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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 894

RIN 3206-AN58

Federal Employees Dental and Vision Insurance Program: Extension of Eligibility to Certain TRICARE-Eligible Individuals; Effective Date of Enrollment

AGENCY: Office of Personnel Management.

ACTION: Interim final rule; request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim final rule to expand eligibility for enrollment in the Federal Employees Dental and Vision Insurance Program (FEDVIP) to additional groups. The National Defense Authorization Act for Fiscal Year 2017 (FY17 NDAA), expanded FEDVIP eligibility to certain TRICARE-eligible individuals (TEIs).

DATES: This rule is effective on November 14, 2018. OPM must receive comments on or before January 18, 2019.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Julia Elam, Program Analyst, at julia.elam@opm.gov or (202) 606-2128.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

FEDVIP was created as a result of the passage of the Federal Employee Dental and Vision Benefits Enhancement Act of 2004, Public Law 108-496. This Act required OPM to make stand-alone dental and vision insurance available to Federal employees, retirees, and their dependents. FEDVIP has 3.4 million enrollees with approximately 7.1 covered individuals. FEDVIP is available to eligible Federal Civilian and U.S. Postal Service (USPS) employees, retirees (annuitants), survivor annuitants, compensationers, and their eligible family members (dependents) on an enrollee-pay-all basis; there is no government contribution towards premium.

The program is administered by OPM in accordance with 5 U.S.C. chapters 89A and 89B and implementing regulations (5 CFR part 894). Section 715 of Public Law 114-328, authorizes the Secretary of Defense to enter into an agreement with the OPM Director to allow certain TRICARE-eligible individuals to enroll, or to be covered under an enrollment in FEDVIP, and amends 5 U.S.C. 8951 and 8958(c) (dental benefits) and 5 U.S.C. 8981 and 8988(c) (vision benefits), to establish eligibility of certain TRICARE-eligible individuals to enroll so that they and their eligible family members may obtain dental and vision benefits under FEDVIP.

Discussion of the Proposed Changes

This rule will assist newly eligible individuals and their family members in enrolling in this program. Under 5 U.S.C. 8951, a TRICARE-eligible individual (TEI) who is eligible for FEDVIP dental benefits means an individual who is eligible for coverage pursuant to 10 U.S.C. 1076c(b) (the TRICARE Retiree Dental Program (TRDP)). Under this regulation, all individuals that are currently eligible for TRDP will be eligible for FEDVIP dental benefits beginning plan year 2019. Under 5 U.S.C. 8981, as amended, a TRICARE-eligible individual who is eligible for FEDVIP vision benefits means an individual who is covered pursuant to 10 U.S.C. 1076d (*i.e.*, TRICARE Reserve Select), 1076e (*i.e.*, TRICARE Retired Reserve), 1079(a) (*i.e.*, uniformed services active duty family members enrolled in TRICARE Select or

TRICARE Prime), 1086(c) (*i.e.*, uniformed services retirees and retiree family members enrolled in TRICARE Select or TRICARE Prime), or 1086(d) (*i.e.*, TRICARE for Life). These individuals will be eligible for FEDVIP vision benefits beginning plan year 2019. It is estimated that there are approximately 7.6 million individuals who will be newly eligible for FEDVIP vision benefits and 3 million individuals who will be newly eligible for FEDVIP dental benefits. Coverage, eligibility, and enrollment for these individuals are discussed in subparts C and E and the new subpart H of this regulation.

Under subpart H, TRICARE-eligible individuals will need to actively enroll in FEDVIP in order to be covered for plan year 2019, even if those individuals are currently enrolled in TRDP. Generally, the uniformed services retiree will be the sponsor and enrollee in whose name the enrollment is carried for eligible dependent family members. Uniformed services members on active duty are not eligible for FEDVIP benefits, and a family member that is eligible for vision benefits will serve as the enrollee and will enroll eligible family members in one FEDVIP vision benefit plan.

There are technical corrections and clarifications such as the addition of definitions at 5 CFR 894.101, inclusion of terminology to include TRICARE-eligible individuals throughout subpart A, and a special provision for TRICARE-eligible individuals (TEIs) at 5 CFR 894.106. There is inclusion of language regarding coverage, types of enrollment, and cost of coverage for TRICARE-eligible individuals at 5 CFR 894.204, 5 CFR 894.401, 5 CFR 894.403, and 5 CFR 894.406. Technical corrections to include newly eligible TEIs are proposed in 5 CFR 894.305 through 894.307. The TEIs that can enroll and cover TEI family members are discussed at 5 CFR 894.309. Technical corrections for enrollment and termination or cancellation of coverage for TEIs have been included throughout subparts E and F.

The first enrollment opportunity for the newly eligible TRICARE-eligible individuals will occur during the 2018 Federal Benefits Open Season period, which will run from November 12 through December 10, 2018 with the

first effective date of coverage beginning on January 1, 2019.

Expected Impact of Proposed Changes

This rule is expected to be an E.O. 13771 deregulatory action because it offers more dental coverage options and new vision coverage in FEDVIP for TRICARE-eligible individuals. TRDP beneficiaries currently have one option for dental coverage or can seek coverage in the private dental insurance market. Vision coverage is a new government-offered benefit for this population. Eligibility to enroll in FEDVIP provides more coverage options for these individuals than are currently available to them.

OPM contracts with 10 dental carriers and 4 vision carriers to offer plans under FEDVIP. There are 15 dental plan options available across FEDVIP from these 10 dental carriers. Within the 4 vision carriers, there are 8 vision plan options that are nationwide and internationally available to all potential enrollees. While this rule expands the number of individuals who are potentially eligible for this FEDVIP, OPM does not believe this regulation will have a large impact on the broader dental or vision insurance markets as FEDVIP generally constitutes a smaller percentage of an overall carrier's book of business.

In plan year 2018, FEDVIP overall program enrollment includes 3.3 million individuals. The number enrolled has not changed significantly in recent years. For example, there were 3.2 million in plan year 2017 and 2.98 million in plan year 2016. Based on OPM data, between 2013 and 2017, an average of 87,849 people made plan changes during open season.

Based on the changes required by FY17 NDAA, OPM estimates there are approximately 7.82 million individuals who will be newly eligible for FEDVIP vision benefits and 5.93 million individuals who will be newly eligible for FEDVIP dental benefits. However, OPM does not expect every newly eligible individual to enroll in FEDVIP as they may choose not to enroll or may opt instead to enroll in private dental and/or vision insurance. Since OPM does not have extensive data on and cannot estimate the potential uptake of TRICARE-eligible individuals to determine the impact of this regulation, we are seeking comments on the following:

1. How will the changes made by this regulation impact the non-group dental or vision insurance market?
2. How will the changes made by this regulation impact the choices available to terminating FEDVIP enrollees?

3. How will the changes made by this regulation impact the enrollment of annuitants compared to employees?

4. How will the regulation impact changes to enrollment in FEDVIP?

Waiver of Proposed Rulemaking

OPM is issuing this rulemaking as an interim final rule and has determined that, under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), it would be impracticable, unnecessary, and contrary to the public interest to delay a final regulation until a public notice and comment process has been completed.

The conclusion of a public notice and comment period before the rule is finalized would be impracticable because it would impede due and timely execution of OPM's functions: Uniformed services retirees and their family members and active duty family members would not have time to enroll or be enrolled in FEDVIP during the November 2018 open season. Since the enactment of Public Law 114–328, OPM and the Department of Defense (DoD) have worked in coordination on a number of actions necessary to implement the law. Before OPM could start any rulemaking implementation, a Memorandum of Agreement (MOA) was needed between the DoD's Defense Health Agency (DHA) and OPM to provide certain TRICARE-eligible individuals the opportunity to purchase FEDVIP dental and/or vision coverage beginning January 1, 2019. The MOA was signed on March 26, 2018, leaving OPM insufficient time to prepare and complete a full public notice and comment rulemaking proceeding and to timely incorporate a final rule into open season materials prior to the open season's commencement date.

To the extent that an NPRM would furnish general public information about enrollment opportunities, it is unnecessary in light of the extensive outreach already undertaken by OPM and DoD, which provided more specific and more detailed notice to affected beneficiaries than an NPRM would provide. Outreach included identifying the eligible population of uniformed services retirees and family members for both FEDVIP dental and vision coverage and active duty family members for vision coverage; joint efforts to communicate with potential enrollees about eligibility, enrollment, and key dates for enrolling in FEDVIP; and working with the FEDVIP Administrator to update enrollment systems to allow enrollment of newly eligible individuals. Furthermore, both OPM and DHA have worked in coordination to inform current TRICARE Retiree

Dental Program (TRDP) enrollees about the end of dental benefit delivery under the TRDP by December 31, 2018 to ensure TRDP enrollees are aware of the transition of the program to FEDVIP.

In addition, it is unnecessary to the extent that OPM's rule simply extends the coverage of DoD regulations at 32 CFR 199.22 that were promulgated through notice and comment. The lost opportunity to enroll in the November 2018 open season would result in serious damage to important interests, since uniformed services retirees and their family members will no longer have access to the TRDP, the prior plan that FEDVIP is replacing, and the gap in coverage could have significant health and financial impact on them. This outcome would be contrary to the public interest.

For these reasons, OPM has determined that the public notice and participation that the APA ordinarily requires would, in this case, be impracticable, unnecessary, and contrary to the public interest and that good cause exists for waiving proposed rulemaking and delaying its solicitation of comments from the public until after it issues an interim final rule. OPM will consider those comments received upon its interim final rulemaking in a subsequent final rule.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs 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 regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. This rule has been designated as a "significant regulatory action," under Executive Order 12866.

Reducing Regulation and Controlling Regulatory Costs

This rule is expected to be an E.O. 13771 deregulatory action. Details can be found in the "Expected Impact of the Proposed Changes" section of the rule.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local or tribal governments of more than \$100 million annually. Thus, no written assessment of unfunded mandates is required.

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves a collection of information subject to the PRA for the Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System, known as BENEFEDS OPM is in the process of seeking OMB approval. The public reporting burden for this collection is estimated to average 8 minutes for a respondent to submit an enrollment including time for reviewing education and support but may not include time for reviewing a plan and specific benefits. The total burden hour estimate for this form is 44,307 hours. The systems of record notice for this collection is: Central-1 found on <https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-central-1-civil-service-retirement-and-insurance-records.pdf>.

The FEDVIP currently has a total of 15 dental plan options available across the program from 10 dental plan choices within 6 nationwide and 4 regional plans. Each potential enrollee has access to all nationwide options. Regional options are available in at least 29 states and Puerto Rico. There are 8 vision plan choices that are nationwide and international available to all potential enrollees. Historically, an average of 87,849 FEDVIP enrollees made plan changes during each open season between 2013–2017. This regulation is not anticipated to change the burden associated with this collection although the number of participants will increase due to the expansion of eligibility.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to formsmanager@opm.gov. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 5 CFR Part 894

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM amends 5 CFR part 894 as follows:

PART 894—FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM

1. The authority citation for part 894 is revised to read as follows:

Authority: 5 U.S.C. 8962; 5 U.S.C. 8992; Subpart C also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; Pub. L. 114–328.

Subpart A—Administration and General Provisions

■ 2. Amend § 894.101 by:

■ a. In the definition of “Child,” revising the introductory text, adding introductory text to paragraph (1), and adding paragraph (4).

■ b. Adding the definition of “Enrollee” in alphabetical order.

■ c. Revising the definition of “Family member.”

■ d. Adding the definition of “Sponsor” in alphabetical order.

■ e. Revising the definition of “Stepchild.”

■ f. Adding the definitions of “TEI,” “TEI certifying family member,” “TEI child,” “TEI former spouse,” “TRICARE-eligible individual (TEI),” “TRICARE-eligible individual for FEDVIP dental benefits (TEI-D),” and “TRICARE-eligible individual for FEDVIP vision benefits (TEI-V)” in alphabetical order.

The revisions and additions read as follows:

§ 894.101 Definitions.

* * * * *

Child means:

(1) Except as discussed in paragraph (4) of this definition, a child is one of the following:

* * * * *

(4) With respect to a *TEI*, *child* means a *TEI child*.

* * * * *

Enrollee means the individual in whose name the FEDVIP enrollment is carried. There is one FEDVIP enrollment for each *enrollee* in a dental plan, and/or in a vision plan and that enrollment may include *family members* who may be covered by the enrollment. The term *enrollee* includes individuals eligible to enroll based upon a status described at subpart C of this part, who enroll and are covered. With respect to the Federal workforce, *enrollee* generally means an *employee* or *annuitant*. With respect to a *TEI*, *enrollee* generally means the *sponsor* who is a *TEI* with respect to a FEDVIP plan; but if the *sponsor* is not a *TEI*, or for FEDVIP dental benefits if the *sponsor* defined at 894.804 is not enrolled and meets a condition at § 894.309(a)(3)(iii), then *enrollee* means the *TEI certifying family member*. A *TEI former spouse* may be an *enrollee* only for a self-only FEDVIP vision plan. An *enrollee* may enroll and elect a FEDVIP dental and/or vision plan, option, and *type of enrollment*, except as provided at § 894.309.

* * * * *

Family member means a spouse (including a spouse under a valid common law marriage) and/or unmarried dependent child(ren) under age 22 or beyond age 22, if incapable of self-support because of mental or physical disability which existed before reaching age 22, as defined at 5 U.S.C. 8901(5). With respect to a *TEI*, the term *family member* means a *TEI family member*.

* * * * *

Sponsor generally means the individual who is eligible for medical or dental benefits under 10 U.S.C. chapter 55 based on his or her direct affiliation with the uniformed services (including military members of the National Guard

and Reserves), in accordance with § 894.804.

Stepchild means:

(1) Except as provided in paragraph (2) of this definition, the *child* of an *enrollee's* spouse or domestic partner and shall continue to refer to such *child* after the *enrollee's* divorce from the spouse, termination of the domestic partnership, or death of the spouse or domestic partner, so long as the *child* continues to live with the *enrollee* in a regular parent-child relationship.

(2) Your spouse's child born within or outside marriage or his or her adopted child. The child of your spouse shall continue to be considered your stepchild after your divorce from your spouse or the death of your spouse so long as the child continues to live with you in a regular parent-child relationship.

TEI means *TRICARE-eligible individual for FEDVIP dental benefits (TEI-D)* or a *TRICARE-eligible individual for FEDVIP vision benefits (TEI-V)*.

TEI certifying family member means, where the *sponsor* is not an *enrollee* under § 894.309, the *TEI family member* who may accept responsibility to self-certify as an *enrollee* in accordance with § 894.809.

TEI child means an individual who is a *TEI* and who meets the definition of dependent in 10 U.S.C. 1072(2)(D) or (I) with respect to a *sponsor*.

TEI family member means a *TEI* who is a dependent with respect to a *sponsor*, as defined in 10 U.S.C. 1072(2)(A) (spouse), 10 U.S.C. 1072(2)(B) (unremarried widow), 10 U.S.C. 1072(2)(C) (unremarried widower), 10 U.S.C. 1072(2)(D) (child), or 10 U.S.C. 1072(2)(I) (unmarried person).

TEI former spouse means a *TEI* who is an unremarried former spouse as defined in 10 U.S.C. 1072(2)(F), (G), or (H) and is entitled to medical care under 10 U.S.C. 1086(c) or (d).

TRICARE-eligible individual (TEI) means a *TRICARE-eligible individual for FEDVIP dental benefits (TEI-D)* or a *TRICARE-eligible individual for FEDVIP vision benefits (TEI-V)*, as the case may be.

TRICARE-eligible individual for FEDVIP dental benefits (TEI-D) means an individual who is eligible for FEDVIP dental coverage based on the individual's eligibility to enroll or be covered under the TRICARE Retiree Dental Program, 10 U.S.C. 1076c(b) in accordance with § 894.802.

TRICARE-eligible individual for FEDVIP vision benefits (TEI-V) means an individual who is eligible for FEDVIP vision coverage based on the

individual's enrollment in a specified TRICARE health plan in accordance with § 894.803.

* * * * *

■ 3. Add § 894.106 to read as follows:

§ 894.106 Special provisions for *TRICARE-eligible individuals (TEI)*.

Generally, applicable provisions of this part are effective for *TEIs*. Provisions that are specific to Federal employees, annuitants and their family members do not apply to *TEIs*. See § 894.101 for application of defined terms to *TEIs* and subpart H of this part for special provisions for *TEIs*, which governs in the event of ambiguity.

Subpart B—Coverage and Types of Enrollment

■ 4. Revise § 894.204 to read as follows:

§ 894.204 May I be enrolled in more than one dental or vision plan at a time?

You may be enrolled or be covered in a FEDVIP dental plan and a separate FEDVIP vision plan at the same time. But no one may enroll or be covered as a *family member* in a FEDVIP dental or vision plan if he or she is covered under another person's FEDVIP dental or vision self plus one or self and family enrollment, except as provided under § 890.302(a)(2) through (4) of this chapter, with respect to dual enrollments. If two parents of a *TEI child* are entitled to be a *sponsor*, they must choose one parent to be the *child's sponsor*. Dual enrollments of *TEIs* are permitted as provided under § 890.302(a)(2) through (4) of this chapter as applied with respect to *TEI family members*.

Subpart C—Eligibility

■ 5. Revise § 894.305 to read as follows:

§ 894.305 Am I eligible to enroll if I am a former spouse receiving an apportionment of annuity?

No. Former spouses receiving an apportionment of annuity are not eligible to enroll in FEDVIP. However, a *TEI former spouse* is eligible to enroll in a FEDVIP vision plan as long as he or she remains unremarried.

■ 6. Revise § 894.306 to read as follows:

§ 894.306 Are foster children eligible as family members?

Generally, foster children are eligible for coverage as *family members* under FEDVIP. However, a foster child is excluded from the definition of a *TEI family member*. A pre-adoptive child and an eligible ward of the state are eligible as *TEI family members*.

■ 7. Revise § 894.307 to read as follows:

§ 894.307 Are disabled children age 22 or over eligible as family members?

(a) Except as provided at paragraph (b) of this section, a *child* age 22 or over is an eligible *family member* if the *child* is incapable of self-support because of a physical or mental disability that existed before the *child* reached age 22.

(b) A *TEI child* is a *TEI family member* as long as the *TEI child* is under the age of 21 or 23 as provided at 10 U.S.C. 1072(2)(D) or (I), and, if disabled during the age of eligibility, the *TEI child* remains a *TEI family member* regardless of age as long as the *TEI child* meets the standard for incapacity and support at 10 U.S.C. 1072(2)(D)(iii) or incapacity and dependency at 10 U.S.C. 1072(2)(I)(ii)(III), (iii), (iv) and (v).

■ 8. Add § 894.309 to read as follows:

§ 894.309 I am a *TEI-D* or *TEI-V*. Am I eligible to enroll in FEDVIP, and cover my *TEI family members*?

(a) *FEDVIP dental plan*. (1) A *sponsor* who is a *TEI-D* is eligible to enroll and cover *TEI-D family members* under the enrollment.

(2) A *sponsor* who is a *TEI-D* but who does not enroll even though eligible, is not an *enrollee* and cannot enroll or cover *TEI family members*.

(3) A *TEI certifying family member* who is a *TEI-D* is eligible to enroll and to cover *TEI-D family members* under the enrollment when:

(i) The *sponsor* is not a *TEI-D*;

(ii) The *sponsor* is deceased; or

(iii) The *sponsor* is a *TEI-D* described at § 894.804(b)(1) or (2) who does not enroll (therefore is not an *enrollee* and cannot cover *TEI family members*) and the *sponsor*:

(A) Receives dental services from the Department of Veterans Affairs (VA);

(B) Has employer-sponsored dental coverage without a family coverage option; or

(C) Has a medical or dental condition that prevents him or her from obtaining dental benefits.

(b) *FEDVIP vision plan*. (1) A *sponsor* who is a *TEI-V* is eligible to enroll and cover *TEI-V family members*.

(2) A *TEI certifying family member* who is a *TEI-V* is eligible to enroll and cover *TEI-V family members* under the enrollment when:

(i) The *sponsor* is not a *TEI-V*; or

(ii) The *sponsor* is deceased.

(3) A *TEI former spouse* is eligible to enroll for self only, but may not elect a self plus one or self and family type of enrollment and may not cover *family members*, even if they are *TEI family members*.

Subpart D—Cost of Coverage

■ 9. In § 894.401, add paragraph (e) to read as follows:

§ 894.401 How do I pay premiums?

* * * * *

(e) A *sponsor*, *TEI certifying family member*, *TEI former spouse*, or *TEI* who is an unremarried survivor pays premiums the following ways:

(1) A *sponsor* or *TEI certifying family member* who receives uniformed services pay or uniformed services retirement pay shall pay premiums through deduction from payroll (including uniformed services retirement pay deduction).

(2) A *sponsor* or *TEI certifying family member* who is not described in paragraph (e)(1) of this section, and a *TEI former spouse* or *TEI* who is an unremarried survivor shall pay premiums through:

- (i) Automatic bank withdrawal; or
- (ii) Direct premium payments.

■ 10. In § 894.403, add paragraph (b)(5) to read as follows:

§ 894.403 Are FEDVIP premiums paid on a pre-tax basis?

* * * * *

(b) * * *

(5) You are a *TEI*.

■ 11. Add § 894.406 to read as follows:

§ 894.406 What happens if my uniformed services pay or uniformed services retirement pay is insufficient to cover my FEDVIP premiums, or I go into a nonpay status?

(a) You must contact the *Administrator* to arrange to pay your premiums by direct premium payment or automatic bank withdrawal to the *Administrator*.

(b) If you do not make the premium payments, your FEDVIP coverage will stop. You will not be able to reenroll until the next open season after:

- (1) You are in pay status; or
- (2) Your uniformed services pay or uniformed services retirement pay (retired, retainer, or equivalent) is sufficient to make the premium payment.

Subpart E—Enrollment and Changing Enrollment

■ 12. In § 894.501:

■ a. Remove the word “or” at the end of paragraph (b)(2).

■ b. Remove the period and add a semicolon in its place at the end of paragraph (b)(3).

■ c. Add paragraphs (b)(4) through (6).

■ d. Remove the word “or” at the end of paragraph (e).

■ e. Remove the period and add a semicolon in its place at the end of paragraph (f).

■ f. Add paragraph (g).

The additions read as follows:

§ 894.501 When may I enroll?

* * * * *

(b) * * *

(4) A *sponsor* who is a *TEI*;

(5) A *TEI certifying family member*, but only if, on your first date of eligibility to enroll, your *sponsor* is not a *TEI* or is deceased, or for FEDVIP dental coverage, if your *sponsor* is defined at § 890.309(a)(3)(iii); or

(6) A *TEI former spouse*.

* * * * *

(g) For a *TEI*, within 60 days of your uniformed services pay or uniformed services retirement pay being restored after having being reduced, forfeited, or terminated.

■ 13. In § 894.502:

■ a. Revise the section heading.

■ b. Add introductory text.

■ c. Revise paragraph (a).

■ d. Remove the word “or” at the end of paragraph (d).

■ e. Remove the period and add a semicolon in its place at the end of paragraph (e).

■ f. Add paragraphs (f) and (g).

The revisions and additions read as follows:

§ 894.502 What are the Qualifying Life Events (QLEs) that allow me to enroll or become covered in FEDVIP outside of open season?

You may enroll or become covered outside of open season if you are otherwise eligible to enroll and:

(a) You or a *family member* or *TEI family member* lose other dental/vision coverage;

* * * * *

(f) You are a *TEI* and your uniformed services pay or uniformed services retirement pay is restored after having been reduced, forfeited, or terminated; or

(g) You are not a *TEI* and you marry a *TEI* and can be covered as a *TEI family member*; or, you are not a *TEI* and you marry a non-*TEI sponsor* that is on active duty and can be covered as a *TEI certifying family member*. However, upon remarriage, a *TEI former spouse* or *TEI surviving spouse* or widow loses status as a *TEI* with respect to a former or deceased *sponsor*.

■ 14. In § 894.504, revise paragraph (c) and add paragraphs (d) and (e) to read as follows:

§ 894.504 When is my enrollment effective?

* * * * *

(c) If you are a *TEI* and enroll or are enrolled during the open season, your enrollment is effective no earlier than January 1, 2019.

(d) A *QLE* enrollment or change is effective the 1st day of the pay period following the date of your *QLE*.

(e)(l) A belated open season enrollment or change is effective retroactive to the date it would have been effective if you had made a timely enrollment or request for a change.

(2) Any belated enrollment or change outside of open season that goes beyond the allowable 60 day enrollment timeframe is effective retroactive to the 1st day of the pay period following the one in which you became newly eligible or the date of your *QLE*.

(3) You are responsible for any retroactive premiums due to a belated enrollment or request for a change.

■ 15. Revise § 894.507 to read as follows:

§ 894.507 After I'm enrolled, may I change from one dental or vision plan or plan option to another?

(a) You may change from one dental plan to another, and/or from one vision plan to another, or you may change from one plan option to another option in that same plan:

(1) During the annual open season;

(2) When you get married (except for *TEIs* who are unremarried survivors, *TEI former spouses*, and *TEI children*); or

(3) For *employees*, when you return to Federal employment after being on leave without pay if you did not have Federal dental or vision coverage prior to going on leave without pay, or your coverage was terminated or canceled during your period of leave without pay.

(b)(1) If you are enrolled in a dental or vision plan with a geographically restricted service area, and you or a covered eligible *family member* or *TEI family member* move out of the service area, you may change to a different dental or vision plan that serves that area.

(2) You may make this change at any time before or after the move, once you or a covered eligible *family member* or *TEI family member* has a new address.

(3) The enrollment change is effective the first day of the pay period following the pay period in which you make the change.

(4) You may not change your *type of enrollment* unless you also have a *QLE* that allows you to change your *type of enrollment*.

■ 16. Revise § 894.509 to read as follows:

§ 894.509 What are the QLEs that are consistent with increasing my type of enrollment?

(a) Marriage; except for a *TEI* who is an unmarried survivor, widow or widower; *TEI former spouse*; and *TEI child(ren)*;

(b) *Acquiring an eligible child or TEI child*; or

(c) Loss of other dental or vision coverage by an eligible *family member* or *TEI family member*.

■ 17. In § 894.510, revise paragraphs (c) and (d)(1) to read as follows:

§ 894.510 When may I decrease my type of enrollment?

* * * * *

(c)(1) Except as provided in paragraph (c)(2) of this section, you may decrease your type of enrollment only during the period beginning 31 days before your QLE and ending 60 days after your QLE.

(2) You may make any of the following enrollment changes at any time beginning 31 days before a QLE listed in § 894.511(a):

(i) A decrease in your self plus one enrollment;

(ii) A decrease in your self and family enrollment to a self plus one enrollment, when you have only one remaining eligible *family member* or *TEI family member*; or

(iii) A decrease in your self and family enrollment to a self only enrollment, when you have no remaining eligible *family members* or *TEI family members*.

(d)(1) Except as provided in paragraph (d)(2) of this section, your change in enrollment is effective the first day of the first pay period following the one in which you make the change.

* * * * *

■ 18. Revise § 894.511 to read as follows:

§ 894.511 What are the QLEs that are consistent with decreasing my type of enrollment?

(a) Loss of an eligible *family member* or *TEI family member* due to:

(1) Divorce;

(2) Death; or

(3) Loss of eligibility of a previously enrolled *child* or *TEI child*.

(b) You are an *employee*, *annuitant* or *compensation*er and your spouse deploys to active military service.

■ 19. Add § 894.513 to read as follows:

§ 894.513 Do I have to elect FEDVIP coverage each year in order to remain covered?

No. If you do not change or cancel your enrollment, and if your enrollment does not terminate pursuant to this part, then your current enrollment will continue into the next year. Before open

season, you should review the plan brochure for any changes in benefits and premiums for the next year.

Subpart F—Termination or Cancellation of Coverage

■ 20. Amend § 894.601 by revising paragraphs (a) through (c) and adding paragraphs (g) and (h) to read as follows:

§ 894.601 When does my FEDVIP coverage stop?

(a) If you no longer meet the definition of an eligible *employee* or *annuitant*, or *TEI*, your FEDVIP coverage stops at the end of the pay period in which you were last eligible.

(b) If you go into a period of nonpay or insufficient pay (or insufficient uniformed services pay or uniformed services retirement pay) and you do not make direct premium payments, your FEDVIP coverage stops at the end of the pay period for which your agency, retirement system, *OWCP*, uniformed services or uniformed services retirement system last deducted your premium payment.

(c) If you are making direct premium payments or payments by automatic bank withdrawal, and you stop making the payments, your FEDVIP coverage stops at the end of the pay period for which you last made a payment.

* * * * *

(g) If your status as a uniformed services retiree discontinues and you become a uniformed services member on active duty, your FEDVIP dental and/or vision plan enrollment terminates and your coverage stops at the end of the last pay period for which the premium payment was made from your uniformed services retirement pay. You will still be the *sponsor* but no longer the *enrollee*, and your *TEI certifying family member* would have to reenroll in vision and cover all *TEI family members*. As *sponsor*, you must notify your *family members* of changes in your eligibility and enrollment status changes. See § 894.815.

(h) If your status as a uniformed services member on active duty discontinues and you become a uniformed services retiree, the FEDVIP vision plan enrollment of your *TEI family members* terminates and coverage for your *TEI family members* will stop at the end of the pay period for which the last premium payment was made. As the *sponsor* who is an *enrollee*, you would have to enroll yourself and reenroll all *TEI family members*. As *sponsor*, you must notify your *family members* of changes in your eligibility and enrollment status changes. See § 894.815.

■ 21. Revise § 894.603 to read as follows:

§ 894.603 Is there a temporary extension of coverage and conversion right when my coverage stops or when a covered family member loses eligibility?

No. There is no temporary extension of coverage, or Temporary Continuation of Coverage (TCC), or right to convert to an individual dental or vision policy when your FEDVIP coverage stops or when a *family member* or *TEI family member* loses eligibility under FEDVIP.

Subpart H—[Redesignated as Subpart I and Amended]

■ 22. Redesignate subpart H (consisting of § 894.801) as subpart I (consisting of § 894.901) and revise newly redesignated subpart I to read as follows:

Subpart I—Benefits in Underserved Areas**§ 894.901 Will benefits be available in underserved areas?**

(a) Dental and vision plans under FEDVIP will include underserved areas in their service areas and provide benefits to enrollees in underserved areas.

(b) In any area where a FEDVIP dental or vision plan does not meet OPM access standards, including underserved areas, enrollees may receive services from non-network providers.

(c) Contracts under FEDVIP shall include access standards as defined by OPM and payment levels for services to non-network providers in areas that do not meet access standards.

■ 23. Add new subpart H to read as follows:

Subpart H—Special Provisions for TRICARE-Eligible Individuals (TEI)

Sec.

894.801 Am I eligible for FEDVIP based on my eligibility to enroll in a TRICARE dental or health plan?

894.802 Am I a TEI for a FEDVIP dental plan (TEI-D) if I am eligible to enroll or be covered under the TRICARE Retiree Dental Program?

894.803 Am I a TEI for a FEDVIP vision plan (TEI-V) based on my enrollment in a TRICARE health plan?

894.804 Am I a sponsor for a FEDVIP dental or vision plan?

894.805 I am not a TEI-D or TEI-V, but I am a sponsor. Am I eligible to cover my TEI family members?

894.806 Can a retiree or Retired Reserve member enroll and cover TEI family members in a FEDVIP dental plan?

894.807 Can an active duty member enroll or be covered under a FEDVIP vision plan?

894.808 I am a TEI family member. Can I enroll myself in FEDVIP?

- 894.809 Who is a TEI certifying family member, and may I be the enrollee if I accept this responsibility?
- 894.810 If I enroll for self plus one, may I decide which TEI family member to cover?
- 894.811 I am a TEI family member of a sponsor who is a retiree or Retired Reserve member who is not on active duty. My sponsor is a TEI-D but is not enrolled in a FEDVIP dental plan. Can I enroll in a FEDVIP dental plan even though my sponsor is eligible to enroll but is not enrolled?
- 894.812 I am a widow or widower TEI family member. Can I enroll my TEI child who is a TEI family member without enrolling myself in FEDVIP?
- 894.813 I am a TEI former spouse. Am I eligible to enroll in a FEDVIP vision plan?
- 894.814 Is a foster child included in the definition of TEI family member?
- 894.815 I am a sponsor. Am I responsible to notify the Administrator and my TEI family members when my FEDVIP dental or vision eligibility and/or enrollment status changes?
- 894.816 If I return from active duty and retire, what happens to my TEI family members' enrollment in their FEDVIP vision plan?
- 894.817 If I am a retiree who is a TEI-V and I return to active duty, what happens to my TEI family members' enrollment in their FEDVIP vision plan?

Subpart H—Special Provisions for TRICARE-Eligible Individuals (TEI)

§ 894.801 Am I eligible for FEDVIP based on my eligibility to enroll in a TRICARE dental or health plan?

(a) The U.S. Department of Defense (DOD) is responsible for regulating eligibility for obtaining medical and dental care under the TRICARE Program, pursuant to 10 U.S.C. chapter 55. The FEDVIP laws at 5 U.S.C. chapter 89A was amended by the National Defense Authorization Act for Fiscal Year 2017, Public Law 114–328, to allow individuals who were eligible for coverage under the TRICARE Retiree Dental Program (TRDP) in accordance with DOD rules to obtain dental coverage in a FEDVIP dental plan. Public Law 114–328 also added a provision allowing certain individuals who are concurrently enrolled for medical care in specified TRICARE health plans to obtain FEDVIP vision coverage.

(b) Categories of individuals who were eligible for TRDP and who are eligible to be covered under a FEDVIP dental plan are set forth in § 894.802. Categories of individuals who may be covered under specified TRICARE health plans and, if so covered, are eligible to be covered under a FEDVIP vision plan, are set forth in § 894.803. Individuals eligible for FEDVIP coverage

are referred to as *TRICARE eligible individuals (TEI)*.

(c)(1) FEDVIP rules provide an enrollee with the right to select:

- (i) A dental and/or a vision plan; and
- (ii) *Type of enrollment* that may cover the eligible individual in a self only enrollment or the eligible individual with one or more *family members* in a self plus one or self and family enrollment.

(2) For *TRICARE eligible individuals (TEI)*, this means that:

(i) If the *sponsor* is both a *TEI* and enrolled, the *sponsor* may be an *enrollee* and may cover the *sponsor* and *TEI family members* under the plan.

(ii) If a *sponsor* is not eligible to enroll (or pursuant to § 894.309(a)(3)(iii) is not enrolled), a *TEI* who is a *TEI family member* may self-certify to serve as *enrollee* instead, and may cover other *TEI family members*.

(d) If a FEDVIP dental or vision plan has a specific geographic enrollment area, *TEI family members* must live or work in that area in order to be enrolled for coverage. An *enrollee* whose *TEI family members* are located in different geographic locations may select a plan that is nationwide/international in scope in order to obtain accessible coverage.

§ 894.802 Am I a TEI for a FEDVIP dental plan (TEI-D) if I am eligible to enroll or be covered under the TRICARE Retiree Dental Program?

A *TRICARE-eligible individual for FEDVIP dental benefits (TEI-D)* means an individual who is eligible to be enrolled and/or who may be covered under the TRICARE Retiree Dental Program (TRDP) pursuant to 10 U.S.C. 1076c(b) as set forth in 32 CFR 199.3 and 199.22. Individuals covered under any of the following programs are excluded and are *not TEI-D*: TRICARE Young Adult provisions of 10 U.S.C. 1110b; Transitional Assistance Management Program (TAMP), 10 U.S.C. 1145(a); Continued Health Care Benefit Program (CHCBP); 10 U.S.C. 1078a; or Foreign Military (including NATO) sponsor/family coverage.

§ 894.803 Am I a TEI for a FEDVIP vision plan (TEI-V) based on my concurrent enrollment in a TRICARE health plan?

(a) Except as provided in paragraphs (b) and (c) of this section, a *TEI-V* is an individual who is concurrently enrolled in and/or covered pursuant to:

- (1) 10 U.S.C. 1076d (TRICARE Reserve Select (TRS));
- (2) 10 U.S.C. 1076e (TRICARE Retired Reserve (TRR));
- (3) 10 U.S.C. 1079(a) (uniformed services active duty family members

concurrently enrolled in TRICARE Select or TRICARE Prime);

(4) 10 U.S.C. 1086(c) (uniformed services retirees and retiree family members or former spouses concurrently enrolled in TRICARE Select or TRICARE Prime); or

(5) 10 U.S.C. 1086(d) (TRICARE for Life (TFL)), as set forth in 32 CFR 199.3. The provisions of TFL require Medicare eligible retirees and individual Medicare eligible retiree family members or former spouses to enroll in Medicare Part B (requires payment of applicable premiums), otherwise they are not a *TEI-V*.

(b) An individual covered under any of the following programs is *not* a *TEI-V*:

(1) TRICARE Young Adult provisions of 10 U.S.C. 1110b;

(2) Transitional Assistance Management Program (TAMP), 10 U.S.C. 1145(a);

(3) Continued Health Care Benefit Program (CHCBP), 10 U.S.C. 1078a; or

(4) Foreign Military (including NATO) sponsor/family coverage.

(c) An active duty member of the uniformed services under 10 U.S.C. 1074(a) is *not* a *TEI-V*.

§ 894.804 Am I a sponsor for a FEDVIP dental or vision plan?

(a) Generally, the *sponsor* is the individual who is eligible for medical or dental benefits under 10 U.S.C. chapter 55 based on his or her direct affiliation with the uniformed services, including military members of the National Guard and Reserves. Relationship to a *sponsor* conveys *TEI* status to a *TEI family member*. If two parents of a *TEI child* are entitled to be a *sponsor*, see restriction on dual enrollment at § 894.203.

(b) *Sponsor* for a FEDVIP dental plan means:

(1) Retiree. A member or former member of a uniformed service who is entitled to uniformed services retirement pay. To determine a *sponsor's enrollee* status for a FEDVIP dental plan, see § 894.309 and the definition of *TEI-D*;

(2) Retired Reserve member under the age of 60 (“Gray Area Retiree”). To determine *sponsor's enrollee* status for a FEDVIP dental plan, see § 894.309 and the definition of *TEI-D*;

(3) Medal of Honor recipient who is not otherwise entitled to dental benefits; or

(4) Deceased Member described in paragraph (b)(1) or (2) of this section who died after retiring from active duty and a deceased member who was a Medal of Honor recipient described in paragraph (b)(3) of this section.

(c) *Sponsor* for a FEDVIP vision plan includes:

(1) Retiree. A member or former member of a uniformed service who is entitled to uniformed services retirement pay.

(2) Retired Reserve member under the age of 60 ("Gray Area Retiree");

(3) Medal of Honor recipient who is enrolled in TRICARE Select or TRICARE Prime and who is not on active duty;

(4) Member of the uniformed services (active or Reserve Component) on active duty for more than 30 days. An active duty member of the uniformed services under 10 U.S.C. 1074(a) is not a *TEI-V* and is not an *enrollee* for a FEDVIP vision plan, see § 894.309 and definition of *TEI-V*;

(5) Ready Reserve member;

(6) Deceased member described at paragraphs (c)(1) through (5) of this section; or

(7) Deceased Reserve Component member (deceased in the line of duty).

§ 894.805 I am not a *TEI-D* or *TEI-V*, but I am a sponsor. Am I eligible to cover my *TEI* family members?

(a) *FEDVIP dental plan*. (1) No, a *sponsor* must be both a *TEI-D* and an *enrollee*, in order to cover *TEI* family members in a FEDVIP dental plan.

(2) However, a *TEI* certifying family member may enroll and cover *TEI* family members in a FEDVIP dental plan if the *sponsor* described at § 894.804 is a retiree or Retired Reserve Member who is a *TEI-D*, but who is not enrolled and the retiree or Retired Reserve Member:

(i) Receives VA dental services;

(ii) Has employer-sponsored dental coverage without a family coverage option; or

(iii) Has a medical or dental condition that prevents him or her from obtaining dental benefits. See § 894.309.

(b) *FEDVIP vision plan*. (1) No, a *sponsor* must be both a *TEI-V* and an *enrollee* in order to enroll and cover *TEI* family members in his or her FEDVIP vision plan.

(2) However, a *TEI* certifying family member may enroll *TEI* family members. A uniformed services member (active or Reserve Component) on active duty for more than 30 days described in § 894.804(c)(4) is not a *TEI-V* and is not eligible to enroll and cover *TEI* family members. See § 894.309.

§ 894.806 Can a retiree or Retired Reserve member enroll and cover *TEI* family members in a FEDVIP dental plan?

Generally, yes, since a retiree or Retired Reserve member who is a *sponsor* is also a *TEI-D*. However, if a retiree or Retired Reserve member who

is eligible to enroll does not in fact enroll, then the member is not an *enrollee* and cannot cover *TEI* family members. A *TEI* certifying family member may serve as *enrollee* only if the member does not enroll and meets at least one of the following conditions:

(a) Receives VA dental services;

(b) Has employer-sponsored dental coverage without a family coverage option; or

(c) Has a medical or dental condition that prevents him or her from obtaining dental benefits. See description of eligibility in § 894.309(a)(3)(iii).

§ 894.807 Can an active duty member enroll or be covered under a FEDVIP vision plan?

No, a uniformed services member on active duty is not a *TEI-V* and may not enroll or be covered under a FEDVIP vision plan. However, an active duty member is a *sponsor*, therefore their *TEI* family members may be eligible to enroll in a vision plan. See definition of *TEI* for FEDVIP vision benefits (*TEI-V*) in § 894.101.

§ 894.808 I am a *TEI* family member. Can I enroll myself in FEDVIP?

Generally, you are not eligible to enroll yourself as a *TEI* family member. Only an *enrollee* designated at subpart C of this part may enroll in FEDVIP and select a plan, option, and type of enrollment (self only, self plus one, or self and family) that may cover *TEI* family members. There is only one FEDVIP dental enrollment and one FEDVIP vision enrollment associated with a *sponsor* and either the *sponsor* or a *TEI* certifying family member may be the *enrollee*, who may enroll, and cover *TEI* family members under the enrollment, in accordance with § 894.309.

§ 894.809 Who is a *TEI* certifying family member, and may I be the *enrollee* if I accept this responsibility?

(a) *TEI* certifying family member means, where the *sponsor* is not an *enrollee* under § 894.309, the *TEI* family member in order of precedence, as set forth in paragraph (b) of this section, who may accept responsibility to self-certify as the *enrollee* by enrolling and, if appropriate, covering the *sponsor's* *TEI* family members by electing a self plus one or self and family type of enrollment. Accepting responsibility to self-certify as the *enrollee* includes consulting all *TEI* family members regarding their preference for coverage under the enrollment, electing an appropriate plan, option, and type of enrollment.

(b) The following order of precedence governs which *TEI* family member may self-certify as the *enrollee*:

(1) An unmarried surviving spouse of a retiree or Medal of Honor recipient, if any, is the *TEI* certifying family member who may enroll and cover surviving *TEI* child(ren) of the retiree.

(2) If there is no unmarried surviving spouse of a retiree or Medal of Honor recipient, the surviving *TEI* child of a retiree who accepts responsibility to self-certify as the *enrollee* is the *TEI* certifying family member who may enroll and cover other surviving child(ren) who are *TEI* family member(s) of the deceased retiree.

(3) The *TEI* family member who is a spouse is the *TEI* certifying family member who may enroll and cover other *TEI* family member(s).

(4) If there is no spouse, the *TEI* family member who accepts responsibility to self-certify as the *enrollee* is the *TEI* certifying family member who may enroll and cover other *TEI* family member(s).

(c) In the event that the *TEI* family member or *TEI* certifying family member is a minor child or a disabled adult dependent, a legal guardian may exercise the *TEI's* rights on his or her behalf.

(d) Accepting responsibility to self-certify as the *enrollee* means that you accept the *Administrator's* authority to make reconsideration decisions under § 894.104 and OPM's authority to correct enrollments under § 894.105.

§ 894.810 If I enroll for self plus one, may I decide which *TEI* family member to cover?

Generally, yes, as specified in § 894.202. However, if you are an *enrollee* and you do not elect a type of enrollment that covers a *TEI* family member, that *TEI* family member will not have FEDVIP coverage or benefits. A *TEI* family member who is not a *TEI* certifying family member may not self-certify and enroll himself or herself as a *TEI* family member in a FEDVIP plan. Note however, that a *TEI* family member may seek reconsideration of an erroneous enrollment under § 894.104, and the *Administrator* and OPM retain authority to correct enrollments under § 894.105.

§ 894.811 I am a *TEI* family member of a sponsor who is a retiree or Retired Reserve member who is not on active duty. My sponsor is a *TEI-D* but is not enrolled in a FEDVIP dental plan. Can I enroll in a FEDVIP dental plan even though my sponsor is eligible to enroll but is not enrolled?

Generally, if your *sponsor* is a *TEI-D*, he or she must enroll in a FEDVIP dental plan in order to cover *TEI* family

members. As an exception, however, a *TEI family member* can accept the responsibility to self-certify and enroll in a FEDVIP dental plan as a *TEI certifying family member*, and cover other *TEI family members*, if the *sponsor* who is a *TEI-D* (eligible for FEDVIP dental benefits) is not enrolled and the *sponsor* meets at least one of the following conditions identified in § 894.309(a)(3)(iii):

- (a) The retiree *sponsor* receives VA dental services;
- (b) The retiree *sponsor* has employer-sponsored dental coverage without a family coverage option; or
- (c) The retiree *sponsor* has a medical or dental condition that prevents him or her from obtaining dental benefits.

§ 894.812 I am a widow or widower *TEI family member*. Can I enroll my *TEI child* who is a *TEI family member* without enrolling myself in FEDVIP?

No. A widow or widower who is a *TEI family member* is the *TEI certifying family member*. Because there is no available *sponsor*, you are the *enrollee*, and must either:

- (a) Enroll yourself and the *TEI child* in a self plus one enrollment; or
- (b) Enroll all *TEI family members* in a self and family enrollment, in order for the *TEI child* to receive FEDVIP coverage.

§ 894.813 I am a *TEI* former spouse. Am I eligible to enroll in a FEDVIP vision plan?

Yes, you are eligible to enroll in a FEDVIP vision plan only. A *TEI former spouse* is not eligible to enroll in a FEDVIP dental plan. You are a *TEI-V*, and you are an *enrollee*, however your *type of enrollment* is limited to self only. You may not enroll a child, even if the child is a *TEI child*. The *TEI child* will have his or her opportunity for FEDVIP dental and/or vision coverage through your ex-spouse *sponsor*, or *TEI certifying family member* as the case may be. It is possible for a minor *TEI child* to be the *TEI certifying family member* eligible to enroll as an *enrollee*. If this is the case, you (or the *TEI child's* legal guardian if not you) may effectuate that enrollment by accepting responsibility on behalf of the *TEI child* to self-certify as *enrollee* by enrolling and, if appropriate, covering other *TEI family members* of the *sponsor*. Accepting responsibility to self-certify as *enrollee* on behalf of the *TEI child* includes consulting all of the *TEI family members* of the *TEI certifying family member* regarding their preference for coverage under the enrollment, electing an appropriate plan, option and *type of enrollment*, and paying the premium on behalf of the *TEI child* and other *TEI family members* for the enrollment.

§ 894.814 Is a foster child included in the definition of *TEI family member*?

A foster child is excluded from coverage as they are not defined to be a *TEI family member*. However, a pre-adoptive child, adopted child, and an eligible ward of the state are considered *TEI family members*.

§ 894.815 I am a *sponsor*. Am I responsible to notify the Administrator and my *TEI family members* when my FEDVIP dental or vision eligibility and/or enrollment status changes?

Yes, as *sponsor*, you must notify the Administrator and your *TEI family members* of changes in your eligibility and enrollment status. Status as an *enrollee*, with a right to the enrollment, depends upon your *sponsor* status and eligibility as a *TEI*, and the enrollment action you have taken. Failure to notify the Administrator and your *TEI family members* of a change in status within the uniformed services that affects your eligibility to enroll may result in invalid continued enrollment, or an unexpected termination of enrollment, for your *TEI family members*, for which you will be responsible.

(a) *Example 1.* (1) Status change from non-enrollee to *enrollee*.

(2) You are on active duty (not *TEI* and not an *enrollee* in a dental or vision plan). Your *TEI certifying family member* may enroll and cover *TEI family members* in a FEDVIP plan.

Upon a change in your status to a retiree or Retired Reserve member (who is not on active duty), you become a *TEI* and may enroll yourself and *TEI family members* in a FEDVIP plan. Your *TEI certifying family member* is no longer the *enrollee*, and you must notify the Administrator of your change in status. The Administrator will send the *TEI certifying family member* notice that his or her enrollment is terminated, and notify them that their *sponsor* (i.e. you), may enroll, and may cover *TEI family members* on the new enrollment.

(b) *Example 2.* (1) Status change from non-enrollee to *enrollee*.

(2) You are a retiree or a retired Reserve member and as a *TEI-D* you are eligible for, but not enrolled in, a FEDVIP dental plan and you satisfy at least one of the conditions at § 894.309(a)(3)(iii). You are not an *enrollee* because you are not enrolled, and therefore cannot cover *TEI family members*. Your *TEI certifying family member* may enroll and cover *TEI family members* in a FEDVIP dental plan. Upon a change in your status causing you to no longer satisfy one of the conditions, your *TEI certifying family member* is no longer the *enrollee*, and you must notify the Administrator.

The Administrator will send your *TEI certifying family member* notice that their enrollment is terminated, and notify them that their *sponsor* (i.e. you), may enroll, and may cover *TEI family members* on the new enrollment.

(c) *Example 3.* (1) Status change from *enrollee* to non-enrollee.

(2) You are a retiree or Retired Reserve member (who is not on active duty), and you go on active duty. You lose *TEI* status and you are no longer eligible to be an *enrollee*. You must notify the Administrator of your change in status. The Administrator will terminate your enrollment and notify you that a *TEI certifying family member* may accept responsibility to self-certify as *enrollee* by enrolling and, if appropriate, covering other *TEI family members* by electing self plus one or self and family *type of enrollment* for only a FEDVIP vision plan. You are responsible to notify your covered *TEI family members* that your enrollment will terminate, and of their opportunity to accept responsibility to self-certify as *enrollee*.

§ 894.816 If I return from active duty and retire, what happens to my *TEI family members'* enrollment in their FEDVIP vision plan?

As a uniformed services member on active duty, you are the *sponsor* but you are not eligible to enroll in a FEDVIP vision plan and you cannot be the *enrollee*. A *TEI certifying family member* may be the *enrollee* while you are on active duty. Upon your retirement, however, you become eligible to enroll as a *TEI-V* and *TEI-D*, and the current *enrollee* status of your *TEI certifying family member* ends. As *sponsor*, you are responsible for notifying the Administrator and your *TEI family members* of your change in status. The *TEI family members'* enrollment will be terminated and as a *TEI-V* and *TEI-D* who is both *sponsor* and *enrollee*, you may enroll yourself and cover *TEI family members*. See § 894.601.

§ 894.817 If I am a retiree who is a *TEI-V* and I return to active duty, what happens to my *TEI family members'* enrollment in their FEDVIP vision plan?

If you and your *TEI family members* are enrolled in a FEDVIP vision plan while you are retired, and you return to active duty, you will no longer be eligible to enroll in a FEDVIP vision plan and cannot continue to be the *enrollee* even though you are the *sponsor*. The current enrollment for you and your *TEI family members* will terminate and your coverage stops at the end of the pay period for which the premium payment was made from your

uniformed services retirement pay. A *TEI certifying family member* may accept responsibility to self-certify as the *enrollee* by enrolling and, if appropriate, covering other *TEI family members*. You are responsible for notifying your covered *TEI family members* that your enrollment will terminate and of their opportunity to accept responsibility to self-certify as the *enrollee*. Once the *TEI certifying family member* enrolls, and covers your *TEI family members*, they can remain enrolled in a FEDVIP vision plan for the duration of your active duty service. See § 894.601.

[FR Doc. 2018-25114 Filed 11-14-18; 4:15 pm]

BILLING CODE 6325-64-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2018-0586; Product Identifier 2017-NM-151-AD; Amendment 39-19445; AD 2018-20-11]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the *Federal Register*. That AD applies to certain Bombardier, Inc., Model DHC-8-300 series airplanes. As published, a service information citation is incorrect. This document corrects the error. In all other respects, the original document remains the same.

DATES: This correction is effective November 23, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 23, 2018 (83 FR 52754, October 18, 2018).

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd.qseries@aero.bombardier.com; internet <http://www.bombardier.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-2018-0586.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov>; 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 address for the Docket Office (phone: 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Darren Gassetto, Aerospace Engineer, Mechanical Systems and Admin Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7323; fax 516-794-5531; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Airworthiness Directive 2018-20-11, Amendment 39-19445 (83 FR 52754, October 18, 2018) ("AD 2018-20-11"), requires a detailed inspection of the ball bearings of an emergency exit, replacement of bearings if necessary, application of corrosion inhibiting compound (CIC), and revision of the maintenance or inspection program, as applicable. That AD applies to certain Bombardier, Inc., Model DHC-8-300 series airplanes.

Need for the Correction

As published, a service information citation is incorrect in the following preamble and regulatory text locations: Related Service Information Under 1 CFR part 51; paragraph (g) of AD 2018-20-11; and paragraph (l)(2)(iii) of AD 2018-20-11.

In those locations, AD 2018-20-11 refers to Temporary Revision (TR) 54-042, dated April 10, 2018, to the DHC-8-300 Aircraft Maintenance Manual (AMM), but the document is actually Temporary Revision (TR) 52-042, dated April 10, 2018, to the DHC-8-300 Aircraft Maintenance Manual (AMM).

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information:

- Service Bulletin 8-52-65, dated July 26, 2017, which describes procedures for a detailed inspection of the forward right-hand type I emergency exit door ball bearings for corrosion,

seal damage, and loss of lubricant; applying CIC; and replacing emergency exit door ball bearings if necessary.

- de Havilland Inc. Dash 8 Series 300 Maintenance Task Card Task Number 5220/12 ("Servicing of Forward RH Emergency Exit Mechanisms"), dated March 15, 2017, which describes procedures for servicing the forward right-hand emergency exit door mechanisms.

- Temporary Revision (TR) 52-042, dated April 10, 2018, to the DHC-8-300 Aircraft Maintenance Manual (AMM), which describes procedures for servicing the type I emergency exit door mechanisms.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, we are publishing the entire rule in the **Federal Register**.

The effective date of this AD remains November 23, 2018.

Since this action only corrects a service information citation, it has no adverse economic impact and imposes no additional burden on any person. Therefore, we have determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 [Corrected]

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

2018-20-11 Bombardier, Inc.: Amendment 39-19445; Docket No. FAA-2018-0586; Product Identifier 2017-NM-151-AD.

(a) Effective Date

This AD is effective November 23, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model DHC-8-301, -311, and -315 airplanes, certificated in any category, serial numbers 100 through 672 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports indicating that the forward right-hand type I emergency exit door could not be opened during maintenance. An investigation determined that the exit door handle was jammed due to corroded center and lower shaft ball bearings. We are issuing this AD to address corrosion of the emergency exit door ball bearings, which could result in the inability to open the emergency exit door during an emergency evacuation and consequently impede airplane egress.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 60 days after November 23, 2018 (the effective date of this AD): Revise the maintenance or inspection program, as applicable, to incorporate de Havilland Inc. Dash 8 Series 300 Maintenance Task Card Task Number 5220/12 ("Servicing of Forward RH Emergency Exit Mechanisms"), dated March 15, 2017; and Temporary Revision 52-042, dated April 10, 2018, to the DHC-8-300 Aircraft Maintenance Manual (AMM). The initial compliance time for doing the task is at the time specified in de Havilland Inc. Dash 8 Series 300 Maintenance Task Card Task Number 5220/12 ("Servicing of Forward RH Emergency Exit Mechanisms"), dated March 15, 2017, or within 60 days after November 23, 2018, whichever occurs later.

(h) Inspection and Replacement

Within 5,000 flight hours or 36 months, whichever occurs first, after November 23, 2018 (the effective date of this AD): Do a detailed inspection of all ball bearings of the forward right-hand type I emergency exit for corrosion, seal damage, and loss of lubricant; replace bearings as applicable; and apply corrosion inhibiting compound (CIC); in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8-52-65, dated July 26, 2017. Do all applicable replacements before further flight.

(i) No Alternative Actions or Intervals

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

procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. 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*: 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF-2017-30, dated August 30, 2017, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0586.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Admin Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7323; fax 516-794-5531; email 9-avs-nyaco-cos@faa.gov.

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on November 23, 2018 (83 FR 52754, October 18, 2018).

(i) Bombardier Service Bulletin 8-52-65, dated July 26, 2017.

