-	0.0%
Total	**$ 10,724,711**	**$ 11,973,369**	**$ 1,248,658**	**11.6%**	**$ 12,564,645**	**$ 591,276**	**4.9%**

Note: minor rounding differences may occur in totals

OFFICE OF HUMAN RESOURCES: 2019-2020 BUDGET SUMMARYY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE	**43.0**	**43.0**	**-**	**-**	**43.0**	**-**	**-**
Employee Compensation	9,079,982	9,621,702	541,721	6.0%	10,057,995	436,293	4.5%
Salaries	6,171,019	6,359,464	188,445	3.1%	6,658,977	299,513	4.7%
Benefits	2,908,963	3,262,238	353,275	12.1%	3,399,018	136,780	4.2%
Travel	2,826,615	2,834,765	8,150	0.3%	3,834,765	1,000,000	35.3%
Rent /Comm/Util	294,180	290,900	(3,280)	-1.1%	290,900	-	0.0%
Administrative	532,601	454,677	(77,924)	-14.6%	454,677	-	0.0%
Contracted Services	3,018,943	2,554,787	(464,156)	-15.4%	2,554,787	-	0.0%
Total	**$ 15,752,321**	**$ 15,756,831**	**$ 4,511**	**0.0%**	**$ 17,193,124**	**$ 1,436,293**	**9.1%**

OFFICE OF PUBLIC AND CONGRESSIONAL AFFAIRS: 2019-2020 BUDGET SUMMARY							
	2018 Board Approved Budget	2019 Requested Budget	2018-2019 Change	Change Percent	Requested Budget	2019-2020 Change	Change Percent
FTE	**7.0**	**7.0**	**-**	**-**	**7.0**	**-**	**-**
Employee Compensation	1,545,155	1,613,383	68,228	4.4%	1,695,830	82,447	5.1%
Salaries	1,146,826	1,197,036	50,210	4.4%	1,253,635	56,600	4.7%
Benefits	398,329	416,348	18,018	4.5%	442,195	25,848	6.2%
Travel	12,300	12,000	(300)	-2.4%	12,000	-	0.0%
Rent /Comm/Util	-	500	500	0.0%	500	-	0.0%
Administrative	42,236	39,036	(3,200)	-7.6%	39,036	-	0.0%
Contracted Services	210,975	176,975	(34,000)	-16.1%	176,975	-	0.0%
Total	**$ 1,810,666**	**$ 1,841,894**	**$ 31,228**	**1.7%**	**$ 1,924,341**	**$ 82,447**	**4.5%**

Note: minor rounding differences may occur in totals

X. Appendix B: Capital Projects

CAPITAL INVESTMENT PROJECTS				
Description	2018 Board Approved Budget	2019 Board Approved Budget	2019 Requested Budget	2020 Requested Budget
Information technology software development investments	**$ 5,653,000**	**$ 15,051,000**	**$ 17,116,000**	**$ 15,758,000**
Examination and Supervision Solution	$ -	**$ 8,414,000**	**$ 8,414,000**	$ -
Data Collection Solution	$ -	**$ -**	**$ 200,000**	$ 2,400,000
Business Intelligence Tools and Capability Enhancement	$ 1,920,000	**$ 1,920,000**	**$ 1,920,000**	$ -
Enterprise Central Data Repository	$ -	**$ -**	**$ 990,000**	$ 1,096,000
AMAC Servicing System Solution	$ 2,100,000	**$ 600,000**	**$ 600,000**	$ 600,000
Enterprise Data Analytics, Governance and Reporting Services	$ 600,000	**$ 600,000**	**$ 600,000**	$ 450,000
Asset and Liabilities Management Application	$ 433,000	**$ 3,167,000**	**$ 3,167,000**	$ 3,600,000
Human Resource Business Solution	$ 350,000	**$ -**	**$ -**	$ -
Enterprise Learning Management System Replacement	$ 250,000	**$ 350,000**	**$ 550,000**	$ 112,000
GRC Tool: Managing Compliance Information	$ -	**$ -**	**$ 325,000**	$ -
Financial Management System Analysis of Alternatives	$ -	**$ -**	**$ 350,000**	$ -
Disaster Recovery Capabilities Enhancement	$ -	**$ -**	**$ -**	$ -
Anticipated additional software development investments	$ -	**$ -**	**$ -**	$ 7,500,000
Other Information technology investments	**$ 9,000,000**	**$ 5,495,000**	**$ 3,989,000**	**$ 1,800,000**
Enterprise Laptop Lease	$ 1,850,000	**$ 1,000,000**	**$ 800,000**	$ 800,000
IT Infrastructure, Platform and Security refresh	$ 3,700,000	**$ 1,700,000**	**$ 2,350,000**	$ -
Agency Modernization Infrastructure Support	$ 1,250,000	**$ -**	**$ -**	$ -
Agency Web Design and Platform modernization	$ 1,200,000	**$ -**	**$ -**	$ -
Home Mortgage Disclosure Act System Development (cost sharing)	$ 750,000	**$ -**	**$ -**	$ -
Credit and Deposit Analytic Solution	$ 250,000	**$ -**	**$ -**	$ -
Security management tool upgrades (Patch and Vulnerability)	$ -	**$ 670,000**	**$ 342,000**	$ -
Security management tool upgrades (Security Event/Incident Management)	$ -	**$ -**	**$ 327,000**	$ -
Refresh End of Life VoIP Phone System	$ -	**$ -**	**$ 170,000**	$ -
Enterpise Video Conference Collaboration Services and Upgrades	$ -	**$ 2,125,000**	**$ -**	$ -
Anticipated additional other information technology investments	$ -	**$ -**	**$ -**	$ 1,000,000
Capital building improvements and repairs	**$ 750,000**	**$ 600,000**	**$ 900,000**	**$ 1,050,000**
Headquarters HVAC System Replacement	$ 650,000	**$ -**	**$ 750,000**	$ 750,000
Central Office General Building Improvements	$ -	**$ 500,000**	**$ -**	$ -
Southern Region/AMAC General Building Improvements	$ 100,000	**$ 100,000**	**$ 150,000**	$ 300,000
TOTAL CAPITAL PROJECTS	$ 15,403,000	$ 21,146,000	$ 22,005,000	$ 18,608,000

Project name	**EXAMINATION AND SUPERVISION SOLUTION AND INFRASTRUCTURE HOSTING (ESS&IH) (2019.007)**					
Project sponsor	Business Innovation Director and Chief Information Officer					
Customers/ beneficiaries	Internal: E&I, All Field Program Offices, OCIO, and OCFP External: Credit Unions, State Supervisory Authorities (SSAs)					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$0	$8,414	TBD	TBD	
	Operations and Maintenance			TBD	$4,500	$3,600
Link to the NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. ESS will enable credit union examiners to fulfill the NCUA strategic objective 1.2, "provide high-quality and efficient supervision," by providing a more effective and secure examination tool. Goal 3: Maximize organizational performance to enable mission success. ESS will enable credit union examiners to perform their work more efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation."					
Project Performance	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	% of Exam and Supervision Contact Types by Program Transitioned to ESS		28% Release 1*	52% Release 2**	100% Release 3***	
	Development Sprint completion: Estimate versus Actual		Within +/- 20%	Within +/- 20%	Within +/- 20%	
	Testing Pass Rate: % of User Stories that Pass User Acceptance Testing on First attempt		90%	90%	90%	
	Production System Availability		99.9%	99.9%	99.9%	99.9%
	* Release 1 includes ESM Iterations 1-3: ONES Credit Union (CU) Exam Program (Contact Type 10,11, 22,23, 26,27,28) including 2 SSAs.					