(ii) de Havilland Inc. Dash 8 Series 300 Maintenance Task Card Task Number 5220/12 ("Servicing of Forward RH Emergency Exit Mechanisms"), dated March 15, 2017.

(iii) Temporary Revision (TR) 52-042, dated April 10, 2018, to the DHC-8-300 Aircraft Maintenance Manual (AMM).

(4) For service information identified in this AD, contact Bombardier, Inc. Q-Series

Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd.qseries@aero.bombardier.com; internet <http://www.bombardier.com>.

(5) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Des Moines, Washington, on November 8, 2018.

Chris Spangenberg,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018-25002 Filed 11-16-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2018-0980]

Drawbridge Operation Regulation; Sacramento River, Rio Vista, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Rio Vista Drawbridge across Sacramento River, mile 12.8 at Rio Vista, CA. The deviation is necessary to allow the bridge owner to conduct preventative maintenance on the bridge. This deviation allows the bridge to operate at various specified times during the deviation period.

DATES: This deviation is effective without actual notice from November 19, 2018 to 11:50 p.m. on February 15, 2019. For the purposes of enforcement, actual notice will be used from November 15, 2018 through November 19, 2018.

ADDRESSES: The docket for this deviation, USCG-2018-0980, is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary

deviation, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, email Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Rio Vista Drawbridge, mile 12.8, over the Sacramento River, at Rio Vista, CA. The drawbridge navigation span provides a vertical clearance of 18 feet above Mean High Water in the closed-to-navigation position. In accordance with 33 CFR 117.5, the draw opens on signal. Navigation on the waterway is commercial and recreational.

From November 15, 2018 to February 15, 2019, the draw shall open for recreational vessels in accordance with the following schedule: Monday through Friday, 7 a.m. to 3:30 p.m., the draw need not open for the passage of recreational vessels except between 11 a.m. and noon when the draw shall open on signal when notice is given to the bridge tender. The draw shall open on signal, Monday through Friday, 3:30 p.m. to 7 a.m. the following morning, if at least a 4-hour notification is given to the bridge tender. The draw shall open on signal from 7 a.m. on Saturday through 11:59 p.m. on Sunday when notice is given to the bridge tender.

From November 15, 2018 to February 15, 2019, the draw shall open for commercial vessels in accordance with the following schedule: The draw shall open on signal from midnight on Monday through 7 a.m. on Saturday if at least a 4-hour notification is given to the bridge tender. The draw shall open on signal from 7 a.m. on Saturday through 11:59 p.m. on Sunday when notice is given to the bridge tender.

The temporary schedule change will allow the bridge owner to conduct needed maintenance and painting on the lift span portion of the bridge. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies in accordance with 33 CFR 117.31(b). There is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular

operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 6, 2018.

Carl T. Hausner,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2018-25153 Filed 11-16-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0371]

RIN 1625-AA00

Safety Zone; Penn's Landing Fireworks, Delaware River, Philadelphia PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the existing recurring fireworks safety zone on the Delaware River Adjacent to Penn's Landing in Philadelphia, Pennsylvania. This amendment allows the Coast Guard to enforce the safety zone at this location throughout the entire year. The Coast Guard will notify the public of upcoming enforcement of the zone through publication of a Notice of Enforcement in the **Federal Register** and Broadcast Notice to Mariners. This change will expedite public notification of events at the location and ensure the protection of the maritime public and event participants from the hazards associated with fireworks displays in the Delaware River adjacent to Penn's Landing.

DATES: This rule is effective December 19, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0371 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 Petty Officer Edmund Ofalt, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone 215-271-4814, email Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard routinely receives requests for fireworks displays in the Delaware River Adjacent to Penn's Landing in Philadelphia, Pennsylvania. As a result, the Coast Guard previously issued a rule creating a recurring safety zone location for this location, listed as entry (a)16 in the table to 33 CFR 165.506. That regulation lists possible days of anticipated enforcement as July 2nd, 3rd, 4th, or 5th; Columbus Day; December 31st, and January 1st. In recent years, however, the number of firework events at this location have significantly increased. To date in the year 2018 there have been 13 requests for fireworks events at this location—many more than the anticipated number of approximately 3 events covered by the current regulation. The additional requests fall outside the enforcement dates listed in the CFR. As a result, the Coast Guard had to issue numerous temporary safety zones to cover the additional events that fall outside of the coverage of the current regulation. In accordance with good cause exceptions found in 5 U.S.C. 553, the rules creating these temporary safety zones are generally not preceded by notice of proposed rulemaking due to the short lead-time often provided to the Coast Guard.

In response, on September 21, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Safety Zone; Penn's Landing Fireworks, Delaware River, Philadelphia PA" (83 FR 47852). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. During the comment period that ended October 22, 2018, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with the fireworks to be used in this type of display will be a safety concern for anyone within a 500 yard radius of the fireworks barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published September 21, 2018. The comment was supportive of the proposed rulemaking. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule revises the recurring fireworks safety zone near Penn's Landing, listed as entry (a)16 in the table to 33 CFR 165.506. Although this safety zone will be January through December each year, enforcement of the safety zone will only be for short periods of time before, during and after fireworks shows at this location. In order to promote clarity, Penn's Landing has been added to the location column of the revised regulatory text. The column defining the boundaries of the regulated area has also been updated to improve clarity and more efficiently define the regulated area. The revised safety zone will cover all navigable waters of the Delaware River within 500 yards of a fireworks barge located at approximately 39°56'49" N, longitude 075°08'11" W, adjacent to Penn's Landing, Philadelphia, Pennsylvania.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration and time of day of the safety zone. Only a small, designated area of the Delaware River will be impacted during enforcement. Consistent with the current regulatory text found in 33 CFR 165.506(d), the default time period this zone will be enforced during each

activation is between 5:30 p.m. and 1 a.m. That regulation, however, allows for modifications in this timeframe. In practice, the zone is typically activated with only a two-hour enforcement time period. During the evening, when enforcement is occurring, commercial and recreational traffic is normally low. Notification of enforcement dates and times will be made, at a minimum, to the maritime community via Notice of Enforcement published in the **Federal Register**, Broadcast Notice to Mariners, and actual notice will be provided via on-scene enforcement vessels. Notifications will be updated as necessary to keep the maritime community informed of the status of the safety zone.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a

category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will only be enforced for a short duration and excludes vessels from entry into or remaining within a specified area on the Delaware River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.506, revise entry (a)16 in the table to § 165.506 to read as follows:

§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.

* * * * *

TABLE TO § 165.506

(a) Coast Guard Sector Delaware Bay—COTP Zone

| | | | | | |
|---|---|---|---|---|---|
| * | * | * | * | * | * |
| 16 January 1st–December 31st: Any day specified by Notice of Enforcement published in the Federal Register and broadcast via Broadcast Notice to Mariners. | Penn's Landing, Delaware River, Philadelphia PA; Safety Zone. | All waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, within 500 yards of a fireworks barge at approximate position latitude 39°56'49" N, longitude 075°08'11" W. | | | |
| * | * | * | * | * | * |

Dated: November 13, 2018,
Scott E. Anderson,
Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.
 [FR Doc. 2018-25129 Filed 11-16-18; 8:45 am]
BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2018-0099; A-1-FRL-9983-32-Region 1]

Air Plan Approval; Connecticut; Volatile Organic Compound Emissions From Consumer Products and Architectural and Industrial Maintenance Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. The SIP revision amends requirements for controlling volatile organic compound (VOC) emissions from consumer products and architectural and industrial maintenance (AIM) coatings by revising Regulations of Connecticut State Agencies (RCSA)

sections 22a-174-40, 22a-174-41, and adding section 22a-174-41a. The intended effect of this action is to approve these regulations into the Connecticut SIP. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 19, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2018-0099. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, *i.e.*, 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 at www.regulations.gov or at the U.S. Environmental Protection Agency, EPA Region 1, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are

Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code OEP05-2), Boston, MA 02109-3912, tel. 617-918-1584, email Mackintosh.David@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Table of Contents

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background and Purpose

On June 4, 2018 (83 FR 25615), EPA issued a notice of proposed rulemaking (NPR) for the State of Connecticut. In the NPR, EPA proposed approval of SIP revisions submitted by the Connecticut Department of Energy and Environmental Protection (CT DEEP) on October 18, 2017. The SIP submittal included revised sections 22a-174-40 “Consumer Products” and 22a-174-41 “Architectural and Industrial Maintenance Products—Phase 1” and adds new section 22a-174-41a

“Architectural and Industrial Maintenance Products—Phase 2.”

The NPR provides the rationale for EPA’s proposed approval, which will not be restated here.

II. Response to Comments

EPA received three anonymous comments in response to the notice of proposed rulemaking. The comments address subjects outside the scope of the proposed action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action. Therefore, the comments are not germane and EPA provides no further response.

III. Final Action

EPA is approving the October 18, 2017, CT DEEP SIP submittal consisting of revised section 22a–174–40 “Consumer Products” and 22a–174–41 “Architectural and Industrial Maintenance Products—Phase 1” and new section 22a–174–41a “Architectural and Industrial Maintenance Products—Phase 2,” all of which became effective in the State of Connecticut on October 5, 2017.

IV. Incorporation by Reference

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

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 January 18, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 1, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 H—Connecticut

- 2. Section 52.370 is amended by adding paragraph (c)(119) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(119) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on October 18, 2017.

(i) *Incorporation by reference.*

(A) Regulations of Connecticut State Agencies Section 22a–174–40, entitled “Consumer Products,” effective Oct 5, 2017.

(B) Regulations of Connecticut State Agencies Section 22a–174–41, entitled “Architectural and Industrial Maintenance Products—Phase 1,” effective Oct 5, 2017.

(C) Regulations of Connecticut State Agencies Section 22a-174-41a, entitled “Architectural and Industrial Maintenance Products—Phase 2,” effective Oct 5, 2017.

- 3. Section 52.385, Table 52.385 is amended by:
- a. Revising entries for “22a-174-40” and “22a-174-41” and
- b. Adding the entry “22a-174-41a” after the entry “22a-174-41”

The revisions and addition read as follows:

§ 52.385 EPA-Approved Connecticut Regulations
* * * * *

TABLE 52.385—EPA-APPROVED REGULATIONS

| Connecticut State citation | Title/subject | Dates | | Federal Register citation | Section 52.370 | Comments/ description |
|----------------------------------|---|--------------------------|-------------------------|---|-------------------|--------------------------|
| | | Date adopted by State | Date approved by EPA | | | |
| * | * | * | * | * | * | * |
| 22a-174-40 | Consumer Products | 10/5/2017 | 11/19/2018 | [Insert Federal Register ci- tation]. | (c)(119). | |
| 22a-174-41 | Architectural and Industrial Maintenance Products— Phase 1. | 10/5/2017 | 11/19/2018 | [Insert Federal Register ci- tation]. | (c)(119). | |
| 22a-174-41a | Architectural and Industrial Maintenance Products— Phase 2. | 10/5/2017 | 11/19/2018 | [Insert Federal Register ci- tation]. | (c)(119). | |
| * | * | * | * | * | * | * |

Proposed Rules

Federal Register

Vol. 83, No. 223

Monday, November 19, 2018

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2018-0980; Product Identifier 2017-SW-123-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model MBB-BK 117 C-2 helicopters. This proposed AD would require establishing or reducing the life limit of various parts. This proposed AD is prompted by recalculations. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 18, 2019.

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

- *Federal eRulemaking Docket:* Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- *Fax:* 202-493-2251.

- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-

0980; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email matthew.fuller@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is

possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2017-0174, dated September 12, 2017 (EASA AD 2017-0174), to correct an unsafe condition for Airbus Helicopters Model MBB-BK 117 C-2 helicopters. EASA advises that recalculation by Airbus Helicopters has resulted in new or reduced life limits for certain parts. EASA AD 2017-0174 states the life limits are mandatory for continued airworthiness and failing to replace life-limited parts as specified could result in an unsafe condition. To address this condition, EASA AD 2017-0174 requires replacing the affected parts before exceeding their new or reduced life limit.

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

We reviewed Airbus Helicopters Alert Service Bulletin ASB MBB-BK117 C-2-04A-008, Revision 0, dated April 27, 2017, for Model MBB-BK 117 C-2 and C-2e helicopters. This service information specifies entering into the helicopter records the reduced and new airworthiness life limits for certain part-numbered main rotor head, swash plate, rotor flight controls, cyclic controls, and upper controls parts.

Proposed AD Requirements

This proposed AD would require establishing and reducing the life limit of the following parts: Main rotor head—nut, upper and lower quadruple nut, bolts, and inner sleeve; swash plate control ring assembly; rotor flight control collective bellcrank-K; cyclic

control rod tube; and upper control forked lever.

Costs of Compliance

We estimate that this proposed AD would affect 128 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at \$85 per work-hour.

Replacing a nut would take about 5 work-hours and parts would cost about \$3,352 for an estimated replacement cost of \$3,777.

Replacing a quadruple nut upper would take about 5 work-hours and parts would cost about \$3,283 for an estimated replacement cost of \$3,708.

Replacing a quadruple nut lower would take about 5 work-hours and parts would cost about \$3,405 for an estimated replacement cost of \$3,830.

Replacing a bolt would take about 2 work-hours and parts would cost about \$370 for an estimated replacement cost of \$540.

Replacing an inner sleeve would take about 2 work-hours and parts would cost about \$20,073 for an estimated replacement cost of \$20,243.

Replacing a control ring assembly would take about 5 work-hours and parts would cost about \$11,141 for an estimated replacement cost of \$11,566.

Replacing a bellcrank-K (collective) would take about 4 work-hours and parts would cost about \$3,400 for an estimated replacement cost of \$3,740.

Replacing a control rod tube would take about 4 work-hours and parts would cost about \$1,084 for an estimated replacement cost of \$1,424.

Replacing a forked lever would take about 3 work-hours and parts would cost about \$6,049 for an estimated replacement cost of \$6,304.

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.

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; 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.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters Deutschland GmbH:

Docket No. FAA-2018-0980; Product Identifier 2017-SW-123-AD.

(a) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model MBB-BK 117 C-2 helicopters with a part listed in Table 1 to paragraph (e) of this AD installed, certificated in any category.

Note 1 to paragraph (a) of this AD: Helicopters with an MBB-BK117 C-2e designation are Model MBB-BK117 C-2 helicopters.

(b) Unsafe Condition

This AD defines the unsafe condition as a part remaining in service beyond its fatigue life. This condition could result in failure of a part and loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by January 18, 2019.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Before further flight, remove from service any part that has reached or exceeded its new or reduced life limit as listed in Table 1 to paragraph (e) of this AD. Thereafter, remove from service each part on or before reaching its new or reduced life limit as listed in Table 1 to paragraph (e) of this AD. For purposes of this AD, a "landing" is counted any time the helicopter lifts off into the air and then lands again regardless of the duration of the landing and regardless of whether the engine is shut down.

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| Part Name | Part Number (P/N) | Life Limit |
|--|------------------------------|--|
| Nut | B622M1003201 | 65,800 landings or 10,123 hours time-in-service (TIS) if the number of landings is unknown |
| Quadruple nut upper Quadruple nut lower | B622M1004201 B622M1005201 | 60,000 landings or 9,230 hours TIS if the number of landings is unknown |
| Bolt | B622M1006201 B622M1007201 | 31,200 landings or 4,800 hours TIS if the number of landings is unknown |
| Inner sleeve | B622M1009201 | 13,300 hours TIS |
| Control ring assembly | B623M2001101 | 27,600 hours TIS |
| Bellcrank-K (collective) (4) | B670M7021201 | 21,500 hours TIS |
| Control rod tube | B291M1015201 | 30,000 hours TIS |
| Forked lever | B671M7007201 B671M7007205 | 22,500 Hours TIS |

Table 1 to Paragraph (e)

BILLING CODE 4910-13-C**(f) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email 9-ASW-FTW-AMOC-Requests@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before

operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Airbus Helicopters Alert Service Bulletin ASB MBB-BK117 C-2-04A-008, Revision 0, dated April 27, 2017, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2017-0174, dated September 12, 2017. You may view the EASA AD on the internet at <http://www.regulations.gov> in the AD Docket.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6220, Main Rotor Head; 6230 Main Rotor Mast/Swashplate; and 6710, Main Rotor Control.

Issued in Fort Worth, Texas, on November 6, 2018.

James A. Grigg,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018-24995 Filed 11-16-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2018-0920; Product Identifier 2016-NE-09-AD]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2016-22-05, which applies to certain Pratt & Whitney Division (PW) PW4164, PW4164-1D, PW4168, PW4168-1D, PW4168A, PW4168A-1D, and PW4170 turbofan engines. AD 2016-22-05 requires initial and repetitive inspections of the affected fuel nozzles and their replacement with parts eligible for installation. Since we issued AD 2016-22-05, PW introduced newly forged fuel nozzles, fuel manifold brackets, and clamps. This proposed AD would require initial and repetitive inspections of the affected fuel nozzles and fuel nozzle supply manifold assemblies, replacement of the affected fuel nozzles with parts eligible for installation, and the installation of new brackets and clamps on the fuel supply manifold assemblies with parts eligible for installation. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 3, 2019.

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

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

For service information identified in this NPRM, contact Pratt & Whitney Division, 400 Main St., East Hartford, CT 06108; phone: 860-565-8770; fax: 860-565-4503. You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200

District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7759.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0920; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800-647-5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Scott Hopper, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7154; fax: 781-238-7199; email: scott.hopper@faa.gov.

SUPPLEMENTARY INFORMATION:
Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2018-0920; Product Identifier 2016-NE-09-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

We issued AD 2016-22-05, Amendment 39-18694 (81 FR 75686, November 1, 2016), (“AD 2016-22-05”), for certain PW PW4164, PW4164-1D, PW4168, PW4168-1D, PW4168A, PW4168A-1D, and PW4170 turbofan engines. AD 2016-22-05 requires initial and repetitive inspections of the affected fuel nozzles and their replacement with parts eligible for installation. AD 2016-22-05 resulted from several instances of fuel leaks on PW engines installed with the Talon IIB combustion chamber configuration. We issued AD 2016-22-05 to prevent failure of the fuel nozzles, which could

lead to engine fire and damage to the airplane.

Actions Since AD 2016-22-05 Was Issued

Since we issued AD 2016-22-05, multiple PW4000 turbofan engines experienced fuel leaks resulting in engine fires. A subsequent review of the potential causes identified cracks in the fuel manifold at the braze joint. As a result, PW published PW Alert Service Bulletin (ASB) PW4G-100-A73-47, dated March 10, 2017, and PW Service Bulletin (SB) PW4G-100-73-48, Revision No. 1, dated April 24, 2018, to introduce a forged fuel nozzle that removes the brazed inlet fitting and adds new brackets and clamps to the fuel supply manifolds to dampen combustion chamber vibrations.

Related Service Information Under 14 CFR Part 51

We reviewed PW ASB PW4G-100-A73-45, dated February 16, 2016; PW ASB PW4G-100-A73-47, dated March 10, 2017; and PW SB PW4G-100-73-48, Revision No. 1, dated April 24, 2018. PW ASB PW4G-100-A73-45 describes procedures for inspecting and replacing the fuel nozzles. PW ASB PW4G-100-A73-47 describes procedures for replacing the fuel nozzle and support assembly. PW SB PW4G-100-73-48 describes procedures for replacing the fuel nozzle manifold assemblies and installing new brackets and clamps on the manifolds. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA’s Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2016-22-05. This proposed AD would require initial and repetitive inspections and replacement of the affected fuel nozzles. This proposed AD would also require replacement of the affected fuel nozzle supply manifold assemblies and the installation of new brackets and clamps on the fuel supply manifold assemblies with parts eligible for installation.

Differences Between This Proposed AD and the Service Information

PW ASB PW4G–100–A73–47, dated March 10, 2017, requires the installation of the new fuel nozzles by April 1, 2019, which is approximately 24 months from

the PW ASB issue date. This AD requires initial inspection and replacement of failed fuel nozzles before further flight and installation of new fuel nozzles within 24 months after the effective date of this AD.

Costs of Compliance

We estimate that this proposed AD affects 72 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|------------|------------------|------------------------|
| Inspect fuel nozzles | 2.2 work-hours × \$85 per hour = \$187 | \$0 | \$187 | \$13,464 |
| Open and close cowl doors (on-wing) | 1 work-hour × \$85 per hour = \$85 | 0 | 85 | 6,120 |
| Remove and replace (24) fuel nozzles | 48 work-hours × \$85 per hour = \$4,080 | 423,471.12 | 427,551.12 | 30,783,680.64 |
| Remove and re-install necessary hardware according to AMM. | 23 work-hours × \$85 per hour = \$1,955 | 0 | 1,955 | 140,760 |
| Replace Fuel Supply Manifold Tubes and install new clamps/brackets. | 16 work-hours × \$85 per hour = \$1,360 | 77,158.97 | 78,518.97 | 5,653,365.84 |

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 engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2016–22–05, Amendment 39–18694 (81 FR 75686, November 1, 2016), and adding the following new AD:

Pratt & Whitney Division: Docket No. FAA–2018–0920; Product Identifier 2016–NE–09–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by January 3, 2019.

(b) Affected ADs

This AD replaces AD 2016–22–05, Amendment 39–18694 (81 FR 75686, November 1, 2016).

(c) Applicability

This AD applies to Pratt & Whitney Division (PW):

(1) PW4164, PW4168, and PW4168A model engines that have fuel nozzles, part number (P/N) 51J345, installed, and that have any of the following installed: Talon IIB combustion chamber per PW Service Bulletin (SB) PW4G–100–72–214, dated December 15, 2011; ring case configuration (RRC) high-pressure compressor (HPC) per PW SB PW4G–100–72–219, Revision No. 1, dated October 5, 2011, or original issue; or the outer combustion chamber assembly waspaloy nuts per PW SB PW4G–100–72–253, dated November 24, 2014;

(2) PW4168A model engines with Talon IIA outer combustion chamber assembly, P/N 51J100 or 51J382, and fuel nozzles, P/N 51J345, with serial numbers CGGUA19703 through CGGUA19718, inclusive, or CGGUA22996 and higher, installed;

(3) PW4168A–1D and PW4170 model engines with engine serial numbers P735001 through P735190, inclusive, and fuel nozzles, P/N 51J345, installed; and

(4) PW4164–1D, PW4168–1D, PW4168A–1D, and PW4170 model engines that have installed the RRC HPC per PW SB PW4G–100–72–220, Revision No. 4, dated September 30, 2011, or earlier revision, and have fuel nozzles, P/N 51J345, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7310, Engine Fuel Distribution.

(e) Unsafe Condition

This AD was prompted by several instances of fuel leaks on PW engines with the Talon IIB combustion chamber configuration installed. We are issuing this AD to prevent failure of the fuel nozzles. The unsafe condition, if not addressed, could result in engine fire and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 800 flight hours (FHs) after December 6, 2016, the effective date of AD 2016-22-05, or before further flight, whichever occurs later, and after that within every 800 FHs accumulated on the fuel nozzles, perform the following:

(i) Inspect all fuel nozzles, P/N 51J345, in accordance with Part A, of PW Alert Service Bulletin (ASB) PW4G-100-A73-45, dated February 16, 2016.

(ii) For any fuel nozzle that fails the inspection, before further flight, remove and replace with a part that is eligible for installation.

(2) At next shop visit or within 24 months after the effective date of this AD, whichever occurs first, perform the following:

(i) Remove all fuel nozzles, P/N 51J345, in accordance with Part A, of PW ASB PW4G-100-A73-47, dated March 10, 2017, and replace with parts eligible for installation.

(ii) Replace the fuel nozzle manifold supply assemblies and install the new brackets and clamps on the fuel supply manifolds in accordance with Accomplishment Instructions, "For Engines Installed on Aircraft" or "For Engines Not Installed on Aircraft," of PW SB PW4G-100-73-48, Revision No. 1, dated April 24, 2018.

(h) Definitions

(1) For the purpose of this AD, an "engine shop visit" is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except for the following situations, which do not constitute an engine shop visit:

(i) Separation of engine flanges solely for the purposes of transportation of the engine without subsequent maintenance.

(ii) Separation of engine flanges solely for the purpose of replacing the fan or propulsor without subsequent engine maintenance.

(2) For the purpose of this AD, a part that is "eligible for installation" is a fuel nozzle with a P/N other than 51J345 that is FAA-approved for installation, and that meets the requirements of Part A, paragraph 5.B., or Part B, paragraph 2, of PW ASB PW4G-100-A73-47, dated March 10, 2017.

(i) Terminating Action

Installation of the eligible fuel nozzles, replacement of manifold supply assemblies, and installation of brackets and clamps in accordance with (g)(2) of this AD constitutes terminating action for the repetitive inspection requirements of paragraph (g)(1) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly

to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. You may email your request to: ANE-AD-AMOC@faa.gov.

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

(k) Related Information

(1) For more information about this AD, contact Scott Hopper, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7154; fax: 781-238-7199; email: scott.hopper@faa.gov.

(2) For service information identified in this AD, contact Pratt & Whitney Division, 400 Main St., East Hartford, CT 06108; phone: 860-565-8770; fax: 860-565-4503. You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7759.

Issued in Burlington, Massachusetts, on November 9, 2018.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018-24965 Filed 11-16-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2018-0961; Product Identifier 2018-NM-121-AD]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. This proposed AD was prompted by reports indicating that the pitot heat switch is not always set to ON, which could result in misleading air data. This proposed AD would require replacement of pitot anti-icing system components, installation of a junction box and wiring provisions, repetitive testing of the anti-icing system, and applicable on-condition actions. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 3, 2019.

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

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

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; internet <https://www.myboeingfleet.com>. You may view this 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-2018-0961.

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-2018-0961; 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 NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3539; email: frank.carreras@faa.gov.

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-

2018–0961; Product Identifier 2018–NM–121–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

We have received reports indicating that the pitot heat switch is not always set to ON. The failure to activate the manually activated pitot anti-icing system likely resulted in misleading air data that contributed to an accident and three incidents involving Boeing Model 737 airplanes. This condition, if not addressed, could result in the air data sensors not being heated, which could allow ice to form on the sensors and cause erroneous air data. This erroneous air data can lead to loss of crew situational awareness and an inability to maintain continued safe flight and landing of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–30A1064, Revision 1, dated October 18, 2017. The service

information describes procedures for replacement and repetitive testing of the P5–9 window and pitot heat module, changing the anti-icing system to automatically supply power to heat the air data sensors. If flight crews fail to activate it manually, the anti-icing system will come on automatically after engine start.

We also reviewed the following concurrent service information.

- Boeing Service Bulletin 737–30–1067, Revision 1, dated May 4, 2017. This service information describes procedures for installing a new J18 junction box to change the anti-icing system.

- Boeing Service Bulletin 737–30–1068, Revision 1, dated May 4, 2017. This service information describes procedures for installing wiring provisions to the anti-icing system.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Minimum Equipment List (MEL) Provision

Operators are required by 14 CFR part 91 to have an MEL to operate with inoperable equipment. Paragraph (l) of this proposed AD allows for the operation of the airplane even if the modified air data probe heat (ADPH) system is inoperable, so long as the operator's MEL has a provision to allow for this inoperability.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified as “RC” (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–30A1064, Revision 1, dated October 18, 2017, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would also require accomplishing the actions specified in Boeing Service Bulletin 737–30–1067, Revision 1, dated May 4, 2017; and Boeing Service Bulletin 737–30–1068, Revision 1, dated May 4, 2017, described previously.

For information on the procedures and compliance times, see this service information at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0961.

Costs of Compliance

We estimate that this proposed AD affects 296 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|--|--|------------|-----------------------------|---------------------------------|
| Replacement (Boeing Alert Service Bulletin 737–30A1064). | 6 work-hours × \$85 per hour = \$510 | \$0 | \$510 | \$150,960. |
| Repetitive tests (Boeing Alert Service Bulletin 737–30A1064). | 5 work-hours × \$85 per hour = \$425 per inspection cycle. | 0 | \$425 per inspection cycle. | \$125,800 per inspection cycle. |
| J18 Junction box installation (Boeing Service Bulletin 737–30–1067). | Up to 75 work-hours × \$85 per hour = \$6,375. | 23,614 | Up to \$29,989 | Up to \$8,876,744. |
| Installation of wire provisions (Boeing Service Bulletin 737–30–1068). | Up to 193 work-hours × \$85 per hour = \$16,405. | 4,800 | Up to \$21,205 | Up to \$6,276,680. |

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

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

category airplanes to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2018–0961; Product Identifier 2018–NM–121–AD.

(a) Comments Due Date

We must receive comments by January 3, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–30A1064, Revision 1, dated October 18, 2017.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and rain protection.

(e) Unsafe Condition

This AD was prompted by reports indicating that the pitot heat switch is not always set to ON, which could result in misleading air data. We are issuing this AD to address misleading air data, which can lead to loss of crew situational awareness and could ultimately result in the inability to maintain continued safe flight and landing.

(f) Compliance

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

(g) Actions for Group 5

For airplanes identified as Group 5 in Boeing Alert Service Bulletin 737–30A1064, Revision 1, dated October 18, 2017: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(h) Required Actions for Groups 1 Through 4

Except as specified by paragraph (j) of this AD, for airplanes identified as Groups 1 through 4 in Boeing Alert Service Bulletin 737–30A1064, Revision 1, dated October 18, 2017: At the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–30A1064, Revision 1, dated October 18, 2017, do all applicable actions identified as "RC" (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–30A1064, Revision 1, dated October 18, 2017.

(i) Concurrent Requirements

For airplanes identified as Groups 1 through 4 in Boeing Alert Service Bulletin 737–30A1064, Revision 1, dated October 18, 2017: Prior to or concurrently with the action required by paragraph (h) of this AD, install a new J18 junction box to change the anti-icing system, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–30–1067, Revision 1, dated May 4, 2017, and install wiring provisions to the anti-icing system, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–30–1068, Revision 1, dated May 4, 2017.

(j) Exceptions to Service Information Specifications

For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Service Bulletin 737–30A1064, Revision 1, dated October 18, 2017, uses the phrase "the original issue date of this service bulletin," this AD requires using "the effective date of this AD."

(k) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert

Service Bulletin 737–30A1064, dated May 4, 2017, provided that step 15 for Groups 1 through 4, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–30A1064, Revision 1, dated October 18, 2017, is done at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–30A1064, Revision 1, dated October 18, 2017, or within 180 days after the effective date of this AD, whichever occurs later.

(l) Minimum Equipment List (MEL)

In the event that the air data probe heat (ADPH) system as modified by this AD is inoperable, an airplane may be operated as specified in the operator's MEL, provided the MEL includes provisions that address the modified ADPH system.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (n)(2) of this AD. Information may be emailed to: 9-ANM-LAACO-AMOC-Requests@faa.gov.

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

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

(4) For service information that contains steps that are labeled as RC, the provisions of paragraphs (m)(4)(i) and (m)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled "RC Exempt," then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(n) Related Information

(1) For more information about this AD, contact Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3539; email: frank.carreras@faa.gov.

(2) For information about AMOCs, contact Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5851; fax: 562-627-5210; email: jeffrey.w.palmer@faa.gov.

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

Issued in Des Moines, Washington, on November 7, 2018.

Chris Spangenberg,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018-25001 Filed 11-16-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2018-0924; Product Identifier 2018-NE-34-AD]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney Division (PW) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Pratt & Whitney Division (PW) PW4158 turbofan engines. This proposed AD was prompted by several reports of high cycle fatigue (HCF) cracks found in the fuel nozzle supply manifold. This proposed AD would require replacement of the affected fuel nozzles and fuel nozzle manifold supply assemblies with parts eligible for installation. This proposed AD would also require installation of new brackets and clamps on the fuel supply manifold assemblies. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 3, 2019.

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

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

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06108; phone: 860-565-8770; fax: 860-565-4503. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7759.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0924; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800-647-5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Scott Hopper, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7154; fax: 781-238-7199; email: scott.hopper@faa.gov.

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2018-0924; Product Identifier 2018-NE-34-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

We received several reports of HCF cracks found in the fuel nozzle supply manifold tube at the braze joint interface on PW PW4158 turbofan engines identified with suffix-3 on the Engine Data Plate, and equipped with the Talon IIB combustor chamber. The root cause of the cracks in the braze joint was attributed to thermal mechanical fatigue due to high thermal gradients on engines equipped with the Talon IIB combustor chamber. This condition, if not addressed, could result in engine fire, damage to the engine, and damage to the airplane.

Related Service Information Under 14 CFR Part 51

We reviewed PW Service Bulletin (SB) PW4ENG 73-224, dated November 8, 2017. The SB describes procedures for replacing the fuel nozzle supply manifold assemblies with parts eligible for installation, and installing new brackets and clamps on the fuel nozzle supply manifolds. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

We reviewed PW SB PW4ENG 73-223, dated February 5, 2018. This SB describes procedures for replacing the fuel nozzles and fuel nozzle support assemblies with parts eligible for installation.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require replacing the affected fuel nozzles and fuel nozzle manifold supply assemblies with parts eligible for installation. This proposed AD would also require installation of new brackets and clamps on the fuel supply manifold assemblies.

Costs of Compliance

We estimate that this proposed AD affects 114 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|--------------|------------------|------------------------|
| Remove and replace (24) fuel nozzles | 48 work-hours × \$85 per hour = \$4,080 | \$423,471.12 | \$427,551.12 | \$48,740,827.68 |
| Replace fuel supply manifold tubes and install new clamps and brackets. | 16 work-hours × \$85 per hour = \$1,360 | 77,158.97 | 78,518.97 | 8,951,162.58 |

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 engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Division: Docket No. FAA–2018–0924; Product Identifier 2018–NE–34–AD.

(a) Comments Due Date

We must receive comments by January 3, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney Division (PW) PW4158 turbofan engines designated by a –3 on the Engine Data Plate and with Talon II outer combustion chamber assembly, part number (P/N) 51J228, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7310, Engine Fuel Distribution.

(e) Unsafe Condition

This AD was prompted by several reports of high cycle fatigue (HCF) cracks found in the fuel nozzle supply manifold tube at the braze joint interface. We are issuing this AD to prevent failure of the fuel nozzles. The unsafe condition, if not addressed, could result in engine fire, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

No later than, the next engine shop visit after the effective date of this AD, do the following:

(1) Remove the 24 fuel nozzles, part number (P/N) 51J344, and replace with P/N 51J397.

(2) Replace the fuel nozzle manifold supply assemblies and install new brackets and clamps on the fuel supply manifolds in accordance with the "For Engines Installed on Aircraft" or "For Engines Not Installed on Aircraft" sections, as applicable, of the Accomplishment Instructions in PW Service Bulletin (SB) PW4ENG 73–224, dated November 8, 2017.

(h) Definitions

For the purpose of this AD, an "engine shop visit" is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except for the following situations, which do not constitute an engine shop visit:

(1) Separation of engine flanges solely for the purposes of transportation of the engine without subsequent maintenance.

(2) Separation of engine flanges solely for the purposes of replacing the fan or propulsor without subsequent maintenance.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD.

Information may be emailed to: ANE-AD-AMOC@faa.gov.

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

(j) Related Information

(1) For more information about this AD, contact Scott Hopper, Aerospace Engineer, ECO Branch, FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7154; fax: 781-238-7199; email: scott.hopper@faa.gov.

(2) For PW service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860-565-8770; fax: 860-565-4503. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7759.

Issued in Burlington, Massachusetts, on November 9, 2018.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018-24944 Filed 11-16-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 180712626-8840-01]

RIN 0694-AH61

Review of Controls for Certain Emerging Technologies

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Bureau of Industry and Security (BIS) controls the export of dual-use and less sensitive military items through the Export Administration Regulations (EAR), including the Commerce Control List (CCL). As controls on exports of technology are a key component of the effort to protect sensitive U.S. technology, many sensitive technologies are listed on the CCL, often consistent with the lists maintained by the multilateral export control regimes of which the United States is a member. Certain technologies, however, may not yet be listed on the CCL or controlled multilaterally because they are emerging technologies. As such, they have not yet been evaluated for their national

security impacts. This advance notice of proposed rulemaking (ANPRM) seeks public comment on criteria for identifying emerging technologies that are essential to U.S. national security, for example because they have potential conventional weapons, intelligence collection, weapons of mass destruction, or terrorist applications or could provide the United States with a qualitative military or intelligence advantage. Comment on this ANPRM will help inform the interagency process to identify and describe such emerging technologies. This interagency process is anticipated to result in proposed rules for new Export Control Classification Numbers (ECCNs) on the CCL.

DATES: Submit comments on or before December 19, 2018.

ADDRESSES: You may submit comments through either of the following:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The identification number for this rulemaking is BIS 2018-0024.

- *Address:* By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694-AH61.

FOR FURTHER INFORMATION CONTACT:

Kirsten Mortimer, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce. Phone: (202) 482-0092; Fax (202) 482-3355; Email: Kirsten.Mortimer@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

As part of the National Defense Authorization Act (NDAA) for Fiscal Year 2019, Public Law No: 115-232, Congress enacted the Export Control Reform Act of 2018 (the Act or ECRA). Section 1758 of the Act authorizes Commerce to establish appropriate controls, including interim controls, on the export, reexport, or transfer (in country) of emerging and foundational technologies. Under the Act, emerging and foundational technologies are those essential to the national security of the United States and are not described in Section 721(a)(6)(A)(i)-(v) of the Defense Production Act of 1950, as amended. Emerging and foundational technologies, in keeping with ECRA, will be determined by an interagency process that will consider both public and classified information as well as information from the Emerging Technology Technical Advisory

Committee and the Committee on Foreign Investment in the United States.

In identifying emerging and foundational technologies, the process must consider:

- The development of emerging and foundational technologies in foreign countries;
- The effect export controls may have on the development of such technologies in the United States; and
- The effectiveness of export controls on limiting the proliferation of emerging and foundational technologies in foreign countries.

To help inform this process, this advance notice of proposed rulemaking (ANPRM) proposes several general areas for public comment. Given the challenges involved in identifying emerging and foundational technologies, this ANPRM will help Commerce and other agencies propose specific emerging technologies for control.

Once an emerging or foundational technology has been identified, the Act authorizes Commerce to establish controls, including interim controls, on the export, reexport, or transfer (in-country) of that technology. In determining the appropriate level of export controls, the Department must consider the potential end-uses and end-users of the technology, and countries to which exports from the United States are restricted (e.g., embargoed countries). While Commerce has discretion to set the level of export controls, at a minimum it must require a license for the export of emerging and foundational technologies to countries subject to a U.S. embargo, including those subject to an arms embargo. Responses to this ANPRM will help Commerce and other agencies identify and assess emerging technologies for the purposes of updating the export control lists without impairing national security or hampering the ability of the U.S. commercial sector to keep pace with international advances in emerging fields.

Emerging Technologies

To assist BIS in identifying emerging technologies that are essential to the national security of the United States, this ANPRM seeks public comment on criteria for defining and identifying emerging technologies. This ANPRM describes certain categories of technology that are currently subject to the EAR but controlled only to embargoed countries, countries designated as supporters of international terrorism, and restricted end uses or end users. These categories are a representative list of the

technology categories from which Commerce, through an interagency process, seeks to determine whether there are specific emerging technologies that are important to the national security of the United States for which effective controls can be implemented that avoid negatively impacting U.S. leadership in the science, technology, engineering, and manufacturing sectors.

Commerce does not seek to expand jurisdiction over technologies that are not currently subject to the EAR, such as “fundamental research” described in § 734.8 of the EAR. For purposes of this ANPRM, Commerce does not seek to alter existing controls on technology already specifically described in the CCL. Such controls would generally continue to be addressed through multilateral regimes or interagency reviews.

Foundational Technology

Commerce will issue a separate ANPRM regarding identification of foundational technologies that may be important to U.S. national security. Commerce seeks public comment, however, on treating emerging and foundational technologies as separate types of technology.

Representative Technology Categories

The representative general categories of technology for which Commerce currently seeks to determine whether there are specific emerging technologies that are essential to the national security of the United States include:

- (1) Biotechnology, such as:
 - (i) Nanobiology;
 - (ii) Synthetic biology;
 - (iv) Genomic and genetic engineering;
- or
- (v) Neurotech.
- (2) Artificial intelligence (AI) and machine learning technology, such as:
 - (i) Neural networks and deep learning (e.g., brain modelling, time series prediction, classification);
 - (ii) Evolution and genetic computation (e.g., genetic algorithms, genetic programming);
 - (iii) Reinforcement learning;
 - (iv) Computer vision (e.g., object recognition, image understanding);
 - (v) Expert systems (e.g., decision support systems, teaching systems);
 - (vi) Speech and audio processing (e.g., speech recognition and production);
 - (vii) Natural language processing (e.g., machine translation);
 - (viii) Planning (e.g., scheduling, game playing);
 - (ix) Audio and video manipulation technologies (e.g., voice cloning, deepfakes);
 - (x) AI cloud technologies; or

- (xi) AI chipsets.
 - (3) Position, Navigation, and Timing (PNT) technology.
 - (4) Microprocessor technology, such as:
 - (i) Systems-on-Chip (SoC); or
 - (ii) Stacked Memory on Chip.
 - (5) Advanced computing technology, such as:
 - (i) Memory-centric logic.
 - (6) Data analytics technology, such as:
 - (i) Visualization;
 - (ii) Automated analysis algorithms; or
 - (iii) Context-aware computing.
 - (7) Quantum information and sensing technology, such as
 - (i) Quantum computing;
 - (ii) Quantum encryption; or
 - (iii) Quantum sensing.
 - (8) Logistics technology, such as:
 - (i) Mobile electric power;
 - (ii) Modeling and simulation;
 - (iii) Total asset visibility; or
 - (iv) Distribution-based Logistics Systems (DBLS).
 - (9) Additive manufacturing (e.g., 3D printing);
 - (10) Robotics such as:
 - (i) Micro-drone and micro-robotic systems;
 - (ii) Swarming technology;
 - (iii) Self-assembling robots;
 - (iv) Molecular robotics;
 - (v) Robot compliers; or
 - (vi) Smart Dust.
 - (11) Brain-computer interfaces, such as
 - (i) Neural-controlled interfaces;
 - (ii) Mind-machine interfaces;
 - (iii) Direct neural interfaces; or
 - (iv) Brain-machine interfaces.
 - (12) Hypersonics, such as:
 - (i) Flight control algorithms;
 - (ii) Propulsion technologies;
 - (iii) Thermal protection systems; or
 - (iv) Specialized materials (for structures, sensors, etc.).
 - (13) Advanced Materials, such as:
 - (i) Adaptive camouflage;
 - (ii) Functional textiles (e.g., advanced fiber and fabric technology); or
 - (iii) Biomaterials.
 - (14) Advanced surveillance technologies, such as:
 - Faceprint and voiceprint technologies.
- BIS welcomes comments on: (1) How to define emerging technology to assist identification of such technology in the future; (2) criteria to apply to determine whether there are specific technologies within these general categories that are important to U.S. national security; (3) sources to identify such technologies; (4) other general technology categories that warrant review to identify emerging technology that are important to U.S. national security; (5) the status of development of these technologies in

the United States and other countries; (6) the impact specific emerging technology controls would have on U.S. technological leadership; (7) any other approaches to the issue of identifying emerging technologies important to U.S. national security, including the stage of development or maturity level of an emerging technology that would warrant consideration for export control.

Comments should be submitted to BIS as described in the **ADDRESSES** section of this ANPRM by December 19, 2018.

This rule was determined to be significant by the Office of Management Budget under Executive Order 12866.

Dated: November 14, 2018.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2018–25221 Filed 11–16–18; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–122898–17]

RIN 1545–BO38

User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to imposing user fees for enrolled agents and enrolled retirement plan agents. The proposed regulations remove the initial enrollment user fee for enrolled retirement plan agents because the IRS no longer offers initial enrollment as an enrolled retirement plan agent. The proposed regulations also increase the amount of the renewal user fee for enrolled retirement plan agents from \$30 to \$67. In addition, the proposed regulations increase the amount of both the enrollment and renewal user fee for enrolled agents from \$30 to \$67. The proposed regulations affect individuals who are or apply to become enrolled agents and individuals who are enrolled retirement plan agents. The Independent Offices Appropriations Act of 1952 authorizes charging user fees.

DATES: Written or electronic comments must be received by January 18, 2019. Requests to speak and outlines of topics to be discussed at the public hearing

scheduled for January 24, 2019, at 10 a.m. must be received by January 18, 2019.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-122898-17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-122898-17), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-122898-17). The public hearing will be held in the Main Auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mark Shurtliff at (202) 317-6845; concerning cost methodology, Michael A. Weber at (202) 803-9738; concerning submission of comments, the public hearing, or to be placed on the building access list to attend the public hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to 26 CFR part 300 regarding user fees.

A. Enrolled Agents and Enrolled Retirement Plan Agents

Section 330(a)(1) of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. Before admitting a representative to practice, the Secretary is authorized to "require that the representative demonstrate—(A) good character; (B) good reputation; (C) necessary qualifications to enable the representative to provide to persons valuable service; and (D) competency to advise and assist persons in presenting their cases." 31 U.S.C. 330(a)(2). Pursuant to section 330 of title 31, the Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230).

Section 10.4(a) of Circular 230 authorizes the IRS to grant enrollment as enrolled agents to individuals who demonstrate special competence in tax matters by passing a written examination administered by, or under

the oversight of, the IRS and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. Every year, the IRS develops and administers an Enrolled Agent Special Enrollment Examination (EA-SEE) that individuals must pass to become an enrolled agent.

Section 10.4(b) of Circular 230 currently authorizes the IRS to grant enrollment as enrolled retirement plan agents to individuals who demonstrate special competence in qualified retirement plan matters by passing a written examination administered by, or under the oversight of, the IRS and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. Until February 12, 2016, the IRS annually developed and administered an Enrolled Retirement Plan Agent Special Enrollment Examination (ERPA-SEE) that individuals were required to take and pass to become an enrolled retirement plan agent. After February 12, 2016, however, the IRS stopped offering the ERPA-SEE. Individuals who have already passed the ERPA-SEE may maintain their enrollment as enrolled retirement plan agents, but the IRS is not accepting applications to become new Enrolled Retirement Plan Agents. Accordingly, the proposed regulations propose to remove the user fee for the initial enrollment of an enrolled retirement plan agent currently in Treasury Regulation § 300.10.

Section 10.4(d) also authorizes the IRS to grant enrollment as an enrolled agent or an enrolled retirement plan agent to a qualifying former IRS employee by virtue of past IRS service and technical experience if the former employee has not engaged in any conduct that would justify suspension or disbarment under the provisions of Circular 230 and meets certain other requirements. Application for enrollment as an enrolled agent based on former employment with the IRS must be made within three years from the date of separation from that employment and does not require passing the EA-SEE. When the IRS discontinued offering the ERPA-SEE necessary for enrollment as an enrolled retirement plan agent for individuals without IRS work experience, effective February 12, 2016, the IRS stopped granting individuals enrollment as enrolled retirement plan agents by virtue of past service and technical experience in the IRS.

Once eligible for enrollment as an enrolled agent, whether by examination or former employment with the IRS, an individual must file an application for enrollment with the IRS and currently

pay a \$30 nonrefundable user fee. To maintain active enrollment and practice before the IRS, an individual who has been enrolled as an enrolled agent or enrolled retirement plan agent must file an application to renew enrollment every three years and currently pay a \$30 nonrefundable user fee. 31 CFR 10.6(d).

The IRS Return Preparer Office (RPO) is responsible for certain matters related to authority to practice before the IRS, including acting on applications for enrollment and renewal of enrolled agents and for renewal of enrolled retirement plan agents. 31 CFR 10.1. As a condition for enrollment as an enrolled agent, the RPO may conduct a federal tax-compliance check to determine whether an applicant has filed all required tax returns and has no outstanding federal tax debts and a suitability check to determine whether an applicant has engaged in any conduct that would justify suspending or disbarring any practitioner under Circular 230. 31 CFR 10.5(d). As a condition for renewal, enrolled agents and enrolled retirement plan agents must certify completion of the continuing education requirements. 31 CFR 10.6(e).

As part of its responsibility for administering the enrollment program, RPO determines whether applicants have met the above requirements. 31 CFR 10.6(j)(1). An applicant who is denied enrollment as an enrolled agent for failure to pass a tax-compliance check may reapply if the applicant becomes current with respect to the applicant's tax liabilities. 31 CFR 10.5(d)(2). Applicants who fail to meet the continuing education and fee payment requirements receive from RPO a notice that states the basis for RPO's determination of noncompliance and provides an opportunity to cure the failure. 31 CFR 10.6(j)(1).

B. User Fee Authority

The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing the charge for services the agency provides (user fees). Under the IOAA, these user-fee regulations are subject to policies prescribed by the President and shall be as uniform as practicable. Those policies are currently set forth in the Office of Management and Budget (OMB) Circular A-25 (OMB Circular), 58 FR 38142 (July 15, 1993).

The IOAA states that the services provided by an agency should be self-sustaining to the extent possible (31 U.S.C. 9701(a)). The OMB Circular states that agencies providing services

that confer special benefits on identifiable recipients beyond those accruing to the general public must identify those services, determine whether user fees should be assessed for those services, and, if so, establish user fees that recover the full cost of providing those services. As required by the IOAA and the OMB Circular, agencies are to review user fees biennially and update them as necessary to reflect changes in the cost of providing the underlying services. During these biennial reviews, an agency must calculate the full cost of providing each service, taking into account all direct and indirect costs to any part of the U.S. government. The full cost of providing a service includes, but is not limited to, salaries, retirement benefits, rents, utilities, travel, and management costs, as well as an appropriate allocation of overhead and other support costs associated with providing the service.

An agency should set the user fee at an amount that recovers the full cost of providing the service unless the agency requests, and the OMB grants, an exception to the full-cost requirement. The OMB may grant exceptions only where the cost of collecting the fees would represent an unduly large part of the fee for the activity, or where any other condition exists that, in the opinion of the agency head, justifies an exception. When the OMB grants an exception, the agency does not collect the full cost of providing the service that confers a special benefit on identifiable recipients rather than the public at large, and the agency therefore must fund the remaining cost of providing the service from other available funding sources. When the OMB grants an exception, the agency, and by extension all taxpayers, subsidize the cost of the service to the recipients who would otherwise be required to pay the full cost of providing the service, as the IOAA and the OMB Circular direct.

C. Enrollment and Renewal User Fees for the Enrolled Agent and Renewal User Fee for the Enrolled Retirement Plan Agent

As discussed in section A of this preamble, an individual who has been granted enrollment as an enrolled agent or an enrolled retirement plan agent may practice before the IRS. The IRS confers benefits on individuals who are enrolled agents or enrolled retirement plan agents beyond those that accrue to the general public by allowing them to practice before the IRS. Because the ability to practice before the IRS is a special benefit, the IRS charges a user fee to recover the full cost associated

with administering the program for enrollment and renewal of enrolled agents and renewal of enrolled retirement plan agents.

On September 30, 2010, the Treasury Department and the IRS published two final regulations in the **Federal Register**: final regulations (TD 9501, 75 FR 60309) that required tax return preparers who prepare all or substantially all of a tax return or claim for refund for compensation to obtain a preparer tax identification number (PTIN) and final regulations (TD 9503, 75 FR 60316) that required a user fee to apply for or renew a PTIN. Individuals applying for or renewing a PTIN were to be subject to federal tax-compliance and suitability checks and were required to pay a \$50 user fee to obtain or renew a PTIN. All enrolled agents and certain enrolled retirement plan agents were required to obtain a PTIN as a condition of enrollment and renewal of enrollment. TD 9527, 76 FR 32286; Notice 2011–91, 2011–47 I.R.B. 792.

On April 19, 2011, the Treasury Department and the IRS published in the **Federal Register** (76 FR 21805) a final regulation (TD 9523) that reduced the amount of the user fees for the initial enrollment and renewal enrollment for enrolled agents and enrolled retirement plan agents from \$125 to \$30. Because individuals applying to enroll as an enrolled agent or enrolled retirement plan agent also had to obtain a PTIN, the user fee to enroll or renew enrollment was reduced to reflect that certain review procedures (including federal tax-compliance and suitability checks) would be performed as part of the process to obtain a PTIN. On June 1, 2017, the IRS ceased collecting any user fees related to the PTIN. See *Steele v. United States*, 260 F.Supp.3d 52 (D. D.C. 2017) (holding that the IRS was authorized to require tax return preparers to obtain PTINs, but was not authorized to charge fees for PTINs).

As required by the IOAA and the OMB Circular, the RPO completed its 2017 biennial review of the enrollment and renewal user fees associated with enrolled agents and enrolled retirement plan agents. As discussed in section D of this preamble, during its review the RPO took into account the increase in labor, benefits, and overhead costs incurred in connection with providing services to individuals who enroll or renew enrollment as enrolled agents and enrolled retirement plan agents since the user fee was last changed in 2011. In addition, RPO determined that costs associated with federal tax-compliance checks and suitability checks on enrolled individuals should be

recovered as part of the user fee for administering the enrollment and renewal programs. The 2017 biennial review also took into account new costs associated with administering the program for enrolled agents and enrolled retirement plan agents, including the costs of operating a dedicated toll-free helpline in the RPO for enrollment and renewal matters. The RPO determined that the full cost of administering the program for enrolled agents and enrolled retirement plan agents has increased from \$30 to \$67 per application for enrollment or renewal. The proposed fee complies with the directive in the OMB Circular to recover the full cost of providing a service that confers special benefits on identifiable recipients beyond those accruing to the general public.

D. Calculation of User Fees Generally

The IRS follows generally accepted accounting principles (GAAP) in calculating the full cost of processing an application for enrollment or renewal. The Federal Accounting Standards Advisory Board (FASAB) is the body that establishes GAAP that apply for federal reporting entities, such as the IRS. FASAB publishes the FASAB Handbook of Accounting Standards and Other Pronouncements, as Amended (Current Handbook), which is available at http://files.fasab.gov/pdf/files/2017_fasab_handbook.pdf. The Current Handbook includes the *Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government*. SFFAS No. 4 establishes internal costing standards under GAAP to accurately measure and manage the full cost of federal programs, and the methodology below is in accordance with SFFAS No. 4.

1. Cost Center Allocation

The IRS determines the cost of its services and the activities involved in producing them through a cost-accounting system that tracks costs to organizational units. The lowest organizational unit in the IRS's cost-accounting system is called a cost center. Cost centers are usually separate offices that are distinguished by subject-matter area of responsibility or geographic region. All costs of operating a cost center are recorded in the IRS's cost-accounting system and allocated to that cost center. The costs allocated to a cost center are the direct costs for the cost center's activities as well as all indirect costs, including overhead, associated with that cost center. Each cost is recorded in only one cost center.

2. Determining the per Unit Cost

To establish the per-unit cost, the total cost of providing the service is divided by the volume of services provided.

3. Cost Estimation of Direct Labor

Not all cost centers are fully devoted to one service for which the IRS charges user fees. Some cost centers work on a number of different services across the IRS. In these cases, the IRS uses various cost-measurement techniques to estimate the cost incurred in those cost centers attributable to the program. These techniques include using various timekeeping systems to measure the time required to accomplish activities, or using information provided by subject-matter experts on the time devoted to a program. Once the IRS has estimated the average time required to accomplish an activity, it multiplies that time estimate by the relevant organizational unit's average labor and benefits cost per unit of time to determine the labor and benefits cost incurred to provide the service. To determine the full cost, IRS then adds overhead as discussed below.

4. Overhead

Overhead is an indirect cost of operating an organization that cannot be immediately associated with an activity that the organization performs. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity.

These costs can include:

- General management and administrative services of sustaining and supporting organizations.
- Facilities management and ground maintenance services (security, rent, utilities, and building maintenance).
- Procurement and contracting services.
- Financial management and accounting services.
- Information technology services.
- Services to acquire and operate property, plants and equipment.
- Publication, reproduction, and graphics and video services.
- Research, analytical, and statistical services.
- Human resources/personnel services.
- Library and legal services.

To calculate the overhead allocable to a service, the IRS multiplies a Corporate Overhead rate by the labor and benefits costs determined as discussed previously. The IRS calculates the Corporate Overhead rate annually based

on cost elements underlying the Statement of Net Cost included in the IRS Annual Financial Statements, which are audited by the Government Accountability Office. The Corporate Overhead rate is the ratio of the sum of the IRS's indirect labor and benefits costs from the supporting and sustaining organizational units—those that do not interact directly with taxpayers—and all non-labor costs to the IRS's labor and benefits costs of its organizational units that interact directly with taxpayers.