* Release 1 includes ESM Iterations 1-3: ONES Credit Union (CU) Exam Program (Contact Type 10,11, 22,23, 26,27,28) including 2 SSAs. ** Release 2 includes ESM Iteration 4: All natural Person CU risk focused exam (10,11), Small CU (10), Corporate CU Exam (12,13), and Customer Complaints (32). *** Release 3 includes (ESM Iteration 5): Fair lending exam (3); Onsite Fair lending exam; NFICU Onsite/Offsite (15), Vendor Review (24), CUSO Review (29); On/Offsite Super Fraud (90,91); Consumer Compliance (96, 97); Liquidation (new); Bank Purchase (new); Conservatorship (50,51)
The ESS&IH projects will put access to the key examination and supervision capabilities into a streamlined toolset allowing Examiners and Supervisors to be more efficient, consistent and effective. The overarching ESS&IH project scope is to implement a new, flexible, technical foundation to enable current and future the NCUA business process modernization initiatives, and replace the NCUA's legacy exam system, AIRES, with a new Commercial-Off-The-Shelf (COTS) solution. This project represents the first five iterations of the ESM Program. This project includes the implementation of a central user interface (CUI), which will serve as a common point of access for future ESM applications and support secure transfer of data between the NCUA and third parties. Key project deliverables include a new COTS examination solution to replace the legacy system, AIRES, deployment of a CUI and establishment of the technical foundation. Investment objectives include: • Process Efficiency and Scalability – To enable the NCUA staff to effectively oversee all credit unions, from the smallest to the largest, with various types of examinations from a single platform; • Process Flexibility and Adaptability – To adjust to new regulatory processes, demands, and priorities rapidly to an increasingly sophisticated credit union industry; • Improved Analytics – To enhance the ability to identify and evaluate risk in credit unions effectively through deep, detailed, "vertical" and "horizontal" analysis of credit unions using various analytical techniques and tools; • Robust and Flexible Data Collection – To securely collect and share financial and non-financial data with flexible workflows to automate manual processes and efficiently route work assignments; and, • Risk-based Examination Approach – To focus examiner resources on credit unions and asset portfolios that pose the most risk to the credit union industry. • Modern IT Infrastructure – To enable current and future business process modernization including a single point of entry to related IT services. Time Management System (TMS), Management Automated Resource System (MARS), and National Supervision Policy Manual (NSPM) tools are not in scope of this project. Replacement of these legacy systems will be included in future procurement efforts under the ESM Program.

Quarterly project schedule and deliverables	March/2019	Stand-up, new ESS&IH "cloud" based infrastructure/technical platform and attain authority to operate (Enterprise Solutions Modernization (ESM) (Iteration 1)
	June/2019	Complete User Acceptance Testing of the first Release of the Central User Interface (CUI) and new examination tool
	September/2019	Deploy first release of the CUI and new examination tool to Small User Group (i.e., ONES) and complete training (ESM Iteration 2-3)
	December/2019	Complete discovery and requirements gathering for modernization of examination process for majority of users (ESM Iteration 4)
Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If changes continue to be made to legacy tools/applications, then the ESS configuration timelines may be impacted due to changing requirements.	Maintain regular monthly communications with E&I and the CRM team on the status, planned activities, and estimated timeline. ECDR integration will minimize impacts to ESS&IH.
	If the central data repository is not funded and stood up timely, the implementation timeline for ESS may be delayed.	Parallel development and focus on the ONES data.
	If during discovery our vendor's initial assumptions (e.g., Secure File Transfer) were incorrect and additional software or services are required, then costs could increase and additional funding would be required.	Obligate minimum amounts required for effective program execution in order to preserve management reserve (e.g., MTIPS, PMO, and Lease).

Project name	**DATA COLLECTION SOLUTION (DCS) / ENTERPRISE CONTENT MANAGEMENT (ECM) ANALYSIS OF ALTERNATIVES (AOA) STUDY (2019.008)**					
Project sponsor	OCIO and the Office of Business Innovation (OBI)					
Customers/ beneficiaries	Internal: OCIO and OBI External: N/A					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$0	$200	$2,400		
	Operations and Maintenance				TBD	TBD
Link to the NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. The Data Collection Solution (DCS) will enable credit union examiners to fulfill the NCUA strategic objective 1.2, "provide high-quality and efficient supervision," 1.2 by implementing an enterprise content management (ECM) platform that ingests data simply and with improved performance. Goal 3: Maximize organizational performance to enable mission success. The Data Collection Solution (DCS) will assist credit union examiners to perform their work more efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by implementing an enterprise content management (ECM) platform that will support the NCUA's requirements for data collection, workflow, document management, customer relationship management and records management thereby improving the NCUA's records management compliance.					
Project Performance (note: √ indicates achievement of performance measure in year)	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Complete AoA Study		√			
	Provide 3-4 ECM Alternative Solutions		√			
	Complete ECM Solicitation Package			TBD		
	Award ECM Solution Contract			TBD		
	Implement ECM Solution				TBD	
Detailed project description	In addition to its data collection needs, which the NCUA plans to address through the Data Collection Solution (DCS) project, the agency requires document management, records management, customer relationship management and workflow solutions. Initial research indicates that Enterprise Content					

Detailed project description	In addition to its data collection needs, which the NCUA plans to address through the Data Collection Solution (DCS) project, the agency requires document management, records management, customer relationship management and workflow solutions. Initial research indicates that Enterprise Content Management (ECM) platforms may provide the capability to address these broad range of needs. A study is required to validate whether ECM solutions can meet the NCUA's data collection as well as records/document/customer management needs and to produce 3-4 viable alternative solutions.
	
	The purpose of this pre-planning project phase is to award and complete an Analysis of Alternatives (AoA) to study the operational effectiveness, suitability, risks and life-cycle costs of alternative ECM solutions to support the NCUA's requirements for data collection, workflow, document management, customer relationship management and records management. An AoA needs to be completed to gather the requirements across these areas and to validate that the ECM solutions are the most effective and efficient way to meet the NCUA's data collection, document management, records management needs. Additionally, the project will provide a roadmap for acquiring and implementing an ECM platform and will be followed by a subsequent project to solicit and implement the solution.
	