The Corporate Overhead rate of 68.00 percent for costs reviewed during FY 2017 was calculated based on FY 2016 costs (which are assumed to be fixed and reoccurring) as follows:

| | |
|---|-----------------|
| Indirect Labor and Benefits Costs | \$1,681,373,747 |
| Non-Labor Costs | + 2,879,907,032 |
| Total Indirect Costs | \$4,561,280,779 |
| Direct Labor and Benefits Costs | ÷ 6,708,063,559 |
| Corporate Overhead Rate | 68.00% |

E. Calculation of User Fee for Enrolled Agent Enrollment and Renewal and Enrolled Retirement Plan Agent Renewal

The IRS used projections for fiscal years 2018 through 2020 to determine the direct costs associated with enrolled agent enrollment and renewal and enrolled retirement plan agent renewal. Direct costs are incurred by the RPO and include labor costs for enrollment and renewal submission processing; tax compliance and background checks; continuing education and testing-related activities; and communications, which include the new toll-free helpline.

The labor and benefits for the work performed related to applications for enrolled agent enrollment and renewal and enrolled retirement plan agent renewal is projected to be \$2,708,603 in total over fiscal years 2018 through 2020. The labor and benefits costs include the cost to perform background checks and tax compliance checks, which are services that were not included in the previous \$30 user fee. The number of enrollment and renewal applications is based on the FY2016 numbers adjusted by the anticipated increase in enrollment. Adding Corporate Overhead expenses to the total labor and benefits results in total costs of \$4,550,453 as shown below:

| | |
|--------------------------------|-------------|
| Labor and Benefits | \$2,708,603 |
| Corporate Overhead (68%) | 1,841,850 |

| | |
|-------------------------------|-----------|
| Labor, Benefits, and Overhead | 4,550,453 |
|-------------------------------|-----------|

Dividing this total cost by the projected population of initial enrollment and renewal applications for fiscal years 2018 through 2020 results in a cost per application of \$67 as shown below:

| | |
|------------------------------|-------------|
| Labor, Benefits and Overhead | \$4,550,453 |
| Number of Applications | ÷ 68,343 |
| Cost per Application | 67 |

Taking into account the full amount of these costs, the user fee for enrolled agent enrollment or renewal and enrolled retirement plan agent renewal is proposed to be \$67 per application. The IRS does not intend to seek an exception from OMB to the full cost requirement.

Special Analyses

OIRA has determined that this regulation is significant and subject to review under section 6(b) of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The user fee primarily affects individuals who are enrolled agents, apply to become enrolled agents, or are enrolled retirement plan agents. Only individuals, not businesses, can be enrolled agents or enrolled retirement plan agents. Thus, any economic impact of the user fee on small entities generally will occur only when an enrolled agent or enrolled retirement plan agent owns a small business or when a small business employs enrolled agents or enrolled retirement plan agents and reimburses them for their renewal fees. The Treasury Department and IRS estimate that approximately 22,781 individuals will apply annually for enrollment as an enrolled agent, renewal as an enrolled agent, or renewal as an enrolled retirement plan agent. Due to the relatively small number of small businesses that employ enrolled agents or enrolled retirement plan agents, a substantial number of small entities are not likely to be affected. Further, the economic impact on any small entities affected would be limited to paying the \$37 difference in cost between the \$67 user fee and the previous \$30 user fee (for each enrolled agent or enrolled retirement plan agent that a small entity employs and pays for), which is unlikely to present a significant economic impact. The total economic impact of this regulation is thus approximately \$842,897 annually,

which is the product of the approximately 22,781 individuals and the \$37 increase in the fee. Accordingly, the rule is not expected to have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

It is not anticipated that the increase in user fee that is paid every three years and averages to \$12.33 per year will negatively affect enrollment, which has historically remained steady as user fee amounts have changed. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments submitted will be made available at www.regulations.gov or upon request.

A public hearing has been scheduled for January 24, 2019, beginning at 10:00 a.m. in the Main Auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building-security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of § 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by *January 18, 2019*. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Mark Shurtliff, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300—USER FEES

■ **Paragraph. 1.** The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

§ 300.0 [Amended]

■ **Par. 2.** Section 300.0 is amended by removing paragraph (b)(10) and redesignating paragraphs (b)(11) through (13) as paragraphs (b)(10) through (12).

■ **Par. 3.** Section 300.5 is amended by revising paragraphs (b) and (d) to read as follows:

§ 300.5 Enrollment of enrolled agent fee.

* * * * *

(b) *Fee.* The fee for initially enrolling as an enrolled agent with the IRS is \$67.

* * * * *

(d) *Applicability date.* This section applies 30 days after the date of publication of a Treasury Decision adopting this rule as a final regulation in the **Federal Register**.

■ **Par. 4.** Section 300.6 is amended by revising paragraphs (b) and (d) to read as follows:

§ 300.6 Renewal of enrollment of enrolled agent fee.

* * * * *

(b) *Fee.* The fee for renewal of enrollment as an enrolled agent with the IRS is \$67.

* * * * *

(d) *Applicability date.* This section applies 30 days after the date of publication of a Treasury Decision adopting this rule as a final regulation in the **Federal Register**.

§ 300.10 [Removed]

■ **Par. 5.** Section 300.10 is removed.

§ 300.11 [Redesignated as § 300.10 and Amended]

■ **Par. 6.** Redesignate § 300.11 as § 300.10 and amend newly redesignated § 300.10 by revising paragraphs (b) and (d) to read as follows:

§ 300.10 Renewal of enrollment of enrolled retirement plan agent fee.

* * * * *

(b) *Fee.* The fee for renewal of enrollment as an enrolled retirement plan agent with the IRS is \$67.

* * * * *

(d) *Applicability date.* This section applies 30 days after the date of publication of a Treasury Decision adopting this rule as a final regulation in the **Federal Register**.

§§ 300.12 and 300.13 [Redesignated as §§ 300.11 and 300.12]

■ **Par. 7.** Redesignate §§ 300.12 and 300.13 as §§ 300.11 and 300.12.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2018–25210 Filed 11–15–18; 4:15 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0730; FRL–9986–63–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Attainment Plan for the Allegheny, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision, submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD), to EPA on October 3, 2017, for the purpose of providing for attainment of the 2010 sulfur dioxide (SO₂) primary national ambient air quality standard (NAAQS) in the Allegheny, Pennsylvania SO₂ nonattainment area (hereafter referred to as the “Allegheny Area” or “Area”). The major sources of SO₂ in the Allegheny Area are the Harsco Metals facility and the facilities which comprise the U.S. Steel (USS) Mon Valley Works: Clairton, Edgar Thomson and Irvin Plants. The Pennsylvania SIP submission is an attainment plan which includes the base year emissions inventory, an analysis of the reasonably available control technology (RACT) and reasonably available control measure (RACM)

requirements, enforceable emission limitations and control measures, a reasonable further progress (RFP) plan, a modeling demonstration of SO₂ attainment, a nonattainment New Source Review (NNSR) permit program, and contingency measures for the Allegheny Area. As part of approving the attainment plan, EPA is also proposing to approve new SO₂ emission limits and associated compliance parameters for USS Clairton, Edgar Thomson and Irvin Plants and the Harsco Metals facility into the Allegheny County portion of the Pennsylvania SIP. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 19, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0730 at <http://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Leslie Jones Doherty, (215) 814–3409, or by email at jones.leslie@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background for EPA's Proposed Action

On June 2, 2010, the EPA Administrator signed a final rule establishing a new SO₂ primary NAAQS as a 1-hour standard of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations. *See* 75 FR 35520 (June 22, 2010), 40 CFR 50.17. This action also revoked the existing 1971 annual standard and 24-hour standards, subject to certain conditions.¹ EPA established the NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to SO₂ emissions ranging from 5 minutes to 24 hours with an array of adverse respiratory effects including narrowing of the airways which can cause difficulty breathing (bronchoconstriction) and increased asthma symptoms. For more information regarding the health impacts of SO₂, please refer to the June 22, 2010, final rulemaking. *See* 75 FR 35520. Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. On August 5, 2013, EPA promulgated initial air quality designations for 29 areas for the 2010 SO₂ NAAQS (78 FR 47191), which became effective on October 4, 2013, based on violating air quality monitoring data for calendar years 2009–2011, where there was sufficient

¹ With certain exceptions, EPA's June 22, 2010 final action revoked the two 1971 primary 24-hour standard of 140 ppb and the annual standard of 30 ppb because they were determined not to add additional public health protection given a 1-hour standard at 75 ppb. *See* 75 FR 35520. However, the secondary 3-hour SO₂ standard was retained. Because Allegheny County has already been designated for the 2010 1-hour SO₂ NAAQS and was neither designated nonattainment nor subject to a SIP call for the 1971 primary standards, these standards have been revoked for this area. *See* 40 CFR 50.4(e).

data to support a nonattainment designation.²

Effective on October 4, 2013, the Allegheny Area was designated as nonattainment for the 2010 SO₂ NAAQS for an area that encompasses the primary SO₂ emitting sources of the Harsco Metals facility and the USS Mon Valley Works (Clairton, Edgar Thomson and Irvin Plants). The Allegheny Area is comprised of a portion of Allegheny County which includes the City of Clairton, City of Duquesne, City of McKeesport, Borough of Braddock, Borough of Dravosburg, Borough of East McKeesport, Borough of East Pittsburgh, Borough of Elizabeth, Borough of Glassport, Borough of Jefferson Hills, Borough of Liberty, Borough of Lincoln, Borough of North Braddock, Borough of Pleasant Hills, Borough of Port Vue, Borough of Versailles, Borough of Wall, Borough of West Elizabeth, Borough of West Mifflin, Elizabeth Township, Forward Township, and North Versailles Township in Pennsylvania. The October 4, 2013 final designation triggered a requirement for Pennsylvania to submit a SIP revision with an attainment plan for how the Area would attain the 2010 SO₂ NAAQS as expeditiously as practicable, but no later than October 4, 2018, in accordance with CAA sections 172 and 191–192.

For a number of areas, including the Allegheny Area, EPA published a notice on March 18, 2016, that Pennsylvania and other pertinent states had failed to submit the required SO₂ attainment plan by this submittal deadline. *See* 81 FR 14736. This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source review and highway funding sanctions. However, pursuant to Pennsylvania's submittal of October 3, 2017, and EPA's subsequent letter dated October 6, 2017 to Pennsylvania finding the submittal complete and noting the stopping of the sanctions' deadline, these sanctions under section 179(a) will not be imposed as a consequence of Pennsylvania's having missed the original deadline. Additionally, under CAA section 110(c), the finding triggers a requirement that EPA promulgate a federal implementation plan (FIP) within two years of the effective date of the finding unless, by that time, the state has made the necessary complete

² EPA is continuing its designation efforts for the 2010 SO₂ NAAQS. Pursuant to a court-order issued on March 2, 2015, by the U.S. District Court for the Northern District of California, EPA must complete the remaining designations for the rest of the country on a schedule that contains three specific deadlines. *Sierra Club, et al. v. Environmental Protection Agency*, 13–cv–03953–SI (2015).

submittal and EPA has approved the submittal as meeting applicable requirements.

II. Requirements for SO₂ Nonattainment Area Plans

Attainment plans must meet the applicable requirements of the CAA, and specifically CAA sections 172, 191, and 192. The required components of an attainment plan submittal are listed in section 172(c) of Title 1, part D of the CAA. The EPA's regulations governing nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIPs, in a document entitled the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO₂ SIPs and fundamental principles for SIP control strategies. *Id.* at 13545–49, 13567–68. On April 23, 2014, EPA issued recommended guidance (hereafter 2014 SO₂ Nonattainment Guidance) for how state submissions could address the statutory requirements for SO₂ attainment plans.³ In this guidance, EPA described the statutory requirements for an attainment plan, which includes: An accurate base year emissions inventory of current emissions for all sources of SO₂ within the nonattainment area (172(c)(3)); an attainment demonstration that includes a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the state will provide for expeditious attainment of the NAAQS (172(c)); RFP (172(c)(2)); implementation of RACM, including RACT (172(c)(1)); NNSR requirements (172(c)(5)); and adequate contingency measures for the affected area (172(c)(9)). A synopsis of these requirements is also provided in the notice of proposed rulemaking on the Illinois SO₂ nonattainment plans, published on October 5, 2017 at 82 FR 46434.

In order for EPA to fully approve a SIP as meeting the requirements of CAA sections 110, 172 and 191–192 and EPA's regulations at 40 CFR part 51, the SIP for the affected area needs to demonstrate to EPA's satisfaction that each of the aforementioned

requirements have been met. Under CAA sections 110(l) and 193, EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it insures equivalent or greater emission reductions of such air pollutant.

III. Attainment Demonstration and Longer Term Averaging

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G further delineates the control strategy requirements that SIPs must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability. General Preamble, at 13567–68. SO₂ attainment plans must consist of two components: (1) Emission limits and other control measures that assure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51, Appendix W which demonstrates that these emission limits and control measures provide for timely attainment of the primary SO₂ NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.*, a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations). EPA's 2014 SO₂ Nonattainment Guidance recommends that the emission limits established for the attainment demonstration be

expressed as short-term average limits (*e.g.*, addressing emissions averaged over one or three hours), but also describes the option to utilize emission limits with longer averaging times of up to 30 days so long as the state meets various suggested criteria. *See* 2014 SO₂ Nonattainment Guidance, pp. 22 to 39. The guidance recommends that—should states and sources utilize longer averaging times—the longer term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment that the plan otherwise would have set.

The 2014 SO₂ Nonattainment Guidance provides an extensive discussion of EPA's rationale for positing that appropriately set comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 SO₂ NAAQS. In evaluating this option, EPA considered the nature of the standard, conducted detailed analyses of the impact of use of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment. *Id.* at pp. 22 to 39. *See also id.* at Appendices B, C, and D.

As specified in 40 CFR 50.17(b), the 1-hour primary SO₂ NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 SO₂ NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Env't'l Dev. Ass'n's Clean Air Project v. EPA*, 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single exceedance does not create a violation of the standard. Instead, at issue is whether a source operating in compliance with a properly set longer term average could cause exceedances, and if so the resulting frequency and magnitude of such exceedances, and in particular whether EPA can have reasonable confidence that a properly set longer term average limit will provide that the average fourth highest daily maximum value will be at or below 75 ppb. A synopsis of how EPA judges whether such plans "provide for attainment," based on modeling of projected allowable

³ See "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions" (April 23, 2014), available at https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

emissions and in light of the NAAQS' form for determining attainment at monitoring sites follows.

For SO₂ plans based on 1-hour emission limits, the standard approach is to conduct modeling using fixed emission rates. The maximum emission rate that would be modeled to result in attainment (*i.e.*, in an "average year"⁴ shows three, not four days with maximum hourly levels exceeding 75 ppb) is labeled the "critical emission value." The modeling process for identifying this critical emissions value inherently considers the numerous variables that affect ambient concentrations of SO₂, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit at this critical emission value.

EPA recognizes that some sources have highly variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the critical emission value. EPA also acknowledges the concern that longer term emission limits can allow short periods with emissions above the "critical emissions value," which, if coincident with meteorological conditions conducive to high SO₂ concentrations, could in turn create the possibility of a NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the critical emission value. However, for several reasons, EPA believes that the approach recommended in its guidance document suitably addresses this concern. First, from a practical perspective, EPA expects the actual emission profile of a source subject to an appropriately set longer term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. EPA expects this similarity because it has recommended that the longer term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the critical emissions value) and that

takes the source's emissions profile into account. As a result, EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer term limit, as compared to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the critical emission level, and in the longer term average limit scenario, the source is presumed occasionally to emit more than the critical emission value but on average, and presumably at most times, to emit well below the critical emission value. In an "average year," compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.*, three days with hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer term limit, it is possible that additional exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the critical emission value at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer term limit scenario. This result arises because the longer term limit requires lower emissions most of the time (because the limit is set well below the critical emission value), so a source complying with an appropriately set longer term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

As a hypothetical example to illustrate these points, suppose a source that always emits 1000 pounds of SO₂ per hour, which results in air quality at the level of the NAAQS (*i.e.*, results in a design value of 75 ppb). Suppose further that in an "average year," these emissions cause the 5 highest maximum daily average 1-hour concentrations to be 100 ppb, 90 ppb, 80 ppb, 75 ppb, and 70 ppb. Then suppose that the source becomes subject to a 30-day average emission limit of 700 pounds per hour. It is theoretically possible for a source meeting this limit to have emissions that occasionally exceed 1000 pounds per hour, but with a typical emissions profile, emissions would much more commonly be between 600 and 800 pounds per hour. In this simplified example, assume a zero background

concentration, which allows one to assume a linear relationship between emissions and air quality. (A nonzero background concentration would make the mathematics more difficult but would give similar results.) Air quality will depend on what emissions happen on what critical hours, but suppose that emissions at the relevant times on these 5 days are 800 pounds/hour (lb/hr), 1100 pounds per hour, 500 pounds per hour, 900 pounds per hour, and 1200 pounds per hour, respectively. (This is a conservative example because the average of these emissions, 900 pounds per hour, is well over the 30-day average emission limit.) These emissions would result in daily maximum 1-hour concentrations of 80 ppb, 99 ppb, 40 ppb, 67.5 ppb, and 84 ppb. In this example, the fifth day would have an exceedance that would not otherwise have occurred, but the third day would not have an exceedance that otherwise would have occurred, and the fourth day would have been below, rather than at, 75 ppb. In this example, the fourth highest maximum daily concentration under the 30-day average would be 67.5 ppb.

This simplified example illustrates the findings of a more complicated statistical analysis that EPA conducted using a range of scenarios using actual plant data. As described in Appendix B of EPA's 2014 SO₂ Nonattainment Guidance, EPA found that the requirement for lower average emissions is highly likely to yield better air quality than is required with a comparably stringent 1-hour limit. Based on analyses described in Appendix B of its 2014 SO₂ Nonattainment Guidance, EPA expects that an emission profile with maximum allowable emissions under an appropriately set comparably stringent 30-day average limit is likely to have the net effect of having a *lower* number of exceedances and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the critical emission value. This result provides a compelling policy rationale for allowing the use of a longer averaging period, in appropriate circumstances where the facts indicate this result can be expected to occur.

The question then becomes whether this approach, which is likely to produce a lower number of overall exceedances even though it may produce some unexpected exceedances above the critical emission value, meets the requirement in section 110(a)(1) and 172(c)(1) for SIPs to "provide for attainment" of the NAAQS. For SO₂, as for other pollutants, it is generally impossible to design a nonattainment

⁴ An "average year" is used to mean a year with average air quality. While 40 CFR 50 Appendix T provides for averaging three years of 99th percentile daily maximum values (*e.g.*, the fourth highest maximum daily concentration in a year with 365 days with valid data), this discussion and an example below uses a single "average year" in order to simplify the illustration of relevant principles.

plan in the present that will guarantee that attainment will occur in the future. A variety of factors can cause a well-designed attainment plan to fail and unexpectedly not result in attainment, for example if meteorology occurs that is more conducive to poor air quality than was anticipated in the plan. Therefore, in determining whether a plan meets the requirement to provide for attainment, EPA's task is commonly to judge not whether the plan provides absolute certainty that attainment will in fact occur, but rather whether the plan provides an adequate level of confidence of prospective NAAQS attainment. From this perspective, in evaluating use of a 30-day average limit, EPA must weigh the likely net effect on air quality. Such an evaluation must consider the risk that occasions with meteorology conducive to high concentrations will have elevated emissions leading to exceedances that would not otherwise have occurred, and must also weigh the likelihood that the requirement for lower emissions on average will result in days not having exceedances that would have been expected with emissions at the critical emissions value. Additional policy considerations, such as in this case the desirability of accommodating real world emissions variability without significant risk of violations, are also appropriate factors for the EPA to weigh in judging whether a plan provides a reasonable degree of confidence that the plan will lead to attainment. Based on these considerations, especially given the high likelihood that a continuously enforceable limit averaged over as long as 30 days, determined in accordance with EPA's guidance, will result in attainment, EPA believes as a general matter that such limits, if appropriately determined, can reasonably be considered to provide for attainment of the 2010 SO₂ NAAQS.

The 2014 SO₂ Nonattainment Guidance offers specific recommendations for determining an appropriate longer term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.*, the critical emission value), and applies an adjustment factor to determine the (lower) level of the longer term average emission limit that would be estimated to have a stringency comparable to the otherwise necessary 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the SIP emission limits, which (if compliance requires new controls) may

require use of an emission database from another source. The recommended method involves using these data to compute a complete set of emission averages, computed according to the averaging time and averaging procedures of the prospective emission limitation. In this recommended method, the ratio of the 99th percentile among these long term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied by the candidate 1-hour emission limit to determine a longer term average emission limit that may be considered comparably stringent.⁵ The 2014 SO₂ Nonattainment Guidance also addresses a variety of related topics, such as the potential utility of setting supplemental emission limits, such as mass-based limits, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer term emission rate limit.

Preferred air quality models for use in regulatory applications are described in Appendix A of EPA's *Guideline on Air Quality Models* (40 CFR part 51, Appendix W).⁶ In 2005, EPA promulgated the American Meteorological Society/Environmental Protection Regulatory Model (AERMOD) as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating SO₂ concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO₂ standard is provided in Appendix A to the April 23, 2014 SO₂ nonattainment area SIP guidance document referenced above. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO₂ NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.*, not just at the violating monitor) by using

air quality dispersion modeling (See Appendix W to 40 CFR part 51) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the SO₂ NAAQS. For a short-term (*i.e.*, 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO₂.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMOD Meteorological Preprocessor (AERMET). Estimated concentrations should include ambient background concentrations, should follow the form of the standard, and should be calculated as described in section 2.6.1.2 of the August 23, 2010 clarification memo on "Applicability of Appendix W Modeling Guidance for the 1-hr SO₂ National Ambient Air Quality Standard" (U. S. EPA, 2010a).

IV. Pennsylvania's Attainment Plan Submittal for the Allegheny Area

In accordance with section 172(c) of the CAA, the Pennsylvania attainment plan for the Allegheny County Area includes: (1) An emissions inventory for SO₂ for the plan's base year (2011); (2) an attainment demonstration including analyses that locate, identify, and quantify sources of emissions contributing to violations of the 2010 SO₂ NAAQS as well as a dispersion modeling analysis of an emissions control strategy for the primary SO₂ sources (USS Clairton, Edgar Thomson and Irvin Plants and Harsco Metals) showing attainment of the SO₂ NAAQS by the October 4, 2018 attainment date; (3) a determination that the control strategy for the primary SO₂ source within the nonattainment areas constitutes RACM/RACT; (4) requirements for RFP toward attaining the SO₂ NAAQS in the Area; (5) contingency measures; (6) the assertion that Pennsylvania's existing SIP-approved NNSR program meets the applicable requirements for SO₂; and (7) the request that emission limitations and compliance parameters for Clairton, Edgar Thomson and Irvin Plants and Harsco Metals be incorporated into the SIP.

⁵ For example, if the critical emission value is 1000 pounds of SO₂ per hour, and a suitable adjustment factor is determined to be 70 percent, the recommended longer term average limit would be 700 pounds per hour.

⁶ The EPA published revisions to the *Guideline on Air Quality Models* on January 17, 2017.

V. EPA's Analysis of Pennsylvania's Attainment Plan Submittal for the Allegheny Area

Consistent with CAA requirements (*see* section 172), an attainment demonstration for a SO₂ nonattainment area must include a showing that the area will attain the 2010 SO₂ NAAQS as expeditiously as practicable. The demonstration must also meet the requirements of 40 CFR 51.112 and 40 CFR part 51, Appendix W, and include inventory data, modeling results, and emissions reductions analyses on which the state has based its projected attainment. EPA is proposing that the attainment plan submitted by Pennsylvania is sufficient, and EPA is proposing to approve the plan to ensure ongoing attainment.

A. Pollutants Addressed

Pennsylvania's SO₂ attainment plan evaluates SO₂ emissions for the Allegheny Area comprised of a portion of Allegheny County that is designated nonattainment for the 2010 SO₂ NAAQS. There are no precursors to consider for the SO₂ attainment plan. SO₂ is a pollutant that arises from direct emissions, and therefore concentrations are highest relatively close to the sources and much lower at greater distances due to dispersion. Thus, SO₂ concentration patterns resemble those of other directly emitted pollutants like lead, and differ from those of photochemically-formed (secondary) pollutants such as ozone. Pennsylvania's attainment plan appropriately considered SO₂ emissions for the Allegheny Area.

B. Emissions Inventory Requirements

States are required under section 172(c)(3) of the CAA to develop comprehensive, accurate and current emissions inventories of all sources of the relevant pollutant or pollutants in the nonattainment area. These inventories provide detailed accounting of all emissions and emissions sources by precursor or pollutant. In addition, inventories are used in air quality modeling to demonstrate that attainment of the NAAQS is as expeditious as practicable. The 2014 SO₂ Nonattainment Guidance provides that the emissions inventory should be consistent with the Air Emissions Reporting Requirements (AERR) at Subpart A to 40 CFR part 51.⁷

⁷ The AERR at Subpart A to 40 CFR part 51 cover overarching Federal reporting requirements for the states to submit emissions inventories for criteria pollutants to EPA's Emissions Inventory System. EPA uses these submittals, along with other data sources, to build the National Emissions Inventory.

For the base year inventory of actual emissions, a "comprehensive, accurate and current" inventory can be represented by a year that contributed to the three-year design value used for the original nonattainment designation. The 2014 SO₂ Nonattainment Guidance notes that the base year inventory should include all sources of SO₂ in the nonattainment area as well as any sources located outside the nonattainment area which may affect attainment in the area. Pennsylvania appropriately elected to use 2011 as the base year. Actual emissions from all the sources of SO₂ in the Allegheny Area were reviewed and compiled for the base year emissions inventory requirement. The primary SO₂-emitting point sources located within the Allegheny Area are the USS Mon Valley Works—Clairton, Edgar Thomson and Irvin Plants with SO₂ emissions in 2011 of 1468 tons per year (tpy), 1279 tpy, and 419 tpy, respectively. The Harsco Metals facility which is located on the Edgar Thomson plant property is the next largest source with 7 tpy of SO₂ emissions in 2011. A more detailed discussion of the emissions inventory for the Allegheny Area and EPA's analysis of the Area can be found in Pennsylvania's October 3, 2017 submittal as well as the emissions inventory Technical Support Document (TSD), which can be found under Docket ID No. EPA-R03-OAR-2017-0730 and which is available online at www.regulations.gov.

Table 1 shows the level of emissions, expressed in tpy, in the Allegheny Area for the 2011 base year by emissions source category.

TABLE 1—2011 BASE YEAR SO₂ EMISSIONS INVENTORY FOR THE ALLEGHENY AREA

| Emission source category | SO ₂ emissions (tpy) |
|--------------------------|---------------------------------|
| Point | 3249.20 |
| Area | 158.85 |
| Non-road | 1.17 |
| On-road | 8.11 |
| Total | 3417.33 |

EPA has evaluated Pennsylvania's 2011 base year emissions inventory for the Allegheny Area and has made the determination that this inventory was developed consistent with EPA's guidance. Therefore, pursuant to section 172(c)(3), EPA is proposing to approve Pennsylvania's 2011 base year emissions inventory for the Allegheny Area.

The attainment demonstration also provides for a projected attainment year

inventory that includes estimated emissions for all emission sources of SO₂ which are determined to impact the nonattainment area for the year in which the Area is expected to attain the NAAQS. Pennsylvania provided a 2018 projected emissions inventory for all known sources included in the 2011 base year inventory, and EPA finds Pennsylvania appropriately developed this inventory as discussed in the emissions inventory TSD. The projected 2018 emissions are shown in Table 2. Pennsylvania's submittal asserts that the SO₂ emissions are expected to decrease by approximately 618 tons, or 18%, by 2018 from the 2011 base year.⁸ A detailed discussion of the projected emissions for the Allegheny Area and EPA's analysis of emissions can be found in Pennsylvania's October 3, 2017 submittal as well as in the emissions inventory TSD, which can be found under Docket ID No. EPA-R03-OAR-2017-0730 and online at www.regulations.gov.

TABLE 2—2018 PROJECTED SO₂ EMISSION INVENTORY FOR THE ALLEGHENY AREA

| Emission source category | SO ₂ emissions (tpy) |
|--------------------------|---------------------------------|
| Point | 2676.52 |
| Area | 119.18 |
| Non-road | 0.44 |
| On-road | 2.96 |
| Total | 2799.10 |

C. Air Quality Modeling

The SO₂ attainment demonstration provides an air quality dispersion modeling analysis to demonstrate that control strategies chosen to reduce SO₂ source emissions will bring the Area into attainment by the statutory attainment date of October 4, 2018. The modeling analysis, which the state is to conduct in accordance with Appendix W to 40 CFR part 51 (EPA's Modeling Guidance), is used for the attainment demonstration to assess the control strategy for a nonattainment area and establish emission limits that will provide for attainment. In accordance with Appendix W, three years of prognostic meteorological data was used

⁸ Reductions in projected 2018 SO₂ emissions in the onroad, nonroad and nonpoint source categories can be attributed to lower sulfur content limits for gasoline and diesel fuels for the onroad and nonroad sector, and more stringent sulfur content limits on home heating oil and other distillate/residual fuel oils for the nonpoint sector which limits are included in the Pennsylvania SIP. Reductions in projected 2018 SO₂ emissions for point sources are a result of the limits discussed in the RACT/RACM section of this rulemaking.

to simulate the dispersion of pollutant plumes from multiple point, area, or volume sources across the averaging times of interest. The modeling demonstration typically also relies on maximum allowable emissions from sources in the nonattainment area. Though the actual emissions are likely to be below the allowable emissions, sources have the ability to run at higher production rates or optimize controls such that emissions approach the allowable emissions limits. An attainment plan must provide for attainment under all allowable scenarios of operation for each source based on the maximum allowable emissions.

ACHD provided an analysis which was developed in accordance with EPA's Modeling Guidance and the 2014 SO₂ Nonattainment Guidance, and was prepared using the EPA dispersion modeling system, AERMOD. This modeling demonstration also utilized the Weather Research and Forecasting (WRF) model to generate prognostic meteorological data. EPA's Mesoscale Model Interface Program (MMIF) was used to extract the prognostic meteorological data which was processed using AERMET, a pre-processor to AERMOD, in accordance with 40 CFR part 51. EPA notes that our most recent version of 40 CFR part 51 Appendix W allows for prognostic meteorological data to be used in AERMOD. The prognostic meteorological data was extracted and processed following the methodology outlined in EPA's updated Appendix W and other applicable guidance. In the particular circumstances in this Area, in which local topographical influences are likely to be channeling flows in a manner prone to yield different flows for different facilities in the Area, EPA believes that the prognostic meteorological data generated by ACHD are likely to provide a better characterization of winds in this Area than application of a single hourly wind speed and direction across the Area. EPA also conducted its own land use survey (using the methods of Auer), finding that about 70 percent (%) of the Area within an area out to three kilometers from the main sources in the Area may be considered rural land use, which supports ACHD's use of rural dispersion coefficients in its modeling analysis. Further discussion of ACHD's development of these meteorological data and EPA's land use survey can be found in EPA's modeling TSD, which can be found under Docket ID No. EPA-R03-OAR-2017-0730.

ACHD characterized USS's Clairton Coke Works fugitive coke oven emissions using an alternative modeling

technique, which shows significantly better model performance over the regulatory version of AERMOD. Given the high temperatures of these fugitive emissions, ACHD recognized that the plume rise and initial plume characteristics vary by hour reflecting hourly variations in meteorology in a manner that is not addressed in simple treatments of volume sources in AERMOD. Therefore, ACHD used an alternate method, using EPA's Buoyant Line and Point Source Model (BLP), to determine hourly values of these parameters. Since AERMOD does not provide for volume sources to have heat flux or otherwise to have plume rise, ACHD used hourly release heights reflecting the plume height for each hour's meteorology estimated by the BLP Plume Rise module. Similarly, ACHD used hourly values which characterize the initial width and height of the release based on hourly plume dimensions determined by BLP. Fugitive emissions were then included in AERMOD for each of the multiple volume sources used to represent the coke batteries in the Area by using volume sources with hourly release heights and initial dispersion coefficients determined in this manner, as contained in an hourly emission rate file. This alternative method is referred to as the BLP/AERMOD Hybrid approach.

As noted in ACHD's modeling protocol document (*See* Appendix A of Pennsylvania's October 3, 2017 submittal), the procedure for handling USS's coke oven fugitive emissions in the dispersion modeling analysis was initially developed and used for previous particulate matter smaller than 10 microns in diameter (PM₁₀) SIP work completed by ACHD and discussed in EPA Model Clearinghouse⁹ Memos from 1991 through 1994 (91-III-12, 93-III-06, and 94-III-02). (*See* Modeling Protocol Addendum to Appendix A of Pennsylvania's October 3, 2017 submittal for more information on prior Model Clearinghouse memos). The original algorithms were developed for the ACHD PM₁₀ SIP workgroup in 1994 and are currently being used by ACHD with additional revisions to the BLP Plume Rise program. This method is considered an alternative model due to

⁹ EPA Model Clearinghouse is the central point of consultation and coordination within the EPA for reviewing the use of air quality models and analytical techniques for demonstrating compliance or attainment with the NAAQS in regulatory applications or implementation plans. All case-specific approvals of alternative models by an EPA Regional Office require consultation and concurrence by the Model Clearinghouse, per Section 3.2.2 of the *Guideline on Air Quality Models* (40 CFR part 51 Appendix W).

the inclusion of the BLP model within the AERMOD dispersion model system (starting with AERMOD version 15181) using the BUOYLINE source pathway keyword. ACHD began its SIP modeling development for the Area using AERMOD version 15181 then switched to version 1616r for its final modeling demonstration, which was the current regulatory version at the time of submittal. Use of an alternative model needs to be approved under section 3.2 of Appendix W—Guideline on Air Quality Models—with concurrence from EPA's Model Clearinghouse.

A demonstration in support of the use of the BLP/AERMOD Hybrid approach for source characterization of the coke oven fugitive emissions for PM₁₀ was undertaken by ACHD as part of its 2012 Annual Fine Particle Matter (particulate matter less than 2.5 microns in diameter, PM_{2.5}) attainment plan preparation. While the demonstration was used to support this approach with PM₁₀ (simulating dispersion of primary particulate matter), in AERMOD both PM₁₀ and SO₂ are treated as inert pollutants, therefore, they would have similar dispersion characteristics and are directly scalable and comparable. Thus, EPA finds that this approach is applicable for all primary pollutants including SO₂. ACHD prepared the analysis and submitted an alternative modeling request under section 3.2.2 (b)(2) and (d) of Appendix W to EPA Region 3's Regional Administrator on July 27, 2018. EPA staff have reviewed ACHD's analysis and found that the BLP/AERMOD Hybrid approach provides better model performance of the impacts from the coke oven fugitive emissions than the regulatory BUOYLINE source methodology in AERMOD. This result is consistent with the dispersion model performance analyses ACHD described in Appendix A-2 Modeling Protocol Addendum, G and I of Pennsylvania's October 3, 2017 submittal.

EPA's review and approval of ACHD's analysis supporting the use of the BLP/AERMOD Hybrid approach followed the EPA Model Clearinghouse concurrence process as prescribed in section 3.2 of Appendix W. Following receipt of ACHD's analysis on July 27, 2018, EPA Region 3 recommended approval of this alternative modeling approach to the EPA Model Clearinghouse on August 7, 2018. The EPA Model Clearinghouse concurred with Region 3's recommended approval on August 10, 2018. EPA Region 3 then approved the use of this alternative model by letter from its Regional Administrator to ACHD dated August 16, 2018. EPA is providing notice in this rulemaking

proposal that an alternative modeling approach using the BLP/AERMOD Hybrid approach to simulate the fugitive coke oven battery emissions was used for ACHD's SO₂ attainment plan and that its use was approved by EPA. ACHD's request to use this alternative modeling approach, EPA Region 3's analysis of ACHD's request, and the EPA Model Clearinghouse concurrence is included in the docket for this rulemaking action and can be found under Docket ID No. EPA-R03-OAR-2017-0730 and online at www.regulations.gov. EPA is taking public comment on proposing to approve the SIP based on the approved use of ACHD's alternative modeling approach.

The primary SO₂ sources included in the SIP modeling demonstration are the Harsco Metals facility and the three USS Mon Valley Works facilities—Clairton, Edgar Thomson and Irvin Plants. The modeling properly characterized source limits, local meteorological data, background concentrations, and provided an adequate model receptor grid to capture maximum modeled concentrations. Using the EPA conversion factor for the SO₂ NAAQS, the final modeled design value for the Allegheny Area (196.17 microgram per meter cubed, µg/m³), is less than 75 ppb.¹⁰ EPA has reviewed the modeling that Pennsylvania submitted to support the attainment demonstration for the Allegheny Area and has determined that the modeling is consistent with CAA requirements, Appendix W, and EPA's guidance for SO₂ attainment demonstration modeling as discussed above. Therefore, EPA is proposing to determine that the analysis demonstrates that the source limits used in the modeling demonstration show attainment with the 1-hour SO₂ NAAQS. EPA's analysis of the modeling is discussed in more detail in EPA's modeling TSD, which can be found under Docket ID No. EPA-R03-OAR-2017-0730 and online at www.regulations.gov for this rulemaking. EPA proposes to conclude that the modeling provided in the attainment plan shows that the Allegheny Area will attain the 2010 1-hour primary SO₂ NAAQS by the attainment date.

D. RACM/RACT

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all reasonably available control measures (*i.e.*, RACM) as expeditiously as practicable and shall provide for attainment of the NAAQS. EPA interprets RACM, including RACT, under section 172, as measures that a state determines to be both reasonably available and contribute to attainment as expeditiously as practicable “for existing sources in the area.” In addition, CAA section 172(c)(6) requires plans to include enforceable emission limitations and control measures as may be necessary or appropriate to provide for attainment by the attainment date.

Pennsylvania's October 3, 2017 submittal discusses facility-specific control measures, namely SO₂ emission limits for Harsco Metals and for the USS Mon Valley Works facilities—Clairton, Edgar Thomson and Irvin Plants, that were developed through the air dispersion modeling submitted by ACHD. The modeling analysis is discussed in section IV.C. Air Quality Modeling of this proposed rulemaking and in the Modeling TSD. ACHD asserts that the combination of controls and the resulting emission limits at the three USS facilities and Harsco Metals is sufficient for the Allegheny Area to meet the SO₂ NAAQS and serve as RACT/RACM.

Controls at the Clairton and Edgar Thomson plants represent the majority of SO₂ reductions within the Allegheny Area. As noted by ACHD, the Clairton Plant is the largest coke plant in North America. The Clairton Plant operates 10 coke batteries and produces approximately 13,000 tons of coke per day along with approximately 225 million cubic feet of coke oven gas (COG). The COG is used as fuel at all of the Mon Valley Works facilities. At the Clairton Plant, ACHD explained in its attainment plan that upgrades to the 100 and 600 Vacuum Carbonate Units (VCUs) will reduce the content of hydrogen sulfide (H₂S) in the downriver COG utilized at all Mon Valley Works plants. The 100 VCU upgrade was completed in 2016 and the 600 VCU upgrade will add redundant controls for the downriver COG line. Full operation of both upgraded units will be completed on or before October 4, 2018 as required by permit. Source monitoring to demonstrate continuous efficient operation of the Clairton VCU system is also required to be complete by October 4, 2018. In addition, a tail gas recycling project at the Shell Claus off-gas Treatment (SCOT) plant within the Clairton plant will reroute sulfur-

rich gases back into the by-products facility at Clairton during planned and unplanned outages and will be completed on or before October 4, 2018 as required by permit.

In its modeling analysis, ACHD determined critical emission values (CEV) with an hourly average for SO₂ sources. However, based on the variability in sulfur content of the COG, ACHD determined that several sources warrant a limit with a longer-term averaging period. As discussed previously, EPA believes that establishment of emission rate limits with averaging periods longer than one hour may reasonably be found to provide for attainment if specified criteria recommended in EPA's 2014 SO₂ Nonattainment Guidance are met.

The objective of ACHD's analysis of the variability of COG sulfur content is to determine the adjustment factor that can be multiplied times the modeled CEVs to compute longer term limits that will require a comparable degree of control as would be required by 1-hour limits at the CEVs. EPA's 2014 SO₂ Nonattainment Guidance states that “. . . air agencies may determine that an area could attain through a control strategy that will not significantly change the emission distribution (as may be true, for example, for a strategy involving a switch to lower sulfur coal with similar sulfur content variability or for a strategy involving enhancement of existing control equipment). Where the control strategy does not significantly change the distribution, the source's current emission distribution may be the best indicator of the source's post-control emission distribution.” In this case, the upgrades to the VCU unit at the USS Clairton plant reduce the H₂S content in the COG but are unlikely to cause significant changes in the distribution of emissions, except to the extent that installation of redundant sulfur capture systems is likely to reduce the frequency and magnitudes of emission spikes from the facilities burning this COG. ACHD used the most recent three years of operating data (2014–2016) available at the time of its analysis to analyze the variability in H₂S content in the COG for the four primary COG process streams used to deliver fuel to the USS Mon Valley Works plants (Unit 1, Unit 2, A Line and B Line). All COG is produced and desulfurized at the Clairton plant and then distributed via pipeline to the other two plants. USS upgraded its COG sulfur removal systems in April 2016, therefore ACHD separately analyzed the 8 months of data post-control to compare whether the distribution of hydrogen sulfide (H₂S) content would

¹⁰ The SO₂ NAAQS level is expressed in ppb, but AERMOD gives results in micro grams per cubic meter (µg/m³). The conversion factor for SO₂ (at the standard conditions applied in the ambient SO₂ reference method) is 1 ppb = approximately 2.619 µg/m³. See Pennsylvania's SO₂ Round 3 Designations proposed TSD at https://www.epa.gov/sites/production/files/2017-08/documents/35_pa_so2_rd3-final.pdf.

be similar before and after controls. After extrapolating the post-control data, the distribution of H₂S content is similar to the distribution before controls thus, ACHD concluded that the use of the full 3 years of data is representative of overall variability and, that these upgrades are not expected to have a significant effect on variability or on the degree of adjustment to yield a comparably stringent longer term average limit. Analyzing variability of fuel quality is not a direct means of analyzing the variability of emissions (which also factors in the variability of the quantity of fuel burned). On the other hand, the facilities at issue here have relatively stable operations, and a complete analysis would also factor in the degree to which the installation of redundant control systems reduces emission spikes and thereby reduces variability. For these reasons, EPA believes that ACHD's analysis should provide a reasonable approximation of the prospective variability of emissions following implementation of the controls in the attainment plan and a

reasonable approximation of the degree of adjustment needed to determine the longer term limits that are comparably stringent to the 1-hour limits that would otherwise be established.

In accordance with the methods EPA recommended in Appendix C to its 2014 SO₂ Nonattainment Guidance, adjustment factors were determined from the variability in sulfur content in each line and were applied to the modeled CEV for the processes using that COG to determine an appropriate emission limit with a 30-day averaging period that is of comparable stringency to the 1-hour CEV. The 30-day average SO₂ emission limit adjustment factor is 0.717 for emission units burning COG from Unit 1 Line, 0.797 for units burning COG from Unit 2 Line, 0.848 for units burning COG from A Line, and 0.834 for units burning COG from B Line. As recommended in 2014 SO₂ Nonattainment Guidance, ACHD determined that for sources with a 30-day averaging period a supplementary 24-hour limit not to be exceeded for 3 consecutive days should be applied in

order to limit the frequency and magnitude of occurrences of elevated emissions. Adjustment factors for 24-hour SO₂ emission limits were calculated for each line and applied to the modeled CEV to determine the emission limit with a 24-hour averaging period. The 24-hour average SO₂ emission limit adjustment factors for emission units burning COG are 0.914 for Unit 1 Line COG, 0.898 for Unit 2 Line COG, 0.927 for A Line COG, and 0.944 for B Line COG.

Table 3 shows the modeled CEV, the 30-day and 24-hour average adjustment factors and the resulting comparable 30-day and 24-hour average SO₂ emission rate, calculated by applying the adjustment factor to the critical emissions value, for units affected by COG sulfur reduction projects and units partially affected by the COG controls in combination with other fuels at the Clairton plant. Table 3 also shows new SO₂ limits for units taking reductions to their allowable limits at the Clairton plant.

TABLE 3—SO₂ EMISSION LIMITS FOR USS CLAIRTON PLANT

| Process | CEV (lbs/hr) | Adjustment factor (for 30-day limit) | New emission limit (lbs/hr) | Averaging period | Adjustment factor (for 24-hour limit) | Supplemental 24-hour limit (lbs/hr) |
|-------------------------------|--|---|-----------------------------------|---------------------|--|---|
| Boiler 1 | 142.01 (aggregate basis) ¹¹ | 0.834 | 118.44 | 30-day | 0.944 | 134.06 |
| Boiler 2. | | | | | | |
| Boiler R1. | | | | | | |
| Boiler R2. | | | | | | |
| Boiler T1. | | | | | | |
| Boiler T2. | | | | | | |
| Battery 1 Underfiring | 14.52 | 0.717 | 10.41 | 30-day | 0.914 | 13.27 |
| Battery 2 Underfiring | 12.76 | 0.717 | 9.15 | 30-day | 0.914 | 11.66 |
| Battery 3 Underfiring | 14.74 | 0.717 | 10.57 | 30-day | 0.914 | 13.47 |
| Battery 13 Underfiring | 17.48 | 0.797 | 13.93 | 30-day | 0.898 | 15.70 |
| Battery 14 Underfiring | 17.60 | 0.797 | 14.03 | 30-day | 0.898 | 15.80 |
| Battery 15 Underfiring | 23.43 | 0.797 | 18.67 | 30-day | 0.898 | 21.04 |
| Battery 19 Underfiring | 36.85 | 0.797 | 229.37 | 30-day | 0.898 | 33.09 |
| Battery 20 Underfiring | 33.88 | 0.797 | 27.00 | 30-day | 0.898 | 30.42 |
| B Battery Underfiring | 29.82 | 0.717 | 21.38 | 30-day | 0.914 | 27.26 |
| C Battery Underfiring | 44.67 | 0.717 | 32.03 | 30-day | 0.914 | 40.83 |
| SCOT Incinerator | 24 | ..... | 24 | 1-hour | | |
| PEC Baghouse 1–3 | 7.10 | ..... | 7.10 | 1-hour | | |
| PEC Baghouse 13–15 | 7.46 | ..... | 7.46 | 1-hour | | |
| PEC Baghouse 19–20 | 7.78 | ..... | 7.78 | 1-hour | | |
| PEC Baghouse B | 7.50 | ..... | 7.50 | 1-hour | | |
| PEC Baghouse C | 8.65 | ..... | 8.65 | 1-hour | | |
| Quench Tower 1 | 0.75 | ..... | 0.75 | 1-hour | | |
| Quench Tower B | 4.09 | ..... | 4.09 | 1-hour | | |
| Quench Tower C | 5.00 | ..... | 5.00 | 1-hour | | |
| Quench Tower 5A | 7.56 | ..... | 7.56 | 1-hour | | |
| Quench Tower 7A | 7.21 | ..... | 7.21 | 1-hour | | |
| Batteries 1–3 Hot Car | 10.64 | ..... | 10.64 | 1-hour | | |
| Batteries 13–15 Hot Car | 11.21 | ..... | 11.21 | 1-hour | | |
| Batteries 19–20 Hot Car | 13.73 | ..... | 13.73 | 1-hour | | |
| C Battery Hot Car | 5.82 | ..... | 5.82 | 1-hour | | |

¹¹ ACHD ran 16 different modeling scenarios for the various boiler stacks at the Clairton plant and used the worst case boiler impacts in its final analysis. Additional information can be found in ACHD's SIP submittal's Appendix I included in the docket for this rulemaking and is available online at www.regulations.gov.

EPA's guidance advises that, to help assure attainment near sources with longer term limits, states should assure that occasions with hourly emissions above the CEV are limited in frequency and magnitude. The supplemental limits that ACHD has adopted, providing 24-hour average limits to supplement the 30-day average limits, serve this purpose. To evaluate these limits, ACHD analyzed SO₂ emissions from one source at the Clairton facility (Battery 20 underfiring) at maximum flow rate and compared hourly emission values to the 30-day, 24-hour and CEV limits. ACHD's analysis indicates that, for this unit, over a two month span the 30-day limit and 24-hour limits were not exceeded while the CEV was exceeded four times. Actual flow rate for the months analyzed was 70% of the maximum flowrate in which the CEV would have been exceeded twice by less than 2 lb/hr in the time period. In addition, ACHD evaluated the hours which were above the CEV at either flowrate and the Liberty monitor values ranged from 0–13 ppb at those times and meteorology was typical for the months. EPA does not have the emissions data to make quantitative estimates of the expected frequency or magnitude of emissions exceeding the CEVs, but EPA believes, particularly with the application of the 24-hour supplemental limits, that these occasions are likely to be modest in frequency and magnitude. Further

details regarding ACHD's longer term limits and variability analysis can be found in Appendix D of Pennsylvania's October 3, 2017 submittal which can be found under Docket ID No. EPA–R03–OAR–2017–0730 and online at www.regulations.gov.

For these sources with limits based on longer averaging periods, H₂S content will be measured by a continuous source monitoring device and flow meter equipment that measures the actual hourly flow of gas. SO₂ emissions will then be calculated by assuming complete conversion of the combusted H₂S. The SO₂ values will be calculated hourly, averaged over a 24-hour basis (calendar day) and then averaged over a rolling 30-day basis. All sources utilizing a 30-day rolling average also have an additional shorter term 24-hour limit which may not be exceeded more than three consecutive days. A more detailed discussion of ACHD's statistical analysis that was used to develop the proposed 30-day average limits and supplemental 24-hour limits for the Allegheny Area can be found in Appendix D of Pennsylvania's October 3, 2017 submittal found under Docket ID No. EPA–R03–OAR–2017–0730. Additionally, EPA's 2014 SO₂ Nonattainment Guidance and section I. of this proposed rulemaking provide an extensive discussion of EPA's rationale for concluding that emission limits based on averaging times as long as 30 days that are appropriately set, reflecting comparable stringency to a

suitable 1-hour limit, especially when accompanied by supplemental limits that help minimize the frequency and magnitude of spikes in emissions, can be found to provide for attainment of the 2010 SO₂ NAAQS. In evaluating these longer term averaging times, EPA proposes to find that the emission limits with these longer term averaging times were appropriately set in accordance with EPA's 2014 SO₂ Nonattainment Guidance and are sufficient for the Allegheny Area to attain the 2010 SO₂ NAAQS.

The USS Edgar Thomson plant is an iron and steel making facility which mainly produces steel slabs. At the USS Edgar Thomson facility, a new stack and a combined flue system is planned for Riley Boilers 1, 2 and 3. All boilers will exhaust to the new stack which is below good engineering practice (GEP) stack height. Specifically, the height of this stack, 85 meters, is lower than the formula GEP height based on the dimensions of nearby buildings, 97 meters.

Actual emissions will be reduced as a result of the boilers using the lower H₂S content COG from the USS Clairton plant in combination with other fuels, and thus emissions for the boilers will be reduced on an aggregate basis. New emission limits for the boilers at the Edgar Thomson plant are listed in Table 4 along with other sources with reduced SO₂ allowable limits; all of these limits are established on a 1-hour basis.¹²

TABLE 4—SO₂ EMISSION LIMITS FOR USS EDGAR THOMSON PLANT

| Process | New * Emission Limit (lbs/hr) |
|-------------------------------|-------------------------------|
| Combustion Units | |
| Boiler 1 | 556.91 (aggregate basis) |
| Boiler 2. | |
| Boiler 3. | |
| Blast Furnace 1 | 98.50 |
| Stoves | |
| Blast Furnace 3 | 90.00 |
| Stoves | |
| Non-Combustion Units | |
| Blast Furnace 1 | 2.01 |
| Casthouse (Roof + Fume) .. | |
| Blast Furnace 3 | 1.69 |
| Casthouse (Roof + Fume) .. | |
| BOP Process | 6.64 |
| (Roof) | |

¹² Subsequent to ACHD's submittal of its attainment plan for the Area, ACHD informed EPA that the new stack at the Edgar Thompson plant might have different parameters than the "new stack" parameters included in the attainment plan's attainment demonstration modeling. The stack is part of the modeled control strategy discussed in

sections C and D of this rulemaking. However, ACHD has confirmed to EPA (by email) that subsequent modeling with the new stack parameters (e.g. location, height, temperature, velocity) at the Edgar Thomson plant is consistent with the submitted modeling demonstration showing SO₂ attainment by the attainment date

with the same SO₂ emission limitations in the modeling submitted with ACHD's attainment plan for the Area. A copy of this email dated December 8, 2017 with technical documentation supporting ACHD's conclusion is included in the docket for this rulemaking and is available online at www.regulations.gov.

TABLE 4—SO₂ EMISSION LIMITS FOR USS EDGAR THOMSON PLANT—Continued

| Process | New * Emission Limit (lbs/hr) |
|--------------------------------------|-------------------------------|
| Continuous Cast- ing (Roof) | 5.25 |
| Casthouse Baghouse | 45.10 |

* New emission limit is equivalent to modeled CEV for Edgar Thomson sources.

The USS Irvin plant is a secondary steel processing plant which receives steel slabs and performs one of several finishing processes on the steel slabs. Reductions in SO₂ emissions at the USS

Irvin plant are mainly a result of the COG controls reducing the sulfur content in the COG. The 80-inch Hot Strip Mill receives COG via the A Line from the Clairton plant while all other

units at the Irvin plant receive COG via the B Line. Emission limits for units at the USS Irvin plant are listed in Table 5.

TABLE 5—SO₂ EMISSION LIMITS FOR U.S. STEEL IRVIN PLANT

| Process | CEV (lbs/hr) | Adjustment factor (for 30-day limit) | New emission limit (lbs/hr) | Averaging period | Adjustment factor (for 24-hour limit) | Supplemental 24-hour limit (lbs/hr) |
|---|-----------------|---|-----------------------------------|---------------------|--|---|
| Boiler #1 | 9.45 | 0.834 | 7.88 | 30 day | 0.944 | 8.92 |
| Boiler #2 | 10.02 | 0.834 | 8.36 | 30 day | 0.944 | 9.46 |
| Boiler #3–4 (aggregate) | 9.85 | 0.834 | 8.21 | 30 day | 0.944 | 9.30 |
| 80" Hot Strip Reheat (aggregate) | 128.10 | 0.848 | 108.63 | 30 day | 0.927 | 118.75 |
| HPH Annealing Furnaces (aggregate) | 14.39 | 0.834 | 12 | 30 day | 0.944 | 13.58 |
| Open Coil Annealing (aggregate) | 13.79 | 0.834 | 11.5 | 30 day | 0.944 | 13.02 |
| Continuous Annealing | 9.68 | 0.834 | 8.07 | 30 day | 0.944 | 9.14 |
| #1 Galvanizing Line | 0.04 | ..... | 0.04 | 1-hour | ..... | ..... |
| #2 Galvanizing Line | 0.01 | ..... | 0.01 | 1-hour | ..... | ..... |

In addition, Harsco Metals (also known as Braddock Recovery Inc) is located on the property of the USS Edgar Thomson plant. Harsco uses a rotary kiln fired with COG which is supplied by USS Clairton plant. As a result of the lower sulfur content in the USS-produced COG, Harsco has become subject to a lower SO₂ limit of 1.8 lbs/hr as a 1-hour average for the rotary kiln.

Emission limits at all four facilities (USS Clairton, Edgar Thomson and Irvin Plants and Harsco Metals) were established through enforceable installation permits (See Appendices K of Pennsylvania's October 3, 2017 SIP submittal). The collective emission limits and related compliance parameters (*i.e.*, testing, monitoring, record keeping and reporting) have been proposed for incorporation into the SIP as part of the attainment plan in accordance with CAA section 172. The emission limits for each of the SO₂-emitting USS Mon Valley facilities are listed in Tables 3, 4 and 5. The compliance parameters include continuous process monitoring of H₂S content and flow rate of the COG at Clairton facility and the four lines

which feed the Edgar Thompson and Irvin facilities; record-keeping, reporting, and stack testing requirements at all facilities. ACHD affirms that the implementation of new emission limits and corresponding compliance parameters at the three USS Mon Valley Works facilities and Harsco Metals will enable the Allegheny Area to attain and maintain the SO₂ NAAQS. The AERMOD modeling analysis shows, as discussed in detail in the Modeling TSD, that the emission limits listed in Tables 3, 4 and 5 and the limit for Harsco Metals (modeling the 1-hour limits where applicable and modeling the 1-hour equivalents where longer term average limits apply) are sufficient for the Allegheny Area to attain the 1-hour SO₂ NAAQS.