	The scope of this project in 2019 is an AoA of ECM platforms and identification of 3-4 viable alternative solutions to address the following requirements:
	• Data Collection Solution (DCS)
	  • Call Report
	  • CU Profile
	  • CUSO
	  • GENISIS/FOMIA
	  • Grants & Loans
	  • Regional (e.g. Correspondence)
	  • Customer Assistance Center
	• Workflow
	  • Logging
	  • GENISIS
	• CRM
	• Records Management
	  Enterprise Document Management
	The results of the AoA will aid the agency's decision making on major IT investments and the suitability of ECM as a viable solution.	

Quarterly project schedule and deliverables	March/2019	
	June/2019	Complete AoA Study
	September/2019	Identify and scope 3-4 viable ECM alternative solutions

Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If the scope of the DCS AoA study is not properly defined, then the study may not yield suitable alternatives for the NCUA's data collection, records management, document management and workflow requirements.	Project sponsor will ensure early collaboration with OCIO and OBI leadership to define the scope of the AoA study. Additionally, the project sponsor will be prepared to spin off a second AoA study to address unrelated requirements.

Project name	**BUSINESS INTELLIGENCE (BI) TOOLS AND CAPABILITY ENHANCEMENT (2019.009)**					
Project sponsor	Office of National Examination and Supervision (ONES)					
Customers/ beneficiaries	Internal: ONES External: Large and Corporate Credit Unions					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$1,920	$1,920	TBD	---	---
	Operations and Maintenance	---	---	$1,375	$1,375	$1,375
Link to the NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. The BI Tool and Capability Enhancement project will enable credit union examiners to fulfill the NCUA strategic objective 1.2, "provide high-quality and efficient supervision," by consolidating the historic and on-going information collected by ONES in a central, standardized data warehouse. ONES will acquire and analyze risk data sets independent of the risk reporting provided by the credit unions themselves, enhancing both the quality and depth of ONES assessment of the safety and soundness of covered credit unions. Goal 3: Maximize organizational performance to enable mission success. The BI Tool and Capability Enhancement project will enable credit union examiners perform their work more efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by providing a centralized source of information team to implement Data Driven Supervision which will improve overall understanding of, and quantification of, material risks, provide the ability to conduct regular and ad-hoc sensitivity testing, reverse stress testing, and focused risk testing.					
Project Performance (note: √ indicates achievement of performance measure in year)	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Continue to ingest quarterly data from the CUs	√	√	√	√	√
	Cleanse quarterly data for ingestion into the warehouse	√	√	√	√	√
	Modify template(s) for data ingestion in accordance with approved business rules	√	√		√	

Create new templates for additional data collection	√	√		√	
Develop business user dashboards and reports	√	√	√	√	√
Percentage of data successfully ingested		Baseline established	TBD	TBD	TBD
Amount of data received (quarterly)		Baseline established	TBD	TBD	TBD

The purpose of this project is the collection, centralization, organization and storage of ONES data so that analysis is more accurate and efficient. This accessibility will integrate with BI tools to improve ONES's overall reporting and data analysis capabilities.

The primary goal for this project is an organized and governed data warehouse that hosts clean and accurate data from legacy, enhanced and new systems in a manner that allows for timely, distributed reporting (BI tools) and can adapt to fluctuating market conditions.

The continued buildout of the data warehouse will allow the ONES financial analysts to perform data driven assessments and challenge of capital analysis and supervisory stress tests developed by its covered credit unions, and provide a more informed assessment of credit union capital needs relative to overall risk profile. The data warehouse buildout also enhances management reporting and supports the ability of ONES National Lending Specialists (NLS) to prepare for and conduct risk-based examination of credit risk exposures and management practices in ONES covered credit unions. These new functions will improve management's supervision of ONES activities as well as all ONES staffs' ability to prepare in advance for exams and quickly identify and quantify areas of risk.

March/2019	Buildout of the BI data warehouse architecture
June/2019	Enhancements and buildout of the BI data warehouse environment Refinement and new reporting functionality;
September/2019	Refinement and new dashboards
December/2019	Delivery of data warehouse and for ONES staff

Risk	**Mitigation**
If the credit unions do not provide data in the correct format each quarter, then portfolio information for the credit unions will be inaccurate or incomplete.	Provide clear updated instructions for each template that include acceptable lists of values for each field where possible.
If credit union data is inaccurate or incomplete, then processing of quarterly credit union data will be delayed due to time to analyze and correct input data issues.	Continue to develop additional statistical routines that will quickly identify data file quality issues; this will improve the data issue identification and speed up the process of addressing data quality issues.

Project name	**ENTERPRISE CENTRAL DATA REPOSITORY (ECDR) (2019.012)**					
Project sponsor	OCIO					
Customers/ beneficiaries	Internal: All Offices at the NCUA External: Credit Unions, Credit Union members and the public will indirectly benefit from this project.					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$0	$990	$1,096		
	Operations and Maintenance			$1,129	$2,709	$2,933
Link to NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. The Enterprise Central Data Repository (ECDR) project will enable credit union examiners to fulfill strategic objective 1.2, "provide high-quality and efficient supervision," by providing a data platform that will enable the NCUA to more accurately and cost-effectively assess risks to the credit union system that will enable the NCUA to better identify and evaluate credit union risk more efficiently to conduct its mission through data analytics. Goal 3: Maximize organizational performance to enable mission success. The Enterprise Central Data Repository (ECDR) project will enable credit union examiners to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by providing the central data repository on which the agency's enterprise data analytics and Enterprise Solutions Modernization (ESM) initiative will rely that will improve the integrity, security and business value of the NCUA's data.					
Project Performance (note: √ indicates achievement of performance measure in year)	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Expand infrastructure to support legacy data required for ESS	√	√			
	Continue to ingest ONES quarterly loan data	√	√	√	√	√
	Eliminate duplicate data tables	√	√			
	Accurately categorize data (enterprise, analytics, etc.)		√			
	Number of data source consolidated into ECDR		Baseline established	TBD	TBD	TBD

Detailed project description	The Enterprise Central Data Repository (ECDR) project will implement a central data repository that will serve as the data integration point for ESS, ONES's analytic tools, the NCUA's legacy applications and the Data Collection Solution (DCS). The ECDR will become an enterprise solution for the NCUA allowing the organization to transition in a phased approach the from the existing legacy databases to a cloud-based data repository serving the agency's needs.	
Quarterly project schedule and deliverables	December/2018	Signed ATO for ECDR, not including ISA/MOU's
	March/2019	Phase 0/1: ECDR Infrastructure + Support for ESS Iterations 2 & 3 (ONES Examination Data and Institutional Financial Data) integrated in Test environment.
	June/2019	Phase 0/1: ECDR Infrastructure + Support for ESS Iterations 2 & 3 (ONES Examination Data and Institutional Financial Data) in Production
	September/2019	
	December/2019	Phase 1: Support for ESS Iteration 4 (Examination Data & Institutional Financial Data for Remaining Credit Unions)
Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If resources assigned to this project are needed to support high priority tasks, then there may be impacts to this project.	Continuous communication with OCIO Management on task prioritization and/or resource conflicts.
	If requirement changes are needed, then there may be impact to the schedule.	Hold regular status meetings with project team to keep requirements delivery on schedule. Escalate any requirements changes or expansion of requirements immediately to determine the impact of such changes.
	If there are schedule delays with the cloud environment, then additional storage may be required on premise.	Continue to communicate with the ESS team. Prepare for possible delays in moving to cloud be creating CR to increase storage by the time solution is scheduled to migrate to Test.