EPA's guidance for longer term average limits is that plans based on such limits can be considered to provide for attainment where appropriate as long as the longer term limit is comparably stringent to the 1-hour limit that would otherwise be set and EPA can have reasonable confidence that occasions of emissions above the critical 1-hour emission rate will be limited in frequency and magnitude. ACHD has

provided for comparable stringency by computing adjustment factors in accordance with the method that EPA recommended in Appendix C of its guidance and adopting longer term average limits (where applicable) that are adjusted accordingly. Also in accordance with EPA's recommendations, ACHD has established supplemental limits that will help assure that occasions of emissions above the critical 1-hour emission rate will be limited in frequency and magnitude. Therefore, EPA believes that ACHD has met EPA's recommended criteria for longer term average limits to be part of a plan that provides suitable assurances that the area will attain the standard.

ACHD also evaluated potential RACT at other sources in the Allegheny Area including Koppers Inc.—Clairton Plant, Clairton Slag—West Elizabeth Plant, Eastman Chemical Resins Inc.—Jefferson Plant and Kelly Run Sanitation—Forward Township. All sources have less than 5 tpy of allowable SO₂ emissions. ACHD determined that no additional controls would be technically or economically feasible for the purposes of SO₂ RACT

at these small sources. ACHD also noted that Guardian Industries permanently shut down in 2015; therefore, no RACT analysis was performed for Guardian Industries. In addition, ACHD examined several RACM options for area, nonroad and mobile sources of SO₂ in the Area and determined no additional controls are needed to provide for attainment in the Area, since ACHD's modeling indicates that its plan will provide for attainment without reduction of any portion of background concentrations attributable to these sources.

EPA is proposing to approve ACHD's determination that the SO₂ control strategies at the USS Mon Valley Works facilities—Clairton, Edgar Thomson and Irvin plants and Harsco Metals constitute RACM/RACT for each source in the Allegheny Area based on the modeling analysis previously described and ACHD's evaluation of technically and economically feasible controls.

Pennsylvania has requested that portions of the installation permits for the USS Mon Valley Works facilities—Clairton, Edgar Thomson and Irvin plants and Harsco Metals be approved into the Allegheny County portion of the Pennsylvania SIP. Upon approval, the emission limits listed in the installation permits and corresponding compliance parameters found in the installation permits for Clairton, Edgar Thomson, Irvin and Harsco Metals will become permanent and enforceable SIP measures to meet the requirements of the CAA. After considering ACHD's submitted information, EPA, therefore, concludes Pennsylvania's October 3, 2017, SIP submittal for the Area meets the RACM/RACT and emission limitation and other control measure requirements of section 172(c) of the CAA.

E. RFP Plan

Section 172(c)(2) of the CAA requires an attainment plan to include a demonstration that shows reasonable further progress (*i.e.*, RFP) for meeting air quality standards will be achieved through generally linear incremental improvement in air quality. Section 171(1) of the CAA defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D) or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date." As stated originally in the 1994 SO₂ Guidelines Document¹³

and repeated in the 2014 SO₂ Nonattainment Guidance, EPA continues to believe that this definition is most appropriate for pollutants that are emitted from numerous and diverse sources, where the relationship between particular sources and ambient air quality are not directly quantified. In such cases, emissions reductions may be required from various types and locations of sources. The relationship between SO₂ and sources is much more defined, and usually there is a single step between pre-control nonattainment and post-control attainment. Therefore, EPA interpreted RFP for SO₂ as adherence to an ambitious compliance schedule in both the 1994 SO₂ Guideline Document and the 2014 SO₂ Nonattainment Guidance. The control measures for attainment of the 2010 SO₂ NAAQS included in Pennsylvania's submittal were modeled by ACHD to achieve attainment of the NAAQS. The ACHD permits which require these control measures to be effective on or before October 4, 2018 (including specific emission limits and compliance parameters) show the resulting emission reductions to be achieved as expeditiously as practicable for the Area. As a result, based on air quality modeling, ACHD projected these control measures will yield a sufficient reduction in SO₂ emissions from the major sources in the Allegheny Area to show attainment of the SO₂ NAAQS for the Allegheny Area. EPA has found ACHD's attainment modeling for the Area to be in accordance with CAA requirements. EPA finds the control measures proposed will be implemented as expeditiously as practicable by October 4, 2018 according to the terms of the permits for the affected facilities. Therefore, EPA has determined that Pennsylvania's SO₂ attainment plan for the Allegheny Area fulfills the RFP requirements for the Allegheny Area. EPA proposes to approve Pennsylvania's attainment plan with respect to the RFP requirements.

F. Contingency Measures

In accordance with section 172(c)(9) of the CAA, contingency measures are required as additional measures to be implemented in the event that an area fails to meet the RFP requirements or fails to attain the standard by its attainment date. These measures must be fully adopted rules or control measures that can be implemented quickly and without additional EPA or state action if the area fails to meet RFP requirements or fails to meet its attainment date, and should contain trigger mechanisms and an implementation schedule. However,

SO₂ presents special considerations. As stated in the final 2010 SO₂ NAAQS promulgation on June 22, 2010 (75 FR 35520) and in the 2014 SO₂ Nonattainment Guidance, EPA concluded that because of the quantifiable relationship between SO₂ sources and control measures, it is appropriate that state agencies develop a comprehensive program to identify sources of violations of the SO₂ NAAQS and undertake an aggressive follow-up for compliance and enforcement.

The contingency measures in Pennsylvania's October 3, 2017 submittal are designed to keep the Allegheny Area from triggering an exceedance or violation of the SO₂ NAAQS. In the attainment plan, ACHD states that if an ambient air quality monitor measures enough exceedances in a consecutive three-year period that would cause a design value to exceed the 75 ppb standard, ACHD would conduct a thorough analysis in order to identify the sources of the violation and bring the area back into compliance with the NAAQS. ACHD states that the root cause analysis will begin immediately upon verification of a violation, will include analysis of source and meteorological conditions contributing to the violation, and will take no longer than 10 days to complete. In its plan, sources identified by ACHD as most likely contributing to the violation will have 10 days from notification to submit a written system audit report which details the operating parameters of all SO₂ emission sources for the four 5-day periods up to and including the dates which the monitor registered exceedances of the SO₂ NAAQS. According to the attainment plan, sources must recommend SO₂ control strategies for each affected unit in the audit report. Once ACHD receives the audit report(s), a 30-day evaluation period will begin in which ACHD will investigate the audit findings and recommended control strategies. The 30-day evaluation period will be followed by a 30-day consultation period with the sources. Additional control measures will be implemented as expeditiously as possible to bring the Area back into compliance. If a permit modification is necessary, ACHD has the statutory authority under ACHD Rules and Regulations, Article XXI—Air Pollution Control to amend and issue a final permit. Any new emission limits would also be submitted to EPA as a SIP revision. In addition, ACHD has the regulatory authority to take any action it deems necessary or proper for the effective enforcement of rules and regulations; such actions include the

¹³ SO₂ Guideline Document, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA-452/R-94-008, February 1994. Located at: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

issuance of orders (*i.e.*, enforcement orders and orders to take corrective action to address air pollution or the danger of air pollution from a source) and the assessment of civil penalties. ACHD's regulations for enforcement, ACHD Article XXI, Part I, sections 2109.01–2109.06 and 2109.10, provide ACHD authority to enforce its regulations, permits and orders. Pursuant to these regulations, ACHD has authority, *inter alia*, to inspect facilities, seek penalties for violations, enter enforcement orders, and revoke permits. These regulations are included in the Pennsylvania SIP. *See* 67 FR 68935 (November 14, 2002).

EPA finds that ACHD has a comprehensive program included in the Pennsylvania SIP to identify sources of violations of the SO₂ NAAQS and to undertake an aggressive follow up for compliance and enforcement. Therefore, EPA proposes that the contingency measures submitted by Pennsylvania follow the 2014 SO₂ Nonattainment Guidance and meet the section 172(c)(9) requirements.

G. New Source Review¹⁴

Section 172(c)(5) of the CAA requires that an attainment plan require permits for the construction and operation of new or modified major stationary sources in a nonattainment area. In Allegheny County, NNSR procedures and conditions for which new major stationary sources or major modifications may obtain a preconstruction permit are stipulated in the ACHD Rules and Regulations, Article XXI, Air Pollution Control, § 2102.06, "Major Sources Locating in or Impacting a Nonattainment Area" which was previously approved into the Pennsylvania SIP, with the most recent revision effective March 30, 2015 (80 FR 16570). ACHD Rules and Regulations, Article XXI, Air Pollution Control,

§ 2102.06 also incorporates by reference applicable provisions of PADEP's NNSR regulations codified at 25 Pa. Code Chapter 127, Subchapter E. PADEP's NNSR regulations in 25 Pa. Code Chapter 127, Subchapter E were previously approved into the Pennsylvania SIP, with the most recent revision updating the regulations to meet EPA's 2002 NSR reform regulations effective on May 14, 2012 (77 FR 28261). A discussion of the specific PADEP provisions incorporated by reference into ACHD Article XXI can be found in Pennsylvania's October 3, 2017 submittal found under Docket ID No. EPA-R03-OAR-2017-0730. These rules provide for appropriate NNSR permitting as required by CAA sections 172(c)(5) and 173 and 40 CFR 51.165 for SO₂ sources undergoing construction or major modification in the Allegheny Area without need for modification of the approved rules. Therefore, EPA concludes that Allegheny County's SIP-approved NNSR program meets the requirements of section 172(c)(5) for this Area.

VI. EPA's Proposed Action

EPA is proposing to approve Pennsylvania's attainment plan SIP revision for the Allegheny Area, as submitted through ACHD and PADEP to EPA on October 3, 2017, for the purpose of demonstrating attainment of the 2010 1-hour SO₂ NAAQS. Specifically, EPA is proposing to approve the base year emissions inventory, a modeling demonstration of SO₂ attainment, an analysis of RACM/RACT, a RFP plan, and contingency measures for the Allegheny Area and is proposing that the Pennsylvania SIP revision has met the requirements for NNSR for the 2010 1-hour SO₂ NAAQS. Additionally, EPA is proposing to approve into the Pennsylvania SIP specific SO₂ emission limits and compliance parameters in permits established for the SO₂ sources impacting the Allegheny Area.

EPA has determined that Pennsylvania's SO₂ attainment plan for the 2010 1-hour SO₂ NAAQS for the Allegheny Area meets the applicable requirements of the CAA and EPA's 2014 SO₂ Nonattainment Guidance. Thus, EPA is proposing to approve Pennsylvania's attainment plan for the Allegheny Area as submitted on October 3, 2017. EPA's analysis for this proposed action is discussed in Section V of this proposed rulemaking. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Final approval of this SIP submittal will

remove EPA's duty to implement a FIP for this Area.

VII. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference portions of the installation permits issued by ACHD with USS facilities at Clairton, Edgar Thomson and Irvin and with Harsco Metals. This includes emission limits and associated compliance parameters, recording-keeping and reporting. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this proposed rulemaking for more information).

VIII. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive

¹⁴ The CAA new source review (NSR) program is composed of three separate programs: Prevention of significant deterioration (PSD), NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS—"attainment areas"—as well as areas where there is insufficient information to determine if the area meets the NAAQS—"unclassifiable areas." The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—"nonattainment areas." The Minor NSR program addresses construction or modification activities that do not qualify as "major" and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs. Section 173 of the CAA lays out the NNSR program for preconstruction review of new major sources or major modifications to existing sources, as required by CAA section 172(c)(5). The programmatic elements for NNSR include, among other things, compliance with the lowest achievable emissions rate and the requirement to obtain emissions offsets.

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, this proposed rule, concerning the SO₂ attainment plan for the Allegheny Area in Pennsylvania, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: November 1, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2018-25079 Filed 11-16-18; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 181022971-01]

RIN 0648-B157

Fisheries of the Northeastern United States; Mid-Atlantic Blueline Tilefish Fishery; 2019 and Projected 2020–2021 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2019 blueline tilefish fishery north of the North Carolina/Virginia border and projected specifications for 2020 and 2021. The proposed action is intended to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan. It is also intended to inform the public of these proposed specifications for the 2019 fishing year and projected specifications for 2020–2021.

DATES: Comments must be received by 5 p.m. local time, on December 4, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0115, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0115,
2. Click the “Comment Now!” icon, complete the required fields.
3. Enter or attach your comments.

—OR—

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on the Proposed Rule for Blueline Tilefish Specifications.”

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 part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

A draft environmental assessment (EA) has been prepared for this action that describes the proposed measures and other considered alternatives, as well as provides an analysis of the impacts of the proposed measures and alternatives. Copies of the specifications document, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from

Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the internet at www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341.

SUPPLEMENTARY INFORMATION:

Background

The blueline tilefish fishery north of the North Carolina/Virginia border is managed by the Mid-Atlantic Fishery Management Council under the Tilefish Fishery Management Plan (FMP), which outlines the Council’s process for establishing annual specifications. Blueline tilefish south of the North Carolina/Virginia border are managed by the South Atlantic Fishery Management Council under the Snapper Grouper FMP.

The Tilefish FMP requires the Mid-Atlantic Council to recommend acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and other management measures for the commercial and recreational sectors of the fishery, for up to three years at a time. The Council’s Scientific and Statistical Committee (SSC) provides an ABC recommendation to the Council to derive these catch limits. The Council makes recommendations to NMFS that cannot exceed the recommendation of its SSC. The Council’s recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. We are responsible for reviewing these recommendations to ensure that they achieve the FMP objectives and are consistent with all applicable laws. Following review, NMFS publishes the final specifications in the **Federal Register**.

A benchmark stock assessment was completed in late 2017 for the blueline tilefish population along the entire East Coast through the Southeast Data, Assessment, and Review process (SEDAR 50). Within the assessment, the coast-wide population was modeled separately north and south of Cape Hatteras, North Carolina, because of data limitations within the northern area. To assist in developing an ABC recommendation, the Mid- and South Atlantic Councils’ SSCs, as well as staff from the NMFS Northeast and Southeast Fisheries Science Centers formed a joint subcommittee to examine available information for the region north of Cape

Hatteras, and to develop separate catch advice for each Council's jurisdiction.

At its March 2018 meeting, the Mid-Atlantic SSC reviewed the results from the SEDAR 50 benchmark stock assessment as well as additional work using the Data-Limited Methods Toolkit and derived a recommendation for acceptable biological catch (ABC) using the Mid-Atlantic Council's risk policy. The resulting ABC was 179,500 lb (81.4 mt) annually for 2019–2021 for the region north of Cape Hatteras. The SSC

then followed the recommendation of the Joint Mid- and South Atlantic Blueline Tilefish Subcommittee to assign 56 percent of that ABC to the Mid-Atlantic Council (north of the VA/NC border) and 44 percent to the South Atlantic Council. This percentage breakdown is based on the catch distribution from the 2017 Pilot Blueline Tilefish Longline Survey.

The Mid-Atlantic Council took final action on 2019–2021 quota specifications for the blueline tilefish

fishery at its April 2018 meeting, and submitted its recommended specifications to us on August 17, 2018. A summary of the Council's recommended specifications is shown below in Table 1.

Proposed Specifications

The Council's recommendations are consistent with the SSC's recommended ABC, and represent an approximate 15-percent increase in ABC from 2018.

TABLE 1—PROPOSED AND PROJECTED BLUELINE TILEFISH SPECIFICATIONS

| | 2018 | Proposed 2019 | Projected 2020–2021 |
|-------------------------------|---------------------------|----------------------------|----------------------|
| ABC—North of NC/VA line | 87,031 lb (39.5 mt) | 100,520 lb (45.6 mt) | 100,520 lb (45.6 mt) |
| Recreational ACL/ACT | 63,533 (28.8 mt) | 73,380 (33.3 mt) | 73,380 (33.3 mt) |
| Commercial ACL/ACT | 23,498 lb (10.6 mt) | 27,140 lb (12.3 mt) | 27,140 lb (12.3 mt) |
| Recreational TAL | 62,262 lb (28.2 mt) | 71,912 lb (32.6 mt) | 71,912 lb (32.6 mt) |
| Commercial TAL | 23,263 lb (10.5 mt) | 26,869 lb (12.2 mt) | 26,869 lb (12.2 mt) |

The Mid-Atlantic Council recommended increasing the commercial possession limit from 300 (136 kg) to 500 lb (227 kg) to assist the commercial fishery in harvesting the full commercial TAL. The Council was concerned that if fishing effort increases substantially, the small commercial TAL could be landed quickly at the 500-lb (227-kg) limit. To mitigate that concern, the Council included an inseason trigger, authorizing the Regional Administrator to reduce the possession limit to 300 lb (136 kg) per trip when 70 percent of the TAL has been landed.

The Council proposed no change to the recreational fishery beyond the increase to the recreational TAL (Table 1). The recreational fishery is open from May 1 through October 31 of each year and closed from November 1 through April 30. The bag limit for blueline tilefish depends on the type of fishing vessel being used. On a private boat, each angler may keep up to three blueline tilefish. On an U.S. Coast Guard uninspected for-hire vessel (charter boat), each angler may keep up to five blueline tilefish. On an U.S. Coast Guard inspected for-hire vessel (party boat), each angler may keep up to seven blueline tilefish.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other

applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council prepared an analysis of the potential economic impacts of the action, which is included in the draft EA for this action and supplemented by information contained in the preamble of this proposed rule.

For Regulatory Flexibility Act purposes, NOAA's National Marine Fisheries Service has established a size standard for small businesses, including their affiliated operations, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as small if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11.0 million for all its affiliated operations worldwide. The Small Business Administration has established size standards for all other major industry sectors in the U.S., including defining for-hire fishing firms (NAICS code 487210) as small when their receipts are less than \$7.5 million.

The measures proposed in this action apply to vessels that hold a Federal permit for blueline tilefish. Some

entities own multiple vessels with tilefish permits. In 2017, 2,028 separate vessels held tilefish permits. Those vessels were owned by 1,519 entities. Using the size definitions above, 1,508 are small business entities, comprised of 886 small commercial fishing entities, 242 small for-hire entities, and 380 had no revenue in 2017 (but are considered small businesses). For those small businesses with revenues, their average total revenues were \$0.55 million in 2017.

This action would increase the blueline tilefish commercial total allowable landings (TAL) from 23,263 lb (10.5 mt) to 26,869 lb (12.2 mt) (about 15 percent) and increase the commercial trip limit from 300 lb (136 kg) to 500 lb (227 kg) per trip. The trip limit would reduce to 300 lb (136 kg) when 70 percent of the commercial quota has been landed. The recreational TAL would increase from 62,262 lb (28.2 mt) to 71,912 lb (32.6 mt) (about 15 percent). Therefore, the potential impact of this action on small entities is positive, but limited by the relatively low TAL.

Given the small potential economic impact of the management measures proposed, this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 13, 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 648 is proposed
to be amended as follows:

**PART 648—FISHERIES OF THE
NORTHEASTERN UNITED STATES**

■ 1. The authority citation for part 648
continues to read as follows:

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

■ 2. In § 648.295, paragraphs (b)(1) and
(2) are revised to read as follows:

**§ 648.295 Tilefish commercial trip limits
and landing condition.**

* * * * *

(b) * * *

(1) *Commercial possession limit.* Any
vessel of the United States fishing under
a tilefish permit, as described at
§ 648.4(a)(12), is prohibited from
possessing more than 500 lb (227 kg) of
gutted blueline tilefish per trip in or
from the Tilefish Management Unit.

(2) *In-season adjustment of
possession limit.* The Regional
Administrator will monitor the harvest
of the blueline tilefish commercial TAL
based on dealer reports and other
available information.

(i) When 70 percent of the blueline
tilefish commercial TAL will be landed,
the Regional Administrator will publish
a notice in the **Federal Register**
notifying vessel and dealer permit
holders that, effective upon a specific
date, the blueline tilefish commercial

possession limit is reduced to 300 lb
(136 kg) of gutted blueline tilefish per
trip in or from the Tilefish Management
Unit.

(ii) When 100 percent of the blueline
tilefish commercial TAL will be landed,
the Regional Administrator will publish
a notice in the **Federal Register**
notifying vessel and dealer permit
holders that, effective upon a specific
date, the blueline tilefish commercial
fishery is closed for the remainder of the
fishing year. No vessel may retain or
land blueline tilefish in or from the
Tilefish Management Unit.

* * * * *

[FR Doc. 2018–25089 Filed 11–16–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 83, No. 223

Monday, November 19, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 14, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 19, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. 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. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Information Collection for Document Delivery Services.

OMB Control Number: 0518–0027.

Summary of Collection: The National Agricultural Library (NAL) accepts requests from libraries and other organizations in accordance with the national and international interlibrary loan code and guidelines. In its national role, NAL collects and supplies copies or loans of agricultural materials not found elsewhere. 7 U.S.C. 3125a and 7 CFR 505 gives NAL the authority to collect this information. NAL provides photocopies and loans of materials directly to USDA staff, other Federal agencies, libraries and other institutions, and indirectly to the public through their libraries. The Library charges for some of these activities through a fee schedule. In order to fill a request for reproduction or loan of items the library must have the name, mailing address, phone number of the respondent initiating the request, and may require either a fax number, email address, or Ariel IP address. The collected information is used to deliver the material to the respondent, bill for and track payment of applicable fees, monitor the return to NAL of loaned material, identify and locate the requested material in NAL collections, and determine whether the respondent consents to the fees charged by NAL.

Need and Use of the Information: The NAL document delivery staff uses the information collected to identify the protocol for processing the request. The information collected determines whether the respondent is charged or exempt from any charges and what process the recipient uses to make payment if the request is chargeable. The staff also uses the information provided to process/package the

reproduction or loan for delivery. Without the requested information NAL has no way to locate and deliver the loan or reproduction to the respondent, and thus cannot meet its mandate to supply agricultural material.

Description of Respondents: Federal Government; Not-for-profit institutions; State, Local or Tribal Government; Business or other for-profit.

Number of Respondents: 590.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 69.

Agricultural Research Service

Title: Web Forms for Research Data, Models, Materials, and Publications as well as Study and Event Registration.

OMB Control Number: 0518–0032.

Summary of Collection: OMB Circular 130 Management of Federal Information Resources, establishes that “agencies will use electronic media and formats . . . in order to make government information more easily accessible and useful to the public” In order to provide information and services related to its program responsibilities defined at 7 CFR 2.65, the Agricultural Research Service (ARS) needs to obtain certain basic information from the public. Online forms allow the public to request from ARS research data, models, materials, and publications as well as registration for scientific studies and events.

Need and Use of the Information: ARS will use the information to respond to requests for specific services. The information will be collected electronically. If this collection is not conducted, ARS will be hindered from reducing the burden on its customers by providing them the most timely and efficient way to request services.

Description of Respondents: Individuals or households.

Number of Respondents: 8,750.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 438.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–25154 Filed 11–16–18; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****[B-47-2018]****Foreign-Trade Zone (FTZ) 64—
Jacksonville, Florida, Authorization of
Production Activity, Bacardi USA, Inc.
(Kitting of Alcoholic Beverages),
Jacksonville, Florida**

On July 13, 2018, Bacardi USA, Inc., submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 64E, in Jacksonville, Florida.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 34825, July 23, 2018). On November 13, 2018, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: November 13, 2018.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2018-25143 Filed 11-16-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****[B-48-2018]****Foreign-Trade Zone (FTZ) 176—
Rockford, Illinois; Authorization of
Production Activity Leading Americas
Inc. (Wire Harnesses), Hampshire,
Illinois**

On July 16, 2018, Leading Americas Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 176—Site 17, in Hampshire, Illinois.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 34825, July 23, 2018). On November 13, 2018, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: November 13, 2018.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2018-25148 Filed 11-16-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****[S-149-2018]****Approval of Subzone Status; Digi-Key
Corporation; Fargo, North Dakota**

On September 26, 2018, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Municipal Airport Authority of the City of Fargo, grantee of FTZ 267, requesting subzone status subject to the existing activation limit of FTZ 267, on behalf of Digi-Key Corporation, in Fargo, North Dakota.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (83 FR 49356, October 1, 2018). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 267A was approved on November 14, 2018, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 267's 1,026-acre activation limit.

Dated: November 14, 2018.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2018-25147 Filed 11-16-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration****[A-533-885, A-570-097]****Polyester Textured Yarn From India
and the People's Republic of China:
Initiation of Less-Than-Fair-Value
Investigations**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 7, 2018.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482-4929 (India), or Irene Gorelik at (202) 482-6905 (the People's Republic of China (China)), 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 October 18, 2018, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) Petitions concerning imports of polyester textured yarn (yarn) from India and China, filed in proper form on behalf of Unifi Manufacturing, Inc. and Nan Ya Plastics Corporation, America (the petitioners), domestic producers of yarn.¹ The AD Petitions were accompanied by countervailing duty (CVD) Petitions concerning imports of yarn from India and China.²

During the period October 22 through November 1, 2018, we requested information from the petitioners pertaining to the scope of the investigations and certain allegations contained within the Petitions.³ During the period October 26 through November 2, 2018, the petitioners supplemented the record in response to these requests.⁴

¹ See Petitioners' Letter, "Polyester Textured Yarn from the People's Republic of China and India—Petition for the Imposition of Antidumping and Countervailing Duties," dated October 18, 2018 (Petitions).

² See Volumes III and V of the Petitions.

³ See Commerce's Letters, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China and India: Supplemental Questions," "Petition for the Imposition of Antidumping Duties on Imports of Polyester Textured Yarn from India: Supplemental Questions," and "Petition for the Imposition of Antidumping Duties on Imports of Polyester Textured Yarn from the People's Republic of China: Supplemental Questions," dated October 22, 2018. See also "Petition for the Imposition of Antidumping Duties on Imports of Polyester Textured Yarn from India: Supplemental Questions," dated October 29, 2018, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China and India: Phone Call with Counsel to the Petitioners," dated October 29, 2018, and "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China and India: Supplemental Questionnaire Regarding Proposed Scope," dated November 1, 2018.

⁴ See the Petitioners' Letters, "Polyester Textured Yarn from India and the People's Republic of China—Petitioners' Supplement to Volume I Relating to General Issues," (General Issues Supplement), and "Polyester Textured Yarn from India—Petitioners' Supplement for Volume IV Regarding India Antidumping Duties," dated October 26, 2018. See also Polyester Textured Yarn from the People's Republic of China; Petitioners' Supplemental for Volume II Regarding China Antidumping Duties" (China AD Supplemental), dated October 29, 2018, "Polyester Textured Yarn from India—Petitioners' 2nd Supplemental Response for Volume IV Regarding India Antidumping Duties," dated October 30, 2018, "Polyester Textured Yarn from India and the

Continued

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of yarn from India and China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing yarn in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the AD investigations that the petitioners are requesting.⁵

Period of Investigations

Because the Petitions were filed on October 18, 2018, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the India investigation is October 1, 2017, through September 30, 2018. Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the POI is April 1, 2018, through September 30, 2018.

Scope of the Investigations

The product covered by these investigations is yarn from India and China. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Comments on Scope of the Investigations

During our review of the Petitions, we contacted the petitioners regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the product 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 these investigations, 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 determinations. If scope comments include factual information,⁸ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on November 27, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on December 7, 2018, which is 10 calendar days from the initial comments deadline.⁹

Commerce requests 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 concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).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 AD Questionnaires

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of yarn 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 (FOPs) accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any factual 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 yarn, 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 November 27, 2018, which is 20 calendar days from the signature date of this notice.¹¹ Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on December 7, 2018. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on

People's Republic of China—Petitioners' Supplement to Volume I Relating to General Issues," dated October 31, 2018 (Second General Issues Supplement), and "Polyester Textured Yarn from the People's Republic of China and India—Petitioners' Response to Commerce's Question Regarding Scope Language," dated November 2, 2018.

⁵ See the "Determination of Industry Support for the Petition" section, *infra*.

⁶ See General Issues Supplement. See also Memorandum, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China and India: Phone Call with Counsel to the Petitioners," dated October 29, 2018.

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%20Filing%20Procedures.pdf>.

¹¹ See 19 CFR 351.303(b).

the record of each of the AD 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 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 petitioners do not offer a definition of the domestic like product distinct from the scope of the Petitions.¹⁴ Based on our analysis of the information submitted on the record, we have determined that yarn, 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 petitioners have 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 petitioners provided their own production of the domestic like product in 2017, as well as the 2017 production of companies that support the Petitions.¹⁶ The petitioners compared the production of the supporters of the Petitions to the estimated total production of the domestic like product for the entire domestic industry.¹⁷ We relied on data provided by the petitioners for purposes of measuring industry support.¹⁸

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petition.¹⁹ 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).²⁰ 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.²¹ 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.²² 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 petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the AD investigations that they are requesting that Commerce initiate.²³

Allegations and Evidence of Material Injury and Causation

The petitioners allege 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 petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁴

The petitioners contend that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression and suppression; declines in the domestic industry’s production, capacity utilization, and

¹⁴ See Volume I of the Petitions, at 11–12; see also General Issues Supplement, at 4–5 and Exhibit GEN-Supp-2.

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: Polyester Textured Yarn from the People’s Republic of China (China AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Polyester Textured Yarn from the People’s Republic of China and India (Attachment II); see also Antidumping Duty Investigation Initiation Checklist: Polyester Textured Yarn from India (India AD Initiation Checklist), at Attachment II. These checklists are dated concurrently with, and hereby adopted by, 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 4–5 and Exhibit GEN–2.

¹⁷ *Id.*; see also General Issues Supplement, at Exhibit GEN-Supp-3.

¹⁸ *Id.* For further discussion, see China AD Initiation Checklist, at Attachment II; and India AD Initiation Checklist, at Attachment II.

¹⁹ See China AD Initiation Checklist, at Attachment II; and India AD Initiation Checklist, at Attachment II.

²⁰ See section 732(c)(4)(D) of the Act; see also China AD Initiation Checklist, at Attachment II; and India AD Initiation Checklist, at Attachment II.

²¹ See China AD Initiation Checklist, at Attachment II; and India AD Initiation Checklist, at Attachment II.

²² *Id.*

²³ *Id.*

²⁴ See Volume I of the Petitions, at 13–14 and Exhibit GEN–8.

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)).

U.S. commercial shipments; decline in the domestic industry's financial performance; lost sales and revenues; and closures of U.S. production facilities.²⁵ 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.²⁶

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value that are the basis for Commerce's decision to initiate AD investigations of imports of yarn from India and China. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific AD Initiation Checklists.

Export Price

For both India and China, the petitioner based export price (EP) on price quotes for yarn produced in, and exported from, India and China and offered for sale in the United States.²⁷ Where appropriate, the petitioners made deductions from U.S. price for foreign brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. inland freight, U.S. brokerage and handling, U.S. customs fees, and unrebated value added tax, consistent with the terms of sale as applicable.²⁸

Normal Value

For India, the petitioners based NV on home market prices obtained through market research for yarn produced in and sold, or offered for sale, in India within the proposed POI.²⁹ The petitioners calculated net home market prices, adjusted as appropriate for rebates.³⁰ The petitioners provided information indicating that the prices were below the cost of production (COP) and, therefore, the petitioners also

calculated NV based on constructed value (CV).³¹ For further discussion of COP and NV based on CV, see the section "Normal Value Based on Constructed Value" below.³²

With respect to China, Commerce considers China to be an NME country.³³ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act.³⁴

The petitioners claim that Malaysia is an appropriate surrogate country for China because it is a market economy country that is at a level of economic development comparable to that of China, it is a significant producer of identical merchandise, and data for Malaysia for valuing FOPs are available and reliable.³⁵ The petitioners provided publicly available information from Malaysia to value all FOPs.³⁶ Therefore, based on the information provided by the petitioners, we determine that it is appropriate to use Malaysia as the primary surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

³¹ *Id.*

³² In accordance with section 773(b)(2) of the Act, for this investigation, Commerce will request information necessary to calculate the CV and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

³³ See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying decision memorandum, *China's Status as a Non-Market Economy*, unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

³⁴ See China AD Initiation Checklist.

³⁵ See Volume II of the Petitions, at 6–8 and Exhibit AD–PRC–3.

³⁶ See Volume II of the Petitions, at 9–11; see also China AD Supplemental at 5–6 and Exhibit AD–PRC–Supp–4–B.

Factors of Production

Based on their assertion that information regarding the FOPs and volume of inputs consumed by Chinese producers/exporters of yarn was not reasonably available, the petitioners used their own consumption rates for yarn to estimate the Chinese manufacturers' FOPs.³⁷ The petitioners valued the estimated FOPs using surrogate values from Malaysia reported in Malaysian ringgit and converted to U.S. dollars.³⁸ The petitioners calculated factory overhead, selling, general and administrative (SG&A) expenses, and profit based on the experience of a Malaysian producer of yarn.³⁹

Normal Value Based on Constructed Value

As noted above, for India, the petitioners obtained home market prices but demonstrated that these prices were below the COP during the POI; therefore, the petitioners also based NV on CV pursuant to section 773(a)(4) of the Act. Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), SG&A expenses, financial expenses, profit, and packing expenses.

The petitioners calculated the COM based on two domestic producers' input FOPs and usage rates for raw materials, labor, energy, and packing.⁴⁰ The petitioners valued the input FOPs using publicly available data on costs specific to India during the proposed POI. Specifically, the petitioners based the prices for raw material and packing inputs on publicly available import data for India.⁴¹ The petitioners valued labor and energy costs using publicly available sources for India.⁴² The petitioners calculated factory overhead, SG&A, financial expenses, and profit for India based on the experience of an Indian producer of yarn.⁴³

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of yarn from India and China are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for yarn are as follows: (1)

³⁷ See China AD Initiation Checklist.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See India AD Initiation Checklist.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

²⁵ *Id.* at 10, 13–26 and Exhibits GEN–6 and GEN–8 through GEN–13; see also General Issues Supplement, at 6–7 and Exhibits GEN–Supp–4 and GEN–Supp–5.

²⁶ See China AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Polyester Textured Yarn from the People's Republic of China and India (Attachment III); see also India AD Initiation Checklist, at Attachment III.

²⁷ See China AD Initiation Checklist and India AD Initiation Checklist.

²⁸ See China AD Initiation Checklist and India AD Initiation Checklist.

²⁹ See India AD Initiation Checklist.

³⁰ *Id.*

India—35.14 to 202.93 percent;⁴⁴ and (2) China—74.98 and 77.15 percent.⁴⁵

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 yarn from India and China are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

The petitioners identified 34 producers/exporters as accounting for the majority of exports of yarn to the United States from India.⁴⁶ Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of yarn from India during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in 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 the India AD investigation. 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>.

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, no later than 5:00 p.m. ET on the dates noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

The petitioners identified 51 producers/exporters as accounting for the majority of exports of yarn to the United States from China.⁴⁷ In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to issue quantity and value (Q&V) questionnaires to producers/exporters of merchandise subject to this investigation. In the event Commerce determines that it cannot individually examine each company, where appropriate, Commerce intends to select mandatory respondents based on the responses received to its Q&V questionnaires. Commerce will request Q&V information from known exporters and producers identified with complete contact information in the Petition.

Exporters and producers of yarn from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from the Enforcement and Compliance website, at <http://trade.gov/enforcement/news.asp>. Responses to the Q&V questionnaire must be submitted by the relevant Chinese exporters/producers no later than 5:00 p.m. ET on November 21, 2018, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically *via* ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.⁴⁸ The specific requirements for submitting a separate-rate application in this investigation are provided in the application itself, which is available on Commerce's website at <http://enforcement.trade.gov/nme/nme-sep-rate.html>. The separate-rate application will be due 30 days after publication of this initiation notice.⁴⁹ Exporters and producers who submit a separate-rate application and have been

selected as mandatory respondents will only be eligible for consideration for separate-rate status if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate-rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.⁵⁰

Distribution of Copies of the 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 India and China *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 Determinations 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 yarn from India and/or China are materially injuring or threatening

⁴⁴ *Id.*

⁴⁶ See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation Involving Non-Market Economy Countries (April 5, 2005), available at <http://enforcement.trade.gov/policy/bull05-1.pdf> (Policy Bulletin 05.1).

⁴⁹ Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that "the Secretary may request any person to submit factual information at any time during a proceeding," this deadline is now 30 days.

⁵⁰ See Policy Bulletin 05.1 at 6 {emphasis added}.

⁴⁴ See India AD Initiation Checklist.

⁴⁵ See China AD Initiation Checklist.

⁴⁶ See Second General Issues Supplement, at Exhibit GEN-SUPP-5.

material injury to a U.S. industry.⁵¹ A negative ITC determination for any country will result in the investigation being terminated with respect to that country.⁵² 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 submitted⁵³ 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.⁵⁴ 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.

Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of CV under section 773(e) of the Act.⁵⁵ Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists

under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent’s initial Section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in 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.⁵⁶ Parties must use the certification formats provided in 19 CFR 351.303(g).⁵⁷ 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(b). 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)). Instructions for filing such applications may be found on Commerce’s website at <http://enforcement.trade.gov/apo>.

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: November 7, 2018.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

Scope of the Investigations

The merchandise covered by these investigations, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packing method (such as spindles, tubes, or beams).

The merchandise subject to these investigations is properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2018–24953 Filed 11–16–18; 8:45 am]

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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.

⁵¹ See section 733(a) of the Act.

⁵² *Id.*

⁵³ See 19 CFR 351.301(b).

⁵⁴ See 19 CFR 351.301(b)(2).

⁵⁵ See Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

⁵⁶ See section 782(b) of the Act.

⁵⁷ See also *Certification of Factual Information to Import Administration During Antidumping and*

DEPARTMENT OF COMMERCE**International Trade Administration****[A-570-601]****Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review; 2017-2018**

AGENCY: Enforcement and Compliance, International Trade Administration, United States Department of Commerce.

SUMMARY: On August 10, 2018, the Department of Commerce (Commerce) initiated an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs) from the People's Republic of China (China) for 14 companies. Based on timely withdrawal of requests for review, we are now rescinding this administrative review with respect to 10 of these companies.

DATES: Applicable November 19, 2018.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Alex Wood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4987 or (202) 482-1959, respectively.

SUPPLEMENTARY INFORMATION:**Background**

In June 2018, Commerce received multiple timely requests to conduct an administrative review of the antidumping duty order on TRBs from China. Based upon these requests, on August 10, 2018, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce published a notice of initiation of an administrative review covering the period June 1, 2017, through May 31, 2018, with respect to 14 companies.¹ In August and September, 2018, the following companies withdrew their requests for an administrative review: Changshan Peer Bearing Co., Ltd. (CPZ/SKF); CNH Industrial Italia SpA (CNH); GGB Bearing Technology (Suzhou) Co., Ltd. (GGB); GSP Automotive Group Wenzhou Co., Ltd. (GSP); Hangzhou Hanji Auto Parts Co., Ltd. (Hanji Auto);

Hangzhou Radical Energy-Saving Technology Co., Ltd. (Hangzhou Radical); Ningbo Xinglun Bearings Import & Export Co., Ltd. (Xinglun Bearings); Shanghai General Bearing Co., Ltd (SGBC); Zhejiang Machinery Import & Export Corp. (Zhejiang Machinery); and Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd. (Zhaofeng).

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. CNH, CPZ/SKF, GGB, GSP, Hanji Auto, Hangzhou Radical, SGBC, Xinglun Bearings, Zhaofeng, and Zhejiang Machinery timely withdrew their requests for an administrative review of themselves. No other party requested a review of these 10 companies. Accordingly, we are rescinding this review, in part, with respect to these companies, pursuant to 19 CFR 351.213(d)(1).

The instant review will continue with respect to the following companies: Hangzhou Xiaoshan Dingli Machinery Co., Ltd.; Shandong Aokai Bearing Co., Ltd.; Taizhou Zson Bearing Technology Co., Ltd.; and Zhejiang Jingli Bearing Technology Co., Ltd.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751 and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: November 14, 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. 2018-25146 Filed 11-16-18; 8:45 am]

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DEPARTMENT OF COMMERCE**International Trade Administration****[A-570-904]****Certain Activated Carbon From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2016-2017**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 22, 2018, the Department of Commerce (Commerce) published in the **Federal Register** the final results of the administrative review of the antidumping duty (AD) order on certain activated carbon from the People's Republic of China (China). Commerce is amending the final results of the administrative review to correct ministerial errors.

DATES: Applicable November 19, 2018.

FOR FURTHER INFORMATION CONTACT: John Anwesen or Jinny Ahn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0131 or (202) 482-0339, respectively.

SUPPLEMENTARY INFORMATION:

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 39688 (August 10, 2018). See also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 45596, 45603 (September 10, 2018), correcting the spelling of one company name.

On October 22, 2018, Commerce published in the **Federal Register** the final results of the administrative review of certain activated carbon from China.¹ On October 23, 2018, Datong Juqiang submitted timely ministerial error allegations regarding the *Final Results*. In addition, Tianjin Channel Filters Co., Ltd. (TCF), Jilin Bright Future Chemicals Co. Ltd (Jilin Bright Future), Datong Municipal Yunguang Activated Carbon Co., Ltd. (Datong Yunguang), Shanxi Industry Technology Trading Co., Ltd. (SITT), and Shanxi Dapu International Trade Co., Ltd. (Shanxi Dapu) (collectively, No Shipment Companies) submitted timely ministerial error allegations regarding the *Final Results*.

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes “errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.”² With respect to final results, 19 CFR 351.224(e) provides that Commerce “will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review. . . .”

Ministerial Errors

A. No Shipment Companies

The No Shipment Companies allege that, in Appendix II of the *Final Results*, Commerce erroneously listed TCF, Jilin Bright Future, Datong Yunguang, SITT, and Shanxi Dapu as companies not eligible for a separate rate and, therefore, part of the China-Wide entity. With regard to the No Shipment Companies’ allegation, we agree that the inclusion of their names in Appendix II of the *Final Results* constitutes a ministerial error. In the *Final Results*, we determined that these companies made no shipments of subject merchandise during the period of review, based on their respective certifications of no shipments and our inquiry with CBP. Thus, the inclusion of these companies in Appendix II of the *Final Results*, which identified the companies that were not eligible for a separate rate and would be treated as part of the China-wide entity, was an

unintentional error, and constitutes a ministerial error within the meaning of section 751(h) of the Act and 19 CFR 351.224(f), which warrants a correction. Consequently, we revised Appendix II to remove TCF, Jilin Bright Future, Datong Yunguang, SITT, and Shanxi Dapu from the list of companies not eligible for a separate rate as part of the China-Wide entity.

B. Carbon Activated Tianjin Co., Ltd.

In reviewing the ministerial error allegations in the *Final Results*, we noted that we inadvertently we applied the margin corresponding to the incorrect comparison method, inconsistent with the results of our differential pricing test and analysis. This error resulted in assigning the incorrect weighted-average dumping margin to Carbon Activated Tianjin Co., Ltd. (Carbon Activated). In the *Final Results*, we inadvertently listed a dumping margin calculated based on the average-to-transaction (A–T) comparison method, which resulted in a \$0.45/kilogram weighted-average dumping margin.³ However, we should have listed the dumping margin calculated using the mixed alternative methodology (*i.e.*, average-to-average and A–T method),⁴ which results in a weighted-average dumping margin of \$0.23/kilogram. We find that our application of the margin corresponding to the A–T comparison method is an unintentional error constituting a ministerial error within the meaning of section 751(h) of the Act and 19 CFR 351.224(f), and warranting correction.⁵ Consequently, as explained in the Ministerial Error Memorandum, we are amending the final weighted-average dumping margin for Carbon Activated pursuant to 19 CFR 351.224(e) to reflect the correct methodology and weighted-average dumping margin.

Furthermore, in the *Final Results*, we assigned to the non-individually examined companies that qualified for a separate rate (Separate Rate Companies), the weighted-average dumping margin calculated for Carbon Activated.⁶ Consistent with our practice, because

we are amending Carbon Activated’s final weighted-average dumping margin to reflect the correct differential pricing methodology, we are also amending the separate rate assigned to the Separate Rate Companies.

Revisions Not Covered by Section 751(h) of the Act

In its timely filed ministerial allegation letter, Datong Juqiang alleges that, in the Datong Juqiang-specific draft liquidation instructions, Commerce identified one importer/customer by its short name, not its full legal name. In the final Datong Juqiang-specific liquidation instructions, Datong Juqiang requests that Commerce identify the importer/customer by both its full legal name and short name. Datong Juqiang also requests that Commerce revise the instruction to include an additional customer reported by Datong Juqiang in its responses, to avoid any confusion with United States Customs and Border Protection (CBP) when liquidating entries.

We find that Datong Juqiang’s alleged errors do not constitute a ministerial error within the meaning of section 751(h) of the Act and 19 CFR 351.224(f) because they are comments on the draft liquidation instructions, rather than allegations of error in the final results of this administrative review. Nevertheless, we have considered Datong Juqiang’s comment on the draft liquidation instructions and have revised Datong Juqiang’s liquidation instruction to include both the full legal name and short name of one importer/customer as identified by Datong Juqiang. However, consistent with our practice, we decline to include the name of the additional customer reported by Datong Juqiang in its responses because this customer was not reported as importer of record, which is the information upon which importer-specific assessment and liquidation instructions are based, unless the importer of record is unknown. In this case, this additional customer was not reported as an importer of record.

Amended Final Results

The amended weighted-average dumping margins are as follows:

⁷ In the second administrative review of the Order, Commerce determined that it would calculate per-unit weighted-average dumping margins and assessment rates for all future reviews. See *Certain Activated Carbon from the People’s Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208, 70211 (November 17, 2010) and accompanying IDM at Comment 3.

⁸ There are no changes to the dumping margin for Datong Juqiang Activated Carbon Co., Ltd.

¹ See *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 53214 (October 22, 2018) (*Final Results*) and accompanying Issues and Decision Memorandum.

² See also 19 CFR 351.224(f).

³ See *Final Results*, 83 FR at 53214. See also Memorandum, “Antidumping Duty Administrative Review of Certain Activated Carbon from the People’s Republic of China: Final Results Calculation Memorandum for Carbon Activated” at 3.

⁴ See Memorandum, “Antidumping Duty Administrative Review of Certain Activated Carbon from the People’s Republic of China: Final Results Calculation Memorandum for Carbon Activated” dated October 16, 2018 (Carbon Activated’s Final Calculation Memorandum), at 3–4.

⁵ See Ministerial Error Memorandum; see also Carbon Activated’s Final Calculation Memorandum at 3–4.

⁶ See *Final Results*, 83 FR at 53214.

| Exporter | Amended weighted-average dumping margins (USD/kg) ⁷ |
|---|--|
| Beijing Pacific Activated Carbon Products Co., Ltd | 0.23 |
| Carbon Activated Tianjin Co., Ltd | 0.23 |
| Datong Juqiang Activated Carbon Co., Ltd ⁸ | 0.00 |
| Jacobi Carbons AB ⁹ | 0.23 |
| Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd | 0.23 |
| Ningxia Huahui Activated Carbon Co., Ltd | 0.23 |
| Ningxia Mineral & Chemical Limited | 0.23 |
| Shanxi Sincere Industrial Co., Ltd | 0.23 |

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act and 19 CFR 351.224(e) and (g).

Dated: November 13, 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

Companies Not Eligible for a Separate Rate and To Be Treated as Part of China-Wide Entity

Company

1. Beijing Embrace Technology Co., Ltd.
2. Meadwestvaco (China) Holding Co., Ltd.
3. Ningxia Guanghua A/C Co., Ltd.
4. Ningxia Guanghua Activated Carbon Co., Ltd.
5. Ningxia Guanghua Chemical Activated Carbon Co., Ltd.
6. Ningxia Jirui Activated Carbon
7. Shanxi DMD Corporation
8. Tancarb Activated Carbon Co., Ltd.
9. Tangshan Solid Carbon Co., Ltd.
10. Tianjin Jacobi International Trading Co., Ltd.
11. Tianjin Maijin Industries Co., Ltd.

[FR Doc. 2018-25144 Filed 11-16-18; 8:45 am]

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⁹ In the third administrative review of the *Order*, Commerce found that Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) are a single entity and, because there were no facts presented on the record of this review which would call into question our prior finding, we continue to treat these companies as part of a single entity for this administrative review, pursuant to sections 771(33)(E), (F), and (G) of the Act and 19 CFR 351.401(f). See *Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review*, 76 FR 67142, 67145 n.25 (October 31, 2011); see also *Preliminary Results*, and accompanying PDM at n.26.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-523-808]

Certain Steel Nails From the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that, during the period of review (POR) July 1, 2016, through June 30, 2017, Oman Fasteners LLC (Oman Fasteners) is not selling nails at less than normal value but that the collapsed entity of Overseas International Steel Industry LLC (OISI) and Overseas Distribution Services Inc. (ODS) is.

DATES: Applicable November 19, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3936, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 2018, Commerce published the *Preliminary Results* of the 2016–2017 antidumping duty administrative review of certain steel nails from the Sultanate of Oman.¹ In accordance with 19 CFR 351.309(c)(1)(ii), we invited parties to comment on our *Preliminary Results*. On June 13, 2018, Mid Continent Steel & Wire, Inc. (the petitioner) and Oman Fasteners submitted case briefs.² In its case brief, the petitioner timely requested a hearing but withdrew its request on September 7, 2018.³ On June 20, 2018, the petitioner and Oman Fasteners submitted their rebuttal briefs.⁴

¹ See *Certain Steel Nails from the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 22246 (May 14, 2018) and accompanying Preliminary Decision Memorandum (*Preliminary Results*).

² See the petitioner's case brief, dated June 13, 2018, Oman Fasteners' case brief, dated June 13, 2018.

³ See Letter from the petitioner, "Certain Steel Nails from Oman: Withdrawal of Request for Hearing," dated September 7, 2018.

⁴ See the petitioner's rebuttal brief, dated June 20, 2018, and Oman Fasteners' rebuttal brief, dated June 20, 2018.

Scope of the Order

The merchandise covered by this order is nails having a nominal shaft length not exceeding 12 inches.⁵ Merchandise covered by the order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Nails subject to this order also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. For a complete description of the scope of the order, see the IDM.⁶

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the IDM. A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The IDM is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and in the Central Records Unit (CRU), room B8024 of the main Department of Commerce building. In addition, a complete version of the IDM can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed IDM and the electronic versions of the IDM are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results*, we have recalculated Oman Fasteners' weighted-average dumping

⁵ The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

⁶ See Memorandum, "Decision Memorandum for Final Results of the 2016–2017 Antidumping Duty Administrative Review of Certain Steel Nails from the Sultanate of Oman," dated concurrently with, and hereby adopted by this notice (IDM).

margin.⁷ The AFA dumping margin for the collapsed entity (*i.e.*, OISI and ODS) remains unchanged from the *Preliminary Results*.⁸

Final Results of the Review

As a result of this review, we determine that, for the period July 1, 2016, through June 30, 2017, the following dumping margins exist:

| Producer and/or exporter | Weighted-average dumping margin (percent) |
|--|---|
| Oman Fasteners LLC | 0.00 |
| Overseas International Steel Industry LLC/Overseas Distribution Services Inc ... | 154.33 |

Duty Assessment

Commerce shall determine and Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries.⁹ For Oman Fasteners, because its weighted-average dumping margin is zero or *de minimis* (*i.e.*, less than 0.5 percent), Commerce has not calculated importer-specific antidumping duty assessment rates. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis*. Because we calculated a zero margin for Oman Fasteners in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties. For entries of the subject merchandise from OISI and ODS, we will instruct CBP to assess antidumping duties at the AFA rate of 154.33 percent.

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by each respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-

others rate if there is no rate for the intermediate company(ies) involved in the transaction. We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Tariff Act of 1930, as amended (the Act): (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 9.10 percent, the all-others rate established in the antidumping investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information

disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: November 9, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final IDM

- I. Summary
- II. List of Issues
- III. Background
- IV. Scope of the Order
- V. Discussion of the Issues
- Comment 1: Whether Astrotech's financial statement is a better source than Amatei for calculating CV profit and indirect selling expenses
- Comment 2: Whether Commerce made certain errors in its calculation of CV profit and indirect selling expenses
- Comment 3: Whether Oman Fasteners is affiliated with a U.S. customer via a close supplier relationship
- Comment 4: Whether Oman Fastener's U.S. sales are CEP sales because the terms of sale were agreed to or established by the Atlanta office
- Comment 5: Whether Commerce should impute interest for a related party loan
- Comment 6: Whether Commerce should base CV Profit on Omani rates or capped if based on third-country sources
- Comment 7: Whether Commerce's differential pricing methodology is unlawful
- VI. Recommendation

[FR Doc. 2018–25145 Filed 11–16–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–098, C–533–886]

Polyester Textured Yarn From India and the People's Republic of China: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 7, 2018.

FOR FURTHER INFORMATION CONTACT: Janae Martin at (202) 482–0238 (India) and Robert Palmer at (202) 482–9068

⁷ See IDM; see also Memorandum, "Certain Nails from Oman: Calculation Memorandum for the Final Results of the 2016–2017 Administrative Review—Oman Fasteners," dated concurrently with this notice.

⁸ Commerce determined that OISI and ODS should be a collapsed entity in the previous administrative review. See *Certain Steel Nails from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2014–2016*, 83 FR 4030 (January 29, 2018).

⁹ In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

(People's Republic of China (China)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On October 18, 2018, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of polyester textured yarn (yarn) from India and China, filed in proper form on behalf of Unifi Manufacturing, Inc. and Nan Ya Plastics Corp., America (the petitioners), domestic producers of yarn.¹ The CVD Petitions were accompanied by antidumping duty (AD) petitions concerning imports of yarn from India and China.²

During the period October 22 through November 1, 2018, we requested information from the petitioners pertaining to the scope of the investigations and certain allegations contained within the Petitions.³ The petitioners filed additional information between October 26, and November 2, 2018.⁴

¹ See Petitioners' Letter, "Polyester Textured Yarn from India and the People's Republic of China," dated October 18, 2018 (the Petitions).

² See Volumes II and IV of the Petitions.

³ See Commerce's Letters, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China and India: Supplemental Questions" (General Issues Supplemental), "Petition for the Imposition of Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China: Supplemental Questions," "Petition for the Imposition of Countervailing Duties on Imports of Polyester Textured Yarn: Supplemental Questions," all dated October 22, 2018, "Petition for the Imposition of Countervailing Duties on Imports of Polyester Textured Yarn [from India]: Supplemental Questions," dated October 29, 2018, and "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China and India: Supplemental Questionnaire Regarding Proposed Scope," dated November 1, 2018.

⁴ See Petitioners' Letters, "Polyester Textured Yarn from India and the People's Republic of China—Petitioners' Supplement to Volume I Relating to General Issues," "Polyester Textured Yarn from India—Petitioners' Response to Department's October 22, 2018 Supplemental Questionnaire," and "Petitioners' Supplement to Volume III of the Petitions Relating to Countervailing Duty Investigation of Polyester Textured Yarn from the People's Republic of China," all dated October 26, 2018; Petitioners' Letter to Commerce, "Polyester Textured Yarn from India—Petitioners' Response to the Department's October 29, 2018 Supplemental Questionnaire," dated October 30, 2018; Petitioners' Letter to Commerce, "Polyester Textured Yarn from India and the People's Republic of China—Petitioners' Supplement to Volume I Relating to General Issues," dated October 31, 2018 (Second General Issues Supplement); and Petitioners' Letter to Commerce, "Polyester Textured Yarn from India

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Governments of China and India (GOC, and GOI, respectively) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of yarn in China and India and that imports of such products are materially injuring, or threatening material injury to, the domestic yarn industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support necessary for the initiation of the requested CVD investigations.⁵

Period of Investigations

Because the Petitions were filed on October 18, 2018, the period of investigation is January 1, 2017, through December 31, 2017 for each investigation.

Scope of the Investigations

The product covered by these investigations is yarn from China and India. For a full description of the scope of these investigations, see the Appendix to this notice.

Comments on the Scope of the Investigations

During our review of the Petitions, we contacted the petitioners regarding the proposed scope 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 these investigations, as described in the Appendix to this notice, reflects these clarifications.

and the People's Republic of China—Petitioners' Response to Commerce's Question Regarding the Scope Language," dated November 2, 2018.

⁵ See the "Determination of Industry Support for the Petition" section, *infra*.

⁶ See General Issues Supplement. See also Memorandum, re: "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Polyester Textured Yarn from the People's Republic of China and India—Phone Call with Counsel to the Petitioners," dated October 29, 2018.

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 its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on November 27, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on December 7, 2018, which is 10 calendar days from the initial comments deadline.⁹

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).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

⁷ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

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, which went into effect on August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx>, and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOC and GOI of the receipt of the Petitions and provided them the opportunity for consultations with respect to the China CVD Petition and India CVD Petition, respectively.¹¹ Consultations were held with the GOI on November 2, 2018.¹² The GOC did not request consultations.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic

like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹³ 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.¹⁴

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 petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.¹⁵ Based on our analysis of the information submitted on the record, we have determined that polyester textured yarn, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁶

In determining whether the petitioners have standing under section 702(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 petitioners

provided their own production of the domestic like product in 2017, as well as the 2017 production of companies that support the Petitions.¹⁷ The petitioners compared the production of the supporters of the Petitions to the estimated total production of the domestic like product for the entire domestic industry.¹⁸ We relied on data provided by the petitioners for purposes of measuring industry support.¹⁹

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.²⁰ 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).²¹ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.²² Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the 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.²³ Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the CVD investigations that they are requesting that Commerce initiate.²⁴

¹³ See section 771(10) of the Act.

¹⁴ 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)).

¹⁵ See Volume I of the Petitions, at 11–12; see also General Issues Supplement, at 4–5 and Exhibit GEN–Supp–2.

¹⁶ For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, see Countervailing Duty Investigation Initiation Checklist: Polyester Textured Yarn from the People’s Republic of China (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petition Covering Polyester Textured Yarn from the People’s Republic of China and India (Attachment II); see also Countervailing Duty Investigation Initiation Checklist: Polyester Textured Yarn from India (India CVD 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.

¹¹ See Commerce’s Letters, “Countervailing Duty Petition on Polyester Textured Yarn from the People’s Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition” and “Countervailing Duty Petition on Polyester Textured Yarn from India: Invitation for Consultations to Discuss the Countervailing Duty Petition,” both dated October 18, 2018.

¹² See Memorandum, “Consultations with Officials from the Government of India Regarding the Countervailing Duty Petition Concerning Polyester Textured Yarn,” dated November 2, 2018.

¹⁷ See Volume I of the Petitions, at 4–5 and Exhibit GEN–2.

¹⁸ *Id.*; see also General Issues Supplement, at Exhibit GEN–Supp–3.

¹⁹ *Id.* For further discussion, see China CVD Initiation Checklist, at Attachment II; and India CVD Initiation Checklist, at Attachment II.

²⁰ *Id.*

²¹ *Id.*; see also section 702(c)(4)(D) of the Act.

²² See China CVD Initiation Checklist, at Attachment II; and India CVD Initiation Checklist, at Attachment II.

²³ *Id.*

²⁴ *Id.*

Injury Test

Because China and India are “Subsidies Agreement Countries” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from China and/or India materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁵ In CVD petitions, section 771(24)(B) of the Act provides that imports of subject merchandise from developing and least developed countries must exceed the negligibility threshold of four percent. The petitioners also demonstrate that subject imports from India, which has been designated as a least developed country under section 771(36)(B) of the Act, exceed the negligibility threshold of four percent.²⁶

The petitioners contend 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 production, capacity utilization, and U.S. commercial shipments; decline in the domestic industry’s financial performance; lost sales and revenues; and closures of U.S. production facilities.²⁷ 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.²⁸

²⁵ See Volume I of the Petitions, at 13–14 and Exhibit GEN–8.

²⁶ *Id.*

²⁷ *Id.* at 10, 13–26 and Exhibits GEN–6 and GEN–8 through GEN–13; see also General Issues Supplement, at 6–7 and Exhibits GEN–Supp–4 and GEN–Supp–5.

²⁸ See China CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Polyester Textured Yarn from the People’s Republic of China and India (Attachment III); and India CVD Initiation Checklist, at Attachment III.

Initiation of CVD Investigation

Based on the examination of the Petitions, we find that the Petitions meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of yarn from China and India benefit from countervailable subsidies conferred by the GOC and GOI, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of this initiation.

China

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 19 of the 20 alleged programs, and to partially initiate on the remaining program. For a full discussion of the basis for our decision to initiate on each program, see China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

India

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 40 of the 43 alleged programs, and to partially initiate on one of the 43 programs. For a full discussion of the basis for our decision to initiate on each program, see India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petitions, the petitioners named 51 companies in China²⁹ and 33 companies in India³⁰ as producers/exporters of yarn. Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce’s resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of yarn from China and India during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers

²⁹ See Volume I of the Petition at Exhibit GEN–5 and Second General Issues Supplement, at Exhibit GEN–SUPP–5.

³⁰ *Id.*

listed in the “Scope of the Investigation,” in the Appendix.

On November 6, 2018, Commerce released CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of these CVD investigations.³¹ Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce’s website at <http://enforcement.trade.gov/apo>.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petitions have been provided to the GOC and GOI 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 702(d) of the Act.

Preliminary Determinations 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 yarn from China and India are materially injuring, or threatening material injury to, a U.S. industry.³² A negative ITC determination will result in the investigation being terminated.³³

³¹ See Memorandum, “Polyester Textured Yarn from the People’s Republic of China (China) Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection” and Memorandum, “Polyester Textured Yarn from India Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,” both dated November 6, 2018.

³² See section 703(a)(2) of the Act.

³³ See section 703(a)(1) of the Act.

Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁴ 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.³⁵ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review

Extension of Time Limits; Final Rule, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁶ Parties must use the certification formats provided in 19 CFR 351.303(g).³⁷ 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(b). 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)). Instructions for filing such applications may be found on Commerce's website at <http://enforcement.trade.gov/apo>.

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: November 7, 2018.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

Scope of the Investigations

The merchandise covered by these investigations, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of

³⁶ See section 782(b) of the Act.

³⁷ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) ("Final Rule"); see also frequently asked questions regarding the *Final Rule*, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

plies, finish (luster), cross section, color, dye method, texturing method, or packing method (such as spindles, tubes, or beams).

The merchandise subject to these investigations is properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2018–24952 Filed 11–16–18; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on December 4, 2018, from 9:30 a.m. to 4:00 p.m., the Market Risk Advisory Committee (MRAC) will hold a public meeting in the Conference Center at the CFTC's Washington, DC, headquarters. At this meeting, the MRAC will discuss: (1) The current state of clearinghouse risk management and governance and what lies ahead, (2) the management of non-default losses by clearinghouses in recovery and resolution, (3) recent reports and discussion papers on central clearing by global standard setting bodies, and (4) the oversight of third-party service providers/vendor risk management.

DATES: The meeting will be held on December 4, 2018, from 9:30 a.m. to 4:00 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by December 11, 2018.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. You may submit public comments, identified by "Market Risk Advisory Committee," by any of the following methods:

- **CFTC website:** <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the website.

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail, above.

³⁴ See 19 CFR 351.301(b).

³⁵ See 19 CFR 351.301(b)(2).

Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, <http://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT:

Alicia L. Lewis, MRAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418-5862.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll Free: 1-866-844-9416.

International Toll and Toll Free: Will be posted on the CFTC's website, <http://www.cftc.gov>, on the page for the meeting, under Related Links.

Pass Code/Pin Code: 2951743.

The meeting agenda may change to accommodate other MRAC priorities. For agenda updates, please visit the MRAC committee site at: https://www.cftc.gov/About/CFTCCcommittees/MarketRiskAdvisoryCommittee/mrac_meetings.html.

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website, <http://www.cftc.gov>. All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

(Authority: 5 U.S.C. app. 2 § 10(a)(2)).

Dated: November 14, 2018.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2018-25159 Filed 11-16-18; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2018-ICCD-0092]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Comprehensive Literacy Program Evaluation: Striving Readers Implementation Study

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 19, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2018-ICCD-0092. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202-0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Tracy Rimdzius, 202-245-7283.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the

respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Comprehensive Literacy Program Evaluation: Striving Readers Implementation Study.

OMB Control Number: 1850-NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 4,824.

Total Estimated Number of Annual Burden Hours: 2,082.

Abstract: The data collection described in this submission includes activities associated with the legislatively mandated evaluation of the Striving Readers Comprehensive Literacy (SRCL) program. The purpose of this evaluation is to provide information to policymakers, administrators, and educators regarding the implementation of the SRCL program, including grant award procedures, technical assistance, continuous improvement procedures, and literacy interventions at the school level. Data collection will include interviews with state-level grantees and district administrators; school principals, reading specialists, and teachers; and teacher surveys. In addition, the study team will conduct site visits to 50 schools and observe instruction in 100 classrooms using SRCL-funded literacy interventions, however the study team does not request clearance for these observations, which impose no burden. The study team also will collect and review grantee and subgrantee applications and comprehensive literacy plans.

Dated: November 13, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018-25090 Filed 11-16-18; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During September 2018

| | FE Docket Nos. |
|---|---------------------|
| EQUINOR NATURAL GAS LLC (previously STATOIL NATURAL GAS) | 18-101-NG, 17-96-NG |
| DTE GAS COMPANY | 18-111-NG |
| ENERGY PLUS NATURAL GAS, LLC | 18-112-NG |
| BOISE WHITE PAPER L.L.C. | 18-113-NG |
| SEMCO ENERGY, INC., d/b/a SEMCO ENERGY GAS COMPANY | 18-114-NG |
| NEW BRUNSWICK ENERGY MARKETING CORPORATION | 18-72-NG |
| FREEMPORT LNG EXPANSION, LP., et al | 18-03-LNG |
| CLEAN ENERGY | 18-82-LNG |
| ALLIANCE PIPELINE L.P. | 18-103-NG |
| ENGIE ENERGY MARKETING NA, INC. | 18-115-NG; 17-38-NG |
| SENECA RESOURCES COMPANY, LLC (formerly) SENECA RESOURCES CORPORATION | 16-118-NG |
| MEXICO PACIFIC LIMITED LLC | 18-70-LNG |
| LIBERTY UTILITIES ENERGY NORTH NATURAL GAS CORP. d/b/a LIBERTY UTILITIES | 18-121-NG |
| BAY STATE GAS COMPANY d/b/a COLUMBIA GAS OF MASSACHUSETTS | 18-122-NG |
| NORTHERN UTILITIES, INC. | 18-123-NG |
| PETROCHINA INTERNATIONAL (AMERICA), INC. | 18-124-NG |
| CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND ORANGE AND ROCKLAND UTILITIES, INC. ... | 18-125-NG |
| CENTRAL HUDSON GAS & ELECTRIC CORPORATION | 18-126-NG |
| YANKEE GAS SERVICES COMPANY | 18-127-NG |
| SEQUENT ENERGY MANAGEMENT, L.P. | 18-128-NG |
| UGI ENERGY SERVICES, LLC | 18-129-NG |
| ALBERTA NORTHEAST GAS LIMITED | 18-117-NG |
| NORTHEAST GAS MARKETS, LLC | 18-118-NG |
| CONNECTICUT NATURAL GAS CORPORATION | 18-119-NG |
| THE SOUTHERN CONNECTICUT GAS COMPANY | 18-120-NG |
| MONTANA-DAKOTA UTILITIES COMPANY | 18-133-NG |
| STEPPE PETROLEUM USA INC. | 17-06-NG |
| CHENIERE MARKETING, LLC & CORPUS CHRISTI LIQUEFACTION, LLC | 18-137-LNG |
| THE BROOKLYN UNION GAS COMPANY d/b/a NATIONAL GRID NY | 18-104-NG |
| KEYSPAN GAS EAST COMPANY d/b/a NATIONAL GRID | 18-105-NG |
| BOSTON GAS COMPANY d/b/a NATIONAL GRID | 18-106-NG |
| COLONIAL GAS COMPANY d/b/a NATIONAL GRID | 18-107-NG |
| NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID | 18-108-NG |
| THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID | 18-109-NG |
| UNITED STATES GYPSUM COMPANY | 18-134-NG |
| TERMoeLECTRICA DE MEXICALI, S. DE R.L. DE C.V. | 18-135-NG |
| ABAG PUBLICLY OWNED ENERGY RESOURCES | 18-136-NG |
| ROCKPOINT GAS STORAGE US, LLC | 18-116-NG |
| UNION GAS LIMITED | 18-130-NG |
| TAQA NORTH LTD | 18-132-NG |
| MERCURIA COMMODITIES CANADA CORPORATION | 18-138-NG |

AGENCY: Office of Fossil Energy,
Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during September 2018, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), to amend authority, and vacating prior authorization. These orders are

summarized in the attached appendix and may be found on the FE website at <https://www.energy.gov/fe/listing-doe-fe-authorizations-orders-issued-2018-0>.

They are also available for inspection and copying in the U.S. Department of Energy (FE-34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E-033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585,

(202) 586-9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 13, 2018.

Amy Sweeney,
Director, Division of Natural Gas Regulation.

Appendix

DOE/FE Orders Granting Import/Export Authorizations

| | | | | |
|--------------|----------|-----------------------|---|---|
| 4236; 4075-A | 09/05/18 | 18-101-LNG; 17-96-NG. | Equinor Natural Gas LLC (previously Statoil Natural Gas). | Order 4236 granting blanket authority to import LNG from various international sources by vessel and Order 4075-A vacating prior authority. |
| 4239 | 09/03/18 | 18-111-NG | DTE Gas Company | Order 4239 granting blanket authority to import/export natural gas from/to Canada. |
| 4240 | 09/03/18 | 18-112-NG | Energy Plus Natural Gas LLC | Order 4240 granting blanket authority to import/export natural gas from/to Canada. |
| 4241 | 09/05/18 | 18-113-NG | Boise White Paper L.L.C. | Order 4241 granting blanket authority to import natural gas from Canada. |
| 4242 | 09/03/18 | 18-114-NG | SEMCO Energy, Inc., d/b/a SEMCO Energy Gas Company. | Order 4242 granting blanket authority to import/export natural gas from/to Canada. |
| 4243 | 09/03/18 | 18-72-NG | New Brunswick Energy Marketing Corporation. | Order 4243 granting blanket authority to import/export natural gas from/to Canada. |
| 4244 | 09/06/18 | 18-03-LNG | Freeport LNG Expansion, L.P., et al | Order 4244 granting blanket authority to export LNG by vessel from the Freeport LNG Terminal located on Quintana Island, Texas, to Free Trade Agreement Nations and Non-Free Trade Agreement Nations. |

| | | | | |
|--------------------|----------|----------------------|---|--|
| 4245 | 09/05/18 | 18-82-LNG | Clean Energy | Order 4245 granting blanket authority to import/export LNG from/to Free Trade Agreement Nations by truck, rail, barge or other waterborne vessel. |
| 4246 | 09/07/18 | 18-103-NG | Alliance Pipeline LP | Order 4246 granting blanket authority to import natural gas from Canada. |
| 4247; 4026-A | 09/07/18 | 18-115-NG; 17-38-NG. | Engie Energy Marketing NA, Inc. | Order 4247 granting blanket authority to import/export natural gas from/to Canada and to export natural gas to Mexico and Order 4026-A vacating prior authority. |
| 3912-A | 09/03/18 | 16-118-NG | Seneca Resources Company, LLC (formerly Seneca Resources Corporation). | Order 3912-A amending blanket authority to export natural gas to Mexico to reflect name change. |
| 4248 | 09/19/18 | 18-70-NG | Mexico Pacific Limited LLC | Order 4248 granting long-term multi-contract authority to export natural gas to Mexico and to other Free Trade Agreement Nations. |
| 4249 | 09/15/18 | 18-121-NG | Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities. | Order 4249 granting blanket authority to import/export natural gas from/to Canada. |
| 4250 | 09/15/18 | 18-122-NG | Bay State Gas Company d/b/a Columbia Gas of Massachusetts. | Order 4250 granting blanket authority to import/export natural gas from/to Canada. |
| 4251 | 09/15/18 | 18-123-NG | Northern Utilities, Inc. | Order 4251 granting blanket authority to import/export natural gas from/to Canada. |
| 4252 | 09/15/18 | 18-124-NG | Petrochina International (America), Inc. | Order 4252 granting blanket authority to import/export natural gas from/to Canada/Mexico. |
| 4253 | 09/15/18 | 18-125-NG | Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. | Order 4253 granting blanket authority to import/export natural gas from/to Canada. |
| 4254 | 09/15/18 | 18-126-NG | Central Hudson Gas & Electric Corporation. | Order 4254 granting blanket authority to import/export natural gas from/to Canada. |
| 4255 | 09/15/18 | 18-127-NG | Yankee Gas Services Company | Order 4255 granting blanket authority to import/export natural gas from/to Canada. |
| 4256 | 09/16/18 | 18-128-NG | Sequent Energy Management, L.P | Order 4256 granting blanket authority to import/export natural gas from/to Mexico. |
| 4257 | 09/16/18 | 18-129-NG | UGI Energy Services, LLC | Order 4257 granting blanket authority to import natural gas from Canada, and to import/export LNG from/to Canada by truck. |
| 4258 | 09/14/18 | 18-117-NG | Alberta Northeast Gas Limited | Order 4258 granting blanket authority to import/export natural gas from/to Canada. |
| 4259 | 09/14/18 | 18-118-NG | Northeast Gas Markets, LLC | Order 4259 granting blanket authority to import/export natural gas from/to Canada. |
| 4260 | 09/14/18 | 18-119-NG | Connecticut Natural Gas Corporation. | Order 4260 granting blanket authority to import/export natural gas from/to Canada. |
| 4261 | 09/15/18 | 18-120-NG | The Southern Connecticut Gas Company. | Order 4261 granting blanket authority to import/export natural gas from/to Canada. |
| 4262 | 09/16/18 | 18-133-NG | Montana-Dakota Utilities Company | Order 4262 granting blanket authority to import natural gas from Canada. |
| 3979-A | 09/16/18 | 17-06-NG | Steppe Petroleum USA Inc | Order 3979-A vacating authority to import natural gas from Canada. |
| 4263 | 09/28/18 | 18-137-LNG | Cheniere Marketing, LLC & Corpus Christi Liquefaction, LLC. | Order 4263 granting blanket authority to export LNG by vessel from the Corpus Christi Liquefaction Project located in Corpus Christi, Texas to Free Trade Agreement Nations. |
| 4264 | 09/21/18 | 18-104-NG | The Brooklyn Union Gas Company d/b/a National Grid NY. | Order 4264 granting blanket authority to import/export natural gas from/to Canada. |
| 4265 | 09/21/18 | 18-105-NG | KeySpan Gas East Corporation d/b/a National Grid. | Order 4265 granting blanket authority to import/export natural gas from/to Canada. |
| 4266 | 09/21/18 | 18-106-NG | Boston Gas Company d/b/a National Grid. | Order 4266 granting blanket authority to import/export natural gas from/to Canada. |
| 4267 | 09/21/18 | 18-107-NG | Colonial Gas Company d/b/a National Grid. | Order 4267 granting blanket authority to import/export natural gas from/to Canada. |
| 4268 | 09/21/18 | 18-108-NG | Niagara Mohawk Power Corporation d/b/a National Grid. | Order 4268 granting blanket authority to import/export natural gas from/to Canada. |
| 4269 | 09/21/18 | 18-109-NG | The Narragansett Electric Company d/b/a National Grid. | Order 4269 granting blanket authority to import/export natural gas from/to Canada. |
| 4270 | 09/26/18 | 18-134-NG | United States Gypsum Company | Order 4270 granting blanket authority to import natural gas from Canada. |
| 4271 | 09/26/18 | 18-135-NG | Termoelectrica de Mexicali, S. de R.L. de C.V. | Order 4271 granting blanket authority to import/export natural gas from/to Mexico. |
| 4272 | 09/26/18 | 18-136-NG | ABAG Publicly Owned Energy Business. | Order 4272 granting blanket authority to import natural gas from Canada. |
| 4273 | 09/26/18 | 18-116-NG | Rockpoint Gas Storage US, LLC | Order 4273 granting blanket authority to import/export natural gas from/to Canada. |
| 4274 | 09/26/18 | 18-130-NG | Union Gas Limited | Order 4274 granting long-term authority to export natural gas to Canada. |
| 4275 | 09/26/18 | 18-132-NG | TAQA North Ltd | Order 4275 granting blanket authority to import natural gas from Canada. |
| 4276 | 09/28/18 | 18-138-NG | Mercuria Commodities Canada Corporation. | Order 4276 granting long-term authority to export natural gas to Canada. |

[FR Doc. 2018-25167 Filed 11-16-18; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**National Petroleum Council; Meeting****AGENCY:** Office of Fossil Energy, Department of Energy.**ACTION:** Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, December 4, 2018, 9:00 a.m. to 11:30 a.m.

ADDRESSES: The St. Regis Washington, DC, 923 Sixteenth Street NW, Washington, DC 20006, Room: Astor Ballroom.

FOR FURTHER INFORMATION CONTACT: Nancy Johnson, U.S. Department of Energy, Office of Oil and Natural Gas (FE-30), Washington, DC 20585; telephone (202) 586-5600 or facsimile (202) 586-6221.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, or the oil and natural gas industries.

Tentative Agenda

- Call to Order and Introductory Remarks
- Remarks by the Honorable Rick Perry, Secretary of Energy
- Progress Report from the NPC Committee on U.S. Oil and Natural Gas Transportation Infrastructure
- Progress Report from the NPC Committee on Carbon Capture, Use, and Storage
- Progress Report on the Supplemental Analysis to the NPC Arctic Potential Report
- Administrative Matters
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council
- Adjournment

Public Participation: The meeting is open to the public. The Chair of the Council will conduct the meeting to facilitate the orderly conduct of business. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Nancy Johnson at the address or telephone number listed above. Request for oral statements must be received at least three days prior to the meeting. Those not able to attend the meeting or having insufficient time to address the Council are invited to send a written statement to info@npc.org. Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting.

Transcripts: Transcripts of the meeting will be available by contacting Ms. Johnson at the address above, or info@npc.org.

Signed in Washington, DC, on November 9, 2018.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018-25164 Filed 11-16-18; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth; Meeting

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), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, December 6, 2018; 6:00 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897-3737, Greg.Simonton@lex.doe.gov.

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 Agenda

- Call to Order, Introductions, Review of Agenda
- Approval of October 2018 Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments From the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, 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 Greg Simonton 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 statements pertaining to agenda items should contact Greg

Simonton at the address or telephone number listed above. Requests 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 Greg Simonton at the address and phone number listed above. Minutes will also be available at the following website: <https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials>.

Signed in Washington, DC, on November 14, 2018.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018-25166 Filed 11-16-18; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee; Meeting

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, December 12, 2018; 11:00 a.m.–3:00 p.m. Thursday, December 13, 2018; 11:00 a.m.–3:00 p.m.

ADDRESSES: *Teleconference:* Remote attendance of the Advanced Scientific Computing Advisory Committee meeting will be possible via Zoom. Instructions will be posted on the Advanced Scientific Computing Advisory Committee website at: <https://science.energy.gov/ascr/ascac/> prior to the meeting and can also be obtained by contacting Christine Chalk by email at christine.chalk@science.doe.gov or by phone at (301) 903-7486).

FOR FURTHER INFORMATION CONTACT: Christine Chalk, Office of Advanced Scientific Computing Research; SC-21/ Germantown Building; U.S. Department of Energy; 1000 Independence Avenue SW, Washington, DC 20585-1290; Telephone (301) 903-7486.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and guidance on a continuing basis to the Office of Science and to the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Purpose of the Meeting: This meeting is the semi-annual meeting of the Committee.

Tentative Agenda Topics

- View from Washington
- View from Germantown
- Update on Exascale project activities
- Report from Subcommittee on 40 years of investments by the Department of Energy in advanced computing and networking
- Update on National Energy Research Scientific Computing (NERSC) upgrade
- Technical presentations
- Public Comment (10-minute rule)

The meeting agenda includes an update on the budget, accomplishments and planned activities of the Advanced Scientific Computing Research program and the exascale computing project; an update on the Office of Science; technical presentations from funded researchers; and there will be an opportunity for comments from the public. The meeting will conclude at 3:00 p.m. on December 13, 2018. Agenda updates and presentations will be posted on the ASCAC website prior to the meeting: <http://science.energy.gov/ascr/ascac/>.

Public Participation: The meeting is open to the public. Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 10 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should submit your request at least five days before the meeting. Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christine Chalk, U.S. Department of Energy, 1000 Independence Avenue SW, Washington DC 20585, email to Christine.Chalk@science.doe.gov.

Minutes: The minutes of this meeting will be available for review within 60 days on the Department of Energy's Office of Advanced Scientific

Computing website at: <http://science.energy.gov/ascr/ascac/>.

Signed in Washington, DC on November 14, 2018.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018-25165 Filed 11-16-18; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19-274-000.

Applicants: American Midstream (AlaTenn), LLC.

Description: eTariff filing per 1430: Submission of Form 501-G.

Filed Date: 11/8/18.

Accession Number: 20181108-5123.

Comments Due: 5 p.m. ET 11/20/18.

Docket Numbers: RP19-275-000.

Applicants: Chandeleur Pipe Line, LLC.

Description: eTariff filing per 1430: 501-G Report Filing.

Filed Date: 11/8/18.

Accession Number: 20181108-5135.

Comments Due: 5 p.m. ET 11/20/18.

Docket Numbers: RP19-276-000.

Applicants: Young Gas Storage Company, Ltd.

Description: eTariff filing per 1430: Young Form 501-G Filing.

Filed Date: 11/8/18.

Accession Number: 20181108-5160.

Comments Due: 5 p.m. ET 11/20/18.

Docket Numbers: RP19-277-000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Removal of Expired Agreements December 2018 to be effective 12/10/2018.

Filed Date: 11/9/18.

Accession Number: 20181109-5001.

Comments Due: 5 p.m. ET 11/21/18.

Docket Numbers: RP19-278-000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Nov2018 Removal of Terminated Negotiated Rates to be effective 12/9/2018.

Filed Date: 11/9/18.

Accession Number: 20181109-5004.

Comments Due: 5 p.m. ET 11/21/18.

Docket Numbers: RP19-279-000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Nov2018 Cleanup—Remove Terminated Negotiated Rates to be effective 12/9/2018.

Filed Date: 11/9/18.

Accession Number: 20181109-5005.

Comments Due: 5 p.m. ET 11/21/18.

Docket Numbers: RP19-280-000.

Applicants: Spectra Energy Partners, LP.

Description: Petition for Limited Waiver of Order No. 787, et al. of Spectra Energy Partners, LP under RP19-280.

Filed Date: 11/8/18.

Accession Number: 20181108-5207.

Comments Due: 5 p.m. ET 11/20/18.

Docket Numbers: RP19-281-000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: Non-Conforming Service agreement Cascade No. 142548 to be effective 11/1/2018.

Filed Date: 11/9/18.

Accession Number: 20181109-5146.

Comments Due: 5 p.m. ET 11/21/18.

Docket Numbers: RP19-282-000.

Applicants: Tallgrass Interstate Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Interactive Auction Procedures to be effective 12/9/2018.

Filed Date: 11/9/18.

Accession Number: 20181109-5163.

Comments Due: 5 p.m. ET 11/21/18.

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: November 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018-25137 Filed 11-16-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Project No. 14775–001]

**Marine Renewable Energy
Collaborative of New England; Notice
of Intent To File License Application,
Filing of Draft Application, Request for
Waivers of Integrated Licensing
Process Regulations Necessary for
Expedited Processing of a
Hydrokinetic Pilot Project License
Application, and Soliciting Comments**

a. *Type of Filing:* Notice of Intent to File a License Application for an Original License for a Hydrokinetic Pilot Project.

b. *Project No.:* 14775–001.

c. *Date Filed:* November 6, 2018.

d. *Submitted By:* Marine Renewable Energy Collaborative of New England (MRECo).

e. *Name of Project:* Bourne Tidal Test Site.

f. *Location:* On the Cape Cod Canal near the Town of Bourne, in Barnstable County, MA.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* John Miller, Director, Marine Renewable Energy Collaborative of New England, P.O. Box 479, Marion, MA 02738; (508) 728–5825.

i. *FERC Contact:* John Ramer at (202) 502–8969 or email at john.ramer@ferc.gov.

j. *MRECo has filed the following pre-filing materials with the Commission:* (1) A notice of intent (NOI) to file an application for an original license for a hydrokinetic pilot project and a draft license application with monitoring plans; (2) a request for waivers of the integrated licensing process regulations necessary for expedited processing of a hydrokinetic pilot project license application; (3) a proposed process plan and schedule; (4) a request to be designated as the non-federal representative for section 7 of the Endangered Species Act (ESA) consultation; and (5) a request to be designated as the non-federal representative for section 106 consultation under the National Historic Preservation Act.

k. With this notice, we are soliciting comments on the pre-filing materials listed in paragraph j above, including the draft license application and monitoring plans. All comments should also be sent to the address above in paragraph h. In addition, all comments

may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website <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 or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Any individual or entity interested in submitting comments on the pre-filing materials must do so by December 20, 2018.

l. With this notice, we are approving MRECo's request to be designated as the non-federal representative for section 7 of the ESA and its request to initiate consultation under section 106 of the National Historic Preservation Act; and recommending that it begin informal consultation with: (a) The U.S. Fish and Wildlife Service and the National Marine Fisheries Service as required by section 7 of ESA; and (b) the Massachusetts State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

m. With this notice, we are also asking federal, state, local, and tribal agencies with jurisdiction and/or expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph “k” above.

n. This notice does not constitute the Commission's approval of MRECo's request to use the Pilot Project Licensing Procedures. Upon its review of the project's overall characteristics relative to the pilot project criteria, the draft license application contents, and any comments filed, the Commission will determine whether there is adequate information to conclude the pre-filing process.

o. *The proposed Bourne Tidal Test Site Project would consist of:* (1) An existing turbine support platform

mounted on two primary pilings that are spaced approximately 23 feet apart and embedded to a depth of 50 feet below the seabed, and that rise approximately 45-feet above the seabed; (2) a proposed horizontal, axial, open-bladed turbine having a 3-meter-diameter sweep area and an installed capacity of 100 kilowatts (other in-stream turbine-generators would also be tested at the site); (3) two proposed 500-foot-long, 13.2kilovolt transmission lines connecting the project turbine to a battery storage cabinet and to an interconnection with the regional grid; and (4) appurtenant facilities. The hydrokinetic project would have an estimated average annual generation of 100-megawatt hours.

p. A copy of the draft license application and all pre-filing materials are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (<http://www.ferc.gov>), using the “eLibrary” link. Enter the docket number (P–14775), excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1–866–208–3676, or for TTY, (202) 502–8659.

q. *Pre-filing process schedule.* The pre-filing process will be conducted pursuant to the following tentative schedule. Revisions to the schedule below may be made based on staff's review of the draft application and any comments received.

| Milestone | Date |
|--|--------------------|
| Comments on pre-filing materials due. | December 20, 2018. |
| Issuance of meeting notice (if needed). | January 5, 2019. |
| Public meeting/technical conference (if needed). | February 5, 2019. |

r. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: November 13, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018–25175 Filed 11–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. ER19–314–000]****Bridgewater Power Company, L.P.; 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 Bridgewater Power Company, L.P.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 3, 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: November 13, 2018.

Nathaniel J. Davis, Sr.,*Deputy Secretary.*

[FR Doc. 2018–25136 Filed 11–16–18; 8:45 am]

BILLING CODE 6717–01–P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket Nos. RM19–6–000; AD19–7–000; AD19–8–000]****Hydroelectric Licensing Regulations Under America's Water Infrastructure Act of 2018; Notice Establishing Schedule Pursuant to America's Water Infrastructure Act of 2018**

On October 23, 2018, the President signed America's Water Infrastructure Act of 2018 (Act) into law. In addition to amending part 1 of the Federal Power Act as it relates to certain aspects of preliminary permits, qualifying conduit hydropower facilities, and hydropower licenses, the Act directs the Federal Regulatory Commission (FERC or Commission) to:

(1) Issue a rule not later than 180 days after the date of enactment of the Act, establishing an expedited process for issuing and amending licenses for qualifying facilities at existing nonpowered dams that will seek to ensure a final decision by the Commission on an application for a license no later than two years after receipt of a completed application;

(2) With the Secretary of the Army, the Secretary of the Interior, and the Secretary of Agriculture, jointly develop a list of existing nonpowered Federal dams that the Commission and the Secretaries agree have the greatest potential for non-Federal hydropower development, and make the list available to the public and provide the list to certain Committees of the House

of Representatives and the Senate not later than 12 months after the date of enactment of the Act;

(3) Issue a rule not later than 180 days after the date of enactment of the Act, establishing an expedited process for issuing and amending licenses for closed-loop pumped storage projects that will seek to ensure a final decision by the Commission on an application for a license by no later than two years after receipt of a completed application; and

(4) Hold a workshop not later than six months after the date of enactment of the Act to explore potential opportunities for development of closed-loop pumped storage projects at abandoned mine sites, and issue guidance no later than one year after the date of enactment of the Act to assist applicants for licenses or preliminary permits for closed-loop pumped storage projects at abandoned mine sites.

In establishing the expedited processes for issuing and amending licenses for qualifying facilities at existing nonpowered dams and closed-loop pumped storage projects, sections 3003 and 3004 of the Act require the Commission to convene an interagency task force (ITF), with appropriate federal and state agencies and Indian tribes represented, to coordinate the regulatory processes associated with the authorizations required to construct and operate these projects. By concurrent notice, the Commission has invited federal and state agencies and Indian tribes to request participation on the ITF by filing a statement of interest with the Commission by November 29, 2018.

The Commission has established three dockets in order to implement the requirements of the Act: RM19–6–000 (Licensing Regulations under America's Water Infrastructure Act of 2018); AD19–7–000 (Nonpowered Dams List); and AD19–8–000 (Closed-loop Pumped Storage Projects at Abandoned Mines Guidance).

Because the Act requires the Commission to issue a rule establishing the expedited licensing processes not later than 180 days after the date of enactment of the Act, the Commission has established a schedule with abbreviated deadlines. The schedule, which is subject to change, is included below.

| | |
|-----------------------------|---|
| November 29, 2018 | Deadline for federal and state agencies and Indian tribes to file a statement requesting participation on the ITF. |
| December 12, 2018 | Commission staff will hold coordination session for the ITF to discuss proposals for the expedited licensing processes. |
| January/February 2019 | Commission staff will issue a Notice of Proposed Rulemaking (NPR) for the expedited licensing processes. |

| | |
|----------------------|--|
| February 2019 | Commission staff will hold a workshop for closed-loop pumped storage project at abandoned mine sites. |
| March 2019 | NOPR public comment period will close. |
| April 2019 | Commission will issue final rule for expedited processes. |
| April 2019 | Commission staff will provide applicable federal agencies, including the Secretaries of Army, Interior, and Agriculture, Commission staff's draft list of existing nonpowered federal dams having the greatest potential for non-Federal hydropower development. |
| August 2019 | Commission staff will issue the final nonpowered Federal dams list. |
| September 2019 | Commission staff will issue guidance for closed-loop pumped storage projects at abandoned mine sites. |

For more information about this notice, please contact:

Shana Wiseman (RM19-6-000), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8736, shana.wiseman@ferc.gov.

Kim Nguyen (AD19-7-000), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-6105, kim.nguyen@ferc.gov.

Monir Chowdhury (AD19-8-000), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-6736, monir.chowdhury@ferc.gov.

Dated: November 13, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018-25177 Filed 11-16-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11-6-008]

North American Electric Reliability Corporation; Notice of Filing

Take notice that on November 1, 2018, the North American Electric Reliability Corporation submitted an annual report on Find, Fix, Track and Report and Compliance Exception programs, in accordance with the Federal Energy Regulatory Commission's (Commission) Orders.¹

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on November 28, 2018.

Dated: November 13, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018-25176 Filed 11-16-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197-128]

Cube Yadkin Generation, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan.

b. *Project No:* 2197-128.

c. *Date Filed:* September 25, 2018.

d. *Applicant:* Cube Yadkin Generation, LLC.

e. *Name of Project:* Yadkin Hydroelectric Project.

f. *Location:* The Yadkin and Pee Dee rivers in Stanly, Davidson, Montgomery, Rowan, and Davie counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Mark Gross, Cube Hydro Carolinas, LLC, 293 Highway 740, Badin, NC 28009-0575, (704) 422-5774.

i. *FERC Contact:* Mark Carter, (678) 245-3083, mark.carter@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* December 13, 2018.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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-2197-128. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

¹ *North American Electric Reliability Corp.*, 143 FERC ¶ 61,253 (2013); *North American Electric Reliability Corp.*, 148 FERC ¶ 61,214 (2014); *North American Electric Reliability Corp.*, Docket No. RC11-6-004 (Nov. 13, 2015) (delegated letter order).

k. *Description of Request:* As required by Article 407 of the September 22, 2016 license, Cube Yadkin Generation, LLC (licensee) requests Commission approval of a revised shoreline management plan (SMP) for the project. The SMP describes land uses and environmental resources at the project, describes the licensee's shoreline development permitting and shoreline stewardship provisions, and includes various maps (e.g., land use classifications, environmental resource maps, etc.) to support its permitting processes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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 at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *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, .214, respectively. 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.

o. *Filing and Service of 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 commenting, 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. Any filing made by an intervenor 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 385.2010.

Dated: November 13, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018-25174 Filed 11-16-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM19-6-000]

Hydroelectric Licensing Regulations Under America's Water Infrastructure Act of 2018; Notice Inviting Federal and State Agencies and Indian Tribes To Request Participation in the Interagency Task Force Pursuant to America's Water Infrastructure Act of 2018

On October 23, 2018, the President signed America's Water Infrastructure Act of 2018 (Act) into law. Sections 3003 and 3004 of the Act require the Federal Energy Regulatory Commission to issue rules establishing expedited processes for issuing and amending licenses for qualifying facilities at existing nonpowered dams and for closed-loop pumped storage projects. The processes must seek to ensure a final decision by the Commission on an application for a license by no later than two years after receipt of a completed application. These sections also require the Commission to convene an interagency task force (ITF) to coordinate the regulatory processes associated with the authorizations required in connection with the new processes. Because of the Congressionally-mandated deadline, participation in the ITF will be time sensitive.

The Commission invites federal and state agencies and Indian tribes to request participation on the ITF. Federal and state agencies and Indian tribes who wish to participate on the ITF must file a statement of interest with the Commission by November 29, 2018. The statement of interest should include the

following information: The name of the agency or tribe; the name, title, phone number, and email address of the contact person; a brief explanation of the agency's or tribe's interest in joining the ITF; and a brief description of the agency's or tribe's experience with hydropower license proceedings.

In light of the Congressionally-mandated deadline and in the interest of facilitating an efficient and effective discussion, Commission staff will select a representative group of federal agencies, state agencies, and Indian tribes to participate on the ITF. The Commission will directly notify the agencies and tribes selected to participate on the ITF. Commission staff plans to hold a coordination session for ITF participants, which is scheduled for December 12, 2018. By concurrent notice, the Commission has established a schedule in order to implement the requirements of the Act.

The Commission strongly encourages electronic filing. Please file ITF-interest statements in Docket No. RM19-6-000 using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket RM19-6-000.

For more information about this notice, please contact: Shana Wiseman, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8736, shana.wiseman@ferc.gov.

Dated: November 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018-25139 Filed 11-16-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12611-009]

Verdant Power, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Application:* Notice of Intent to File License Application and

Request to Use the Traditional Licensing Process.

b. *Project No.*: 12611–009.

c. *Date filed*: August 31, 2018.

d. *Submitted by*: Verdant Power, LLC.

e. *Name of Project*: Roosevelt Island Tidal Energy Project.

f. *Location*: On the East River in New York City, New York. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to*: 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact*: Mr. Ronald F. Smith, President, Verdant Power, LLC, 20 River Road, Suite 20C, Roosevelt Island, New York, NY 10044, Phone: (703) 328–6842, Email: rsmith@verdantpower.com.

i. *FERC Contact*: Andy Bernick, Phone: (202) 502–8660, Email: andrew.bernick@ferc.gov.

j. Verdant Power, LLC filed a request to use the Traditional Licensing Process on August 31, 2018 and provided public notice of its request on September 28, 2018. In a letter dated November 13, 2018, the Director of the Division of Hydropower Licensing approved Verdant Power, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New York State Historic Preservation Office, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Verdant Power, LLC as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Verdant Power, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18

CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCONlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 12611. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2019.

p. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: November 13, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018–25178 Filed 11–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt

off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCONlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

| Docket No. | File date | Presenter or requester |
|-------------------------------------|------------|---|
| Prohibited: | | |
| 1. CP17–117–000, CP17–118–000 | 10–26–2018 | DeWanna Tarver. |
| Exempt: | | |
| 1. CP17–117–000, CP17–118–000 | 10–25–2018 | State of Louisiana Representative Taylor F. Barras. |
| 2. CP17–117–000, CP17–118–000 | 10–30–2018 | Ralph Abraham, M.D. |
| 3. CP17–117–000, CP17–118–000 | 11–1–2018 | U.S. Senator John Kennedy. |

| Docket No. | File date | Presenter or requester |
|-------------------------------------|-----------|--|
| 4. CP17-117-000, CP17-118-000 | 11-1-2018 | U.S. Congressman Bob Gibbs. |
| 5. CP17-117-000, CP18-118-000 | 11-1-2018 | U.S. Congressmen. ¹ |
| 6. CP17-117-000, CP18-118-000 | 11-1-2018 | U.S. Senator Bill Cassidy, M.D. |
| 7. CP17-117-000, CP17-118-000 | 11-6-2018 | State of Louisiana Governor John Bel Edwards. |
| 8. CP17-117-000, CP17-118-000 | 11-6-2018 | State of Louisiana Attorney General Jeff Landry. |
| 9. CP17-117-000, CP17-118-000 | 11-7-2018 | U.S. Congressman Pete Olson. |
| 9. CP17-117-000, CP17-118-000 | 11-8-2018 | U.S. Congress. ² |

¹ Congressmen Gene Green and Vicente Gonzalez.

² House Representatives Clay Higgins and Steve Scalise.

Dated: November 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018-25138 Filed 11-16-18; 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: EC19-25-000.

Applicants: Sunwave USA Holdings, Inc., Sunwave Gas & Power New York, Inc.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Sunwave USA Holdings, Inc., et al.

Filed Date: 11/9/18.

Accession Number: 20181109-5189.

Comments Due: 5 p.m. ET 11/30/18.

Docket Numbers: EC19-26-000.

Applicants: Buckleberry Solar, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Buckleberry Solar, LLC.

Filed Date: 11/9/18.

Accession Number: 20181109-5192.

Comments Due: 5 p.m. ET 11/30/18.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19-19-000.

Applicants: Marengo Energy Storage.

Description: Notice of Self-Certification of Marengo Energy Storage.

Filed Date: 11/13/18.

Accession Number: 20181113-5048.

Comments Due: 5 p.m. ET 12/4/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2762-001.

Applicants: Linde Energy Services, Inc.

Description: Notice of Non-Material Change in Status of Linde Energy Services, Inc.

Filed Date: 11/9/18.

Accession Number: 20181109-5180.

Comments Due: 5 p.m. ET 11/30/18.

Docket Numbers: ER10-2906-011;

ER10-2908-011; ER10-2910-011;

ER11-4393-006; ER11-4669-005;

ER11-4670-005; ER12-709-004.

Applicants: Morgan Stanley Capital Group Inc., MS Solar Solutions Corp., Power Contract Financing II, L.L.C., TAQA Gen X LLC, NaturEner Montana Wind Energy, LLC, NaturEner Power Watch, LLC, NaturEner Wind Watch, LLC.

Description: Notice of Change in Status of the Morgan Stanley Public Utilities, et al.

Filed Date: 11/13/18.

Accession Number: 20181113-5212.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER11-1858-007.

Applicants: NorthWestern Corporation.

Description: Erratum to June 26, 2018 Triennial Market Power Analysis for the Southwest Power Pool Region of NorthWestern Corporation.

Filed Date: 11/13/18.

Accession Number: 20181113-5182.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER18-622-004.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2018-11-13 Compliance filing to Order 831 Offer Caps to be effective 12/31/9998.

Filed Date: 11/13/18.

Accession Number: 20181113-5037.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER18-2140-000.

Applicants: Persimmon Creek Wind Farm 1, LLC.

Description: Report Filing: Refund Report Filing to be effective N/A.

Filed Date: 11/13/18.

Accession Number: 20181113-5187.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER19-328-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018-11-13 Operating Reserve Demand Curve revisions related to Order 831 to be effective 12/31/9998.

Filed Date: 11/13/18.

Accession Number: 20181113-5046.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER19-329-000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Shakes Solar Interconnection Agreement to be effective 10/26/2018.

Filed Date: 11/13/18.

Accession Number: 20181113-5207.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER19-330-000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Taygete Energy Project Interconnection Agreement to be effective 10/26/2018.

Filed Date: 11/13/18.

Accession Number: 20181113-5210.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER19-331-000.

Applicants: San Diego Gas & Electric Company.

Description: § 205(d) Rate Filing: SDGE JVR Energy Park Service Agreement 58 Vol. 11 E&P Agreement to be effective 11/14/2018.

Filed Date: 11/13/18.

Accession Number: 20181113-5230.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER19-332-000.

Applicants: El Segundo Power, LLC.

Description: Tariff Cancellation: Notice of Cancellation to be effective 11/14/2018.

Filed Date: 11/13/18.

Accession Number: 20181113-5276.

Comments Due: 5 p.m. ET 12/4/18.

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-reg.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: November 13, 2018.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2018-25135 Filed 11-16-18; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2007-0269; FRL-9986-70-OAR]

Proposed Information Collection Request; Comment Request; Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects, EPA ICR No. 2130.06, OMB Control No. 2060-0561

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), "Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs, and Projects" (EPA ICR No. 2130.06, OMB Control No. 2060-0561), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR.

DATES: Comments must be submitted on or before January 18, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OAR-2007-0269 online using www.regulations.gov (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Astrid Terry, Office of Transportation and Air Quality, Environmental

Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734-214-4812; email address: terry.astrid@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <https://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported transportation activities are consistent with ("conform to") the purpose of the state air quality implementation plan (SIP). Transportation activities include transportation plans, transportation improvement programs (TIPs), and federally funded or approved highway or transit projects. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards

(NAAQS or "standards") or interim milestones.

Transportation conformity applies under EPA's conformity regulations at 40 CFR parts 51 and 93, subpart A, to areas that are designated nonattainment, and those redesignated to attainment after 1990 ("maintenance areas" with plans developed under Clean Air Act section 175A) for the following transportation-related criteria pollutants: Ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂). EPA published the original transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several revisions. EPA develops the conformity regulations in coordination with the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA).

Transportation conformity determinations are required before federal approval or funding is given to certain types of transportation planning documents as well as non-exempt highway and transit projects.¹

EPA considered the following in renewing the existing ICR:

- Burden estimates for transportation conformity determinations (including both regional and project-level) in current nonattainment and maintenance areas for the ozone, PM_{2.5}, PM₁₀, and CO NAAQS;
- Federal burden associated with EPA's adequacy review process for submitted SIP motor vehicle emissions budgets that are to be used in conformity determinations;
- Efficiencies in areas making conformity determinations for multiple NAAQS;
- Differences in conformity resource needs in large and small metropolitan areas and isolated rural areas;
- Reduced burden from areas no longer determining conformity for the 1997 PM_{2.5} NAAQS due to revocation;²
- Reduced burden from areas completing 20 years of maintenance for PM₁₀, NO₂ and CO NAAQS, at which time transportation conformity is no longer required; and,
- Increased burden due to areas being designated as nonattainment for the 2015 ozone NAAQS.³

This ICR does not include burden associated with the general development of transportation planning

¹ Some projects are exempt from all or certain conformity requirements; see 40 CFR 93.126, 93.127, and 93.128.

² See 81 FR 58010 (published on August 24, 2016 and effective October 24, 2016).

³ See 83 FR 25776 (effective August 3, 2018) and 83 FR 35136 (effective September 24, 2018) for San Antonio, Texas.

and air quality planning documents for meeting other federal requirements.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are metropolitan planning organizations (MPOs), state departments of transportation, local transit agencies, and state and local air quality agencies. Federal agencies potentially affected by this action include FHWA, FTA, and EPA.

Respondent's obligation to respond: Mandatory pursuant to Clean Air Act section 176(c) (42 U.S.C. 7506(c)) and 40 CFR parts 51 and 93.

Estimated number of respondents: EPA estimates that 109 MPOs will be subject to transportation conformity requirements during the period covered by this ICR and that EPA Regional Offices, the FHWA, and FTA will be involved in interagency consultation, and review of transportation-related conformity determinations performed by MPOs during this process. EPA also estimates that similar consultation will occur for projects in isolated rural areas.

Frequency of response: The information collections described in this ICR must be completed before a transportation plan, TIP, or project conformity determination is made. The Clean Air Act requires conformity to be determined for transportation plans and TIPs every four years. Conformity determinations on projects in metropolitan and isolated rural areas are required on an as-needed basis.

Total estimated burden: 35,344 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$2,247,525 (per year), includes zero annualized capital or operation and maintenance costs.

Changes in estimates: There is a decrease of 15,214 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to less burden associated with decreased conformity analyses for PM₁₀, CO, 1997 PM_{2.5}, and NO₂ NAAQS and a decrease in burden over the previous ICR for reduced emissions model transition and training burden.

Dated: November 8, 2018.

Karl Simon,

Director, Transportation and Climate Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2018-25188 Filed 11-16-18; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 17-83]

Meeting of the Broadband Deployment Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice. 17-83.

SUMMARY: In this document, the FCC announces and provides an agenda for the next meeting of Broadband Deployment Advisory Committee (BDAC).

DATES: Thursday, December 6, 2018 and Friday, December 7, 2018. The meeting will come to order at 9:00 a.m. each day.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Room TW-C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul D'Ari, Designated Federal Authority (DFO) of the BDAC, at paul.dari@fcc.gov or 202-418-1550; Jiaming Shang, Deputy DFO of the BDAC, at jiaming.shang@fcc.gov or 202-418-1303; or Deborah Salons, Deputy DFO of the BDAC, at deborah.salons@fcc.gov or 202-418-0637. The TTY number is: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The FCC will accommodate as many participants as possible; however, admittance will be limited to seating availability. The FCC will also provide audio and/or video coverage of the meeting over the internet from the FCC's web page at www.fcc.gov/live. Oral statements at the meeting by parties or entities not represented on the BDAC will be permitted to the extent time permits, at the discretion of the BDAC Chair and the DFO. Members of the public may submit comments to the BDAC in the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Comments to the BDAC should be filed in Docket 17-83.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance

notice; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: At this meeting, the BDAC will continue considering and will vote on the Model Code for States, and it will hear a status report from the Disaster Response and Recovery Working Group. This agenda may be modified at the discretion of the BDAC Chair and the Designated Federal Officer (DFO).

Federal Communications Commission.

Daniel Kahn,

Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2018-25102 Filed 11-16-18; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 18-1108]

Incentive Auction Task Force and Media Bureau Announce Settlement Opportunity for Mutually Exclusive Displacement Applications Filed During the Special Displacement Window

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission's Incentive Auction Task Force and Media Bureau announce that certain displacement applications filed during the Special Displacement Window by low power television, TV translator, and analog-to-digital replacement translator stations that were displaced by the incentive auction and repacking process were deemed to be mutually exclusive. The document provides a list of mutually exclusive applications and announces a settlement period opening October 30, 2018 and closing January 10, 2019 at 11:59 p.m. ET.

DATES: The settlement period will open October 30, 2018 and close on January 10, 2019 at 11:59 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Division, Media Bureau, Federal Communications Commission, Shaun.Maher@fcc.gov, (202) 418-2324, or Hossein Hashemzadeh (technical), Hossein.Hashemzadeh@fcc.gov, (202) 418-1658.

SUPPLEMENTARY INFORMATION: On February 9, 2018, the Incentive Auction Task Force and the Media Bureau announced a displacement application filing window for low power television (LPTV), TV translator, and analog-to-

digital replacement translator (DRT) stations (referred to collectively as “LPTV/translator stations”) that were displaced by the incentive auction and repacking process (Special Displacement Window). The filing window was open from April 10, 2018, through June 1, 2018. The Commission received over 2,100 displacement applications during the Special Displacement Window.

Appendix A of document DA 18–1108 lists all displacement applications received in the Special Displacement Window that are mutually exclusive with other applications. Parties with applications in the mutually exclusive groups listed in Appendix A may resolve their mutual exclusivity by unilateral engineering amendment, legal settlement, or engineering settlement during a settlement period beginning today, October 30, 2018, and ending at 11:59 p.m. ET, January 10, 2019.

The applications listed in Appendix A are subject to the Commission’s competitive bidding procedures unless their mutual exclusivity is resolved. The Media Bureau will withhold further action on the mutually exclusive proposals listed in Appendix A pending submission of settlement agreements or engineering amendments to resolve mutual exclusivity prior to the close of the settlement period. Thereafter, the Wireless Telecommunications and Media Bureaus will announce an auction date and propose auction procedures for the remaining mutually exclusive applications.

Unilateral Engineering Amendments. Applicants may resolve their mutual exclusivity by filing an engineering amendment to their application. An amendment that does not implicate the application of another station may be filed by the station during the settlement period without coordination with any other entity. All such amendments must be submitted by filing an amended FCC Form 2100—Schedule C in the Media Bureau’s Licensing and Management System (LMS) by 11:59 p.m. ET on January 10, 2019. Engineering amendments submitted by applicants to unilaterally resolve their mutual exclusivity must be minor, as defined by the applicable rules, and must not create new mutual exclusivities or application conflicts.

Legal Settlements. Applicants may also resolve their mutual exclusivity through a legal settlement that provides for the dismissal of one or more of the application(s) in their mutually exclusive group. Such agreements must be submitted for Commission approval. Parties submitting a legal settlement for approval must ensure that their

agreements comply with the provisions of Section 311(c) of the Communications Act of 1934, as amended, and the pertinent requirements of Section 73.3525 of the Commission’s rules, including, inter alia, the settlement reimbursement restrictions. Parties filing a request for approval of settlement agreement must include a copy of their agreement and: (1) A statement outlining the reasons why such agreement is in the public interest; (2) a statement that each party’s application was not filed for the purpose of reaching or carrying out such agreement; (3) a certification that neither the dismissing applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; (4) a statement outlining the exact nature and amount of any consideration paid or promised; (5) an itemized accounting of the expenses for which it seeks reimbursement; and (6) the terms of any oral agreement relating to the dismissal or withdrawal of its application.

Requests for approval of settlement agreement and the above-outlined documents required by Section 73.3525 must be submitted in the form of an amendment to each party’s pending application in LMS by 11:59 p.m. ET on January 10, 2019.

Engineering Settlements. Applicants may also enter into a settlement agreement to resolve their mutual exclusivity by means of an engineering solution. As with unilateral engineering amendments, engineering amendments submitted in conjunction with a settlement must be minor, as defined by the applicable rules, and must not create new mutual exclusivities or application conflicts. Such settlements may include proposing channel sharing as means to resolve their mutual exclusivity. Engineering settlement agreements must also be filed with the Commission for approval and must include the documentation required by Section 73.3525 outlined above.

Requests for approval of engineering settlement agreements, accompanying documentation, and corresponding technical amendments must be submitted in the form of an amendment to each party’s pending application in LMS by 11:59 p.m. ET on January 10, 2019. In the case of channel sharing settlements, the proposed sharee station shall file to modify its current license, specifying the technical parameters in the proposed host station’s displacement application and request that its displacement application be dismissed upon grant of the channel sharing.

In the case of legal and engineering settlements, the parties should endeavor, wherever possible, to resolve their mutual exclusivity through minor engineering amendments, as defined by the applicable rules. However, applicants that are unable to resolve their mutual exclusivity through a minor engineering amendment may, as part of their legal or engineering settlement, amend their application(s) to propose a new available channel. The new channel proposal may not create a new mutual exclusivity or conflict with any other application previously-filed in the Special Displacement Window.

Federal Communications Commission.

Barbara Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 2018–25109 Filed 11–16–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 83 FR 56844.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, November 14, 2018 at 10:00 a.m.

CHANGES IN THE MEETING: The meeting was continued on Thursday, November 15, 2018.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Laura E. Sinram,

Deputy Secretary of the Commission.

[FR Doc. 2018–25337 Filed 11–15–18; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 2018.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to Comments.applications@clev.frb.org:

1. *Buckeye State Bancshares, Inc., Powell, Ohio*; to become a bank holding company by acquiring 100 percent of the outstanding voting shares of Buckeye State Bank, Powell, Ohio.

Board of Governors of the Federal Reserve System, November 13, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–25086 Filed 11–16–18; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2018–11; Docket No. 2018–0002; Sequence No. 27]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Proposed U.S. Department of Homeland Security (DHS) Headquarters Consolidation at St. Elizabeths Master Plan Amendment #2

AGENCY: National Capital Region, Public Buildings Service U.S. General Services Administration (GSA).

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: GSA plans to prepare a Supplemental Environmental Impact Statement (SEIS) for the proposed

Master Plan Amendment to support the continued consolidation of the U.S. Department of Homeland Security (DHS) Headquarters at the St. Elizabeths West Campus, pursuant to the requirements of the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations, and with Section 106 of the National Historic Preservation Act (NHPA) in accordance with 36 CFR part 800.8

DATES: *Applicable:* Monday, November 5, 2018.