Project name	**AMAC SERVICING SYSTEM SOLUTION (2019.015)**					
Project sponsor	Asset Management and Assistance Center (AMAC)					
Customers/ beneficiaries	Internal: Asset Management and Assistance Center (AMAC) External: All Credit Unions					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$2,100	$600	$600	TBD	
	Operations and Maintenance				TBD	TBD
Link to the NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. A new AMAC Servicing System Solution will help the NCUA achieve strategic objective 1.1, "maintain a strong Share Insurance Fund," by enhancing AMAC's legacy content management and servicing systems. This will improve management of credit union liquidations while increasing asset recovery, thereby minimizing costs to the Share Insurance Fund and credit union members. Goal 3: Maximize organizational performance to enable mission success. A new AMAC Servicing System Solution will assist AMAC staff to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation." The new system will enhance AMAC's legacy content management and servicing systems, which will enable AMAC to perform its loan and member servicing duties more effectively, while continuing to fulfill its regulatory reporting responsibilities.					
Project Performance (note: √ indicates achievement of performance measure in year)	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Initiate and plan the acquisition of a new core processor	√				
	Acquire a modern, scalable and cloud-based core processor replacement		√			
	Integrate, configure and provide AMAC personnel with access to a new core processor solution		√			
Detailed project description	The purpose of this project is to enhance AMAC's legacy content management and servicing systems. Phase I of the project resulted in an enhanced, secure content					

The purpose of this project is to enhance AMAC's legacy content management and servicing systems. Phase I of the project resulted in an enhanced, secure content management solution. During Phase II of the project, the NCUA will identify, acquire, and implement replacement solutions for AMAC's aging core data processor. The key project deliverables are the acquisition and deployment of a replacement core processing system.	
March/2019	Award contracts for the core processor replacement solution and implementation services.
June/2019	Complete solution configuration and data migration.
September/2019	Complete testing.
December/2019	Deploy new solution.
Risk	**Mitigation**
The agency's existing core processor will go end-of-life (EoL) in 2019	Identify, acquire and implement a replacement solution in 2019
If a FedRAMP-compliant (or SOC 2, Type II audit compliant) solution is not acquired, then an Authority to Operate (ATO) may be difficult or impossible to obtain	Conduct thorough market research to identify vendors that offer either FedRAMP or SOC 2, Type II compliant solutions
If data migration issues are encountered, the project's budget and/or schedule would likely be negatively impacted	Assess data migration tools and data/database compatibility during market research and use this as qualifying factor

Project name	**ENTERPRISE DATA ANALYTICS, GOVERNANCE AND REPORTING SERVICES (2019.010)**					
Project sponsor	Office of Business Innovation Division (OBI)					
Customers/ beneficiaries	Internal: All Offices at the NCUA External: N/A					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$600	$600	$450		
	Operations and Maintenance				$150	$150
Link to the NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. The Enterprise Data Analytics, Governance and Reporting Services project will enable credit union examiners to fulfill the NCUA strategic objective 1.2, "provide high-quality and efficient supervision," by facilitating the centralization, organization and storage of the NCUA data so analysis is more accurate, simple and easily distributed across the agency to improve the NCUA's overall reporting and data analysis capabilities. Goal 3: Maximize organizational performance to enable mission success. The Enterprise Data Analytics, Governance and Reporting Services project will enable credit union examiners to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation," by establishing an enterprise repository for reporting purposes that will allow for consistent, centralized reporting and eliminating the duplicative reporting responsibilities for numerous staff.					
Project Performance (note: √ indicates achievement of performance measure in year)	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Create draft templates for governance body to identify enterprise data	√				
	Provide training sessions for Data Stewards		√			
	Develop draft charter for review by Enterprise Data Council		√			
	Establish and Operate the Enterprise Data Council		√			
	Create Enterprise Data Instruction		√			

Validate Data Governance Framework		√			
Conduct Critical Data Element Inventory for Exam and Institutional Data Domains		√			
Conduct Metadata Gap Assessment for Exam and Institutional Data Domains		√			
Provide Data Governance training sessions for the Enterprise Data Council members		√			
Implement data governance for additional data domains			√	√	√
Number of data elements consolidated across enterprise domains		Baseline established	TBD	TBD	TBD

The purpose of this project is project is to establish a data governance program comprised of a policy, a central data governing body, and data steward teams. The primary goal for this project is organized and governed data including clean and accurate data from legacy, enhanced, and new systems. This data will allow for timely, distributed reporting (BI tools) and can adapt to fluctuating market conditions. This project will facilitate the centralization, organization and storage of the NCUA data so analysis is more accurate, simple and easily distributed across the agency. This increased accessibility will combine with analytic tools to improve the NCUA's overall reporting and data analysis capabilities.

March/2019	• Provide training sessions for Data Stewards • Develop draft charter for review by Enterprise Data Council • Validate Data Governance Framework with Data Stewards • Conduct Critical Data Element Inventory for Exam and Institutional Data Domains
June/2019	• Create Enterprise Data Instruction • Establish and Operate the Enterprise Data Council • Provide Data Governance training sessions for the Enterprise Data Council members
September/2019	• Formalize Data Governance Framework with the Enterprise Data Council • Conduct Metadata Gap Assessment for Exam and Institutional Data Domains

	September/2019	• Formalize Data Governance Framework with the Enterprise Data Council • Conduct Metadata Gap Assessment for Exam and Institutional Data Domains
	December/2019	• Begin Critical Data Element Inventory for Member Financial Data Domains • Begin Metadata Gap Assessment for Member Financial Data Domains
Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If the business does not actively provide input to the Analytic Strategy for Data, then the scope of Analytic services, roles, and responsibilities may not be clearly defined and understood by all stakeholders.	1. Work to integrate with other ESM work streams in order to leverage business resources. 2. Work with OBI to provide input
	If the scope of the Enterprise Analytic Data Council is not appropriately defined in the Instruction, then the authority and effectiveness of the Council may be compromised. Additionally, support may wain from offices whose data domains and priorities are not part of the programs near term scope.	1. Work with OBI, OCIO and other stakeholders to right-size the Council's scope, ensuring that the scope is not too narrow to limit its effectiveness, and not too broad to paralyze its decision-making ability. 2. Work with OBI and OCIO to build a roadmap to take on additional scope as the framework matures and resources allow

Project name	**ASSET & LIABILITIES MANAGEMENT (ALM) APPLICATION (2019.011)**					
Project sponsor	Office of National Examination and Supervision (ONES)					
Customers/ beneficiaries	Internal: Office of National Examination and Supervision External: Large and Corporate Credit Unions					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$433	$3,167	$3,600	TBD	
	Operations and Maintenance				$3,600	$3,600
Link to the NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. The Asset & Liabilities Management (ALM) Application will enable credit union examiners to fulfill their responsibility to achieve strategic objective 1.2, "provide high-quality and efficient supervision," by building an internal analytical capabilities to run supervisory stress testing in house and to conduct regular quantitative risk assessments. Goal 3: Maximize organizational performance to enable mission success. The Asset & Liabilities Management (ALM) Application will enable credit union examiners to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation," by modernizing the NCUA's supervision tools and approaches, identifying material risks facing the covered credit unions, and tailoring resources to the material risks and risk focused exams.					
Project Performance (note: √ indicates achievement of performance measure in year)	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Procure ALM tool for Stress Testing	√				
	Complete software development lifecycle deployment into production		√			
	Perform data extraction and integration		√			
	Identify remaining software tools		√			
	Procure remaining tools		√			
	Perform stress testing and validate			√		
	Continue to perform internal stress testing				√	√

	Number of Credit Unions that ALM tools are used to conduct supervisory stress testing		Baseline established	TBD	TBD	TBD
Detailed project description	This project will allow the NCUA to build internal analytical capabilities to run supervisory stress testing in house and to conduct regular quantitative risk assessments by procuring and configuring off-the-shelf analytical tools, models, and software used commonly in financial industry stress testing and other risk management activities. This effort delivers a complete solution that will focus on modernizing the NCUA's supervision tools and approaches, identifying material risks facing the covered credit unions, and tailoring resources to the material risks and risk focused exams. This effort will allow the NCUA to reduce the existing third party contractor's role to only consultation.					
Quarterly project schedule and deliverables	March/2019	Pilot of ALM Application Complete				
	June/2019	Refine configuration of ALM Application				
	September/2019	Complete supervisory stress testing using ALM Application				
	December/2019	Determine if reliance on third party vendor can be eliminated				
Project Risks and Mitigation Strategies	**Risk**		**Mitigation**			
	If the ALM Tool does not configure easily, then the NCUA will be contractually bound to a solution that does not meet the needs.		Structure contract with pilot period and additional options to enable the NCUA to exit contract with minimal financial exposure.			
	If the ALM Tool provides results that are inaccurate, then the NCUA will need identify other tools for consideration.		Allow adequate time to validate results against existing third party vendor's findings. Continue utilizing existing third party vendor contract to perform supervisory stress testing.			

Project name	**ENTERPRISE LEARNING MANAGEMENT SYSTEM (LMS) REPLACEMENT (2019.016)**					
Project sponsor	Office of Human Resources (OHR)					
Customers/ beneficiaries	Internal: All Offices at the NCUA External: N/A					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$250	$550			
	Operations and Maintenance			$112	$112	$112
Link to the NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The Enterprise Learning Management System (LMS) Replacement project will assist all the NCUA employees perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.1, "attract, engage and retain highly-skilled, diverse workforce and cultivate an inclusive environment." The new LMS will be the NCUA's primary system for hosting and delivering eLearning courses and will allow for increased access to training and eLearning.					
Project Performance (note: √ indicates achievement of performance measure in year)	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Initiate and plan the acquisition of a new LMS	√				
	Acquire a modern, cost-efficient cloud-based LMS that meets agency requirements		√			
	Prepare and provide access to a new LMS and a full array of learning services to ~2,500 end users		√			
Detailed project description	The purpose of the Enterprise Learning Management System (LMS) Replacement project is to conduct market research, initiate an acquisition, create a project management plan, and execute production implementation a cost-effective, cloud-based solution and training services that provides the NCUA with the full-range of eLearning functionality associated with a modern LMS. This will allow for enhanced examiner utilization and accessibility driven by quality content, ease of use and system reliability, role-based interface: ability to view personalized pages by role, centralized content, adherence to federally-mandated reporting requirements and records management adherence.					

Quarterly project schedule and deliverables	March/2019	Complete capturing requirements, market research, and request for proposals	
	June/2019	Award contract	
	September/2019	Complete testing and implementation	
	December/2019	Deploy	
Project Risks and Mitigation Strategies	**Risk**		**Mitigation**
	If HTML 5 is not enabled in the agency's web browser to support Adobe Flash content in the current LMS, then the existing training system will not work. Support for Adobe Flash is scheduled to be discontinued in 2020.		Procure learning content constructed using modern web standards and that is compatible with the latest version of the agency web browser.
	If technical issues arise during the data migration process, it could result in the loss of training records, content or other data.		Assess data compatibility during market research and use compatibility as a qualifying factor.

Project name	**GOVERNANCE, RISK MANAGEMENT, AND COMPLIANCE (GRC) TOOL FOR MANAGING COMPLIANCE INFORMATION (2019.005)**					
Project sponsor	Office of the Chief Information Officer (OCIO), Office of the Chief Financial Officer (OCFO), Office of the General Council (OGC)					
Customers/ beneficiaries	Internal: All Offices at the NCUA External: All Credit Unions					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$0	$325			
	Operations and Maintenance			$60	$60	$60
Link to the NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The GRC Tool project will help the NCUA achieve strategic objective 3.3, "ensure sound corporate governance" by acquiring and implementing a GRC tool that provides a structured repository for all system security and privacy documentation; security risk assessments; risk scoring; Plan of Actions and Milestones (POAM) management; and authorization workflow information.					
Project Performance	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Reduce manual compilation of security info and event reports by: - implementing an aggregated repository, - utilizing a standard near real-time reporting capability, and - leveraging integration with incident management and reporting dashboards.	Baseline under development				

	Improve performance through enhanced capabilities resulting in visibility into security posture for all levels of NCUA and automated reporting to both internal and external stakeholders.	Baseline under development				
Detailed project description	The purpose of this project is to acquire and implement a single, structured repository for compliance-related records for the NCUA's information technology, financial management, and legal processes. . Once implemented, the GRC tool will enhance the NCUA risk management and its internal control environment while improving business continuity.					
Quarterly project schedule and deliverables	March/2019	Implement GRC Tool for managing compliance information				
	June/2019					
	September/2019					
	December/2019					
Project Risks and Mitigation Strategies	**Risk**		**Mitigation**			
	If the acquisition timeframe is extended, then the implementation schedule will be delayed.		Provide all required procurement artifacts well in advance of deadlines and manage all activities closely with clear escalation paths for higher level issue resolution.			
	If resources are assigned to other assignments, then the implementation schedule will be delayed.		Create integrated master schedule with clear process for resource prioritization and scheduling			