The public scoping meeting date is: Thursday, November 29, 2018, from 6:30 p.m. to 8:30 p.m., Eastern Daylight Time (EDT).

ADDRESSES: R.I.S.E Demonstration Center, 1730 Martin Luther King Jr. Avenue SE, Washington, DC, 20032.

FOR FURTHER INFORMATION CONTACT: Paul Gyamfi, GSA, National Capital Region, Office of Planning and Design Quality, at 202–690–9252. Please contact Mr. Gyamfi if special assistance is needed to attend and participate in the scoping meeting.

SUPPLEMENTARY INFORMATION: GSA intends to prepare a SEIS to analyze the potential impacts resulting from the proposed Master Plan Amendment #2 to support the DHS Headquarters consolidation at the St. Elizabeths West Campus.

Background

In 2008 and in 2012, GSA completed Environmental Impact Statements that analyzed the impacts from the development of 4.5 million square feet of secure office space, plus parking, in the District of Columbia to support the consolidated headquarters of the DHS on the St. Elizabeths East and West Campuses. GSA is preparing a SEIS to assess the impacts of development of the consolidated headquarters on the West Campus of St. Elizabeths. The proposed action is needed to improve efficiency, reflect the current condition of the historic buildings, reduce costs, and accelerate completion of the DHS consolidation. Previous St. Elizabeths Master Plans and Environmental Impact Statements are available for review at <http://stelizabethsdevelopment.com/nepa.html>.

Alternatives Under Consideration

GSA will analyze a range of alternatives (including the no action alternative) for the proposed Master

Plan Amendment #2 of the DHS Headquarters at St. Elizabeths. This Master Plan Amendment will focus on development options to efficiently house DHS and its operating components on the St Elizabeths West Campus.

Scoping Process

A scoping process will be conducted to aid in determining the alternatives to be considered and the scope of issues to be addressed, for identifying the significant issues related to the proposed Master Plan Amendment, in accordance with NEPA and NHPA.

Public Scoping Meeting

A public scoping meeting will be held on Thursday, November 29, 2018, from 6:30 p.m. to 8:30 p.m., EDT at the R.I.S.E Demonstration Center, 1730 Martin Luther King Jr. Avenue SE, Washington, DC 20032. The meeting will be an informal open house where meeting participants may receive information, and give comments. GSA is publishing notices in the *Washington Post*, *Afro-American*, and the *Washington Informer* newspapers announcing the meeting.

Written Comments

Interested parties are encouraged to provide written comments on the SEIS and Section 106 processes. The scoping period begins on November 19, 2018 and ends on December 19, 2018. Comments received during the scoping period will be considered in the analyses to be conducted for the SEIS. Written comments regarding the SEIS must be postmarked no later than December 19, 2018, and sent to the following address: Mr. Paul Gyamfi, Office of Planning and Design Quality, Public Buildings Service, National Capital Region, U.S. General Services Administration, 301 7th Street SW, Suite 4004, Washington, DC, 20407; or by email: Paul.Gyamfi@gsa.gov using the subject line: St. Elizabeths Master Plan Amendment #2. All emails must be received by 11:59 p.m. December 19, 2018.

Dated: November 7, 2018.

Kristi Tunstall Williams,

Deputy Director, Office of Planning and Design Quality, Public Buildings Service, National Capital Region, U.S. General Services Administration.

[FR Doc. 2018–25207 Filed 11–16–18; 8:45 am]

BILLING CODE 6820–YI–P

**GENERAL SERVICES
ADMINISTRATION**

[Notice PBS–2018–12; Docket No. 2018–0002; Sequence No. 31]

**Notice of Availability and
Announcement of Public Meeting for
the Draft Environmental Assessment
for the Edward J. Schwartz Federal
Building Structural Enhancements
Project in San Diego, California**

AGENCY: Public Buildings Service (PBS),
General Services Administration (GSA).

ACTION: Notice of availability;
announcement of public meeting.

SUMMARY: This notice announces the availability, and opportunity for public review and comment, of a Draft Environmental Assessment (EA), which examines the potential impacts of a proposal by GSA to provide structural enhancement improvements to the existing Edward J. Schwartz Federal Building and United States Courthouse. The Draft EA describes the reason the project is being proposed; the alternatives being considered; the potential impacts of each of the alternatives on the existing environment; and the proposed avoidance, minimization, and/or mitigation measures related to those alternatives.

DATES: A public meeting for the Draft EA will be held on Wednesday, November 28, 2018, from 4:00 p.m. to 7:00 p.m., Pacific Standard Time. Interested parties are encouraged to attend and provide written comments on the Draft EA.

The comment period for the Draft EA ends on December 17, 2018.

ADDRESSES: The public meeting will be held at 704 J Street, San Diego, California, 92101. Further information, including an electronic copy of the Draft EA, may be found online on the following website: <https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/buildings-and-facilities/california/edward-j-schwartz-federal-office-building#CurrentProjects>. Questions or comments concerning the Draft EA should be directed to: Osmahn Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, 50 United Nations Plaza, 3345, Mailbox #9, San Francisco, CA, 94102, or via email to osmahn.kadri@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Osmahn Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, GSA, at 415–522–3617. Please also call this number if special assistance is needed to attend and participate in the public meeting.

SUPPLEMENTARY INFORMATION:**Background**

The Project is proposed in order to improve structural safety for the public traveling underneath the building and for the tenants occupying the building above the Front Street underpass, located at 8800 Front Street in San Diego, California. The portion of Front Street that extends below the Schwartz FOB is referred to as the Front Street underpass. The existing building has five stories of federal office building space spanning above the roadway and two levels of parking structure beneath the roadway.

The EA will consider one Action Alternative and one No Action Alternative. The Action Alternative would consist of structural enhancement improvements to the portion of the existing Edward J. Schwartz Federal Building over Front Street between E and F streets. Existing columns and beams supporting the building at the Front Street underpass would be reinforced with new steel beams and column support structures and pre-cast concrete paneling. Construction would require full and partial closure of Front Street between Broadway and F Street. Street closure options during construction of the Action Alternative are being considered and a comprehensive Traffic Control Plan will be prepared to address the street closure.

The No Action Alternative assumes that structural enhancements to the existing building would not occur.

Public Meeting

The public meeting will be conducted in open house format, where project information will be presented and distributed. Comments must be received by December 17, 2018, and emailed to osmahn.kadri@gsa.gov, or sent to the address listed above.

Dated: November 8, 2018.

Matthew Jear,

*Director, Portfolio Management Division,
Pacific Rim Region, Public Buildings Service.*

[FR Doc. 2018–25220 Filed 11–16–18; 8:45 am]

BILLING CODE 6820–YF–P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Centers for Disease Control and
Prevention****Board of Scientific Counselors,
National Center for Injury Prevention
and Control (BSC NCIPC); Correction**

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC NCIPC; December 12, 2018, 9:00 a.m. to 4:30 p.m., EST, which was published in the **Federal Register** on November 2, 2018 Volume 83, Number 213, page 55171.

The registration information should read as follows: Due to the limited availability of phone line ports, we are encouraging the public to please register using the link provided: <https://www.surveymonkey.com/r/JR6LJX7>.

FOR FURTHER INFORMATION CONTACT:

Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Deputy Associate Director for Science, NCIPC, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, GA 30341, Telephone (770) 488–1430. Email address: ncipcbsc@cdc.gov.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

*Chief Operating Officer, Centers for Disease
Control and Prevention.*

[FR Doc. 2018–25133 Filed 11–16–18; 8:45 am]

BILLING CODE 4163–18–P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Centers for Disease Control and
Prevention****Board of Scientific Counselors,
National Center for Environmental
Health/Agency for Toxic Substances
and Disease Registry (BSC, NCEH/
ATSDR)**

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances

and Disease Registry (BSC, NCEH/ATSDR). This meeting is open to the public, limited only by available seating. The meeting room accommodates approximately 60 people. The public is also welcome to listen to the meeting by calling 800–619–8521, passcode 7019704, limited by 100 lines. The deadline for notification of attendance is December 3, 2018. The public comment period is scheduled on December 12, 2018 from 2:30 p.m. until 2:45 p.m., EST and December 13, 2018 from 10:10 a.m. until 10:25 a.m., EST. Individuals wishing to make a comment during Public Comment period, please email your name, organization, and phone number by November 30, 2018 to Amanda Malasky at amalasky@cdc.gov.

DATES: The meeting will be held on December 12, 2018, 8:30 a.m. to 4:00 p.m., EST and December 13, 2018, 8:30 a.m. to 11:30 a.m., EST.

ADDRESSES: Centers for Disease Control and Prevention, 4770 Buford Highway, Atlanta, Georgia 30341–3717 (Building 106, Conference Room 1B).

FOR FURTHER INFORMATION CONTACT: Shirley Little, Program Analyst, NCEH/ATSDR, CDC, 4770 Buford Highway, Mailstop F–45, Atlanta, Georgia 30341–3717, Telephone (770) 488–0577; Email snl7@cdc.gov.

SUPPLEMENTARY INFORMATION:

Purpose: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and wellbeing; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of

results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters To Be Considered: The agenda will include discussions on NCEH/ATSDR Program Responses to BSC Guidance and Action Items, ATSDR Tox Profiles, Federal Strategy on Lead, Cancer Clusters, PFAS Community of Practice, Open Data, and National Pediatric Environmental Health Specialty Unit Program. Agenda items are subject to change as priorities dictate.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–25134 Filed 11–16–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3358–FN]

Medicare and Medicaid Programs: Application From the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF) for Continued Approval of Its Ambulatory Surgical Center Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: This final notice announces our decision to approve the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF) for continued recognition as a national accrediting organization for ambulatory surgical centers (ASCs) that wish to participate in the Medicare or Medicaid programs.

DATES: This notice is applicable November 27, 2018 through November 27, 2024.

FOR FURTHER INFORMATION CONTACT: Erin McCoy, (410) 786–2337, Monda Shaver, (410) 786–3410, or Renee Henry, (410) 786–7828.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in an Ambulatory Surgical Center (ASC) provided certain requirements are met. Sections 1832(a)(2)(F)(i) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as an ASC. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 416, specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for ASCs.

Generally, to enter into an agreement, an ASC must first be certified as complying with the conditions set forth in part 416 and recommended to the Centers for Medicare & Medicaid Services (CMS) for participation by a state survey agency. Thereafter, the ASC is subject to periodic surveys by a state survey agency to determine whether it continues to meet these conditions. However, there is an alternative to certification surveys by state agencies. Accreditation by a nationally recognized Medicare accreditation program approved by CMS may substitute for both initial and ongoing state review.

Section 1865(a)(1) of the Act provides that, if the Secretary of the Department of Health and Human Services finds that accreditation of a provider entity by an approved national accrediting organization meets or exceeds all applicable Medicare conditions, we may treat the provider entity as having met those conditions, that is, we may “deem” the provider entity to be in compliance. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

Part 488, subpart A, implements the provisions of section 1865 of the Act and requires that a national accrediting organization applying for approval of its Medicare accreditation program must provide CMS with reasonable assurance that the accrediting organization requires its accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.5.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-

approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On June 22, 2018, we published a proposed notice in the **Federal Register** (83 FR 29120) announcing the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF's) request for continued approval of its Medicare ASC accreditation program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.5, we conducted a review of AAAASF's Medicare ASC accreditation renewal application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of AAAASF's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its ASC surveyors; (4) ability to investigate and respond appropriately to complaints against accredited ASCs; and, (5) survey review and decision-making process for accreditation.

- The comparison of AAAASF's Medicare ASC accreditation program standards to our current Medicare ASC Conditions for Coverage (CfCs).

- A documentation review of AAAASF's survey process to:

- ++ Determine the composition of the survey team, surveyor qualifications, and AAAASF's ability to provide continuing surveyor training.

- ++ Compare AAAASF's processes to those CMS require of state survey agencies, including periodic resurvey and the ability to investigate and respond appropriately to complaints against accredited ASCs.

- ++ Evaluate AAAASF's procedures for monitoring ASCs it has found to be out of compliance with AAAASF's program requirements. (This pertains only to monitoring procedures when AAAASF identifies non-compliance. If

noncompliance is identified by a state survey agency through a validation survey, the state survey agency monitors corrections as specified at § 488.9(c).)

- ++ Assess AAAASF's ability to report deficiencies to the surveyed ASC and respond to the ASCs plan of correction in a timely manner.

- ++ Establish AAAASF's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

- ++ Determine the adequacy of AAAASF's staff and other resources.

- ++ Confirm AAAASF's ability to provide adequate funding for performing required surveys.

- ++ Confirm AAAASF's policies with respect to surveys being unannounced.

- ++ Obtain AAAASF's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the June 22, 2018 proposed notice also solicited public comments regarding whether AAAASF's requirements met or exceeded the Medicare CfCs for ASCs. We received no comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between AAAASF's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared AAAASF's ASC accreditation program requirements and survey process with the Medicare CfCs at 42 CFR part 416, and the survey and certification process requirements of Parts 488 and 489. Our review and evaluation of AAAASF's ASC application, which were conducted as described in section III of this final notice, yielded the following areas where, as of the date of this notice, AAAASF has revised its standards and certification processes in order to meet the requirements at:

- § 416.2, to ensure its standards appropriately reference § 416.2 subparts B and C;

- § 416.44(b)(1) to ensure its standards appropriately reference Life Safety Code requirements;

- § 416.44(b)(2) to ensure its standards appropriately reference that only Life Safety Code deficiencies may request a time-limited waiver as part of the ASC's plan of correction;

- § 416.47(b)(4) to ensure its standards appropriately address each required element of § 416.47(b)(4);

- § 416.47(b)(5) to ensure its standards appropriately address § 416.47(b)(5);

- § 416.52(a)(1) through (3) to ensure its standards appropriately address the requirements for a comprehensive medical history and physical assessment;

- § 488.5(a)(4)(i) to ensure that its policies clearly support and convey the unannounced nature of Medicare deemed status surveys;

- § 488.5(a)(4)(ii) to ensure comparability of AAAASF's survey process and surveyor guidance to those required for state survey agencies conducting federal Medicare surveys for the same provider or supplier type;

- § 488.5(a)(4)(iii) to ensure that copies of AAAASF's guidelines and instructions to surveyors appropriately address Medicare requirements;

- § 488.5(a)(7) through (9) to ensure its surveyors are qualified and evaluated on performance;

- § 488.5(a)(11)(ii) to ensure accurate survey findings are reported to CMS;

- § 488.5(a)(12) to ensure complaints are triaged appropriately and surveyed within the required timeframes;

- § 488.26(b) and (c) to ensure deficiencies are cited at the appropriate level based on manner and degree of findings; and

- § 488.28(d) to ensure that its policies for correction of deficiencies in ASCs is comparable to CMS requirements, requiring that deficiencies normally must be corrected within 60 days.

B. Term of Approval

Based on our review and observations described in section III of this final notice, we approve AAAASF as a national accreditation organization for ASCs that request participation in the Medicare program, effective November 27, 2018 through November 27, 2024.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Dated: November 7, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2018-25013 Filed 11-16-18; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-6079-N]

Medicare, Medicaid, and Children's Health Insurance Programs; Provider Enrollment Application Fee Amount for Calendar Year 2019

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a \$586.00 calendar year (CY) 2019 application fee for institutional providers that are initially enrolling in the Medicare or Medicaid program or the Children's Health Insurance Program (CHIP); revalidating their Medicare, Medicaid, or CHIP enrollment; or adding a new Medicare practice location. This fee is required with any enrollment application submitted on or after January 1, 2019 and on or before December 31, 2019.

DATES: This notice is applicable beginning on January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Melissa Singer, (410) 786-0365.

SUPPLEMENTARY INFORMATION:

I. Background

In the February 2, 2011 **Federal Register** (76 FR 5862), we published a final rule with comment period titled "Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers." This rule finalized, among other things, provisions related to the submission of application fees as part of the Medicare, Medicaid, and CHIP provider enrollment processes. As provided in section 1866(j)(2)(C)(i) of the Social Security Act (the Act) and in 42 CFR 424.514, "institutional providers" that are initially enrolling in the Medicare or Medicaid programs or CHIP, revalidating their enrollment, or adding a new Medicare practice location are required to submit a fee with their enrollment application. An "institutional provider" for purposes of Medicare is defined at § 424.502 as "(a)ny provider or supplier that submits a paper Medicare enrollment application using the CMS-855A, CMS-855B (not including physician and non-physician practitioner organizations), CMS-855S, CMS-20134, or associated internet-based PECOS enrollment

application." As we explained in the February 2, 2011 final rule (76 FR 5914), in addition to the providers and suppliers subject to the application fee under Medicare, Medicaid-only and CHIP-only institutional providers would include nursing facilities, intermediate care facilities for persons with intellectual disabilities (ICF/IID), psychiatric residential treatment facilities, and may include other institutional provider types designated by a state in accordance with their approved state plan.

As indicated in § 424.514 and § 455.460, the application fee is not required for either of the following:

- A Medicare physician or non-physician practitioner submitting a CMS-855L.
- A prospective or revalidating Medicaid or CHIP provider—
 - ++ Who is an individual physician or non-physician practitioner; or
 - ++ That is enrolled in Title XVIII of the Act or another state's Title XIX or XXI plan and has paid the application fee to a Medicare contractor or another state.

II. Provisions of the Notice

A. CY 2018 Fee Amount

In the December 4, 2017 **Federal Register** (82 FR 57273), we published a notice announcing a fee amount for the period of January 1, 2018 through December 31, 2018 of \$569.00. This figure was calculated as follows:

- Section 1866(j)(2)(C)(i)(I) of the Act established a \$500 application fee for institutional providers in CY 2010.
- Consistent with section 1866(j)(2)(C)(i)(II) of the Act, § 424.514(d)(2) states that for CY 2011 and subsequent years, the preceding year's fee will be adjusted by the percentage change in the consumer price index (CPI) for all urban consumers (all items; United States city average, CPI-U) for the 12-month period ending on June 30 of the previous year.
- The CPI-U increase for CY 2011 was 1.0 percent, based on data obtained from the Bureau of Labor Statistics (BLS). This resulted in an application fee amount for CY 2011 of \$505 (or \$500 × 1.01).
- The CPI-U increase for the period of July 1, 2010 through June 30, 2011 was 3.54 percent, based on BLS data. This resulted in an application fee amount for CY 2012 of \$522.87 (or \$505 × 1.0354). In the February 2, 2011 final rule, we stated that if the adjustment sets the fee at an uneven dollar amount, we would round the fee to the nearest whole dollar amount. Accordingly, the application fee amount for CY 2012 was

rounded to the nearest whole dollar amount, or \$523.00.

- The CPI-U increase for the period of July 1, 2011 through June 30, 2012 was 1.664 percent, based on BLS data. This resulted in an application fee amount for CY 2013 of \$531.70 (\$523 × 1.01664). Rounding this figure to the nearest whole dollar amount resulted in a CY 2013 application fee amount of \$532.00.

- The CPI-U increase for the period of July 1, 2012 through June 30, 2013 was 1.8 percent, based on BLS data. This resulted in an application fee amount for CY 2014 of \$541.576 (\$532 × 1.018). Rounding this figure to the nearest whole dollar amount resulted in a CY 2014 application fee amount of \$542.00.

- The CPI-U increase for the period of July 1, 2013 through June 30, 2014 was 2.1 percent, based on BLS data. This resulted in an application fee amount for CY 2015 of \$553.382 (\$542 × 1.021). Rounding this figure to the nearest whole dollar amount resulted in a CY 2015 application fee amount of \$553.00.

- The CPI-U increase for the period of July 1, 2014 through June 30, 2015 was 0.2 percent, based on BLS data. This resulted in an application fee amount for CY 2016 of \$554.106 (\$553 × 1.002). Rounding this figure to the nearest whole dollar amount resulted in a CY 2016 application fee amount of \$554.00.

- The CPI-U increase for the period of July 1, 2015 through June 30, 2016 was

1.0 percent. This resulted in a CY 2017 application fee amount of \$559.56 (\$554 × 1.01). Rounding this figure to the nearest whole dollar amount resulted in a CY 2017 application fee amount of \$560.00.

- The CPI-U increase for the period of July 1, 2016 through June 30, 2017 was 1.6 percent. This resulted in a CY 2018 application fee amount of \$568.96 (\$560 × 1.016). Rounding this figure to the nearest whole dollar amount resulted in a CY 2018 application fee amount of \$569.00.

B. CY 2019 Fee Amount

Using BLS data, the CPU-U increase for the period of July 1, 2017 through June 30, 2018 was 2.9%. This results in a CY 2019 application fee amount of \$585.501 (\$569 × 1.029). As we must round this to the nearest whole dollar amount, the resultant application fee for CY 2019 is \$586.00.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995. However, it does reference previously approved information collections. The Forms CMS–855A, CMS–855B, and CMS–855I are approved under OMB control number 0938–0685; the Form CMS–855S is approved under OMB control number 0938–1056.

IV. Regulatory Impact Statement

A. Background

We have examined the impact of this notice 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 Social Security 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 regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). As explained in this section of the notice, we estimate that the total cost of the increase in the application fee will not exceed \$100 million. Therefore, this notice does not reach the \$100 million economic threshold and is not considered a major notice.

B. Costs

The costs associated with this notice involve the increase in the application fee amount that certain providers and suppliers must pay in CY 2019.

1. Estimates of Number of Affected Institutional Providers in December 4, 2017, 2016 Fee Notice

In the December 4, 2017 application fee notice, we estimated that based on CMS statistics—

- 3,800 newly enrolling Medicare institutional providers would be subject to and pay an application fee in CY 2018. The estimate of 3,800 newly enrolling Medicare institutional providers was corrected to 10,700 newly enrolling Medicare institutional providers in the January 3, 2018 correction notice (83 FR 381).
- 7,500 revalidating Medicare institutional providers would be subject to and pay an application fee in CY 2018.
- 9,000 newly enrolling Medicaid and CHIP providers would be subject to and pay an application fee in CY 2018.
- 21,000 revalidating Medicaid and CHIP providers would be subject to and pay an application fee in CY 2018.

2. CY 2019 Estimates

a. Medicare

Based on CMS data, we estimate that in CY 2019 approximately—

- 12,870 newly enrolling institutional providers will be subject to and pay an application fee; and
- 41,580 revalidating institutional providers will be subject to and pay an application fee.

Using a figure of 54,450 (12,870 newly enrolling + 41,580 revalidating) institutional providers, we estimate an increase in the cost of the Medicare application fee requirement in CY 2019 of \$925,650 (or 54,450 x \$17 (or \$586 minus \$569)) from our CY 2018 projections and as previously described.

b. Medicaid and CHIP

Based on CMS and state statistics, we estimate that approximately 30,000 (9,000 newly enrolling + 21,000 revalidating) Medicaid and CHIP institutional providers will be subject to an application fee in CY 2019. Using this figure, we project an increase in the cost of the Medicaid and CHIP application fee requirement in CY 2019 of \$510,000 (or 30,000 x \$17 (or \$586 minus \$569)) from our CY 2018 projections and as previously described.

c. Total

Based on the foregoing, we estimate the total increase in the cost of the application fee requirement for Medicare, Medicaid, and CHIP providers and suppliers in CY 2019 to be \$1,435,650 (\$925,650 + \$510,000) from our CY 2018 projections.

The RFA requires agencies to analyze options for regulatory relief of small

businesses. 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. As we stated in the RIA for the February 2, 2011 final rule with comment period (76 FR 5952), we do not believe that the application fee will have a significant impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis 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 604 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 notice 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 (UMRA) 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 2017, that threshold was approximately \$148 million. The Agency has determined that there will be minimal impact from the costs of this notice, as the threshold is not met under the UMRA.

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 notice does not impose substantial direct 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 (82 FR 9339, February 3, 2017). It has been determined that this notice is a transfer notice that does not impose more than de minimis costs

and thus is not a regulatory action for the purposes of E.O. 13771.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Dated: October 19, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–25012 Filed 11–16–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–4142]

Determination That REGITINE (Phentolamine Mesylate) Injection, 5 Milligrams/Vial, and Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means

that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT:

Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363, Stacy.Kane@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the “listed drug,” which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.

355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the “Approved Drug Products With Therapeutic Equivalence Evaluations,” which is generally known as the “Orange Book.” Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug’s NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table are no longer being marketed.

| Applica- tion No. | Drug name | Active ingredient(s) | Strength(s) | Dosage form/route | Applicant |
|----------------------|----------------------|--|--|--|--|
| NDA 008278. | REGITINE | Phentolamine Mesylate | 5 milligrams (mg)/vial | Injectable; Injection | Novartis Pharma- ceuticals Corp. |
| NDA 011287. | KAYEXALATE | Sodium Polystyrene Sulfonate. | 453.6 grams (g)/bottle ... | Powder; Oral, Rectal | Concordia Pharma- ceuticals, Inc. |
| NDA 011751. | PROLIXIN | Fluphenazine Hydro- chloride (HCl). Fluphenazine HCl | 2.5 mg/milliliter (mL) 1 mg; 2.5 mg; 5 mg; 10 mg. | Injectable; Injection; Tablet; Oral | Bristol-Myers Squibb Co. |
| NDA 012249. | LIBRIUM | Chlordiazepoxide HCl ... | 5 mg; 10 mg; 25 mg | Capsule; Oral | Valeant Pharmaceuticals North America, LLC. |
| NDA 016008. | PERMITIL | Fluphenazine HCl | 5 mg/mL | Concentrate; Oral | Schering Corp., Sub- sidiary of Schering Plough, Corp. |
| NDA 016110. | PROLIXIN ENANTHATE | Fluphenazine Enanthate | 25 mg/mL | Injectable; Injection | Bristol-Myers Squibb Co. |
| NDA 017007. | HEPARIN SODIUM | Heparin Sodium | 1,000 units/mL; 2,500 units/mL; 5,000 units/ mL; 7,500 units/mL; 10,000 units/mL; 15,000 units/mL; 20,000 units/mL; 5,000 units/0.5 mL;. | Injectable; Injection | West-Ward Pharma- ceuticals International, Ltd. |
| NDA 017105. | TRANXENE | Clorazepate | 3.75 mg; 7.5 mg; 15 mg | Tablet; Oral; | Recordati Rare Dis- eases, Inc. |
| | TRANXENE | Dipotassium. | 3.75 mg; 7.5 mg; 15 mg | Capsule; Oral; | |
| | TRANXENE SD | Clorazepate Dipotassium. Clorazepate Dipotassium. | 11.25 mg; 22.5 mg | Tablet; Oral | |
| NDA 017488. | MODICON 21 | Ethinyl Estradiol; Norethindrone. | 0.035 mg; 0.5 mg | Tablet; Oral | Ortho-McNeil Pharma- ceutical, Inc. |

| Applica- tion No. | Drug name | Active ingredient(s) | Strength(s) | Dosage form/route | Applicant |
|----------------------|---|--------------------------------------|--|--------------------------------------|--|
| NDA 017489. | ORTHO-NOVUM 1/35- 21. | Ethinyl Estradiol; Norethindrone. | 0.035 mg; 1 mg | Tablet; Oral | Ortho-McNeil Pharma- ceutical, Inc. |
| NDA 017575. | DTIC-DOME | Dacarbazine | 100 mg/vial; 200 mg/vial | Injectable; Injection | Bayer Healthcare Phar- maceuticals, Inc. |
| NDA 017576. | OVCON-50 | Ethinyl Estradiol; Norethindrone. | 0.05 mg; 1 mg | Tablet; Oral | Warner Chilcott Co., LLC. |
| NDA 017619. | LOTRIMIN | Clotrimazole | 1% | Cream; Topical | Schering Plough Healthcare Products, Inc. |
| NDA 017831. | DIDRONEL | Etidronate Disodium | 200 mg; 400 mg | Tablet; Oral | Allergan Pharma- ceuticals International, Ltd. |
| NDA 018017. | BLOCADREN | Timolol Maleate | 5 mg; 10 mg; 20 mg | Tablet; Oral | Merck & Co., Inc. |
| NDA 018052. | GYNE-LOTRIMIN | Clotrimazole | 1% | Cream; Vaginal | Bayer HealthCare, LLC. |
| NDA 018148. | NASALIDE | Flunisolide | 0.025 mg/spray | Metered Spray; Nasal ... | IVAX Research, Inc. |
| ANDA 018551. | POTASSIUM IODIDE ... | Potassium Iodide | 1 g/mL | Solution; Oral | Roxane Laboratories, Inc. |
| NDA 019004. | ORTHO-NOVUM 7/14- 28. | Ethinyl Estradiol; Norethindrone. | 0.035 mg/0.5 mg; 0.035 mg/1 mg. | Tablet; Oral | Ortho-McNeil Pharma- ceutical, Inc. |
| NDA 019309. | ORTHO-NOVUM 7/14- 21. | Ethinyl Estradiol; Norethindrone. | 0.035 mg/0.5 mg; 0.035 mg/1 mg. | Tablet; Oral | Ortho-McNeil Pharma- ceutical, Inc. |
| NDA 019621. | VASOTEC | Enalaprilat | 1.25 mg/mL | Injectable; Injection | Biovail Laboratories International SRL. |
| NDA 019847. | VENTOLIN | Albuterol Sulfate | Equivalent to (EQ) 2 mg base/5 mL. | Syrup; Oral | GlaxoSmithKline. |
| NDA 019857. | CIPRO | Ciprofloxacin | 400 mg/40 mL; 200 mg/ 20 mL; 1200 mg/120 mL. | Injectable; Injection | Bayer Healthcare Phar- maceuticals, Inc. |
| NDA 019857. | CIPRO IN DEXTROSE 5% IN PLASTIC CONTAINER. | Ciprofloxacin | 200 mg/100 mL; 400 mg/200 mL. | Injectable; Injection | Bayer Healthcare Phar- maceuticals, Inc. |
| NDA 019972. | OCUPRESS | Carteolol HCl | 1% | Solution/Drops; Oph- thalmic. | Novartis Pharma- ceuticals, Corp. |
| NDA 020107. | NOVAMINE 15% SUL- FITE FREE IN PLAS- TIC CONTAINER. | Amino Acids | 15% | Injectable; Injection | Baxter Healthcare, Corp. |
| NDA 020207. | ALKERAN | Melphalan HCl | EQ 50 mg base/vial | Injectable; Injection | Apotex, Inc. |
| NDA 020261. | LESCOL | Fluvastatin Sodium | EQ 20 mg base; EQ 40 mg base. | Capsule; Oral | Novartis Pharma- ceuticals, Corp. |
| NDA 020264. | MEGACE | Megestrol Acetate | 40 mg/mL | Suspension; Oral | Bristol-Myers Squibb Co. |
| NDA 020363. | FAMVIR | Famciclovir | 125 mg; 250 mg; 500 mg. | Tablet; Oral | Novartis Pharma- ceuticals, Corp. |
| NDA 020792. | CARDIZEM | Diltiazem HCl | 100 mg/vial | Injectable; Injection | Biovail Laboratories, Inc. |
| NDA 021127. | OPTIVAR | Azelastine HCl | 0.05% | Solution/Drops; Oph- thalmic. | Mylan Specialty, L.P. |
| NDA 021178. | GLUCOVANCE | Glyburide; Metformin HCl. | 2.5 mg/500 mg; 5 mg/ 500 mg. | Tablet; Oral | Bristol-Myers Squibb Co. |
| NDA 21277. | AVELOX IN SODIUM CHLORIDE 0.8% IN PLASTIC CON- TAINER. | Moxifloxacin HCl | 400 mg/250 mL | Solution; IV Infusion | Bayer HealthCare Phar- maceuticals, Inc. |
| NDA 021406. | FORTICAL | Calcitonin Salmon Re- combinant. | 200 international units/ spray. | Metered Spray; Nasal ... | Upsher-Smith Labora- tories, LLC. |
| NDA 021530. | MOBIC | Meloxicam | 7.5 mg/5 mL | Suspension; Oral | Boehringer Ingelheim Pharmaceuticals, Inc. |
| NDA 021689. | NEXIUM IV | Esomeprazole Sodium .. | EQ 20 mg base/vial | Injectable; Intravenous .. | AstraZeneca Pharma- ceuticals LP. |
| NDA 022033. | LUVOX CR | Fluvoxamine Maleate ... | 100 mg; 150 mg | Extended-Release Cap- sule; Oral. | Jazz Pharmaceuticals, Inc. |
| NDA 050299. | NILSTAT | Nystatin | 100,000 units/mL | Suspension; Oral | Glenmark Generics Inc., USA. |
| NDA 050484. | CERUBIDINE | Daunorubicin HCl | EQ 20 mg base/vial | Injectable; Injection | Wyeth Research. |
| NDA 050662. | BIAXIN | Clarithromycin | 250 mg; 500 mg | Tablet; Oral | AbbVie, Inc. |
| ANDA 060076. | STREPTOMYCIN SUL- FATE. | Streptomycin Sulfate | EQ 1g base/vial; EQ 5 g base/vial. | Injectable; Injection | Pfizer, Inc. |

| Applica- tion No. | Drug name | Active ingredient(s) | Strength(s) | Dosage form/route | Applicant |
|----------------------|----------------|-----------------------|-----------------------|--|--|
| ANDA 080472. | HYTONE | Hydrocortisone | 1%, 2.5% | Cream; Topical | Valeant Pharmaceuticals North America, LLC. |
| ANDA 080473. | HYTONE | Hydrocortisone | 1%; 2.5% | Lotion; Topical | Valeant Pharmaceuticals North America, LLC. |
| ANDA 080474. | HYTONE | Hydrocortisone | 1%, 2.5% | Ointment; Topical | Dermik Laboratories, Inc. |
| NDA 202088. | SUPRENZA | Phentermine HCl | 15 mg; 30 mg; 37.5 mg | Orally Disintegrating Tablet; Oral. | Citius Pharmaceuticals, LLC. |

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products in the “Discontinued Drug Product List” section of the Orange Book. The “Discontinued Drug Product List” identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs and ANDAs listed are unaffected by the discontinued marketing of the products subject to those NDAs and ANDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: November 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-25187 Filed 11-16-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-N-3771]

Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the Agency’s annual report entitled “Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments.” Under the Federal

Food, Drug, and Cosmetic Act (FD&C Act), FDA is required to report annually on the status of postmarketing requirements (PMRs) and postmarketing commitments (PMCs) required of, or agreed upon by, application holders of approved drug and biological products. The report on the status of the studies and clinical trials that applicants have agreed to, or are required to, conduct is on the FDA’s “Postmarketing Requirements and Commitments: Reports” web page (<https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Post-marketingPhaseIVCommitments/ucm064436.htm>).

FOR FURTHER INFORMATION CONTACT:

Cathryn C. Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6484, Silver Spring, MD 20993-0002, 301-796-0700; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

Section 506B(c) of the FD&C Act (21 U.S.C. 356b(c)) requires FDA to publish an annual report on the status of postmarketing study commitments that applicants have committed to, or are required to conduct, and for which annual status reports have been submitted.

Under §§ 314.81(b)(2)(vii) and 601.70 (21 CFR 314.81(b)(2)(vii) and 601.70), applicants of approved drugs and licensed biologics are required to submit annually a report on the status of each clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology study or clinical trial either required by FDA (PMRs) or that they have committed to conduct (PMCs), either at the time of approval or after approval of their new drug application, abbreviated new drug application, or biologics license application. The status of PMCs concerning chemistry, manufacturing, and production controls

and the status of other studies or clinical trials conducted on an applicant’s own initiative are not required to be reported under §§ 314.81(b)(2)(vii) and 601.70 and are not addressed in this report. Furthermore, section 505(o)(3)(E) of the FD&C Act (21 U.S.C. 355(o)(3)(E)) requires that applicants report periodically on the status of each required study or clinical trial and each study or clinical trial “otherwise undertaken . . . to investigate a safety issue . . .”

An applicant must report on the progress of the PMR/PMC on the anniversary of the drug product’s approval¹ until the PMR/PMC is completed or terminated and FDA determines that the PMR/PMC has been fulfilled or that the PMR/PMC is either no longer feasible or would no longer provide useful information.

II. Fiscal Year 2017 Report

With this notice, FDA is announcing the availability of the Agency’s annual report entitled “Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments.” Information in this report covers any PMR/PMC that was established, in writing, at the time of approval or after approval of an application or a supplement to an application, and summarizes the status of PMRs/PMCs in fiscal year (FY) 2017 (*i.e.*, as of September 30, 2017). Information summarized in the report reflects combined data from the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research and includes the following: (1) The number of applicants with open PMRs/PMCs; (2) the number of open PMRs/PMCs; (3) the timeliness of applicant submission of the annual status reports

¹ An applicant must submit an annual status report on the progress of each open PMR/PMC within 60 days of the anniversary date of U.S. approval of the original application or on an alternate reporting date that was granted by FDA in writing. Some applicants have requested and been granted by FDA alternate annual reporting dates to facilitate harmonized reporting across multiple applications.

(ASRs); (4) FDA-verified status of open PMRs/PMCs reported in § 314.81(b)(2)(vii) or § 601.70 ASRs; (5) the status of closed PMRs/PMCs; and (6) the distribution of the status by fiscal year of establishment² (FY2011 to FY2017) for PMRs and PMCs open at the end of FY2017, or those closed within FY2017. Additional information about PMRs/PMCs is provided on FDA's website at <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Post-marketingPhaseIVCommitments/default.htm>.

Dated: November 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-25128 Filed 11-16-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

SUPPLEMENTARY INFORMATION: Section 100.2 of VICP's implementing regulation (42 CFR part 100) states that the revised amount of an average cost of a health insurance policy, as determined by the Secretary of HHS (the Secretary), is effective upon its delivery by the Secretary to the United States Court of Federal Claims (the Court), and will be published periodically in a notice in the **Federal Register**. This figure is calculated using the most recent Medical Expenditure Panel Survey-Insurance Component (MEPS-IC) data available as the baseline for the average monthly cost of a health insurance policy. This baseline is adjusted by the annual percentage increase/decrease obtained from the most recent annual Kaiser Family Foundation (KFF) Employer Health Benefits Survey or other authoritative source that may be more accurate or appropriate.

In 2018, MEPS-IC, available at www.meps.ahrq.gov, published the annual 2017 average total single premium per enrolled employee at private-sector establishments that provide health insurance. The figure published was \$6,368. This figure is divided by 12 months to determine the cost per month of \$530.67. The \$530.67 figure is increased or decreased by the percentage change reported by the most recent KFF Employer Health Benefits Survey, available at www.kff.org. The percentage increase from 2017 to 2018 was 3.0 percent. By adding this percentage increase, the calculated average monthly cost of a health insurance policy for a 12-month period is \$546.59.

Therefore, the Secretary announces that the revised average cost of a health insurance policy under the VICP is \$546.59 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the Court. Such notice was delivered to the Court on November 13, 2018.

Dated: November 13, 2018.

George Sigounas,
Administrator.

[FR Doc. 2018-25087 Filed 11-16-18; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Meeting of the Advisory Committee on Infant Mortality

AGENCY: Health Resources and Service Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Advisory Committee on Infant Mortality (ACIM) has scheduled a public meeting.

DATES: December 4, 2018, 9:00 a.m.–5:00 p.m. ET and December 5, 2018, 9:00 a.m.–3:30 p.m. ET.

ADDRESSES: This meeting will be held in-person and by webinar. The address for the meeting is 5600 Fishers Lane, Room 5W11, Rockville, Maryland 20857. Instructions on how to access the meeting via webcast will be provided upon registration.

Information about ACIM and the agenda for this meeting can be found on the ACIM website at <https://www.hrsa.gov/advisory-committees/infant-mortality/index.html>. While this meeting is open to the public, advance registration is required. Registration

information and information about the ACIM can be obtained by accessing: <https://www.hrsa.gov/advisory-committees/infant-mortality/index.html>.

FOR FURTHER INFORMATION CONTACT:

David S. de la Cruz, Ph.D., MPH, Designated Federal Official (DFO), at HRSA, Maternal and Child Health Bureau (MCHB), 5600 Fishers Lane, Rockville, Maryland 20857; 301-443-0543; or dcruz@hrsa.gov.

SUPPLEMENTARY INFORMATION: ACIM provides advice and recommendations to the Secretary of HHS (Secretary) on HHS programs and activities that focus on reducing infant mortality and improving the health status of infants and pregnant women and factors affecting the continuum of care with respect to maternal and child health care. ACIM focuses on outcomes before, during, and following pregnancy and childbirth, strategies to coordinate a myriad of federal, state, local, and private programs, efforts that are designed to deal with the health and social problems impacting infant mortality, and the implementation of the federal Healthy Start Program.

The meeting agenda is being finalized and tentatively includes updates on HRSA, MCHB, and the Healthy Start Program, an introduction of members, a briefing on infant mortality and health disparity data in the U.S., and future topic areas for ACIM to discuss. Agenda items are subject to changes as priorities dictate. The final meeting agenda will be available 2 days prior to the meeting on the ACIM website: <https://www.hrsa.gov/advisory-committees/Infant-Mortality/index.html>. Refer to the ACIM website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide comments on the afternoon of December 5, 2018. Written comments must be submitted via email to the DFO, David S. de la Cruz, by 12:00 p.m. ET on Tuesday, November 20, 2018, at dcruz@hrsa.gov. Please indicate if your comments will be written only or if you are requesting to present your comments in person during the meeting. All comments (oral and written) will be part of the official meeting record. To ensure all individuals who have requested time for oral comments are accommodated, the allocated time for each comment will be limited to no more than 3 minutes. More complete/longer comments should be submitted in writing. Individuals associated with groups or who plan to provide comments on similar topics may be asked to combine their comments and present them through a single representative. No audiovisual

² The establishment date is the date of the formal FDA communication to the applicant that included the final FDA-required (PMR) or -requested (PMC) postmarketing study or clinical trial.

presentations are permitted. Comments should identify the individual's name, address, email, telephone number, professional or organization affiliation, background or area of expertise (e.g., parent, family member, researcher, clinician, public health, etc.), and the topic/subject matter. Oral comments must be presented in-person and not via phone/webinar.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify David S. de la Cruz at the address and phone number listed above at least 10 days prior to the meeting. Since this meeting occurs in a federal government building, attendees must go through a security check to enter the building. Non-U.S. Citizen attendees must notify HRSA of their planned attendance at least 10 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Amy P. McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–25105 Filed 11–16–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities" unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10⅓%, as fixed by the Secretary of the Treasury, is certified for the quarter ended September 30, 2018. This rate is based on the Interest Rates for Specific Legislation, "National

Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))" and "National Research Service Award Program (42 U.S.C. 288(c)(4)(B))." This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

Dated: October 10, 2018.

David C. Horn,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2018–25204 Filed 11–16–18; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Activities Deemed Not To Be Research: Public Health Surveillance, 2018 Requirements

AGENCY: The Office for Human Research Protections, Office of the Assistant Secretary for Health, Office of the Secretary, HHS.

ACTION: Notice of availability.

SUMMARY: The Office for Human Research Protections (OHRP), Office of the Assistant Secretary for Health, is announcing the availability of a draft guidance document entitled, "Activities Deemed Not to Be Research: Public Health Surveillance, 2018 Requirements."

DATES: Submit written comments by December 19, 2018.

ADDRESSES: Submit written requests for a single copy of the draft guidance document entitled "Activities Deemed Not to Be Research: Public Health Surveillance, 2018 Requirements," to the Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–453–6909. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance documents.

You may submit comments identified by docket ID number HHS–OS–OPHS–2018–0015 (Activities Deemed Not to Be Research: Public Health Surveillance, 2018 Requirements), by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Enter the docket ID number and click on "Search." On the next page, click the "Comment Now" action and follow the instructions.

- *Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]:* Irene Stith-Coleman, Ph.D., Office for

Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

Comments received, including any personal information, will be posted without change to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Irene Stith-Coleman, Ph.D., Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, 240–453–6900; email Irene.Stith-Coleman@hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

OHRP, Office of the Assistant Secretary for Health, is announcing the availability of a draft guidance document entitled "Activities Deemed Not to Be Research: Public Health Surveillance, 2018 Requirements." This guidance document applies to activities that are conducted or supported by HHS. It is intended to help entities determine whether a planned activity constitutes a public health surveillance activity deemed not to be research under the 2018 Requirements (the revised subpart A of 45 CFR part 46, effective July 19, 2018). The draft guidance document, when finalized, will represent OHRP's current thinking on this topic. OHRP obtained input from HHS agencies and the Common Rule departments and agencies in developing the draft guidance document.

II. Electronic Access

Persons with access may obtain the draft guidance documents on OHRP's website at <https://www.hhs.gov/ohrp/regulations-and-policy/requests-for-comments/index.html>.

Dated: November 8, 2018.

Julie Kaneshiro,

Deputy Director, Office for Human Research Protections.

[FR Doc. 2018–25202 Filed 11–16–18; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board Public Teleconference

AGENCY: Office of the Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human

Services is hereby giving notice that the National Biodefense Science Board (NBSB) will hold a public teleconference on December 13, 2018.

DATES: The NBSB Public Teleconference is December 13, 2018, from 2:00 p.m. to 4:00 p.m. Eastern Standard Time (EST).

ADDRESSES: We encourage members of the public to attend the public meetings. To register, send an email to nbsb@hhs.gov with "NBSB Registration" in the subject line. Submit your comments to nbsb@hhs.gov, the NBSB Contact Form located at <https://www.phe.gov/Preparedness/legal/boards/nbsb/Pages/RFNBSBComments.aspx>. For additional information, visit the NBSB website located at <https://www.phe.gov/nbsb>.

SUPPLEMENTARY INFORMATION: The NBSB is authorized under Section 319M of the Public PHS Act (42 U.S.C. 247d-7f), as added by Section 402 of the Pandemic and All-Hazards Preparedness Act of 2006 and amended by Section 404 of the Pandemic and All-Hazards Preparedness Reauthorization Act. The Board is governed by the Federal Advisory Committee Act (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees. The NBSB provides expert advice and guidance on scientific, technical, and other matters of special interest to the Department regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate.

Background: The December 13, 2018, NBSB public teleconference is dedicated to the discussion of recommendations on two topics: (1) Strategic improvements to the National Disaster Medical System (NDMS) and (2) implementation of the National Biodefense Strategy. We will post modifications to the agenda on the NBSB meeting website, which is located at <https://www.phe.gov/nbsb>.

Availability of Materials: We will post all teleconference materials prior to the teleconference on December 13, 2018, at the website located at <https://www.phe.gov/nbsb>.

Procedures for Providing Public Input: Members of the public may attend the public teleconference via a toll-free call-in phone number, which is available on the NBSB website at <https://www.phe.gov/nbsb>.

We encourage members of the public to provide written comments that are relevant to the NBSB public teleconference prior to December 13, 2018. Send written comments by email to nbsb@hhs.gov with "NBSB Public Comment" in the subject line. The

NBSB Chair will respond to comments received by December 12, 2018, during the public teleconference.

Dated: November 8, 2018.

Robert P. Kadlec,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2018-25131 Filed 11-16-18; 8:45 am]

BILLING CODE 4150-28-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID 2018 Omnibus BAA (HHS-NIH-NIAID-BAA2018) Research Area 001: Development of Therapeutic Products for Biodefense, Anti-Microbial Resistant (AMR) Infections and Emerging Infectious Diseases.

Date: December 11-12, 2018.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Kumud K. Singh, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC-9823, Rockville, MD 20852, 301-761-7830, kumud.singh@nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Investigator Initiated Program Project Applications (P01).

Date: December 11, 2018.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Priti Mehrotra, Ph.D., Chief, Immunology Review Branch, Scientific

Review Program, Division of Extramural Activities, Room #3G40, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892-7616, 240-669-5066, pmehrotra@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 14, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018-25191 Filed 11-16-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development and Commercialization of Chimeric Antigen Receptor (CAR) Therapies for the Treatment of FMS-Like Tyrosine Kinase 3 (FLT3) Expressing Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this Notice to ElevateBio. ("Elevate"), located in Cambridge, MA.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before December 4, 2018 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Jim Knabb, Senior Technology Transfer Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530, MSC 9702, Bethesda, MD 20892-9702 (for business mail), Rockville, MD 20850-9702; Telephone: (240)-276-7856; Facsimile: (240)-276-5504; Email: jim.knabb@nih.gov.

SUPPLEMENTARY INFORMATION:

Intellectual Property*E-133-2016: FLT3-Specific Chimeric Antigen Receptors and Methods Using Same*

1. US Provisional Patent Application 62/342,394, filed May 27, 2016 (E-133-2016-0-US-01);

2. International Patent Application PCT/US2017/034,691, filed May 26, 2017 (E-133-2016-0-PCT-02)

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the fields of use may be limited to the following:

“The development of a mono- or multi-specific FMS-like tyrosine kinase 3 (FLT3; also known as CD135) chimeric antigen receptor (CAR)-based immunotherapy using autologous or allogenic human lymphocytes (T cells or NK cells) transduced with lentiviral vectors, wherein the viral transduction leads to the expression of a CAR that targets FLT3 (comprised of the FLT3-binding domain referenced as NC7 in the invention as well as an intracellular signaling domain), for the prophylaxis or treatment of FLT3-expressing cancers.”

This technology discloses a CAR vector that targets FLT3 comprised of an anti-FLT3 antibody known as NC7, and an intracellular signaling domain. FLT3 (CD135) is a cytokine receptor expressed on hematopoietic progenitor cells, and is one of the most frequently mutated genes in acute myeloid leukemia (AML) and infant acute lymphoblastic leukemia (ALL). FLT3 mutation leads to increased cell surface expression and therefore on leukemic cells, which makes it an attractive candidate for cellular therapies such as CAR-T.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be

presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 8, 2018.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2018-25197 Filed 11-16-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR18-822: Approaches for Understanding Disease Mechanisms and Improving Outcomes in TB Meningitis (TBM).

Date: December 12, 2018.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301-435-1146, jig@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 14, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018-25196 Filed 11-16-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Heart, Lung, and Blood Institute; Notice of Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyzing Innovation in Trial Design.

Date: December 6, 2018.

Time: 10:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892, 301-827-7913, creazzotl@mail.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyzing Innovation in Trial Design Resource Access.

Date: December 6, 2018.

Time: 10:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892, 301-827-7913, creazzotl@mail.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Integrative Computational Biology for Analysis of NHLBI TOPMed Data.

Date: December 7, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of

Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, susan.sunnarborg@nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; R25: Short-Term Research Education to Increase Diversity.

Date: December 7, 2018.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 7189, Bethesda, MD 20892, 301-827-7911, lindsay.garvin@nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Institutional Training Grants.

Date: December 12, 2018.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301-827-7696, Pintuccig@nhlbi.nih.gov.

(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: November 14, 2018.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018-25192 Filed 11-16-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Infectious Diseases and Microbiology Fellowships.

Date: November 20, 2018.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tamara Lyn McNealy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, Bethesda, MD 20892, 301-827-2372, tamara.mcnealy@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 14, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018-25195 Filed 11-16-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Summer Research Education Experience Programs.

Date: December 4, 2018.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Deanna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, (301) 496-9223, Deanna.adkins@nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trial Readiness for Rare Neurological and Neuromuscular Diseases.

Date: December 4, 2018.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, (301) 496-9223, ana.olariu@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 13, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018-25107 Filed 11-16-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the joint meeting of the NCI Board of Scientific Advisors (BSA) and National Cancer Advisory Board (NCAB).

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 open session will be videocast and can be accessed from the NIH Videocasting and

Podcasting website (<http://videocast.nih.gov>).

A portion of the National Cancer Advisory Board meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board, *Ad Hoc* Subcommittee on Global Cancer Research.

Open: December 3, 2018, 5:30 p.m. to 7:00 p.m.

Agenda: Discussion on Global Cancer Research.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washington Boulevard, Gaithersburg, MD 20878.

Contact Person: Dr. Robert T. Croyle, Acting Executive Secretary, NCAB *Ad Hoc* Subcommittee on Global Cancer Research, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 4E420, Bethesda, MD 20892, (240) 276-6690, croyle@mail.nih.gov.

Name of Committee: NCI Board of Scientific Advisors and National Cancer Advisory Board.

Open: December 4, 2018, 8:45 a.m. to 4:15 p.m.

Agenda: Joint meeting of the NCI Board of Scientific Advisors and National Cancer Advisory Board—NCI Director's report, presentations, and review of concepts.

Closed: December 4, 2018, 4:15 p.m. to 5:15 p.m.

Agenda: Review of intramural program site visit outcomes and the discussion of confidential personnel issues.

Place: National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Room TE406 & 408, Rockville, MD 20850.

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240-276-6340, grayp@mail.nih.gov.

Name of Committee: NCI Board of Scientific Advisors and National Cancer Advisory Board.

Open: December 5, 2018, 9:00 a.m. to 12:45 p.m.

Agenda: Joint meeting of the NCI Board of Scientific Advisors and National Cancer Advisory Board—Presentations and review of concepts.

Place: National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Room TE406 & 408, Rockville, MD 20850.

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical

Center Drive, Room 7W444, Bethesda, MD 20892, 240-276-6340, grayp@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 NCI-Shady Grove campus. All 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: NCAB: <http://deainfo.nci.nih.gov/advisory/ncab/ncab.htm>, BSA: <http://deainfo.nci.nih.gov/advisory/bsa/bsa.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 14, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018-25193 Filed 11-16-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT: Licensing information may be obtained by emailing the indicated licensing contact at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive, Room 4A29, MSC2479, Bethesda, MD 20892-2479; telephone: 301-402-5579. A signed Confidential Disclosure Agreement may be required to receive any unpublished information.

SUPPLEMENTARY INFORMATION: Technology description follows.

Sickle Cell Anemia Treatment Through RIOK3 Inhibition

Available for licensing and commercial development are methods for the treatment of beta-globinopathies such as sickle cell disease and beta-thalassemia by inhibiting the expression and/or activity of RIOK3 in erythroid cells such as primary erythroid progenitor cell or a CD34+ erythroid cells. RIOK3 inhibitors contemplated within the scope of the invention can be antibodies, siRNAs, microRNAs, antisense oligonucleotides or small molecules like Midostaurin, Axitinib, Bosutinib, or Ruxolitinib.

Potential Commercial Applications:

- Sickle cell disease
- beta thalassemia

Development Stage:

- Early stage

Inventors: Bjorg Gudmundsdottir, Laxminath Tumburu, John Tisdale (all of NHLBI)

Intellectual Property: HHS Reference No. E-200-2018; U.S Provisional Patent Application 62/756,497 filed November 6, 2018.

Licensing Contact: Michael Shmilovich, Esq. CLP; 301-435-5019; shmilovm@mail.nih.gov.

Dated: November 7, 2018.

Michael A. Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2018-25194 Filed 11-16-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES, including consideration of personnel

qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: December 10–12, 2018.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, 50 Center Drive, Bethesda, MD 20892.

Contact Person: Steven M. Holland, MD, Ph.D., Chief, Laboratory of Clinical Infectious Diseases, National Institutes of Health/ NIAID, Hatfield Clinical Research Center, Bethesda, MD 20892–1684, 301–402–7684, sholland@mail.nih.gov.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 14, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–25190 Filed 11–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing.

FOR FURTHER INFORMATION CONTACT: Dr. Vince Contreras, 240–669–2823; vince.contreras@nih.gov. Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601

Fishers Lane, Rockville, MD, 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Optimized Variants of the Broadly Neutralizing HIV–1 gp41 Antibody, 10E8

Description of Technology

Scientists at the National Institute of Allergy and Infectious Diseases (NIAID) recently discovered a human neutralizing antibody, 10E8, that binds to the GP41 protein of HIV–1 and prevents infection by HIV–1. 10E8 potentially neutralizes up to 98% of genetically diverse HIV–1 strains.

By engineering the 10E8 antibody, NIAID scientists have improved the properties of 10E8 that affect manufacturability, such as solubility, while preserving its neutralizing breadth and potency.

10E8 variants are useful for passive protection from infection, as therapeutics, and as a tool for vaccine development.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

Potential Commercial Applications

- Passive protection to prevent HIV infection
- Passive protection to prevent mother-to-infant HIV transmission
- Gene-based vectors for anti-gp41 antibody expression
- Therapeutics for elimination of HIV infected cells that are actively producing virus

Competitive Advantages

- Among the most potent and broadly neutralizing human antibodies isolated to date
- Broad reactivity and high affinity to most HIV–1 strains
- Improved manufacturability relative to the natural 10E8 antibody

Development Stage

- In vivo data available (animal)
- Inventors:* Peter D. Kwong (NIAID), Young Do Kwon (NIAID), Ivelin S. Georgiev (NIAID), Gilad A. Ofek (NIAID), Baoshan Zhang (NIAID), Krisha McKee (NIAID), John Mascola (NIAID), Gwo-Yu Chuang (NIAID), Siy J O'Dell (NIAID), Robert Bailer (NIAID), Mark Louder (NIAID), Mangaiarasi Asokan (NIAID), Richard Schwartz (NIAID), Jonathan Cooper (NIAID), Kevin Carlton (NIAID), Michael Bender (NIAID), Mark

Connors (NIAID), Amarendra Pegu (NIAID), Lisa Kueltozo (NIAID), Tatyana Gindin (Columbia University), and Lawrence Shapiro (Columbia University).