Project name	**FINANICAL MANAGEMENT SYSTEM ANALYSIS OF ALTERNATIVES (AOA) (2019.018)**					
Project sponsor	Office of the Chief Financial Officer					
Customers/ beneficiaries	Internal: OCFO External: All Credit Unions and All Vendors Doing Business with the NCUA					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$0	$350			
	Operations and Maintenance			TBD	TBD	TBD
Link to the NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The Financial Management Analysis of Alternatives will help the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by ensuring the agency is using the most cost-effective Financial Management System (FMS) solution.					
Project Performance (note: √ indicates achievement of performance measure in year)	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Complete AoA Study		√			
	Provide FMS Alternative Solutions		√			
Detailed project description	The NCUA is seeking a fully integrated, vendor supported, and upgradeable software system. This system is necessary for the NCUA to properly manage its finances, and will require fund-accounting based solutions that support governmental accounting and are fully compliant with appropriate governmental accounting standards. The NCUA requires a system that includes modules and functionalities common with Federal Agencies, such as: General Ledger and US Standard General Ledger (USSGL) Charts of Accounts, Accounts Payable, Accounts Receivable, Vendor File Maintenance & Management, Purchase Orders and Requisitions, Contracts and Solicitations, Project and Grants Accounting, Invoicing and Billing Management, Inventory Management and Accountable Property, Travel Management, Cost Accounting, Budget Preparation and Management, Budget Accounting, Execution, and Funds Control, Fund Accounting, Capital and Fixed Assets, Financial Reporting, Human Resources/Payroll Interface, Business Intelligence and Ad hoc Reporting, Federal Financial Reporting Requirements					

Detailed project description	The NCUA is seeking a fully integrated, vendor supported, and upgradeable software system. This system is necessary for the NCUA to properly manage its finances, and will require fund-accounting based solutions that support governmental accounting and are fully compliant with appropriate governmental accounting standards. The NCUA requires a system that includes modules and functionalities common with Federal Agencies, such as: General Ledger and US Standard General Ledger (USSGL) Charts of Accounts, Accounts Payable, Accounts Receivable, Vendor File Maintenance & Management, Purchase Orders and Requisitions, Contracts and Solicitations, Project and Grants Accounting, Invoicing and Billing Management, Inventory Management and Accountable Property, Travel Management, Cost Accounting, Budget Preparation and Management, Budget Accounting, Execution, and Funds Control, Fund Accounting, Capital and Fixed Assets, Financial Reporting, Human Resources/Payroll Interface, Business Intelligence and Ad hoc Reporting, Federal Financial Reporting Requirements (OMB A-136), Travel Expense Report and Reimbursement, GSA SmartPay® 3 Charge Card Interface, and System Generated Financial Statements.	
Quarterly project schedule and deliverables	March/2019	
	June/2019	Complete AoA Study
	September/2019	Identify and scope viable FMS alternative solutions
	December/2019	
Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If the scope of the FMS AoA study is not properly defined, then the study may not yield suitable alternatives for the NCUA's financial management requirements.	OCFO will ensure early collaboration with OCIO leadership to define the scope of the AoA study.

Project name	**DISASTER RECOVERY (2019.006)**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All Offices at the NCUA External: All Credit Unions					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$1,200	$0			
	Operations and Maintenance		$0	$360	$360	$360
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The Disaster Recovery project will help NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by enabling infrastructure and platform to alignment with the Data Center for continuity of operations and backup and recovery capabilities for Mission Essential Functions (MEFs) and Essential Supporting Activities (ESAs).					
Project Performance	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Reduce administrative burden by: - eliminating ad hoc support for End of Life (EOL) equipment, - updating more robust platforms with enhanced troubleshooting and management consoles, and - reducing maintenance requirements.	Baseline under development				
	Enhance capabilities resulting in: - lower support costs, greater integration from modernize interfaces and software, and	Baseline under development				

	Enhance capabilities resulting in: - lower support costs, greater integration from modernize interfaces and software, and - predictable upgrade and vulnerability management paths	Baseline under development				
Detailed project description	The purpose of the Disaster Recovery project is to enable infrastructure and platform to alignment with the NCUA data center for continuity of operations and backup and recovery capabilities for MEFs and ESAs in order to ensure that the NCUA operations are stable.					
Quarterly project schedule and deliverables	March/2019					
	June/2019					
	September/2019	Enable disaster recovery capabilities.				
	December/2019	Close out.				
Project Risks and Mitigation Strategies	**Risk**		**Mitigation**			
	If the acquisition timeframe is extended, then the implementation schedule will be delayed.		Provide all required procurement artifacts well in advance of deadlines and manage all activities closely with clear escalation paths for higher level issue resolution.			
	If resources are assigned to other assignments, then the implementation schedule will be delayed.		Create integrated master schedule with clear process for resource prioritization and scheduling			

Project name	**ENTERPRISE LAPTOP LEASE (2019.017)**					
Project sponsor	Office of the Chief Information Officer (OCIO)					
Customers/ beneficiaries	Internal: All Offices at the NCUA External: State Supervisory Authority (SSA)					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$2,501*	$800	$800	$2,035*	$800
	Operations and Maintenance					
	* Compatibility and infrastructure issues delayed the project in 2018, and required $651,000 in repurposed funding, which was approved by the NCUA board through a budget reprogramming. ** The laptop refresh budget assumes the devices will be acquired by way of a 3-year lease. Consequently, the refresh cycle is anticipated to begin again in 2021.					
Link to the NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The Enterprise Laptop Lease project will assist all employees to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation." New hardware for the NCUA's employees provides staff with new functionality and the NCUA improved security features that enhance user productivity, increased mobile functionality, and lower IT administrative costs due to a decreased need for support services.					
Project Performance (note: √ indicates achievement of performance measure in year)	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Upgrade IT infrastructure to support the Windows 10 platform	√				
	Ensure operability of critical, legacy business applications on the Windows 10 platform	√				
	Deploy new Windows 10-based laptops to all eligible NCUA employees, contractors, and SSAs	√				
	Enhance centralized management of agency laptops and applications during the O&M phase	√	√			

Detailed project description	The purpose of the Enterprise Laptop Lease project is to provide the NCUA with a more efficient, mobile friendly, and secure tool to help better perform their jobs at a reasonable cost. The project scope includes: (1) the selection of new, standard laptop configurations; (2) image and compatibility testing; (3) device acquisition; and (4) the managed deployment of the new devices to end users. Out year costs are associated with the required lease payments. All stakeholders who use the NCUA-provided and supported laptops to perform their work will receive the new laptops. By including hardware and OS support into the lease agreement contract, and following a three-year replacement lifecycle, the NCUA will be able to keep pace with changes in workstation and OS technology in a cost effective manner.		
Quarterly project schedule and deliverables	September/2018	~1,500 laptops deployed to all eligible NCUA employees, contractors, and SSAs	
	December/2018	Project closed and transitioned to Operations & Maintenance (O&M)	
	March/2019	O&M of this capital lease	
	June/2019	O&M of this capital lease	
Project Risks and Mitigation Strategies	**Risk**		**Mitigation**
	Unforeseen shipping delays (weather, traffic, etc.) could result in field and remote staff not receiving laptops and peripherals on their scheduled arrival date		Agency staff and contractor partners collaborated to create a logistics and shipping plan that focused on ensuring timely product delivery, traceability and redirect capability for recipients
	Failure of the automated virtual private network (VPN) connection process could result in field and remote staff not being able to access the NCUA's network without additional support		Agency staff worked closely with the VPN vendor to ensure the automated network connectivity solution was viable, robust and secure. Internal technical staff as well as business staff tested the solution under real-world working conditions to ensure it would meet agency requirements

Project name	**INFORMATION TECHNOLOGY (IT) INFRASTRUCTURE, PLATFORM AND SECURITY REFRESH (2019.001)**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All Offices at the NCUA External: All Credit Unions					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$0	$2,350			
	Operations and Maintenance			$620	$620	$620
Link to the NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. Information Technology (IT) Infrastructure, Platform and Security Refresh project will enable credit union examiners to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by refreshing and/or replacing COLO and Regional routers, switches virtual servers, wireless, virtual private network, end of life and end of service components which ensure business continuity.					
Project Performance	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Reduce administrative burden by: - eliminating ad hoc support for End of Life (EOL) equipment, - updating more robust platforms with enhanced troubleshooting and management consoles, and	Baseline under development				

	Improve performance through: - enhanced capabilities resulting in lower support costs, - greater integration from modernize interfaces and software, and - predictable upgrade and vulnerability management paths	Baseline under development				
Detailed project description	The purpose of the Information Technology (IT) Infrastructure, Platform and Security Refresh project is to ensure that the NCUA data is secure and operations are stable by refreshing and/or replacing COLO and Regional routers, switches virtual servers, wireless, virtual private network, and other network end-of-life and end-of-service components.					
Quarterly project schedule and deliverables	March/2019	Complete refresh and/or replace of COLO and Regional IT appliances.				
	June/2019	Close out.				
	September/2019					
	December/2019					
Project Risks and Mitigation Strategies	**Risk**		**Mitigation**			
	If the acquisition timeframe is extended, then the implementation schedule will be delayed.		Provide all required procurement artifacts well in advance of deadlines and manage all activities closely with clear escalation paths for higher level issue resolution.			
	If resources are assigned to other assignments, then the implementation schedule will be delayed.		Create integrated master schedule with clear process for resource prioritization and scheduling.			

Project name	**SECURITY MANAGEMENT TOOL UPGRADE (PATCH & VULNERABILITY MANAGEMENT) (2019.004)**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All Offices at the NCUA External: All Credit Unions					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$0	$342			
	Operations and Maintenance			$60	$60	$60
Link to the NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The Security Management Tool Upgrade (Patch & Vulnerability Management) project will help the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by upgrading the NCUA information technology systems to ensure business continuity and comply with the DHS Continuous Diagnostics and Mitigation (CDM) Federal requirements for effective IT service management.					
Project Performance	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Enhance security posture through centralized system patch and vulnerability management resulting in: • efficiencies by creating a single technology and repository for patch vulnerability management for all systems and software, • reduce learning curve around multiple solutions, • standardizing reports and audit responses, and	Baseline under development				

	Enhance security posture through centralized system patch and vulnerability management resulting in: • efficiencies by creating a single technology and repository for patch vulnerability management for all systems and software, • reduce learning curve around multiple solutions, • standardizing reports and audit responses, and • Automating reporting to both internal and external stakeholders.	Baseline under development				
Detailed project description	The purpose of the Security Management Tool Upgrade (Patch & Vulnerability Management) project is to comply with the DHS Continuous Diagnostics and Mitigation (CDM) Federal requirements for effective IT service management. This will enhance the NCUA security posture and establish the convergence of operational risk and resilience management via operational and technical controls/solutions that ensure business continuity. In addition to ensuring the existing business continuity, these activities ensure the appropriate preparation for future modernization and organizational changes.					
Quarterly project schedule and deliverables	March/2019					
	June/2019					
	September/2019	Implement Security Management Tool Upgrade (Patch & Vulnerability Management)				
	December/2019					
Project Risks and Mitigation Strategies	**Risk**		**Mitigation**			
	If the acquisition timeframe is extended, then the implementation schedule will be delayed.		Provide all required procurement artifacts well in advance of deadlines and manage all activities closely with			

Project name	**SECURITY MANAGEMENT TOOL UPGRADES (SECURITY INFORMATION AND EVENT MANAGEMENT (SIEM)) (2019.003)**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All Offices at the NCUA External: All Credit Unions					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$0	$327			
	Operations and Maintenance			$60	$60	$60
Link to the NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The Security Management Tool Upgrades (Security Information and Event Management (SIEM)) project will help the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by optimizing event collection, monitoring, detection and response capabilities for InfoSec and IT Operations which ensure business continuity.					
Project Performance	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Improve performance by: - reducing manual compilation of security info and event reports by implementing an aggregated repository - utilizing a standard near real-time reporting capability, and - leveraging integration with incident management and reporting dashboards.	Baseline under development				

	Improve effectiveness through: - enhanced capabilities resulting in visibility into security posture for all levels of the NCUA, - Automated reporting to both internal and external stakeholders, and - Monitoring capabilities for all IT functions eliminating redundant acquisitions.	Baseline under development				

Detailed project description	The purpose of the Security Management Tool Upgrades (Security Event and Incident Management (SEIM)) project is to optimize collection, monitoring, detection and response capabilities for security incidents on the NCUA networks, which will improve business processes by enabling data-driven and proactive management.	
Quarterly project schedule and deliverables	March/2019	Acquisition Award
	June/2019	Implement Security Management Tool Upgrades (Security Event and Incident Management (SEIM).
	September/2019	
	December/2019	
Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	If the acquisition timeframe is extended, then the implementation schedule will be delayed.	Provide all required procurement artifacts well in advance of deadlines and manage all activities closely with clear escalation paths for higher level issue resolution.
	If resources are assigned to other assignments, then the implementation schedule will be delayed.	Create integrated master schedule with clear process for resource prioritization and scheduling

Project name	**REFRESH END OF LIFE VOICE OVER INTERNET PROTOCOL (VOIP) PHONE SYSTEM (2019.002)**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All Offices at the NCUA External: General public contacting the NCUA by telephone					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$800	$170			
	Operations and Maintenance			$240	$240	$240
Link to the NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. Refresh End of Life Voice over Internet Protocol (VoIP) Phone System project will enable credit union examiners to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation" by fully replacing the end of life infrastructure, platform and endpoints to ensure voice communications capabilities which ensure business continuity.					
Project Performance	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Reduce administrative burden by: - eliminating ad hoc support for End of Life (EOL) equipment, - updating more robust platforms with enhanced troubleshooting and management consoles, and - reducing maintenance requirements.	Baseline under development				
	Improve performance through: - enhanced capabilities resulting in lower support costs, - greater integration from modernize	Baseline under development				