Publications: Kwon, Y.D. et al. (2016) Optimization of the Solubility of HIV-1-Neutralizing Antibody 10E8 through Somatic Variation and Structure-Based Design. *J Virol.* 90(13): 5899–914. [PMID: 27053554]

Intellectual Property: HHS Reference Number E–133–2015 includes Patent Cooperation Treaty Application Number PCT/US2016/060390 filed November 3, 2016; Canadian Patent Application Number 3003878 filed May 1, 2018; China Patent Application Number TBD filed May 1, 2018; European Patent Application Number 16801639.2 filed June 1, 2018; India Patent Application Number 20187016184 filed 30 April 2018; U.S. Patent Application Number 15/772,443 filed 30 April 2018; South Africa Patent Application Number 2018/02875 filed 2 May 2018; Australia Patent Application Number 2016349392 filed 4 May 2018.

Related Intellectual Property: HHS Reference Number E–253–2011.

Licensing Contact: Dr. Vince Contreras, 240–669–2823; vince.contreras@nih.gov.

Dated: November 7, 2018.

Suzanne M. Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2018–25189 Filed 11–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of National Advisory Council for Human Genome Research.

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 Human Genome Research Institute Special Emphasis Panel; H3Africa Biorepository.

Date: December 14, 2018.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NHGRI, Greider Conference Room 3321, 6700B Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402-0838, pozzatr@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 13, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018-25108 Filed 11-16-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection

Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 2019 National Survey on Drug Use and Health (OMB No. 0930-0110)—Extension

The National Survey on Drug Use and Health (NSDUH) is a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older.

The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy (ONDCP), federal government agencies, and other organizations and researchers to establish policy, to direct program activities, and to better allocate resources.

This is an extension to the 2019 National Survey on Drug Use and Health (NSDUH). There are no substantive changes to the questionnaire or changes in burden. The 2019 NSDUH will continue to include questions on medication-assisted treatment (MAT) and kratom.

As with all NSDUH surveys conducted since 1999, including those prior to 2002 when the NSDUH was referred to as the National Household Survey on Drug Abuse, the sample size of the survey for 2019 will be sufficient to permit prevalence estimates for each of the 50 states and the District of Columbia. The total annual burden estimate is shown below in Table 1.

TABLE 1—ANNUALIZED ESTIMATED BURDEN FOR 2019 NSDUH

| Instrument | Number of respondents | Responses per respondent | Total number of responses | Hours per response | Total burden hours |
|------------------------------|-----------------------|--------------------------|---------------------------|--------------------|--------------------|
| Household Screening | 137,231 | 1 | 137,231 | 0.083 | 11,390 |
| Interview | 67,507 | 1 | 67,507 | 1.000 | 67,507 |
| Screening Verification | 4,116 | 1 | 4,116 | 0.067 | 276 |
| Interview Verification | 10,126 | 1 | 10,126 | 0.067 | 678 |
| Total | 137,231 | ..... | 218,980 | ..... | 79,851 |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 15E57B, 5600 Fishers Lane, Rockville, MD 20857 or email a copy to summer.king@samhsa.hhs.gov.

Written comments should be received by January 18, 2019.

Summer King,
Statistician.

[FR Doc. 2018-25142 Filed 11-16-18; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention's (CSAP) Drug Testing Advisory Board (DTAB) will convene via in person and web conference on December 4, 2018, from 9:00 a.m. EST to 3:30 p.m. EST and December 5, 2018, from 9:00 a.m. EST to 4:00 p.m.

The Board will meet in open-session in-person on December 4, 2018, from 9:00 a.m. EST to 3:30 p.m. EST to discuss the proposed Mandatory Guidelines for Federal Workplace Drug Testing Programs (urine specimens) with updates from the Department of Transportation, Nuclear Regulatory Commission, and the Department of Defense. There will be additional presentations from the Division of Workplace Programs' staff on urine, oral fluid, hair Mandatory Guidelines and future direction, updates on electronic chain of custody and standard variables, and emerging issues surrounding marijuana legalization. The board will meet in closed-session in-person on

December 5, 2018, from 9:00 a.m. EST to 4:00 p.m. EST to discuss confidential issues surrounding the proposed Mandatory Guidelines for Federal Workplace Drug Testing Programs (urine specimens, oral fluid, hair), invalids, studies from Johns Hopkins Behavioral Pharmacology Research Unit, impact of cannabis laws on drug testing and future direction, potential recommendations to the Assistant Secretary for Mental Health and Substance Use regarding additional drugs that may be tested for in the future, and lastly, program financials. Therefore, the December 5, 2018, meeting is closed to the public, as determined by the Assistant Secretary for Mental Health and Substance Use, SAMHSA, in accordance with 5 U.S.C. 552b(c)(4) and (9)(B), and 5 U.S.C. App. 2, Section 10(d).

Meeting registration information can be completed at <http://snacregister.samhsa.gov/MeetingList.aspx>. Web conference and call information will be sent after completing registration. Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees website, <https://www.samhsa.gov/about-us/advisory-councils/meetings> or by contacting the Designated Federal Officer, CAPT Sean J. Belouin, USPHS.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Dates/Time/Type: December 4, 2018, from 9:00 a.m. to 3:30 p.m. EST: Open; December 5, 2018, from 9:00 a.m. to 4:00 p.m. EST: Closed.

Place: Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact: CAPT Sean J. Belouin, USPHS, Senior Pharmacology and Regulatory Policy Advisor, Division of Workplace Programs, 5600 Fishers Lane, Room 16N06D, Rockville, Maryland 20857, Telephone: (240) 276-2600, Email: sean.belouin@samhsa.hhs.gov.

Charles LoDico,
Chemist.

[FR Doc. 2018-25116 Filed 11-16-18; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2018-0791]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0018

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, without change, of the following collection of information: 1625-0018, Official Logbook. Our ICR describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before December 19, 2018.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG-2018-0791] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* dhsdeskofficer@omb.eop.gov.

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr Ave SE, Stop 7710, Washington, DC 20593-7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An

ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2018-0791], and must be received by December 19, 2018.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <https://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0018.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 45457, September 7, 2018) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Official Logbook.

OMB Control Number: 1625–0018.

Summary: The Official Logbook contains information about the voyage, the vessel's crew, drills, watches, and operations conducted during the voyage. Official Logbook entries identify particulars of the voyage, including the name of the ship, official number, port of registry, tonnage, names and merchant mariner credential numbers of the master and crew, the nature of the voyage, and class of ship. In addition, it also contains entries for the vessel's drafts, maintenance of watertight integrity of the ship, drills and inspections, crew list and report of character, a summary of laws applicable to Official Logbooks, and miscellaneous entries.

Need: Title 46, United States Code (U.S.C.) 11301, 11302, 11303, and 11304 require applicable merchant vessels to maintain an Official Logbook. The Official Logbook contains information about the vessel, voyage, crew, and watch. Lack of these particulars would make it difficult for a seaman to verify vessel employment and wages, and for the Coast Guard to verify compliance with laws and regulations concerning vessel operations and safety procedures. The Official Logbook serves as an official record of recordable events transpiring at sea such as births, deaths, marriages, disciplinary actions, etc. Absent the Official Logbook, there would be no official civil record of these events. The courts accept log entries as proof that the logged event occurred. If this information was not collected, the Coast Guard's commercial vessel safety program would be negatively impacted, as there would be no official record of U.S. merchant vessel voyages. Similarly, those seeking to prove that an event required to be logged occurred would not have an official record available.

Forms: CG–706B, Official Logbook.

Respondents: Shipping companies.

Frequency: On occasion.

Hour Burden Estimate: The estimated annual burden remains at 1,750 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 8, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018–25149 Filed 11–16–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–1043]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0099

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0099, Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 18, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–1043] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2018–1043], and must be received by January 18, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email

alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

OMB Control Number: 1625-0099.

Summary: The collection of information requires passenger vessels to post two placards that contain safety and operating instructions on the use of cooking appliances that use liquefied gas or compressed natural gas.

Need: Title 46 U.S.C. 3306-(a)-(5) authorizes the Coast Guard to prescribe regulations for the use of vessel stores of a dangerous nature. These regulations are prescribed in both uninspected and inspected passenger vessel regulations.

Forms: None.

Respondents: Owners and operators of passenger vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 6,429 hours to 6,758 hours a year due to an increase in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 8, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018-25152 Filed 11-16-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2018-0882]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0047

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an

Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0047, Plan Approval and Records for Vital System Automation; without change. Our ICR describe the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 18, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG-2018-0882] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public participation and request for comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr Ave SE, Stop 7710, Washington, DC 20593-7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection;

and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG-2018-0882], and must be received by January 18, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Plan Approval and Records for Vital System Automation.

OMB Control Number: 1625-0047.

Summary: This collection pertains to the vital system automation on commercial vessels that is necessary to protect personnel and property on board U.S.-flag vessels.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to promulgate regulations for the safety of personnel and property on board vessels. Various sections within parts 61 and 62 of Title 46 of the Code of Federal Regulations contain these rules.

Forms: None.

Respondents: Owners, operators, shipyards, designers, and manufacturers of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 46,500 hours to 68,475 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 8, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018-25150 Filed 11-16-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2018-1042]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0070

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0070, Vessel Identification System; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 18, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG-2018-1042] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public participation and request for comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG-612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE. SE, STOP 7710, WASHINGTON, DC 20593-7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG-2018-1042], and must be received by January 18, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email

alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Vessel Identification System.

OMB Control Number: 1625-0070.

Summary: The Coast Guard established a nationwide vessel identification system (VIS) and centralized certain vessel documentation functions. VIS provides participating States and Territories with access to data on vessels numbered by states and Territories. Participation in VIS is voluntary.

Need: Title 46 U.S.C. 12501 mandates the establishment of a VIS. Title 33 CFR part 187 prescribes the requirements of VIS.

Forms: None.

Respondents: Governments of States and Territories.

Frequency: Occasionally.

Hour Burden Estimate: The estimated burden has increased from 5,168 hours to 5,792 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 8, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018-25151 Filed 11-16-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0122]

Agency Information Collection Activities: Screening Requirements for Carriers

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.

DATES: Comments are encouraged and will be accepted (no later than December 19, 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 34855) on July 23, 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: Screening Requirements for Carriers.

OMB Number: 1651-0122.

Current Actions: CBP proposes to extend the expiration date of this information collection with a decrease to the burden hours due to updated agency estimates. There is no change to the information collected.

Type of Review: Extension (without change).

Affected Public: Carriers.

Abstract: Section 273(e) of the Immigration and Nationality Act (8 U.S.C. 1323(e) the Act) authorizes the Department of Homeland Security to establish procedures which carriers must undertake for the proper screening of their alien passengers prior to embarkation at the port from which they are to depart for the United States, in order to become eligible for an automatic reduction, refund, or waiver of a fine imposed under section 273(a)(1) of the Act. The screening procedures are set forth in 8 CFR 273.3. As provided in 8 CFR 273.4, to be eligible to obtain such an automatic reduction, refund, or waiver of a fine, the carrier must provide evidence to CBP that it screened all passengers on the conveyance in accordance with the procedures listed in 8 CFR 273.3.

Some examples of the evidence the carrier may provide to CBP include: A description of the carrier's document screening training program; the number of employees trained; information regarding the date and number of improperly documented aliens intercepted by the carrier at the port(s) of embarkation; and any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States.

Estimated Number of Respondents: 41.

Estimated Time per Respondent: 100 hours.

Estimated Total Annual Burden Hours: 4,100.

Dated: November 13, 2018.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018-25092 Filed 11-16-18; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Soft Target Countermeasure Surveys

AGENCY: Office of Infrastructure Protection (IP), National Protection and Programs Directorate (NPPD), Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; new collection, 1670-NEW.

SUMMARY: DHS NPPD IP will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. NPPD IP has contracted a study to analyze a broad set of business security measures in terms of their costs and spillover effects, with an emphasis on identifying security measures that had a positive effect. To do so, the study team will survey the businesses' customers to evaluate the public's perceptions of the security measures, and evaluate the enhanced security measures on business operations and customer responses. DHS previously published this ICR in the **Federal Register** on Tuesday, June 19, 2018 for a 60-day public comment period. 0 comments were received by DHS. The purpose of this notice is to allow an additional 30 days for public comments. To provide greater transparency, NPPD is making an adjustment from the 60-day notice to show all related costs from the 60-day notice Supporting Statement A within the text of the 30-day notice.

DATES: Comments are encouraged and will be accepted until December 19, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to dhsdeskofficer@omb.eop.gov. All submissions must include the words "Department of

Homeland Security” and the OMB Control Number 1670–NEW—Soft Target Countermeasure Surveys.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Bill Schweigart at 703–603–5148 or at *Bill.Schweigart@HQ.DHS.GOV*.

SUPPLEMENTARY INFORMATION: Title II of the Homeland Security Act of 2002 (Pub. L. 107–296), as amended (2006), directs the DHS to coordinate all Federal homeland security activities, including infrastructure protection. On behalf of DHS, NPPD IP manages the Department’s program to protect and enhance the resilience of the Nation’s physical and cyber infrastructure within the 16 critical infrastructure sectors designated by Presidential Policy Directive 21 Critical Infrastructure Security and Resilience (PPD–21) (February 2013) by implementing the National Infrastructure Protection Plan (NIPP) 2013: Partnering for Critical Infrastructure Security and Resilience. NPPD IP accomplishes their mission by building sustainable partnerships with its public and private sector stakeholders to enable more effective sector coordination, information sharing, and program development and implementation.

The Homeland Security Act of 2002, as amended (2006), also grants DHS the authority to create university-based Centers of Excellence (COEs) using grants, cooperative agreements and contracts. The COEs are authorized by Congress and selected by DHS Science and Technology Directorate (S&T) through a competitive selection process. Among the COEs is The National Center for Risk & Economic Analysis of Terrorism Events (CREATE) at The University of Southern California. The Strategic Sourcing Program Office for DHS has approved the Basic Ordering

Agreements (BOAs) for DHS-wide use. Any and all DHS Components requiring the research, analysis, and/or services of the COEs described in the COE BOAs may issue Task Orders under the BOAs through their assigned warranted Contracting Officers.

NPPD IP has contracted a study through the approved BOA with CREATE to analyze a broad set of security measures used in the Commercial Facilities critical infrastructure sector in terms of their costs and spillover effects, with an emphasis on identifying security measures that had a positive effect. This includes examining a broad range of measures including increased police/security guard presence and other non- or less-invasive options. The study team will work with business leaders to identify locations that have implemented various security measures already, and develop and administer surveys for statistical analysis and modeling. Additionally, the study team will survey the businesses’ customers to evaluate the public’s perceptions of the security measures, and evaluate the enhanced security measures on business operations and customers’ responses.

CREATE will work with NPPD personnel to identify locations that have implemented various security measures already, and develop and administer surveys for statistical analysis and modeling. Management professionals (Chief Operating Officers, Head of Marketing, and Head of Security) from five selected businesses will be asked questions tailored to the five specific businesses regarding current and planned safety measures, management understanding of customer perceptions of security measures, management beliefs about the impacts of security measures, management beliefs about how security measures change customer behaviors and business volume, and some select demographic information. This will be conducted as a structured interview, herein referred to as “Business Structured Interview”, and is needed to obtain necessary and relevant data for subsequent economic analyses. The purpose of these analyses is to evaluate whether specific counterterrorism efforts have a negative or positive impact on the company in question.

CREATE will administer a customer survey, herein referred to as “Customer Survey”, regarding awareness of countermeasures in the Commercial Facilities sector, attitudes and perceptions toward safety, impacts (physical, psychological, and monetary) countermeasures have on customers, and select demographic and individual

difference questions. There will be five variations of this survey targeted to each of the five specific businesses with slight variations in the language as a result, however the same information is being sought from the groups. These surveys are intended to create an understanding of the impacts of security countermeasures on customers’ visitors’ perceptions and behaviors at each of the specific target businesses selected.

Information will be analyzed to determine whether the spillover effects are positive and negative and to what extent. Statistical analysis of the results will identify the direct impacts. These will be fed into an economy-wide modeling approach known as computable general equilibrium (CGE) analysis to determine the “ripple” effects on the entire local economy. The analysis will be performed with an eye toward uncertainty analysis, as well in terms of the framing of survey questions and, rigorously specifying the confidence intervals for the statistical results.

The DHS and CREATE research team will use the information being collected in order to inform the study described above.

The Business Structured Interview will be conducted as interviews, either in-person or via video conferencing that will have a list of questions to help structure and guide discussions. The Customer Survey will be created and sent utilizing a professional-grade software, “Research Core,” by Qualtrics. The software allows the researchers to send customized email invitations to respondents, track their progress, and prevent fraud and abuse of the survey.

This is a new information collection.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title of Collection: Soft Target Countermeasure Surveys.
OMB Control Number: 1670–NEW.
Frequency: Annually.
Affected Public: Private and Public Sector.
Number of Respondents: 2020.
Estimated Time per Respondent: 25 minutes.
Total Burden Hours: 677 hours.
Total Respondent Opportunity Costs: \$24,129.
Total Respondent Out-of-Pocket Cost: \$0.
Total Government Cost: \$300,000.

Scott Libby,

Deputy Chief Information Officer.

[FR Doc. 2018–25162 Filed 11–16–18; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[1653–0041]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Designation of Attorney in Fact/Revocation of Attorney in Fact

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** (83 FR 44642) on August 31, 2018, allowing for a 30-day comment period. USICE received no comments during this period. Based on better estimates, ICE is making an adjustment from the 60-day notice to reflect a decrease in the number of respondents. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until December 19, 2018.

ADDRESSES: Interested persons are invited to submit written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, to the Office of Information and Regulatory

Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to dhsdeskofficer@omb.eop.gov. All submissions must include the words “Department of Homeland Security” and the OMB Control Number 1653–0041.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Designation of Attorney in Fact/Revocation of Attorney in Fact.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* Forms I–312 and I–312A, USICE.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. The data collected on Form I–312 is used by ICE to ensure that an Obligor presents an official request for remittance of collateral security and/or accrued interest to a duly appointed Attorney In Fact for an Obligor when the Obligor chooses to invoke this option. The data collected on Form I–312A is used by ICE to ensure that an Obligor’s intent to expressly revoke a previously valid Attorney In Fact designation is properly documented.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: 700 responses at 1 hour (60 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 700 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* \$20,300.

Dated: November 13, 2018.

Scott Elmore,

PRA Clearance Officer, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2018–25098 Filed 11–16–18; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–19515]

Intent To Request Extension From OMB of One Current Public Collection of Information: Air Cargo Security Requirements

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0040, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. This ICR involves three broad categories of affected populations operating under a security program: Aircraft operators, foreign air carriers, and indirect air carriers. The collections of information that make up this ICR include security programs, security threat assessments (STA) on certain individuals, known shipper data via the Known Shipper Management System (KSMS), Indirect Air Carrier Management System (IACMS), and evidence of compliance recordkeeping.

DATES: Send your comments by January 18, 2019.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT:

Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

OMB Control Number 1652-0040 *Air Cargo Security Requirements*, 49 CFR parts 1515, 1540, 1542, 1544, 1546, and 1548. Under the authority of 49 U.S.C. 44901, TSA's regulations impose screening requirements for cargo and other property transported on commercial aircraft (passenger and all-cargo). Chapter XII of title 49, Code of Federal Regulations defines how TSA screens all property, including U.S. mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard passenger and cargo aircraft. Pursuant to the requirements of the 9/11 Commission Act of 2007, TSA now screens 100 percent of cargo transported on passenger aircraft and continues to improve cargo security with a multi-layered approach to cargo screening. Collections of information associated with these cargo screening

requirements fall under OMB control number 1652-0053.

The extension of this ICR is necessary to ensure compliance with TSA's regulations covering the acceptance, handling, and screening of cargo transported by air. The uninterrupted collection of this information will allow TSA to continue to ensure implementation of these vital security measures for the protection of the traveling public.

Data Collection

This information collection requires entities regulated by TSA, which includes aircraft operators, foreign air carriers, and indirect air carriers (IACs), to collect certain information as part of the implementation of a standard security program, to submit modifications to the standard security program to TSA for approval, and update such programs as necessary. As part of these security programs, the regulated entities must also collect personal information and submit such information to TSA so that TSA may conduct STAs on individuals with unescorted access to cargo. This includes each individual who is a general partner, officer, or director of an IAC or an applicant to be an IAC, and certain owners of an IAC or an applicant to be an IAC; and any individual who has responsibility for screening cargo under 49 CFR parts 1544, 1546, or 1548.

Further, both companies and individuals whom aircraft operators, foreign air carriers, and IACs have qualified to ship cargo on passenger aircraft, also referred to as "known shippers," must submit information to TSA. This information is collected electronically through the KSMS. In accordance with TSA security program requirements, regulated entities may use an alternate manual submission method to identify known shippers.

Regulated entities must also enter into IACMS the information required from applicants requesting to be approved as IACs in accordance with 49 CFR 1548.7 and the information required for their IAC annual renewal. Regulated entities must also maintain records, including records pertaining to security programs, training, and compliance to demonstrate adherence with the regulatory requirements. These records must be made available to TSA upon request. The forms used in this collection of information include the Aviation Security Known Shipper Verification Form and the Security Threat Assessment Application.

Estimated Burden Hours

This ICR covers multiple activities. TSA estimates that there will be—

(1) 4,050 annual respondents regarding Security Programs, for an annual hour burden of 16,403;

(2) 98,500 respondents applying for an STA, for an annual hour burden of 24,625;

(3) 26,700 respondents accessing the KSMS, for an annual hour burden of 23,872; and

(4) 4,050 annual respondents (these respondents are the same respondents identified in (1) above) to the recordkeeping requirement, for an annual hour burden of 8,208 hours.

Comprehensively, TSA estimates a total annual hour burden of 73,108 hours for this collection.

Dated: November 14, 2018.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2018-25203 Filed 11-16-18; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[Docket No. FWS-HQ-IA-2018-0052;
FXIA16710900000-178-FF09A30000]

Foreign Endangered Species; Marine Mammals; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA) and foreign or native species for which the Service has jurisdiction under the Marine Mammal Protection Act (MMPA). With some exceptions, the ESA and the MMPA prohibit activities with listed species unless Federal authorization is issued that allows such activities. The ESA and MMPA also require that we invite public comment before issuing permits for endangered species or marine mammals.

DATES: We must receive comments by December 19, 2018.

ADDRESSES: *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at <http://www.reginfo.gov>

www.regulations.gov in Docket No. FWS-HQ-IA-2018-0052.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- **Internet:** <http://www.regulations.gov>.

Search for and submit comments on Docket No. FWS-HQ-IA-2018-0052.

- **U.S. mail or hand-delivery:** Public Comments Processing, Attn: Docket No. FWS-HQ-IA-2018-0052; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703-358-2104, via email at DMAFR@fws.gov, or via the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments on <http://www.regulations.gov>, unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at <http://www.regulations.gov>, your entire comment, including any personal

identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and section 104(c) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits/ESA and MMPA prohibit/MMPA prohibits activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10 of the ESA allow activities for scientific purposes or to enhance the propagation or survival of the affected species. Regulations regarding permit issuance under the ESA are in title 50 of the Code of Federal Regulations in part 17. ESA permits cover a wide range of activities pertaining to foreign listed species, including import, export, and activities in the United States. Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the marine mammal applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

III. Permit Applications

We invite comments on the following applications.

A. Endangered Species

Applicant: Omaha's Henry Doorly Zoo & Aquarium, Omaha, NE; Permit No. 78380C

The applicant requests a permit to import one live captive-bred male Siberian tiger (*Panthera tigris altaica*) Zoo de Granby, Granby, Quebec, Canada for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: U.S. Geological Survey, Missoula, MT; Permit No. 80989C

The applicant requests authorization to import skin and mouth swabs from wild Sonora tiger salamanders (*Ambystoma tigrinum stebbinsi*), taken in Sonora, Mexico, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: University of Texas at Arlington, Amphibian and Reptile Diversity Research Center, Arlington, TX, Permit No. 93328C

The applicant requests authorization to export and reimport nonliving museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: University of Utah dba Natural History Museum of Utah, Salt Lake City, UT; Permit No. 166772

The applicant requests authorization to export and reimport nonliving museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Oregon Wildlife Foundation, Douglas, AZ; Permit No. 60203C

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for slender-horned gazelle (*Gazella leptoceros*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Maria de Lourdes Martinez Estevez, University of California Santa Cruz, Santa Cruz, CA; Permit No. 77865C

The applicant requests a permit to import 189 skin and shell samples derived from the hawksbill sea turtles (*Eretmochelys imbricata*) from Grupo Tortuguero de las Californias A.C., La Paz, Baja California Sur, Mexico, for scientific research purposes. This notification is for a single import.

Applicant: Arthur Bogan, NC Museum of Natural Sciences, Raleigh, NC; Permit No. 86122C

The applicant requests authorization to export biological samples from captive bred Louisiana pearlshell mussels (*Margaritifera hembeli*) and Alabama pearlshell mussels (*Margaritifera marrianae*) for the

purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Turtle Back Zoo, West Orange, NJ; Permit No. 75693A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species: Komodo monitor (*Varanus komodoensis*), African penguin (*Spheniscus demersus*), Andean condor (*Vultur gryphus*), white-naped crane (*Grus vipio*), white-cheeked gibbon (*Nomascus leucogenys*), maned wolf (*Chrysocyon brachyurus*), snow leopard (*Uncia uncia*), spotted leopard (*Panthera pardus*), and African lion (*Panthera leo*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Great Plains Zoo, Sioux Falls, SD; Permit No. 84932C

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species: Ring-tailed lemur (*Lemur catta*), Siamang gibbon (*Symphalangus syndactylus*), Siberian tiger (*Panthera tigris altaica*), snow leopard (*uncia uncia*), African lion (*Panthera leo*), black rhinoceros (*Diceros bicornis*), African wild dog (*Lycaon pictus*), cheetah (*Acinonyx jubatus*), Komodo monitor (*Varanus komodoensis*), Galapagos tortoise (*Chelonoidis nigra*), Panamanian golden frog (*Atelopus varius zeteki*), and Chinese alligator (*Alligator sinensis*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Surprise Spring Foundation, Prescott, AZ; Permit No. 93748A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species: radiated tortoise (*Astrochelys radiata*), yellow-spot river turtle (*Podocnemis unifilis*), Galapagos tortoise (*Chelonoidis nigra*), and spotted pond turtle (*Geoclemys hamiltonii*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Michael Burroughs, Las Vegas, NV; Permit No. 94167A

The applicant requests renewal of a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance the propagation or survival of the species. This notification covers activities to be

conducted by the applicant over a 5-year period.

Applicant: Kevin Loewengruber, Southgate, MI; Permit No. 84345C

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: H. Yturria Land and Cattle Co., Brownsville, TX; Permit No. 86124C

The applicant requests a permit authorizing the culling of excess red lechwe (*Kobus leche*) from the captive herd maintained at their facility, to enhance the species' propagation and survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Richard Prager, Greenwich, CT; Permit No. 93301C

Applicant: Roger Bennett, Ardmore, TN; Permit No. 93048C

Applicant: Ronald Williams, Midland, TX; Permit No. 87946C

Applicant: Aaron Kik, Lowell, MI; Permit No. 87966C

Applicant: John Lortscher, Moneta, VA; Permit No. 90004C

Applicant: Mike Cunningham, Georgetown, TX; Permit No. 86992C

B. Endangered Marine Mammals and Marine Mammals

Applicant: U.S. Fish and Wildlife Service, Anchorage, AK; Permit No. 82088B

The applicant requests authorization to renew and amend their permit to conduct research activities on polar bears (*Ursus maritimus*) and export and import biological samples for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

IV. Next Steps

If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching <http://www.regulations.gov> for the permit

number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to www.regulations.gov and search for "12345A".

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations, and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and its implementing regulations.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2018–25120 Filed 11–16–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2018–0085; FXIA16710900000–178–FF09A30000]

Foreign Endangered Species; Receipt of Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on an application to conduct certain activities with a foreign species that is listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for endangered species.

DATES: We must receive comments by December 19, 2018.

ADDRESSES:

Obtaining Documents: The application, application supporting materials, and any comments and other materials that we receive will be available for public inspection at <http://www.regulations.gov> in Docket No. FWS–HQ–IA–2018–0085.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet:* <http://www.regulations.gov>. Search for and

submit comments on Docket No. FWS–HQ–IA–2018–0085.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2018–0085; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2104, via email at DMAFR@fws.gov, or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments on <http://www.regulations.gov>, unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at <http://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all

submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10 of the ESA allow activities for scientific purposes or to enhance the propagation or survival of the affected species. Regulations regarding permit issuance under the ESA are in title 50 of the Code of Federal Regulations in part 17. ESA permits cover a wide range of activities pertaining to foreign listed species, including import, export, and activities in the United States.

III. Permit Application

We invite comments on the following application.

Applicant: U.S. Fish and Wildlife Service, Ajo, AZ; Permit No. 88065C

The applicant requests a permit to export up to six captive-born Sonora pronghorn (*Antilocapra americana sonoriensis*) to the Comision de Ecologia y Desarrollo Sustentable del Estado de Sonora—(CEDES), Sonora, Mexico, for reintroduction into the wild for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

IV. Next Steps

If we issue a permit to the applicant listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching <http://www.regulations.gov> for the permit number listed above in this document. That is, to find information about the potential issuance of Permit No. 88065C, you would go to <http://www.regulations.gov> and search for “88065C”.

V. Authority

We issue this notice under the authority of the Endangered Species Act

of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2018–25121 Filed 11–16–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

**[189A2100DD/AAK001030/
A0A501010.999900 253G; OMB Control
Number 1076–0134]**

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Student Transportation Form

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 19, 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 Dr. Joe Herrin, Bureau of Indian Education, 1849 C Street NW, MS–3620–MIB, Washington, DC 20240; facsimile: (202) 208–7658; email: Joe.Herrin@BIE.edu. Please reference OMB Control Number 1076–0134 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Dr. Joe Herrin, phone: (202) 208–7658. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the

public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 16, 2018 (83 FR 16380). No comments were received.

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 BIE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BIE is requesting renewal of OMB approval for the Student Transportation Form. The Student Transportation regulations in 25 CFR part 39, subpart G, contain the program eligibility and criteria that govern the allocation of transportation funds. Information collected from the schools will be used to determine the rate per mile. The information collection provides transportation mileage for Bureau-funded schools, which determines the allocation of transportation funds. This information is collected using a web-based system, Web Education Transportation (Web ET).

Title of Collection: Student Transportation Form.

OMB Control Number: 1076–0134.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Contract and Grant schools; Bureau-operated schools.

Total Estimated Number of Annual Respondents: 183 per year, on average.

Total Estimated Number of Annual Responses: 183 per year, on average.

Estimated Completion Time per Response: Two hours.

Total Estimated Number of Annual Burden Hours: 366 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per year.

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2018–25172 Filed 11–16–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/
A0A501010.999900 253G; OMB Control
Number 1076–0047]

Agency Information Collection Activities; Reindeer in Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 19, 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 Mr. Keith Kahklen, Natural Resources Manager, Bureau of Indian Affairs, P.O. Box 21647, Juneau, Alaska 99802–6147; email: Keith.Kahklen@bia.gov; facsimile: (907) 586–7120. Please reference OMB Control Number 1076–0047 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact: Mr. Keith Kahklen, phone: (907) 586–7618. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 9, 2018 (83 FR 15172). One comment was received, but the comment was not substantive.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Bureau of Indian Affairs (BIA) is seeking renewal of the approval for the information collection conducted under 25 CFR part 243, Reindeer in Alaska, which is used to monitor and regulate the possession and use of Alaskan reindeer by non-Natives in Alaska. The information to be provided includes an applicant's name and address, and where an applicant will keep the reindeer. The applicant must fill out an application for a permit to get a reindeer for any purpose, and is required to report on the status of reindeer annually or when a change occurs, including changes prior to the date of the annual report. This

information collection utilizes four forms. A response is required to obtain and/or retain a benefit.

Title of Collection: Reindeer in Alaska.

OMB Control Number: 1076–0047.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Non-Indians who wish to possess Alaskan reindeer.

Total Estimated Number of Annual Respondents: 4 per year, on average (1 respondent for the Sale Permit for Alaska Reindeer, 1 respondent for the Sale Report Form for Alaska Reindeer, 1 respondent for the Special Use Permit for Alaskan Reindeer, and 1 respondent for the Special Use Reindeer Report).

Total Estimated Number of Annual Responses: 4.

Estimated Completion Time per Response: 5 minutes for the Sale Permit and Report forms; and 10 minutes for the Special Use Permit and Report forms, on average.

Total Estimated Number of Annual Burden Hours: 30 minutes.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once a year, on average.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2018–25171 Filed 11–16–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0149, 1076–0152, and 1076–0158]

Agency Information Collection Activities; Class III Gaming Procedures, Tribal Revenue Allocation Plans, and Gaming on Trust Lands Acquired After October 17, 1988

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Assistant Secretary—Indian Affairs (AS–IA) proposing to renew three information collections.

DATES: Interested persons are invited to submit comments on or before January 18, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Ms. Paula Hart, U.S. Department of the Interior, Office of Indian Gaming, 1849 C Street NW, Mail Stop 3657, Washington, DC 20240; email: indiangaming@bia.gov. Please reference OMB Control Numbers 1076–0149, 1076–0152, and 1076–0158 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Paula Hart, U.S. Department of the Interior, Office of Indian Gaming, telephone: 202–219–4066.

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 AS–IA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the AS–IA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the AS–IA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Abstract: The collection of information ensure that the provisions of the Indian Gaming Regulatory Act (IGRA) and other applicable requirements are met when federally recognized Tribes submit Class III procedures for review and approval by the Secretary of the Interior. Sections 291.4, 291.10, 291.12 and 291.15 of 25 CFR 291, Class III Gaming Procedures, specify the information collection requirement. An Indian Tribe must ask the Secretary to issue Class III gaming procedures. The information to be collected includes: The name of the Tribe, the name of the State, Tribal documents, State documents, regulatory schemes, the proposed procedures, and other documents deemed necessary.

Title of Collection: Class III Gaming Procedures.

OMB Control Number: 1076–0149.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Responses: 12.

Total Estimated Number of Annual Responses: 12.

Estimated Completion Time per Response: 320 hours.

Total Estimated Number of Annual Burden Hours: 3,840 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$0.

* * * * *

Abstract: An Indian tribe must ask the Secretary to approve a Tribal revenue allocation plan. In order for Indian Tribes to distribute net gaming revenues in the form of per capita payments, information is needed by the AS–IA to ensure that Tribal revenue allocation plans include: (1) Assurances that certain statutory requirements are met, (2) a breakdown of the specifics used to which net gaming revenues will be allocated, (3) eligibility requirements for participation, (4) tax liability notification, and (5) the assurance of the protection and preservation of the per capita share of minors and legal incompetents. Sections 290.12, 290.17, 290.24 and 290.26 of 25 CFR part 290, Tribal Revenue Allocation Plans, specify the information collection requirement. The information to be collected includes: The name of the Tribe, Tribal documents, the allocation plan, and other documents deemed necessary.

Title of Collection: Tribal Revenue Allocation Plans.

OMB Control Number: 1076–0152.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Responses: 20.

Estimated Completion Time per Response: 100 hours.

Total Estimated Number of Annual Burden Hours: 2,000 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$0.

* * * * *

Abstract: The collection of information will ensure that the provisions of IGRA, Federal law, and the trust obligations of the United States are met when Federally recognized Tribes submit an application under 25 CFR part 292. The applications covered by this OMB Control No. are those seeking a secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, would be in the best interest of the Indian Tribe and its members, and would not be detrimental to the surrounding community.

Title of Collection: Gaming on Trust Lands Acquired After October 17, 1988.

OMB Control Number: 1076–0158.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Responses: 2.

Total Estimated Number of Annual Responses: 2.

Estimated Completion Time per Response: 1,000 hours.

Total Estimated Number of Annual Burden Hours: 2,000 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: On occasion.

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2018–25100 Filed 11–16–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/AOA501010.999900 253G; OMB Control Number 1076–0183]

Agency Information Collection Activities; Secretarial Elections

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 19, 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 Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street NW, Mail Stop 3645–MIB, Washington, DC 20240; or by email to Laurel Iron Cloud at laurel.ironcloud@bia.gov. Please reference OMB Control Number 1076–0183 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Laurel Iron Cloud by email at laurel.ironcloud@bia.gov, or by telephone at (202) 513–7641. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection

requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on June 14, 2018 (83 FR 27795). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Under the Indian Reorganization Act, Indian tribes have the right to organize and adopt constitutions, bylaws, and any amendments thereto, and ratify charters of incorporation, through elections called by the Secretary of the Interior, according to rules prescribed by the Secretary. See 25 U.S.C. 476, 477, 503. The Secretary's rules for conducting these elections, known as "Secretarial elections," and approving the results are at 25 CFR 81. In most cases, the tribe requests a Secretarial election; however, an individual voting member of a tribe may also request a Secretarial election by petition. These rules also establish the procedures for an individual to petition for a Secretarial election.

BIA requires the tribe to submit a formal request for Secretarial election, including: A tribal resolution; the document or language to be voted on in the election; a list of all tribal members who are age 18 or older in the next 120 days (when the election will occur), including their last known addresses,

voting districts (if any), and dates of birth, in an electronically sortable format.

While much of the information the tribe prepares for a Secretarial election (e.g., list of members eligible to vote) would be required if the tribe instead conducted its own tribal election, the Secretary's rules establish specifics on what a tribal request or petition for election must contain. These specifics are necessary to ensure the integrity of Secretarial elections and allow Bureau of Indian Affairs (BIA) and tribal personnel the ability to consistently administer elections.

Title of Collection: Secretarial Elections.

OMB Control Number: 1076-0183.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Indian Tribes and their members.

Total Estimated Number of Annual Respondents: 252,041.

Total Estimated Number of Annual Responses: 252,041.

Estimated Completion Time per Response: Varies from 15 minutes to 40 hours.

Total Estimated Number of Annual Burden Hours: 64,305.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour

Burden Cost: \$126,000.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2018-25179 Filed 11-16-18; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00000.L19200000.ET0000.
LRORF1708700.241A.XXX MO #4500125063]

Notice of Withdrawal Extension Application, United States Air Force, Public Land Order No. 7419, and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Air Force (DAF), Nellis Air Force Base (AFB) has filed an application with the Department of the Interior to extend the duration of Public Land Order (PLO) No. 7419 for an additional 20-year term for the same military purpose and location. PLO No. 7419 withdrew 2,252 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws, but not the mineral leasing laws. PLO No. 7419 was issued for the United States Air Force to provide safety buffers from potentially hazardous areas, to protect populated areas, and to comply with ammunition and explosives safety standards. This Notice gives the public an opportunity to comment on the withdrawal extension application and to request a public meeting. This Notice also amends PLO No. 7419's legal land description to reflect an amended land survey plat completed in 2016.

DATES: All persons who wish to submit comments, suggestions, objections, or request a public meeting in connection with the withdrawal extension application may do so in writing until February 19, 2019.

ADDRESSES: Comments on this withdrawal extension application and public meeting opportunity should be sent to the District Manager, Bureau of Land Management (BLM), Southern Nevada District Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130-2301.

FOR FURTHER INFORMATION CONTACT: Tom Seley, Project Manager, BLM Southern Nevada District Office, at email tseley@blm.gov or call 702-515-5293. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The DAF, Nellis AFB, has filed an application with the Department of the Interior to extend the duration of PLO No. 7419 for an additional 20-year term. The PLO withdrew approximately 2,252 acres of public lands from settlement, sale, location or entry under the general land laws, including the United States mining laws, but not from leasing under the mineral leasing laws, subject to valid existing rights. The purpose of the withdrawal is for military use at Nellis AFB to provide safety buffers from potentially hazardous areas, to protect populated areas, and to facilitate DAF

compliance with the Department of Defense (DOD) Directive No. 6055.09E regarding ammunition and explosives safety standards. The safety buffer zone includes security patrol roads and a security checkpoint. PLO No. 7419 will expire on December 8, 2019, unless it is extended.

As required by Section 204(b)(1) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1714(b)(1), and BLM regulations at 43 CFR part 2300, the BLM is publishing Notice of the DAF, Nellis AFB Application.

This Notice amends the legal land description and acreage in PLO No. 7419, as noted on an amended plat accepted by the Nevada BLM Chief, Cadastral Survey on October 17, 2016. The lands withdrawn by PLO No. 7419 are described as follows:

Mount Diablo Meridian, Nevada

T. 19 S., R. 62 E.,

Sec. 25, lots 1 and 3, and S $\frac{1}{2}$ NE $\frac{1}{4}$;

Sec. 35, those portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ as conveyed to the United States of America by Warranty Deed recorded October 19, 1999 in Book No. 991019, Instrument No. 00259, as Document No. 19991019.00259 in Clark County, Nevada.

T. 19 S., R. 63 E.,

Sec. 27, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 34, NE $\frac{1}{4}$.

T. 20 S., R. 62 E.,

Sec. 1, lots 9 and 10, and lots 13 thru 20;

Sec. 2, SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 10, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 11, lots 1 thru 8, E $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$;

Sec. 12, lots 2 thru 7, and lots 12 and 13;

Sec. 15, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 20 S., R. 63 E., unsurveyed,
Sec. 3, SE $\frac{1}{4}$.

The areas described contain approximately 2,125.90 acres in Clark County.

The use of a right-of-way, interagency agreement, or cooperative agreement would not apply or provide adequate protection for safety buffers from potentially hazardous areas, protect populated areas, or comply with DOD Directive No. 6055.09E regarding ammunition and explosive safety standards.

No water rights would be required to fulfill the purpose of the requested withdrawal extension.

There are no suitable alternative sites since the lands described are contained within Nellis AFB.

For a period until February 19, 2019, all persons who wish to submit comments, suggestions, or objections in connection with the withdrawal extension application may present their views in writing to the BLM District Manager at the address in the

ADDRESSES section. Comments, including names and street addresses of respondents, will be available for public review at the BLM Southern Nevada District Office, during regular business hours, 8:00 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting may be afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the withdrawal extension application must submit a written request to the BLM District Manager, Southern Nevada District Office at the address in the **ADDRESSES** section, by February 19, 2019. If the authorized officer determines that a public meeting will be held, a notice of the date, time, and place will be published in the **Federal Register**, local newspapers, and posted on the BLM website at: <https://www.blm.gov/media/press-releases> at least 30 days before the scheduled date of the meeting.

The withdrawal extension application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Brian C. Amme,
Acting Nevada State Director.

[FR Doc. 2018-25163 Filed 11-16-18; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau of Indian Affairs

[LLNM004400. L16100000.DO0000.
LXSSG0690000 18XL1109AF]

Notice of Availability of the Draft Oklahoma, Kansas, and Texas Joint Environmental Impact Statement/ Bureau of Land Management Resource Management Plan and Bureau of Indian Affairs Integrated Resource Management Plan

AGENCY: Bureau of Land Management, Interior; and Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) and Bureau of Indian Affairs (BIA) have prepared a Draft Joint Environmental Impact Statement (EIS)/BLM Draft Resource Management Plan (RMP) and BIA Integrated Resource Management Plan (IRMP) for the BLM Oklahoma Field Office, BIA Southern Plains Region, and BIA Eastern Oklahoma Region, and by this Notice is announcing the opening of the public comment period.

DATES: To ensure that comments will be considered, the BLM and BIA must receive written comments on the Draft Joint EIS/BLM RMP and BIA IRMP within 90-days of the date the Environmental Protection Agency publishes its Notice of Availability for the Draft Joint EIS/BLM RMP and BIA IRMP in the **Federal Register**. The BLM and BIA will announce future public meetings, hearings, or other public participation activities at least 15 days in advance, through public notices, media releases, and/or direct mailings.

ADDRESSES: You may submit comments related to the Draft Joint EIS/BLM RMP and BIA IRMP through either of the following methods:

- **Project Website:** <https://www.blm.gov/programs/planning-and-nepa/plans-in-development/new-mexico/oklahoma-rmp>.

- **Email:** BLM_NM_OKT_RMP@blm.gov.

- **Fax:** 405-579-7101, Attn.: Mr. Patrick Rich, RMP Team Lead.

- **Mail:** Bureau of Land Management, Oklahoma Field Office, Attn.: Patrick Rich, RMP Team Lead, 201 Stephenson Parkway, Suite 1200, Norman, Oklahoma 73072.

- **Mail:** BIA Eastern Oklahoma Regional Office, Attn.: RMP Comments, P.O. Box 8002, Muskogee, Oklahoma 74402-4600.

- **Mail:** BIA Southern plains Regional Office, Attn.: RMP Comments, P.O. Box 368, Anadarko, Oklahoma 73005-0368.

Copies of the Draft Joint EIS/BLM RMP and BIA IRMP are available from the BLM and the BIA at the following locations:

- BLM Oklahoma Field Office, 201 Stephenson Parkway, Suite 1200, Norman, Oklahoma 73072
- BIA Eastern Oklahoma Regional Office, 3100 Peak Blvd., Muskogee, Oklahoma 74401
- BIA Eastern Oklahoma Regional Office, 100 Riverside Drive, Anadarko, Oklahoma 73005

- BLM New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508

The Draft Joint EIS/BLM RMP and BIA IRMP background documents are available on the ePlanning website at: <https://www.blm.gov/programs/planning-and-nepa/plans-in-development/new-mexico/oklahoma-rmp>.

FOR FURTHER INFORMATION CONTACT:

Patrick Rich, RMP Team Lead; telephone: 405-579-7154; address: 201 Stephenson Parkway, Suite 1200, Norman, Oklahoma 73072; or email: prich@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: In the Draft Joint EIS/BLM RMP and BIA IRMP, the BLM and BIA analyze the environmental consequences of four alternatives under consideration for managing Federal lands and minerals within the Oklahoma-Kansas-Texas planning area. The BLM Oklahoma Field Office administers approximately 15,100 acres of public lands, including approximately 11,800 acres at the Cross Bar Management Area near Amarillo, Texas; about 3,300 acres of small tracts scattered across the planning area; and Federal lands along the 116-mile stretch of the Red River between the North Fork of the Red River and the 98th Meridian (Red River area). No exact acreages of Federal lands along the Red River are available at this time, because the full 116-mile stretch of land has not been surveyed. The Oklahoma Field Office also administers approximately 4,810,900 acres of subsurface Federal mineral estate across the planning area, including approximately 3,991,100 acres underlying surface estate managed by other Federal agencies, such as U.S. Fish and Wildlife Service, U.S. Forest Service, and National Park Service, and approximately 408,000 acres of split-estate, where Federal minerals underlie private surface estate. The RMP only pertains to Federal lands and has no effect on the boundary of the Federal lands.

The BIA decision area includes approximately 394,200 surface acres and 2,033,500 mineral estate acres for the BIA Eastern Oklahoma Regional Office. Approximately 1,474,500 acres of the BIA Eastern Oklahoma Regional Office jurisdictional area is limited to

coal or other minerals in Osage County. The BIA decision area also includes approximately 457,500 surface acres and 632,000 mineral estate acres for the BIA Southern Plains Regional Office. This includes lands and mineral estate in Oklahoma, Kansas, Texas, and Richardson County, Nebraska.

The BLM is the lead agency in developing the land use plan, while the BIA is a co-lead partner in this joint, integrated planning effort. The Draft Joint EIS/BLM RMP and BIA IRMP provides a land use plan that will replace the BLM's current 1994 Oklahoma RMP, the 1991 Kansas RMP, and the 1996 Texas RMP, as amended. RMP revision and consolidation is necessary due to the numerous changes, including renewable energy, recreation, special status species, visual resources, and wildlife habitat that have occurred across the BLM Oklahoma Field Office planning area since publication. New resource data are available for consideration, and new policies, guidelines, and laws have been established.

Land use planning and NEPA regulations require the BLM and BIA to formulate a reasonable range of alternatives to consider different management scenarios and different means of addressing resource or resource-use conflicts. Established planning criteria, as outlined in 43 CFR part 1610, guide the alternatives-development process. This pursuit provides the BLM, BIA, and the public with an understanding of the various ways in which challenges associated with resources and resource uses might be resolved. This draft land use plan offers the BLM State Director for New Mexico, Oklahoma, Kansas, and Texas; the BIA Eastern Oklahoma Regional Director; and the BIA Southern Plains Regional Director a reasonable range of alternatives from which to make informed decisions. The four alternatives analyzed in the Draft Joint EIS/BLM RMP and BIA IRMP are generally described as follows:

- Alternative A (No Action) is a continuation of existing land use management actions under the current Kansas, Oklahoma, and Texas RMPs and associated amendments;
- Alternative B (Agency Preferred) represents a balanced mix of land use management actions intended to address current and future land use management issues, including provisions for energy development, recreational opportunities, and conservation of natural resources;
- Alternative C represents land use management strategies intended primarily to preserve and protect

ecosystem health and resource values across the planning area; and

- Alternative D represents land use management strategies intended primarily to develop resources and promote economic development across the decision area, such as livestock grazing, energy and mineral development, and recreation.

The BLM is considering areas of critical environmental concern (ACEC) during this planning process, and has proposed one ACEC in the Draft RMP to protect certain resource values. Pertinent information regarding this ACEC, including proposed designation acreage, resource-use limitations, if designated, and the alternatives affected are summarized below.

Cross Bar Management Area ACEC: Alternative C proposes a 10,500-acre ACEC for the Cross Bar Management Area. This ACEC would be managed to protect important biological, cultural, scenic, and historic resources that meet the criteria for relevance and importance. The resource use limitations which would occur if this ACEC is formally designated are as follows:

- Closed to off-highway vehicle use and mechanized travel, except for the main access road and administrative use;
- Non-mechanized trail use limited to designated trails;
- No surface occupancy stipulation for fluid minerals development;
- Closed to mineral material disposal and non-energy leasable mineral development;
- Managed as a right-of-way exclusion zone;
- Visual resources would be managed as visual resource management class II and III (camping areas);
- Vegetation management would emphasize high-priority habitats identified in state wildlife action plans;
- Maintain cover for wildlife and migratory birds;
- Reduce impacts on paleontological resources from ground disturbance and access; and
- Available for livestock grazing.

The land use planning process was initiated on July 26, 2013, through a Notice of Intent published in the **Federal Register** (78 FR 45266), notifying the public of a formal scoping period.

Seventy-two cooperating agencies expressed interest in collaborating with the BLM and BIA during the NEPA process, and the following agencies signed a formal cooperating agency agreement:

1. Adair County Commissioners, OK

2. Barton County Commissioners, KS
3. Bureau of Reclamation Nebraska-Kansas Area Office
4. Brazos River Authority
5. Caddo County Commissioners, OK
6. Choctaw County Commissioners, OK
7. Citizen Potawatomi Nation
8. Clay County, TX
9. Cleveland County Commissioners, OK
10. Coal County Commissioners, OK
11. Cotton County Commissioners, OK
12. Creek County Commissioners, OK
13. Denton County Commissioners, TX
14. Douglas County Commissioners, KS
15. Hamilton County Commissioners, KS
16. Hughes County Commissioners, KS
17. Kansas Corporation Commission
18. Kansas Water Office
19. Latimer County Commissioners, OK
20. Lincoln County Commissioners, OK
21. Love County Commissioners, OK
22. Marion County Commissioners, TX
23. Montague County Commissioners, TX
24. Moore County Commissioners, TX
25. Oklahoma Department of Wildlife Conservation
26. Scurry County Commissioners, TX
27. Wichita County, TX
28. Kansas Corporation Commission
29. U.S. Fish and Wildlife Service Region 2
30. Board of Regents of the University of Oklahoma by and through the Oklahoma Climatological Survey
31. Young County Commissioners, TX
32. Sequoyah County Commissioners, OK
33. Sumner County Commissioners, KS
34. Tonkawa Tribe of Oklahoma
35. Red River Authority of Texas
36. Muscogee (Creek) Nation
37. Texas State Soil and Water Conservation Board
38. Texas General Land Office
39. Office of Surface Mining Reclamation and Enforcement Mid-Continent Region
40. Oklahoma Department of Environmental Quality
41. Oklahoma Department of Mines
42. Okfuskee County Commissioners, OK
43. Oklahoma Geologic Survey
44. Osage Nation
45. Payne County Commissioners, OK
46. Pontotoc County Commissioners, OK
47. Pushmataha County Commissioners, OK
48. Tulsa County Commissioners, OK
49. Collin County Commissioners Court
50. Natural Resources Conservation Service Meade Service Center
51. LeFlore County Commissioners, OK
52. United States Environmental Protection Agency Region 6

53. Wilbarger County, TX
54. Murray County Commissioner, District 2
55. National Forest and Grasslands of Texas
56. Johnson County, KS
57. Texas Railroad Commission
58. United States Army Corps of Engineers, Fort Worth
59. Cooke County Commissioners, TX
60. Cherokee Nation
61. Cherokee County Commissioners, KS
62. Jackson County Commissioners, KS
63. McConnell Air Force Base
64. Altus Air Force Base
65. Vance Air Force Base
66. The Kansas Natural Resource Coalition
67. Tinker Air Force Base
68. Dyess Air Force Base
69. Goodfellow Air Force Base
70. Joint Base San Antonio, TX
71. Laughlin Air Force Base
72. Sheppard Air Force Base

The BLM and BIA held 17 scoping meetings between November 2013 and January 2014, throughout Kansas, Oklahoma, and Texas, with stakeholders, interest groups, and the public.

During the scoping period, the public provided the BLM Oklahoma Field Office with input on relevant issues to consider in the planning process. Additional information was collected during three additional workshops, one each in Kansas, Oklahoma, and Texas with the public and cooperating agencies. Based on these issues, conflicts, information, and the BLM and BIA goals and objectives for this planning effort, the BLM–BIA Interdisciplinary Team formulated action alternatives for consideration and analysis in the Draft Joint EIS/BLM RMP and BIA IRMP. Following the close of the public comment period, the BLM and BIA will use any substantive public comments to revise the Draft Joint EIS/BLM RMP and BIA IRMP in preparation for its release to the public as the Proposed Resource Management Plan and Final Environmental Impact Statement (Proposed RMP/Final EIS). The BLM and BIA will respond to each substantive comment received during the public review and comment period by making appropriate revisions to the document, or by explaining why the comment did not warrant a change. Notice of the Availability of the Proposed RMP/Final EIS will be published in the **Federal Register**.

Please note that public comments and other submitted information, including names, street addresses, and email addresses of persons submitting

comments will be available for public review and disclosure by using one of the methods listed in the **ADDRESSES** section of this notice during regular business hours 8 a.m. to 4 p.m.), Monday through Friday, except holidays. To be included in the analysis, all comments must be received before the close of the 90-day public comment period or 15 days after the last public meeting, whichever is later.

Before including your address, phone number, email address, and/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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Aden L. Seidlitz,

Acting BLM New Mexico State Director.

Eddie Streater,

BIA Eastern Oklahoma Regional Director.

James Schock,

BIA Southern Plains Regional Director.

[FR Doc. 2018–25130 Filed 11–16–18; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18XL1109AF LLUT030000
L17110000.PN0000 241A]

Call for Nominations for the Grand Staircase-Escalante National Monument Advisory Committee, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this Notice is to request public nominations for 15 members to the Grand Staircase-Escalante National Monument Advisory Committee (GSENM MAC). The GSENM MAC provides information and advice regarding the development and implementation of management plans for the Grand Staircase, Kaiparowits, and Escalante Canyons Units and, as appropriate, management of the Monument. The Grand Staircase-Escalante National Monument (GSENM) will accept public nominations for 30 days from the date this Notice is posted.

DATES: A completed application and accompanying nomination/recommendation letters must be

received at the address listed below no later than December 19, 2018.

ADDRESSES: Grand Staircase-Escalante National Monument Headquarters Office, 669 South Highway 89A, Kanab, Utah 84741, Attention: MAC Nominations.