	Improve performance through: - enhanced capabilities resulting in lower support costs, - greater integration from modernize interfaces and software, and - predictable upgrade and vulnerability management paths.	Baseline under development				
Detailed project description	The purpose of the Refresh End of Life Voice over Internet Protocol (VoIP) Phone System project is to fully replace the NCUA's end-of-life telephone system (infrastructure, platform, and endpoints) to ensure voice communications capabilities in order to ensure that business continuity and operations are stable. Once installed, the new phone system will help ensure business continuity, since the current system is no longer supported by the manufacturer, presenting a high risk of permanent, unanticipated failure.					
Quarterly project schedule and deliverables	March/2019	Acquisition Award				
	June/2019	Begin replacement of VoIP appliances.				
	September/2019	Complete VoIP replacement of all appliances.				
	December/2019	Close out.				
Project Risks and Mitigation Strategies	**Risk**		**Mitigation**			
	If the acquisition timeframe is extended, then the implementation schedule will be delayed.		Provide all required procurement artifacts well in advance of deadlines and manage all activities closely with clear escalation paths for higher level issue resolution.			
	If resources are assigned to other assignments, then the implementation schedule will be delayed.		Create integrated master schedule with clear process for resource prioritization and scheduling			

Project name	**CENTRAL OFFICE HVAC SYSTEM REPLACEMENT PROJECT (2019.019)**					
Project sponsor	Office of the Chief Financial Officer					
Customers/ beneficiaries	Internal: All Central Office Building Occupants External: All Central Office Building Visitors					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	650	750	750	---	---
Link to the NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The NCUA central office Heating, Ventilation, and Air Conditioning (HVAC) system replacement project will improve the operations of the agency's largest building while lowering energy consumption by installing more energy-efficient systems, helping achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation." The current HVAC system is 24 years old, and by replacing it the NCUA will ensure its infrastructure meets all current codes for life safety, accessibility, and security. The new system will result increased energy and operational efficiency and lower maintenance costs.					
Project Performance	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Energy Consumption* (kWh/degree days)	1.95K	1.8K	1.6K	=<1.55K	=<1.55K
	System Outages (unscheduled repair visits)	40+	<30	<20	<10	<10
	Customer Complaints (temp-related service calls)	<80	<50	<30	=<25	=<25
	*Estimate based on 18,000 annual degree days. Will be updated with actual performance.					
Detailed project description	This project will replace all HVAC systems in the NCUA central office building to include all cooling towers, air handlers, boilers and HVAC components. The current HVAC system is original to the facility, 24 years old and obsolete. HVAC systems are the biggest users of electricity in a facility, and the anticipated life span of these systems' major components is approximately 20-25 years. The current system is at the end of its usable life and it is not working efficiently. Additionally the maintenance and operating costs have increased considerably and system components are failing more frequently, which are clear signs of decreased reliability.					

Detailed project description	This project will replace all HVAC systems in the NCUA central office building to include all cooling towers, air handlers, boilers and HVAC components. The current HVAC system is original to the facility, 24 years old and obsolete. HVAC systems are the biggest users of electricity in a facility, and the anticipated life span of these systems' major components is approximately 20-25 years. The current system is at the end of its usable life and it is not working efficiently. Additionally the maintenance and operating costs have increased considerably and system components are failing more frequently, which are clear signs of decreased reliability. In the last 23 years, technology and codes governing HVAC systems have dramatically changed. A modern, reliable HVAC system will not only increase energy and operational efficiency, but will allow better comfort and more efficient temperature control. A new HVAC system will: 1) be better for the environment, 2) reduce the NCUA downtime from emergency replacements, 3) maintain a more comfortable environment for building occupants, 4) keep the Roof Top Units (RTU) technologically current with more efficient units, and 5) follow the federal mandate for more environmentally friendly refrigerants. This is a capital improvement that is required in order for the facility to continue normal HVAC operation and it is consistent with the life cycle replacement required for critical infrastructure. Due to the age of the equipment, there are opportunities for significant gains to energy efficiency and reliability simply because of the technological advancements that have taken place since the original installation. Aging equipment is a large contributor to less sustainable facilities and higher operating cost. Modernized equipment will bring considerable savings and ensure another 15-20 years of high reliability HVAC operation.	
Quarterly project schedule and deliverables	March/2019	Design Complete full design, permits and construction schedule.
	November/2019	System components - updates all thermostats and obsolete Variable Airflow Boxes
	March/2020	First Chiller Plant - Replacement of first cooling tower for the facility
	March/2021	Second Chiller Plant - Replacement of the Second Cooling tower for the facility
Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	Schedule. Central office renovation work will affect all floors and will be ongoing through 2019.	Project managers have developed an integrated master schedule for Central Office Renovation and HVAC System

Project name	**THE NCUA FACILITY REPAIRS, AUSTIN TEXAS OFFICE BUILDING (2019.020)**					
Project sponsor	Office of the Chief Financial Officer					
Customers/ beneficiaries	AMAC/Central Region staff					
Budget	**$ in thousands**	**2018**	**2019**	**2020**	**2021**	**2022**
	Acquisition	$100	$150	$300	$230	$200
Link to the NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. Repairs to NCUA's Austin, Texas office building will improve operations at the facility and help enable the agency to meet its strategic objective 3.3 "ensure sound corporate governance." Many of the systems and building elements in the Austin office building have not been adequately maintained, and this investment will ensure that facility infrastructure meets current building codes for life safety, accessibility, and security. Once the investments have been completed, replaced equipment and better management of maintenance schedules will result in increased energy and operational efficiency.					
Project Performance	**Performance measure**	**2018**	**2019**	**2020**	**2021**	**2022**
	Cost Of Ownership (building O&M/employee)	$3,500	$3,200	$2,900	$2,900	$2,900
Detailed project description	The NCUA assessed the condition of its office building in Austin, Texas in 2018 and identified over $750,000 in high priority improvements, such as replacing the fire alarm system, repairing and replacing doors and sensors, and installing fire-proof roofing. The 2019 investment of $150,000 will support fixing/replacing all priority items. These capital improvements are required in order for the facility to continue routine and safe operations, and align with the life cycle replacement required for critical infrastructure. Future year budgets will fund additional major repair or replacement projects in a priority order.					
Quarterly project schedule and deliverables	2nd Quarter/2019	Critical Items:	Roof Repairs Fire Proofing Garage Ventilation Louver Repair Electrical Repairs (Code Deficiency) Fire Alarm System Repairs			

	2nd Quarter/2020	Potentially Critical Items:	Exterior Window Repair Attic Insulation Repair Exterior Building Envelope Repairs HVAC Insulation Repairs Roof Drains Insulation
	2nd Quarter/2021	Necessary Items:	Remodel Restrooms Replace carpet in selected areas Replace Misc HVAC Components
	2nd Quarter/2022	Recommended Items:	Partial Elevator Replacement Lighting Protection Sustainability Improvements

Project Risks and Mitigation Strategies	**Risk**	**Mitigation**
	Cost. Managing facilities on a proactive replacement schedule will likely result in higher short-term costs than addressing problems as they arise, a so-called "break-fix" maintenance strategy.	The NCUA has developed a prioritized, scheduled maintenance and building system replacement plan for the Austin office building, which provides projected, sustained funding levels over several years.

By the National Credit Union Administration Board on September 26, 2018.

Gerard S. Poliquin,

Secretary of the Board.

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