FOR FURTHER INFORMATION CONTACT:

Larry Crutchfield, Public Affairs Officer, GSENM Headquarters Office, 669 South Highway 89A, Kanab, Utah 84741; phone (435) 644–1209, or email: lcritchf@blm.gov.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the GSENM MAC pursuant to section 309 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1739) and Presidential Proclamation 9682 in conformity with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. Appendix 2). The 15 appointed members of the GSENM MAC perform several primary tasks: (1) Provide information and advice on the development of management plans for the Grand Staircase, Kaiparowits, and Escalante Canyons Units and, as appropriate, management of the Monument; (2) Assist BLM in developing recommendations for implementation of ecosystem approaches to management by advising BLM in establishing goals and objectives within the Monument; (3) Advise BLM regarding ongoing local efforts to develop and achieve collaborative approaches to management of the Monument; (4) Consult and make recommendations on issues such as protocols for specific projects; e.g., vegetation restoration methods and treatments, livestock grazing, standards for excavation and curation of artifacts and objects; (5) Advise BLM on opportunities to enhance and expand existing partnerships and volunteer efforts; (6) Advise BLM on opportunities to enhance and expand existing educational outreach efforts; (7) Provide recommendations for implementation of Secretary's Order 3347: Conservation Stewardship and Outdoor Recreation, and Secretary's Order 3356: Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories; (8) Provide recommendations for implementation of the regulatory reform initiatives and policies specified in section 2 of Executive Order 13777: Reducing Regulation and Controlling Regulatory Costs; Executive Order 12866: Regulatory Planning and Review, as amended; and section 6 of Executive Order 13563: Improving Regulation and

Regulatory Review; and (9) Provide recommendations for collaborative and innovative solutions to aggressively address wildland fires on public lands as guided by the Secretary's memo on wildfires dated September 11, 2017.

The MAC shall include 15 members to be appointed by the Secretary as follows:

- (1) An elected official from Garfield County representing the County;
- (2) an elected official from Kane County representing the County;
- (3) a representative of State government;
- (4) a representative of Tribal government with ancestral interest in the Monument;
- (5) a representative of the educational community;
- (6) a representative of the conservation community;
- (7) a representative of developed outdoor recreation, off-highway vehicle users, or commercial recreation activities, including, for example, commercial or recreation fishing;
- (8) a representative of dispersed recreation;
- (9) a livestock grazing permittee operating within the Monument to represent grazing permittees;
- (10) a representative of private landowners;
- (11) a representative of local business owners; and,
- (12) a representative of the public-at-large, including, for example, sportsmen and sportswomen communities.

Three members will be appointed as special Government employees, one for each of the following areas of expertise:

- (1) A member with expertise in systems ecology;
- (2) A member with expertise in paleontology; and
- (3) A member with expertise in archaeology or history.

The Secretary appoints persons to the GSENM MAC who are representatives of the various major citizen interests pertaining to land use planning and management of the lands under BLM management in GSENM.

Each GSENM MAC member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice from among the categories of interest listed above. As appropriate, certain MAC members may be appointed as Special Government Employees. Special Government Employees serve on the MAC without compensation, and are subject to financial disclosure requirements in the Ethics in Government Act and 5 CFR 2634.

This Notice, published pursuant to 43 CFR 1784.4-1 and in accordance with Presidential Proclamation 9682, requests the public to submit applications to fill 15 positions on the MAC. Any individual or organization may nominate one or more persons to serve on the GSENM MAC. Individuals may nominate themselves for GSENM MAC membership. Nomination forms may be obtained from the GSENM Headquarters Office, listed above in the **ADDRESSES** section or at: https://www.blm.gov/sites/blm.gov/files/GetInvolved_RACApplication.pdf. All nominations must include a completed Resource Advisory Council application (OMB Control No. 1004-0204), letters of reference from the represented interests or organizations, and any other information that speaks to the candidate's qualifications. The specific category the nominee would be representing should be identified in the letter of nomination and in the application form. The BLM Utah State Director and Monument Manager will review the applications and letters of reference. The State Director shall confer with the Governor of Utah on potential nominations. The BLM State Director will then forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

Members will serve staggered terms without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The MAC will meet approximately two to four times annually, and at such other times as designated by the BLM Designated Federal Officer.

Authority: 43 CFR 1784.4-1.

Edwin L. Roberson,

State Director.

[FR Doc. 2018-25168 Filed 11-16-18; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0026716; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Department of the Navy, Washington, DC; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy has corrected an inventory of human remains and associated funerary objects,

published in a Notice of Inventory Completion in the **Federal Register** on February 26, 2015. This notice corrects the minimum number of individuals, the number of associated funerary objects, and presents additional findings of cultural affiliation. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Department of the Navy. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Department of the Navy at the address in this notice by December 19, 2018.

ADDRESSES: Mr. Joseph Montoya, Environmental Planning and Conservation Branch Manager, Naval Base Ventura County, 311 Main Road, Building 1, Code N45V, Point Mugu, CA 93042, telephone (805) 989-3804, email joseph.l.montoya@navy.mil.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the Department of the Navy, and in the physical custody of eight repositories which include the Fowler Museum at UCLA, Natural History Museum of Los Angeles County, San Diego Museum of Man, Santa Barbara Museum of Natural History, Southwest Museum of the Autry National Center of the American West, U.C. Berkeley Phoebe A. Hearst Museum of Anthropology, Naval Air Weapons Station China Lake Curation Facility, and Naval Base Ventura County San Nicolas Island Curation Facility. The human remains and associated funerary objects were removed from San Nicolas Island, Naval Base Ventura County, Ventura County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of

the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of human remains, the number of associated funerary objects, and cultural affiliation published in a Notice of Inventory Completion in the **Federal Register** (80 FR 10506–10511, February 26, 2015). After publication, additional human remains and associated funerary objects were found in repository collections. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (80 FR 10507, February 26, 2015), column 1, paragraph 3, sentence 1 is corrected by substituting the following sentence:

The human remains representing, at minimum, 547 individuals and the 1,017 associated funerary objects listed in this notice are in eight different locations in California.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 1, paragraph 3, sentence 2 is corrected by substituting the following sentence:

These are the Fowler Museum at UCLA, the Natural History Museum of Los Angeles County, the Naval Base Ventura County (NBVC) San Nicolas Island Curation Facility, the San Diego Museum of Man, the Santa Barbara Museum of Natural History, the Southwest Museum of the American Indian at the Autry Museum of the American West, the U.C. Berkeley Phoebe A. Hearst Museum of Anthropology and the Naval Air Weapons Station (NAWS) China Lake Curation Facility.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 1, paragraph 4, sentence 2, under the heading “(i) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Fowler Museum at UCLA,” is corrected by substituting the following sentence:

Primary documentation for these human remains is limited.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 1, paragraph 4, under the heading “(i) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Fowler Museum at UCLA,” is corrected by inserting the following sentence after sentence 2:

One sub-adult and one adult male individual were collected from site CA–SNI–19 (the Indian Dwelling Site at Corral Harbor). For the remaining two individuals, no specific provenience information is available beyond their SNI origin.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 1, paragraph 5, under the heading “(i) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Fowler Museum at UCLA,” is corrected by substituting the following paragraph:

In 1951, human remains representing, at minimum, 16 individuals (15 adult (five identified as female, four as male and six undetermined), and one sub-adult) were collected by Stewart L. Peck from site CA–SNI–18 and donated to UCLA. No known individuals were identified. The four associated funerary objects are animal bones, comingled with the human remains of catalog number 136a.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 1, paragraph 6, under the heading “(i) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Fowler Museum at UCLA,” is corrected by deleting the following paragraph:

In 1951, human remains representing at minimum, 2 individuals were collected by Stewart L. Peck and donated to UCLA. No primary documentation or specific provenience information beyond their SNI origin exists for these human remains. No known individuals were identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 2, paragraph 1, sentence 1, under the heading “(i) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Fowler Museum at UCLA,” is corrected by substituting the following sentence:

Sometime prior to 1952, human remains representing, at minimum, two individuals (both adult, one further identified as male) were collected by an unknown party and donated to UCLA.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 2, paragraph 1, sentence 4, under the heading “(i) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Fowler Museum at UCLA,” is corrected by substituting the following sentences:

The 17 associated funerary objects, listed as individual or grouped catalogued items, are one abalone fish hook, one biface fragment, five unmodified shells, one crab claw fragment, two unmodified animal bone fragments, one obsidian point, one perforated disk or abalone shell fish hook blank, one steatite bowl fragment, one lot tarring pebbles, one worked disk or abalone shell fish hook blank, two worked shells. One shell fish hook fragment is listed in the catalog records, but is missing from the museum collections.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 2, paragraph 2, sentence 1, under the heading “(i) Navy-controlled SNI Human Remains and Associated Funerary Objects at the

Fowler Museum at UCLA,” is corrected by substituting the following sentence:

Prior to 1958, human remains representing, at minimum four individuals (three adults (one female, two male), and one sub-adult), were removed from site CA–SNI–15 (NI–15) by H.B. Allen and donated to UCLA.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 2, paragraph 3, under the heading “(i) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Fowler Museum at UCLA,” is corrected by substituting the following paragraph:

In 1959, human remains representing, at minimum, 61 individuals were collected during excavations conducted by Sam-Joe Townsend, Fred Reinman, Marshall McKusick, Clement Meighan and others from the UCLA Archaeological Survey. These human remains were collected from six SNI sites—CA–SNI–14, CA–SNI–15, CA–SNI–16, CA–SNI–18, CA–SNI–40, and CA–SNI–56. In August 1959, excavations at SNI–14 removed an infant individual. Excavations at SNI–15 removed a burial with two adult females interred. Excavations at SNI–16 removed 21 individuals (16 adults, of which three are male and six are female, four sub-adults, and an individual represented by a scapula fragment). Excavations at SNI–18 removed seven individuals (seven adults, four identified as male and one female). Excavations at SNI–40 removed 20 burials that included a minimum of 26 individuals (17 adults, of which nine were identified as male and five as female, three infants, five juveniles, and one sub-adult). In September 1959, a survey of SNI–40 removed an adult individual represented by 16 teeth from a looted grave. Excavations from SNI–56 removed two burials representing three adult individuals (identified further as one male, one female and one undetermined). No known individuals were identified. The 269 associated funerary objects, listed as individual or grouped catalogued items, are divided among the different site numbers. The two associated funerary objects from SNI–14 are one bone spatulate, and one lot of Olivella shell beads. The three associated funerary objects from SNI–15 are one bird bone needle, one lot of bone beads, and one steatite bead fragment. The 100 associated funerary objects from SNI–16 are four lots of asphaltum fragments with basketry impressions, six unmodified animal bone fragments, one bird humerus awl, one animal bone with asphaltum, one bone fishhook, one sea lion tooth pendant, four chalcedony pendants, one unmodified jasper fragment, one yellow ochre fragment, one flaked shale object, one shell bead, one shell implement, four abalone shell containers (holes sealed with asphaltum), two unmodified shell fragments, one lot Olivella shell beads, one modified abalone shell fragment, 69 abalone shell pendants. Three shell pendants and five abalone shell containers are missing from the collection. The 73 associated funerary objects from SNI–18 are one bone harpoon dart, three shell ornaments, one possible pelican stone effigy, one stone ornament with a hole drilled in the center, two stone bifaces, one

stone chopper, one stone scraper, one stone hammerstone, one lot of stone fragments, 15 abalone fish hook blanks, three abalone fish hooks, 11 abalone shell containers, one broken stone pipe with bird bone stem, one bone pipe stem with asphaltum, five bone prys, one bird bone object, eight worked bone fragments, one worked wood fragment, one lot of wood fragments, one steatite grooved pebble, one tarring pebble, one lot of asphaltum fragments, six lots of unmodified animal bone fragments, one lot of shell fragments, two sea urchin fragments, one yellow ochre ball, and one lot of burned wood fragments. One stone charmstone, one stone pipe with bone stem, and one abalone shell fish hook are catalogued, but missing from the collection. The 88 associated funerary objects from SNI-40 are three stone perforated rings, seven steatite pointed objects, one worked stone fragment, one chert projectile point, one quartz projectile point basal fragment, one siltstone net sinker, one bone pendant, one sea mammal canine tooth pendant, one lot of bone spatulate fragments, seven lots of worked bone, 19 lots of shell beads, five unmodified shell fragments, two worked abalone fragments, five lots of unmodified animal bone fragments, one crab claw fragment, one asphaltum fragment, six lots of asphaltum with basketry impressions, one lot of tarring pebbles, one bag of charcoal fragments, one yellow ochre fragment, and 22 shell containers. One stone pipe, one stone perforated ring, one steatite effigy, one chert projectile point with asphaltum at one end, and one obsidian projectile point are missing from the collection. The three associated funerary objects from SNI-56 are one stone point, two bone fish gorge. One perforated steatite stone is missing from the collection. In 2000, one *Haliotis* shell bead and one bird bone were sent for destructive analysis and are missing from the collection.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 3, paragraph 1, under the heading “(i) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Fowler Museum at UCLA,” is corrected by substituting the following paragraph:

Navy-controlled NAGPRA items at the Fowler Museum also include human remains representing, at minimum, an additional three individuals (two adults identified as a male and female, and an infant) that lack specific information on the date of collection, or the site provenience beyond their SNI origin. The collection is labeled as Burial 1 and was donated to the UCLA Dickey Biology Collections prior to 1990. It was transferred to the Fowler Museum at UCLA for NAGPRA inventory purposes. No known individual was identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 3, paragraph 2, under the heading “(i) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Fowler Museum at UCLA,” is corrected by deleting the following paragraph:

One additional group of human remains representing, at minimum, 9 individuals, that

also lack specific information on the date of collection/donation or a collector, does have accompanying documentation indicating it was collected from site CA-SNI-18. No known individuals were identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 3, paragraph 3, sentence 1, under the heading “(ii) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Natural History Museum of Los Angeles County,” is corrected by substituting the number “49” with the number “51.”

In the **Federal Register** (80 FR 10507, February 26, 2015), column 3, paragraph 4, under the heading “(ii) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Natural History Museum of Los Angeles County,” is corrected by substituting the following paragraph:

In August 1933, human remains representing, at minimum, one individual were collected by an individual named Rose and donated to the Antelope Valley Museum. The human remains were transferred to the Natural History Museum of Los Angeles County by Grace Oliver of the Antelope Valley Museum in 1979. No primary documentation or specific provenience information beyond their SNI origin exists for these human remains. No known individuals were identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10507, February 26, 2015), column 3, paragraph 5, sentence 3, under the heading “(ii) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Natural History Museum of Los Angeles County,” is corrected by substituting the following sentence:

The nine associated funerary objects are one composite bone fishhook barb, one sea lion rib bone flaker, one whale bone implement, one bone tube bead, one conical sandstone pipe, one biface fragment, one projectile point in two-pieces, one biface tip, and one large sandstone pipe.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 1, paragraph 2, under the heading “(ii) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Natural History Museum of Los Angeles County,” is corrected by deleting the following paragraph:

In 1959, human remains representing, at minimum, 2 individuals were collected by Ed Mitchell and Sam-Joe Townsend and donated to the Natural History Museum of Los Angeles County. No specific provenience information beyond their SNI origin exists for these human remains. No known individuals were identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 1, paragraph

3, sentence 1, under the heading “(ii) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Natural History Museum of Los Angeles County,” is corrected by substituting the following sentence:

In 1959, human remains representing, at minimum, seven individuals were collected by Ed Mitchell and Sam-Joe Townsend from sites CA-SNI-18 and other unnumbered SNI sites, and donated to the Natural History Museum of Los Angeles County.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 1, paragraph 3, under the heading “(ii) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Natural History Museum of Los Angeles County,” is corrected by inserting the following sentence after sentence 1:

No specific provenience information beyond their SNI origin exists for these human remains.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 1, paragraph 4, sentence 1, under the heading “(ii) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Natural History Museum of Los Angeles County,” is corrected by substituting the following sentence:

In 1966, human remains representing, at minimum, one individual were collected by S. Ray Harmon and donated to the Natural History Museum of Los Angeles County in 1979.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 1, paragraph 5, sentence 3, under the heading “(ii) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Natural History Museum of Los Angeles County,” is corrected by substituting the following sentence:

The four associated funerary objects, listed as individual or grouped catalogued items, are one unmodified large black abalone shell, one lot of asphaltum fragments, one abalone shell pendant, and one lot of bird bones.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 1, paragraph 6, sentence 1, under the heading “(ii) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Natural History Museum of Los Angeles County,” is corrected by substituting the number “13” with the number “10.”

In the **Federal Register** (80 FR 10508, February 26, 2015), column 1, paragraph 6, sentence 3, under the heading “(ii) Navy-controlled SNI Human Remains and Associated Funerary Objects at the Natural History Museum of Los Angeles County,” is corrected by substituting the following sentence:

The three associated funerary objects, listed as individual or grouped catalogued

items, are one lot of mammal bones, including whale ribs, one killer whale tooth, and one lot of fish bone.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 2, paragraph 1, sentence 1, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following sentence:

In the early 1900s, human remains representing, at minimum, eight individuals were collected by Arthur Sanger.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 2, paragraph 1, sentence 6, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following sentence:

The two associated funerary objects are projectile points, embedded within the ilium and cranium of associated human remains.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 2, paragraph 2, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following paragraph:

In 1938, human remains representing, at minimum, four individuals were collected from SNI sites by UCLA. These human remains were later donated to Loyola Marymount University in 1962, which returned them to SNI holdings in 2006. The human remains were collected from six SNI sites—SN-1, SN-9, SN-12, SN-17, SN-18, and SN-171—and some unnumbered locations. No known individuals were identified. The 29 associated funerary objects, listed as individual or grouped catalogued items, are divided among the different sites. The 12 associated funerary objects from SN-1 are seven shell fish hook fragments, one *Norrisia norrisi* fish hook fragment, one worked *Haliotis rufescens* fragment, one pendant, one sandstone hammer stone, and one broken soapstone pipe. The one associated funerary object from SN-17 is a fish hook fragment. The 13 associated funerary objects from SN-18 are one lot of lithics, one lot of unworked sandstone, one lot of oxidized metal, one lot of unworked mussel shell, one quartzite flake, one chert projectile point base, four fish hook fragments, one unmodified shell, one unmodified mammal bone, and one lot of unmodified fish bone. The three associated funerary objects from unknown locations are one shell fish hook fragment, one broken awl, and one lot of faunal remains.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 2, paragraph 3, under the heading “(iii) Human

Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by deleting the following paragraph:

In 1959, human remains representing, at minimum, 2 individuals were collected during excavations conducted by Sam-Joe Townsend and Fred Reinman from the UCLA Archaeological Survey. These human remains were collected from 2 SNI Sites—CA-SNI-14 and CA-SNI-15. These two individuals belong to the same collection from the 1959 excavations located in the Fowler Museum at UCLA and reported under subparagraph (i) of this notice. No known individuals were identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 2, paragraph 5, sentence 4, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following sentence:

The 33 associated funerary objects, listed as individual or grouped catalogued items, are one aves beak, one bag of *Haliotis*, broken, one cut/worked bird bone, one cut and worked shell, one lot of cut, worked, abraded, punched, and broken abalone shell, one cut/worked/abraded red abalone shell, one cut faunal bone, two *Olivella* shell side walls, one ornament fragment, three projectile points, two fragments of red ochre pigment, one sandstone burial marker, one sandstone nodule with red ochre stain, one sea grass, twined, with detritus, one shell columella, eight whole and broken shell fishhooks, three shell fishhook blanks, one frontal marine mammal tooth, one whale bone wedge, and one whole abalone shell.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 3, paragraph 1, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following paragraph:

In 1977, human remains representing, at minimum, eight individuals were collected during excavations conducted by George Kritzman and others. These human remains were collected from 5 SNI sites—CA-SNI-5, CA-SNI-11, CA-SNI-47, CA-SNI-55 and CA-SNI-146. No known individuals were identified. The 14 associated funerary objects, listed as individual or grouped catalogued items, are divided among the different sites. The nine associated funerary objects from SNI-47 are two projectile points, four shell fish hook blanks, one rim tool, one lot of asphaltum with possible basketry impressions, and one drill. The five associated funerary objects from SNI-55 are one rim tool, one gorge, one bead blank, one lot of asphaltum water bottle impressions, and one lot of asphaltum basketry impressions.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 3, paragraph 2, sentence 1, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the phrase “1 individual” with the phrase “two individuals.”

In the **Federal Register** (80 FR 10508, February 26, 2015), column 3, paragraph 2, sentence 4, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following sentence:

The one associated funerary object, listed as grouped catalogued items, is one lot of miscellaneous faunal remains (shell, fishbone, etc.).

In the **Federal Register** (80 FR 10508, February 26, 2015), column 3, paragraph 3, sentence 4, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following sentence:

The eight associated funerary objects, listed as individual or grouped catalogued items, are two shell fishhook blanks, one lot of skirt weights, four bags of unsorted mixed shell and lithics, and one spire ground shell bead.

In the **Federal Register** (80 FR 10508, February 26, 2015), column 3, paragraph 4, sentence 1, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the number “5” with the number “7.”

In the **Federal Register** (80 FR 10508, February 26, 2015), column 3, paragraph 4, sentence 4, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following sentence:

The 37 associated funerary objects, listed as individual or grouped catalogued items, are one marine mammal tooth, one cut marine mammal mandible w/asphaltum, one awl, six bags of flaked stone, one bag of mixed flaked stone, sandstone and bone, three bags of mixed lithics and shell, one bag of mixed shell, flaked stone & bone, three bags of mixed shell, one bag of mixed shell and bone, one lot of basketry impressions, one shell bead, one shell bead blank, one *Mytilus californianus* disk bead, one biface fragment, one crab claw and asphaltum, one

lot of mixed faunal bone, three lots of disk beads, one lot of spire-lopped Olivella beads, one lot of unmodified pebbles, one lot of shell, sand and asphaltum w/basketry impressions, one lot of whole Olivella shells, one lot of worked and perforated serpentine, one Olivella bicipitata bead, one bag of shell and asphaltum, one soapstone tube/bead, and one Tachycardium sp. shell fragment.

In the **Federal Register** (80 FR 10509, February 26, 2015), column 1, paragraph 1, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following paragraph:

In 1989, human remains representing, at minimum, eight individuals were collected during excavations conducted by Steven Schwartz, George Kritzman, Audrey Schwartz, and others from the Department of the Navy's Cultural Resources management program. These human remains were collected from four SNI sites—CA-SNI-168, CA-SNI-171, CA-SNI-214, and CA-SNI-221. No known individuals were identified. The 116 associated funerary objects, listed as individual or grouped catalogued items, are divided among the different sites. The two associated funerary objects from SNI-168 are one broken red abalone and one lot asphaltum fragments. The 114 associated funerary objects from SNI-214 are two lots asphaltum impressions, one lot asphaltum basketry impressions, one asphaltum water bottle with stopper and Haliotis fragments, one biface fragment, one biface knife, two bifaces with asphaltum on base, one disc bead, one bird bone, two lots bird bone fragments, one bone tool, three bowl fragments, two lots carbonized wood, one composite spear with asphaltum, one Delphinidae jaw, one complete dog skeleton, one bag of fish bone, two fish hooks, five fish hook blanks, two incised soapstone, one bag of lithics, one lot of flaked stone, one lot of manuports, two Marine mammal bone awl or punch, one cut Marine mammal bone fragment, one marine mammal scapula, one mortar, one lot Mytilus californianus shell, two pestles, three pestle bases, two pestle fragments, one pestle mid-section, one lot red ochre, one possible sandstone saw, one pressure flaker, nine projectile points, one projectile point base, one projectile point fragment, two projectile point midsections, one projectile point tip, two projectile point with asphaltum on base, one projectile point spear head, one punch or awl, three marine mammal ribs with asphaltum, two lots sandstone dish fragments, one sandstone slab, one sandstone tool, one possible sandstone weight, one scraper, one shell bottle stop, one soapstone healing stone, two soapstone pendants, one lot of variously abraded, drilled or raw soapstone, one bag of soil from inside mortar, one lot tarring pebbles, one Tachycardium shell, one bag unworked bone fragments, one unworked mammal rib, one piece unworked sandstone, one lot unworked shell, one unworked stone with asphaltum, two unworked whale bones, one whale bone chisel, five whale bone pry,

three whale bone wand, one whale bone wand tip, one whale bone epiphyseal plate, five whole and fragmentary whale scapulae, one piece of wood, one piece of wood with asphaltum and charcoal, one piece pecked sandstone, and two pieces abraded soapstone.

In the **Federal Register** (80 FR 10509, February 26, 2015), column 1, paragraph 2, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by inserting the following sentence after sentence 3:

The human remains are noted as missing since 2016.

In the **Federal Register** (80 FR 10509, February 26, 2015), column 1, paragraph 3, sentence 1, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following sentence:

In 2000, human remains representing, at minimum, one individual were collected by Steve Schwartz and Lisa Thomas because of their progressive exposure by erosion.

In the **Federal Register** (80 FR 10509, February 26, 2015), column 1, paragraph 4, sentence 1, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the number “2” with the number “3.”

In the **Federal Register** (80 FR 10509, February 26, 2015), column 2, paragraph 1, sentence 3, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following sentence:

The six associated funerary objects, listed as individual or grouped catalogued items, are one lot of shell beads, one shell bead, one lot of fragmentary marine shell, one lot of stone fragments, one lot of fragmentary mixed fish, human and mammal bone, and one lot of fragmentary bone, charcoal and asphaltum.

In the **Federal Register** (80 FR 10509, February 26, 2015), column 2, paragraph 2, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by deleting the following paragraph:

An additional set of human remains representing, at minimum, 1 individual that also lacks specific information on the date of

collection/donation or a collector, does have accompanying documentation indicating it was collected from site CA-SNI-171. No known individual was identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10509, February 26, 2015), column 2, paragraph 4, under the heading “(iii) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility,” is corrected by substituting the following paragraphs:

NAGPRA items in collections at the SNI Curation Facility include one funerary object associated with human remains located at the Southwest Museum/Autry Museum and reported under subparagraph (vi) of this notice. This associated funerary object is a unmodified abalone shell that was collected by Rozaire in 1960 at site CA-SNI-41 and donated to the Southwest Museum.

NAGPRA items in collections at the SNI Curation Facility also include one funerary object associated with human remains located at the Southwest Museum/Autry Museum and reported under subparagraph (vi) of this notice. This associated funerary object is a fragment of sea grass matting that was collected by an unknown party in 1984 at site CA-SNI-325 and donated to the Southwest Museum.

In the **Federal Register** (80 FR 10509, February 26, 2015), column 2, paragraph 5, under the heading “(iv) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the San Diego Museum of Man,” is corrected by deleting the following paragraph:

In 1899, human remains representing, at minimum, one individual were collected by Mrs. L. H. Sherman and donated to the San Diego Museum of Man. No primary documentation or specific provenience information beyond their SNI origin exists for these human remains. No known individual was identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10509, February 26, 2015), column 3, paragraph 1, under the heading “(iv) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the San Diego Museum of Man,” is corrected by substituting the following paragraph:

In 1930, human remains representing, at minimum, 140 individuals, including some cremated remains, were collected by Malcolm J. Rogers during an expedition for the San Diego Museum of Man. These human remains were excavated or collected on the surface from 31 SNI sites with Rogers' field numbers (with equivalent Smithsonian trinomial, when known) SN-01 (CA-SNI-7), SN-01A (CA-SNI-5), SN-03 (CA-SNI-4), SN-04 (CA-SNI-3), SN-05 (CA-SNI-137), SN-06, SN-07 (CA-SNI-54), SN-07A (CA-SNI-318), SN-12 (CA-SNI-11), SN-13 (CA-SNI-12), SN-14 (CA-SNI-25), SN-15 (CA-SNI-21), SN-16, SN-17 (CA-SNI-141), SN-18 (CA-SNI-15/16), SN-19 (CA-SNI-158),

SN-20 (CA-SNI-56), SN-21, SN-21A (CA-SNI-157), SN-21A (CA-SNI-159), SN-21A (CA-SNI-160), SN-21A (CA-SNI-161), SN-21A (CA-SNI-171), SN-21B (CA-SNI-18), SN-21C (CA-SNI-39), SN-22, SN-23 (CA-SNI-41), SN-24 (CA-SNI-20), SN-26, SN-27, SN-31, and some without site attribution. No known individuals were identified. The 186 associated funerary objects, listed as individual or grouped catalogued items, are grouped by site. The four associated funerary objects from SN-01 (SNI-7) are one scarified mortar and three dog burials. The two associated funerary objects from SN-06 are unmodified abalone shells. The 15 associated funerary objects from SN-07 (SNI-54) are two bowl fragments, one broken steatite pendant, one lot of burned animal bones, one chipped stone fragment, two doughnut stones, one Olivella bead side section, one projectile point, one stone effigy, one stone pendant, three stone spindles and one unmodified animal femur. The one associated funerary object from SN-07A (SNI-318) is an animal femur. The one associated funerary object from SN-13 (SNI-12) is a groundstone. The 46 associated funerary objects from SN-14 (SNI-25) are two arrow points, one bone awl, one bone harpoon, one bone with asphaltum, 11 broken steatite doughnut stones, one burned fish hook, one Franciscan chert blade fragment, two incised steatite bowl fragments, one incised steatite tablet, one modified animal bone with filigree incising, one lot of modified stone, two lots of modified stone bowl fragments, one obsidian knife, one ovate chert knife, one pendant, two lots of shell beads, one small obsidian spear point, one lot of steatite and shell beads, two lots of steatite bowl fragments, one lot of steatite bowl fragments with asphaltum, one steatite seal effigy, two stone beads, one stone pendant fragment, and seven whale bone tool fragments. The seven associated funerary objects associated with SN-15 (SNI-21) are one lot of asphaltum with basketry impressions, one lot of modified shell, one modified bird bone, three modified stone fragments, and one lot of modified whale bone fragments. The five associated funerary objects associated with SN-16 are one sandstone fish hook reamer, one lot of bivalve marine shells, one lot of beads, one necklace of Olivella beads, and one lot of Olivella square shell beads. The one associated funerary object associated with SN-18 (SNI-15/16) is a lot of beads. The two associated funerary objects associated with SN-19 (SNI-158) are one pestle and one mortar. The eight associated funerary objects associated with SN-20 (SNI-56) are one lot of bird bone beads, one alabaster bead, one steatite pendant, one lot of animal bone fragments, one bone awl, one animal bone tool, one steatite bowl, and one steatite canoe effigy. The 30 associated funerary objects from SN-21A are three lots of beads, one lot of shell beads with pendant, one concretion or root cast file, one deer bone awl base, one flake scraper, four ground stone pestles, one lot of yellow ochre, two lots of modified animal bone, one obsidian projectile point, one obsidian projectile point tip, one lot of Olivella, keyhole limpet and tufa beads, three pendants, two red ochre fragments, one root

cast, one soil sample, one stone canoe effigy, one tufa stone, two lots of vessel fragments, one lot of possible whale bone grave markers, and one whale bone spear point. The three associated funerary objects from SN-21A (SNI-157) are one deer antler pressure flaker, one lot of Olivella shell beads, and one quartzite stone for melting asphaltum. The three associated funerary objects from SN-21A (SNI-159) are two obsidian spear points and one necklace of steatite and Olivella shell beads. The four associated funerary objects from SN-21A (SNI-160) are one steatite ring fragment, two fish hook reamers, and one lot of Olivella shell beads. The one associated funerary object from SA-21A (SNI-171) is a lot of modified pelican bone. The two associated funerary objects associated with SN-22 are one modified whale bone fragment, and one steatite bead. The 31 associated funerary objects associated with SN-23 (SNI-41) are one chisel with asphaltum, 10 ground stone pendant and vessel fragments, 11 chipped stone tools (projectile point, biface and flakes), one groundstone vessel fragment, seven bone tools and one lot of shell beads. The seven associated funerary objects associated with SN-24 (SNI-20) are one stone pipe with single groove base, one wood tool, two projectile points, one lot of modified bone tools, one canid cranium, and one lot of modified stone. The 13 associated funerary objects associated with SN-31 are two lots of modified bone, five modified bone pendants, one lot of modified lithics, and five lots of shell beads.

In the **Federal Register** (80 FR 10509, February 26, 2015), column 3, paragraph 2, sentence 1, under the heading “(iv) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the San Diego Museum of Man,” is corrected by substituting the following sentence:

In 1937 and 1939, human remains representing, at minimum, 26 individuals, including four cremations, were transferred to the San Diego Museum of Man from the San Diego Museum of Natural History.

In the **Federal Register** (80 FR 10509, February 26, 2015), column 3, paragraph 2, sentence 5, under the heading “(iv) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the San Diego Museum of Man,” is corrected by substituting the following sentence:

The five associated funerary objects, listed as individual or grouped catalogued items, include two lots of shell beads, one abalone fishhook, and two steatite effigies.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 1, paragraph 2, sentence 4, under the heading “(iv) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the San Diego Museum of Man,” is corrected by substituting the following sentence:

The four associated funerary objects, listed as individual or grouped catalogued items, are one abalone shell with asphaltum, one piece of charcoal, one animal bone tool, and one lot of unmodified shells.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 1, paragraph 3, under the heading “(iv) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the San Diego Museum of Man,” is corrected by substituting the following paragraph:

On an unknown date, human remains representing, at minimum, four individuals were surface collected from SNI and donated to the San Diego Museum of Man. No specific provenience information beyond their SNI origin exists for these human remains; they were most likely collected by Malcom J. Rogers during an expedition for the San Diego Museum of Man in 1930, or part of the 1936 San Diego Natural History Museum transfer. No known individuals were identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 1, paragraph 4, under the heading “(v) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Santa Barbara Museum of Natural History,” is corrected by substituting the following paragraph:

Between 1945 and 1948, human remains representing, at minimum, 19 individuals were collected by Phil Orr during excavations on SNI for the Santa Barbara Museum of Natural History. These human remains were excavated or surface collected from 7 SNI sites—CA-SNI-5 (Orr’s 133.5), CA-SNI-7 (Orr’s 133.7), CA-SNI-10 (Orr’s 133.10), CA-SNI-17 (Orr’s 133.15), CA-SNI-21 (Orr’s 133.21), Orr’s 133.17 and Orr’s 133.18. No known individuals were identified. The 17 associated funerary objects, listed as individual or grouped catalogued items, are one abalone shell dish, one large bird radius/ulna, two misc. shells, one lot of Olivella shell beads, one lot of mixed Olivella shell beads and bone points, one string of Olivella shell beads, one lot of shell beads, two spire topped Olivella shell beads, two steatite donut stones, one steatite pendant, and four stone beads.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 1, paragraph 5, under the heading “(v) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Santa Barbara Museum of Natural History,” is corrected by deleting the following paragraph:

In 1948, human remains representing, at minimum, two individuals were collected by Phil Orr during excavations at Orr’s site number 133.18 (associated state trinomial site number unknown) for the Santa Barbara Museum of Natural History. No known individuals were identified. The one associated funerary object is a lot of shell beads.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 2, paragraph 1, sentence 1, under the heading “(v) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Santa Barbara Museum of Natural History,” is corrected by substituting the following sentence:

In 1959, human remains representing, at minimum, one individual were collected by Thomas Bird and donated to the Santa Barbara Museum of Natural History in 1990.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 2, paragraph 2, sentence 1, under the heading “(v) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Santa Barbara Museum of Natural History,” is corrected by substituting the following sentence:

In 1960, human remains representing, at minimum, two individuals were collected by David Roy Wiser on a construction site near the Department of the Navy’s island airstrip and donated to the Santa Barbara Museum of Natural History.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 2, paragraph 3, sentence 1, under the heading “(v) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Santa Barbara Museum of Natural History,” is corrected by substituting the following sentence:

In 1966, human remains representing, at minimum, one individual were collected by U.S. Navy personnel from a site with the Santa Barbara Museum of Natural History Site Number 133.54 (the equivalent Smithsonian trinomial is unknown) and donated to the Santa Barbara Museum of Natural History.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 2, paragraph 4, sentence 1, under the heading “(v) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Santa Barbara Museum of Natural History,” is corrected by substituting the following paragraph:

In 1970, human remains representing, at minimum, one individual were donated by Art McHarg to the Santa Barbara Museum of Natural History.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 3, paragraph 1, under the heading “(vi) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Southwest Museum of the American Indian at the Autry Museum of the American West,” is corrected by deleting the following paragraph:

Circa 1900, human remains representing, at minimum, one individual were collected by Margaret Nix and donated to the Southwest Museum. No specific provenience information beyond their SNI origin exists for

these human remains. No known individual was identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 3, paragraph 2, sentence 1, under the heading “(vi) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Southwest Museum of the American Indian at the Autry Museum of the American West,” is corrected by substituting the following sentence:

Circa 1926, human remains representing, at minimum, two individuals, were collected by Norman Murdoch and donated to the Southwest Museum in 1976.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 3, paragraph 3, sentence 1, under the heading “(vi) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Southwest Museum of the American Indian at the Autry Museum of the American West,” is corrected by substituting the following paragraph:

Between 1958 and 1960, human remains representing, at minimum, 48 individuals were collected by Bruce Bryan, Charles Rozaire, George Kritzman, and others during Southwest Museum expeditions to SNI. These human remains were excavated or surface collected from nine SNI sites—CA—SNI—11, CA—SNI—12, CA—SNI—16, CA—SNI—38, CA—SNI—41, CA—SNI—47, CA—SNI—51, CA—SNI—55, CA—SNI—97. No known individuals were identified. The 129 associated funerary objects, listed as individual or grouped catalogued items, are divided among the different sites. The four associated funerary objects from SNI—11 are one lot bird bone, one complete small mortar, one lot red ceramic pieces, and one lot tarring pebbles with asphaltum. The 17 associated funerary objects from SNI—12 are one lot Abalone shell beads, one Abalone shell fragment, three Abalone shell pendants, one lot Abalone square shell beads, one lot coral fragments, one limpet shell, one lot miscellaneous shell fragments, three lots Olivella shell beads, two lots sea urchin fragments, one lot snail shells, and two lots Tegula shell fragments. The 25 associated funerary objects from SNI—16 are four lots Abalone shell fragments, one bag misc. shell and faunal, one bag of burnt pebbles, shell fragments and animal bone, one lot Basketry impression soil, two lots Asphaltum fragments, one lot clam or oyster shell fragments, one lot coral fragments, two lots fish bone, two lots Limpet shells, one Oyster shell pendant, one lot rodent bones, two lots sea urchin fragments, one lot shell beads, one lot shell fragments, two lots snail shell fragments, one lot Tegula shell fragments, and one lot whole Olivella beads. The three associated funerary objects from SNI—38 are one lot Abalone shell fragments, one lot unmodified animal bone, and one steatite effigy. The seven associated funerary objects from SNI—41 are one lot Tegula shells, two lots Abalone shell, one lot unmodified animal bones, one lot Chiton shells, one

Olivella shell disc bead, and one sandstone object. The 14 associated funerary objects from SNI—47 are one lot barnacle shell, one lot Abalone shells, one lot mussel shells, one Tegula shell, two granite bowl fragments, one Limpet shell, two polished soapstone effigy fragments, one lot red Abalone shells, one sandstone mano, one lot sea urchin fragments, one shell fragment, and one woven sea grass fiber. The 33 associated funerary objects from SNI—51 are one lot of misc. worked and unworked shell, four lots of mixed stone, shell and bone tools, beads, and lithics, with misc. fragments of animal bone and shell, one lot of tarred pebbles with one flake, one clump of soil with sea grass, two lots animal bone, three unmodified animal bones, two lots charcoal, one modified animal bone, two lots burned bone beads with circular incised groove, one lot burned bone tube beads, one lot tube beads, two lots disc-shaped beads, one lot disc-shaped shell beads, one Conus californicus spire-lopped shell bead, one lot disc-shaped stone beads, two lots Mytilus disc-shaped shell beads with centrally-drilled hole, one lot Olivella shell bead blank, one lot Olivella shell beads, one lot red ochre pigment fragments, three lots spire-lopped shell beads, and one lot woven seagrass pieces. The two associated funerary objects from SNI—55, listed as individual or grouped catalogued items, are one lot Abalone shell beads and one lot Olivella shell beads. The 24 associated funerary objects from SNI—97 are two asphaltum fragments, one bag of seagrass cordage and matting with one bone fragment, two bundles of fibers and soil, one lot sea grass cordage, one lot Black Abalone shells, one burned and ground animal bone fragments, one lot of ground animal bone fragment, one lot burned wood fragments, one core hammerstone, one Cowrie shell fragment, one Mussel shell fragment, one lot fish and animal bone, one ground stone fragment, two stone scrapers, two Quartzite flake or pestle fragments, one lot shell beads, one lot shell fragments, one stone hoe or chopper, one lot of unworked pebble and one possible scraper.

In the **Federal Register** (80 FR 10510, February 26, 2015), column 3, paragraph 4, sentence 1, under the heading “(vi) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Southwest Museum of the American Indian at the Autry Museum of the American West,” is corrected by substituting the following sentence:

Between 1977 and 1984, human remains representing, at minimum, four individuals were collected from sites CA—SNI—11, CA—SNI—12, CA—SNI—13 and CA—SNI—54 by George Kritzman, Fred Reinman, and others during California State University Los Angeles research on SNI and donated to the Southwest Museum at an unknown date.

In the **Federal Register** (80 FR 10511, February 26, 2015), column 1, paragraph 1, sentence 3, under the heading “(vi) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Southwest Museum of the American

Indian at the Autry Museum of the American West,” is corrected by substituting the following sentence:

The 88 associated funerary objects, listed as individual or grouped catalogued items are one lot of undifferentiated animal bone, 81 bone awls, one lot of green abalone fragments, one lot of mussel shell fragments, one coral bead, one lot of sea-matting, cordage and fibers, one shell fragment, and one lot of soil and bone fragments.

In the **Federal Register** (80 FR 10511, February 26, 2015), column 1, paragraph 2, sentence 3, under the heading “(vi) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Southwest Museum of the American Indian at the Autry Museum of the American West,” is corrected by substituting the following sentence:

The one associated funerary object, listed as an individual catalogued item, is a clam shell.

In the **Federal Register** (80 FR 10511, February 26, 2015), column 1, paragraph 3, under the heading “(vi) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Southwest Museum of the American Indian at the Autry Museum of the American West,” is corrected by deleting the following paragraph:

One additional set of human remains representing, at minimum, 1 individual, that also has no specific information on date of collection/donation or a collector, does have accompanying documentation indicating it was collected from site CA-SNI-11. No known individual was identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10511, February 26, 2015), column 1, paragraph 4, under the heading “(vii) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the U.C. Berkeley Phoebe A. Hearst Museum of Anthropology,” is corrected by deleting the following paragraph:

In 1901, human remains representing at minimum, 2 individuals were collected by P.M. Jones and donated to the Lowie Museum of Anthropology (the predecessor of the U.C. Berkeley Phoebe A. Hearst Museum of Anthropology). No primary documentation or specific provenience information beyond their SNI origin exists for these human remains. No known individuals were identified. No associated funerary objects are present.

In the **Federal Register** (80 FR 10511, February 26, 2015), column 1, paragraph 5, under the heading “(vii) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the U.C. Berkeley Phoebe A. Hearst Museum of Anthropology,” is corrected by deleting the following paragraph:

In 1902, human remains representing, at minimum, 24 individuals were collected by

Mrs. Blanche Trask during her botanical survey of SNI and donated to the then Lowie Museum of Anthropology. No primary documentation or specific provenience information beyond their SNI origin exists for these human remains. No known individuals were identified. The 1 associated funerary object is a large abalone shell lying atop the cranium of the individual human remains cataloged as 382-12-2187.

In the **Federal Register** (80 FR 10511, February 26, 2015), column 2, paragraph 1, sentence 1, under the heading “(vii) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the U.C. Berkeley Phoebe A. Hearst Museum of Anthropology,” is corrected by substituting the number “17” with the number “18.”

In the **Federal Register** (80 FR 10511, February 26, 2015), column 2, paragraph 2, sentence 1, under the heading “(vii) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the U.C. Berkeley Phoebe A. Hearst Museum of Anthropology,” is corrected by substituting the number “2” with the number “3.”

In the **Federal Register** (80 FR 10511, February 26, 2015), column 2, paragraph 2, under the heading “(vii) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the U.C. Berkeley Phoebe A. Hearst Museum of Anthropology,” is corrected by inserting the following sentence after sentence 1:

The human remains were originally donated through the U.C. Museum of Paleontology.

In the **Federal Register** (80 FR 10511, February 26, 2015), column 2, the following information is added after paragraph 2:

(viii) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Fowler Museum at UCLA

In 1953, human remains representing, at minimum, two individuals (two adult females) were possibly collected by Clement Meighan and Hal Eberhart from site CA-SNI-56/18A. No known individuals were identified. One associated funerary object was collected, a spool-shaped object made from a whale vertebra.

In 1956, human remains representing, at minimum one individual (an adult female) was surface collected from San Nicolas Island and brought into the UCLA Dickey Biology collections. It was transferred to the Fowler Museum in 1993 for NAGPRA inventory. No known individual was identified. No associated funerary objects are present.

In 1960, human remains representing, at minimum one individual (an infant), was surface collected from San Nicolas Island by Sam-Joe Townsend & S. Rootenberg without further provenience information. No known individual was identified. No associated funerary objects are present.

(ix) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Natural History Museum of Los Angeles County

In the 1930s, human remains representing, at minimum, four individuals were collected by an individual named Howard Arden Edwards of the Antelope Valley Museum. The human remains were transferred to the Natural History Museum of Los Angeles County by Grace Oliver of the Antelope Valley Museum in 1979. No primary documentation or specific provenience information beyond their SNI origin exists for these human remains. No known individuals were identified. No associated funerary objects are present.

In an unknown year, human remains representing, at minimum, 20 individuals were collected by Roy Moodie and later donated to the Natural History Museum of Los Angeles County in 1970. No specific provenience information beyond their SNI origin exists for these human remains. No known individuals were identified. No associated funerary objects are present.

In an unknown year, human remains representing, at minimum, one individual were donated by S.C. Evans to the Natural History Museum of Los Angeles County. No specific provenience information beyond their SNI origin exists for these human remains. No known individuals were identified. No associated funerary objects are present.

(x) Human Remains and Associated Funerary Objects in the Possession of the Naval Base Ventura (NBVC) San Nicolas Island Curation Facility

In 1991, human remains representing, at minimum, one individual were collected by Dana Bleitz in a caliche soil sample from CA-SNI-351; the embedded human remains were only identified when the sample was being cleaned ca. 2015. No known individuals were identified. No associated funerary objects are present.

In 1999, human remains representing, at minimum, one individual were collected by CSU Los Angeles during excavation of a historic-period Chinese abalone site, CA-SNI-323H. No known individuals were identified. No associated funerary objects are present.

In 2005, human remains representing, at minimum, one individual were collected by CSULA from CA-SNI-238; but were only identified when unsorted screened material was processed by Far Western Anthropological Research Group, Inc., in 2013. No known individuals were identified. No associated funerary objects are present. Documentation indicates theses human remains were transferred to the San Nicolas Island Curation Facility. These human remains have been missing since 2013.

In 2006, human remains representing, at minimum, one individual were collected by California State University, Fullerton from CA-SNI-503; only identified when previously unsorted screened material was processed by Far Western Anthropological Research Group, Inc. in 2013. No known individuals were identified. No associated funerary objects are present. Documentation

indicates these human remains were transferred to the San Nicolas Island Curation Facility. These human remains have been missing since 2013.

NAGPRA items in collections at the SNI Curation Facility include two funerary objects associated with human remains located at the Fowler Museum at UCLA and reported in subparagraph (i) of this notice. These associated funerary objects, listed as grouped catalogued items, are one lot of spire-lopped shell beads and one lot of bird bone beads that was collected by Sam-Joe Townsend and Fred Reinman in 1959 at sites SNI-14 and SNI-15 as part of the UCLA Archeological Survey.

(xi) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the San Diego Museum of Man

On an unknown date, human remains representing, at minimum, one individual who had been cremated, were collected from SNI and donated to the San Diego Museum of Man. They were identified during a comprehensive inventory of storage areas. No specific provenience information beyond their SNI origin exists for these human remains. No known individual was identified. No associated funerary objects are present.

(xii) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Santa Barbara Museum of Natural History

In 1917, human remains representing, at minimum, one individual were collected by an unknown individual and accessioned by the Santa Barbara Museum of Natural History in 2014. No specific provenience information beyond their SNI origin exists for these human remains. No known individual was identified. No associated funerary objects are present.

In the 1950s, human remains representing, at minimum, two individuals were collected by an unnamed geologist and later given to a local Chumash individual, who donated them to the Santa Barbara Museum of Natural History in 2000. No specific provenience information beyond their SNI origin exists for these human remains. No known individual was identified. No associated funerary objects are present.

In 1976, human remains representing, at minimum, one individual were collected by R. Russell and initially given to Channel Islands National Park, who then conveyed them to the Santa Barbara Museum of Natural History. No primary documentation or specific provenience information beyond their SNI origin exists for these human remains. No known individual was identified. No associated funerary objects are present.

In 1976, human remains representing, at minimum, two individuals were surface collected by an unknown individual and donated to the Santa Barbara Museum of Natural History. No specific provenience information beyond their SNI origin exists for these human remains. No known individual was identified. No associated funerary objects are present.

Navy-controlled NAGPRA items at the Santa Barbara Museum of Natural History

also include human remains representing, at minimum, three individuals, that have information on the date of donation (1976, 1992 and 1998, respectively), but lack the name of the collectors or site provenience beyond their SNI origin. No known individual was identified. No associated funerary objects are present.

(xiii) Navy-Controlled SNI Human Remains and Associated Funerary Objects at the Naval Air Weapons Station (NAWS) China Lake Curation Facility

In 1993, human remains representing, at minimum, one individual were collected by California State University, Fullerton from CA-SNI-38; but were only identified when previously uncatalogued material was cataloged by the Navy Region Southwest Curation Specialist in 2018. The collection was curated at the Naval Base Ventura County (NBVC) San Nicolas Island Curation Facility from the time of excavation until it was transferred to the NAWS China Lake Curation Facility in 2016. No known individuals were identified. The 32 associated funerary objects, listed as individual or grouped catalogued items, are one piece of porphyritic metavolcanic debitage, one piece of metavolcanic debitage, three lots *Balanus* sp., three lots charcoal, two lots *Cirripedia*, one lot *Decapoda* sp., one lot *Haliotis cracherodii*, one lot *Haliotis* sp., one lot *Helix* sp., one lot *Lottia gigantea*, two lots *Mytilus californianus*, one lot red ochre, one lot *Olivella biplicata*, three lots *pisces* (undiff.), one lot *pisces vertebrae*, one lot *Septifer bifurcatus*, six lots *Strongylocentrotus* sp., one lot *Tegula* sp., and one lot *vermitidae*.

In the **Federal Register** (80 FR 10511, February 26, 2015), column 2, paragraph 3 sentence 1 is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 547 individuals of Native American ancestry.

In the **Federal Register** (80 FR 10511, February 26, 2015), column 2, paragraph 3, sentence 2 is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(3)(A), the 1,017 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

In the **Federal Register** (80 FR 10511, February 26, 2015), column 2, paragraph 3, sentence 3 is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseño Mission Indians of the

Rincon Reservation, California; and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, hereafter referred to as "The Tribes."

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mr. Joseph Montoya, Environmental Planning and Conservation Branch Manager, Naval Base Ventura County, 311 Main Road, Building 1, Code N45V, Point Mugu, CA 93042, telephone (805) 989-3804, email joseph.l.montoya@navy.mil, by December 19, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Department of the Navy is responsible for notifying The Tribes that this notice has been published.

Dated: October 9, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018-25123 Filed 11-16-18; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0026885; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Marshall University, Huntington, WV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Marshall University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Marshall University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian

organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Marshall University at the address in this notice by December 19, 2018.

ADDRESSES: Jendonnae Houdyschell, Associate General Counsel, Marshall University, One John Marshall Drive, Huntington, WV 25755-1060, telephone (304) 696-6704, email houdyschell2@marshall.edu.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Marshall University, Huntington, WV. The human remains and associated funerary objects were removed from the Clover Site (46-CB-40), Cabell County, WV; Snidow Site (46-MC-1 and 46-MC-1/3), Mercer County, WV; Parkersburg, Wood County, WV; and 44-TZ-6, Tazewell County, VA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Marshall University professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Sioux Reservation, South Dakota; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Kaw Nation, Oklahoma; Onondaga Nation; Saginaw Chippewa Indian Tribe of Michigan; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); The Osage Nation (previously listed as the Osage Tribe); and Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York). The Haudenosaunee

Standing Committee on Burial Rules and Regulations, Acting Chair (and Tonawanda Band of Seneca NAGPRA representative) also participated in the consultation on behalf of the other member Tribes, which are the Cayuga Nation; Onondaga Nation; Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York); Seneca Nation of Indians (previously listed as the Seneca Nation of New York); and the Tuscarora Nation.

An invitation to consult was extended to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Catawba Indian Nation (aka Catawba Tribe of South Carolina); Cayuga Nation; Cherokee Nation; Chickahominy Indian Tribe; Chickahominy Indian Tribe—Eastern Division; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Monacan Indian Nation; Nansemond Indian Tribe; Omaha Tribe of Nebraska; Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin); Oneida Indian Nation (previously listed as the Oneida Nation of New York); Pamunkey Indian Tribe; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Rappahannock Tribe, Inc.; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York); Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; The Quapaw Tribe of Indians; Tunica-Biloxi Indian Tribe; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah

Band of Cherokee Indians in Oklahoma; Upper Mattaponi Tribe; and the Wyandotte Nation. These Tribes either did not consult or engaged in limited communication.

Hereafter, all tribes listed in this section are referred to as "The Consulted and Notified Tribes."

History and Description of the Remains

From 1984 through 1986, and again from 1988 through 1989, human remains representing, at minimum, six individuals were removed from the Clover Site (46-CB-40) in Cabell County, WV. The human remains and associated funerary objects were excavated by the Marshall University Archaeological Field School and brought to Marshall University for curation and research. At the time of the excavation, the land was privately owned, it is now owned by the United States. The human remains represent one female aged 12–15 years from Feature 2; one individual (sex indeterminate) aged 14–18 months from Feature 3; one female aged 19–20 years from Feature 4; one male aged 25–26 years from Feature 9; one individual (likely female) more than 25 years old from Feature 21; and one male aged 17–18 years from Feature 27. No known individuals were identified. The 53 associated funerary objects are: One antler flaker, two bone beads, one canal coal claw pendant, nine lots ceramic sherds, one shell-tempered ceramic vessel, nine chert bifaces, one lump fired clay, one lot C-14 samples, one copper hair ornament, one lot ground stone, eight lots mixed materials, five lots soil samples, three lots faunal material, two lots shell, one mussel shell necklace, one piece worked hematite, two pieces worked shell, one sandstone whetstone, two shell beads, and one stone axe.

In the mid-1970s, and again in 1988 and 1989, human remains representing, at minimum, 26 individuals were removed from the Snidow Site (46-MC-1) and an adjacent site (46-MC-1/3) in Mercer County, WV. In the 1970s, the Snidow Site was excavated by a member of the West Virginia Archaeological Society. The finds were brought to Marshall University for study and were later donated to Marshall University. In 1988 and 1989, the Snidow Site was excavated by the Marshall University Archaeological Field School. The human remains were brought to Marshall University for curation and research. On an unknown date, Marshall University sent the human remains belonging to one individual that were removed from Feature 213 at the Snidow Site and the human remains

belonging to three individuals that were removed from Feature 596 for analysis. They were never returned, and have not been located. A single bone belonging to one of the individuals removed from Feature 596 has been located at Marshall University. The human remains from 46-MC-1 represent one male, aged 40–45 years from Burial 2A (Feature 596); one juvenile of indeterminate sex from Burial 2 (Feature 35); one individual of indeterminate sex, aged 6–9 months, from Burial 3A (Feature 36); one individual of indeterminate sex, aged 3–6 years, from Burial 3B (Feature 36); one individual of indeterminate sex, aged 13–16 years, from Burial 3C (Feature 36); one newborn of indeterminate sex from Burial 4 (Feature 41); one infant of indeterminate sex from Burial 5 (Feature 38); one infant of indeterminate sex from Burial 6 (Feature 37); one juvenile of indeterminate sex from Burial 7 (Feature 40); one individual of indeterminate sex, aged 4–6 months from Burial 8A (Feature 42); one individual of indeterminate sex, aged 3–4 years from Burial 8B (Feature 42); one individual of indeterminate sex, aged 4–6 years from Burial 8C (Feature 42); one individual of indeterminate sex, aged 3–4 years from Burial 8D (Feature 42); one juvenile of indeterminate sex from Burial 9 (Feature 43); one individual of indeterminate sex, aged 5–6 years from Burial 10A (Feature 40); one individual of indeterminate sex, aged 18–24 months from Burial 10B (Feature 40); one juvenile of indeterminate sex from Burial 11A (Feature 45); one adult of indeterminate sex from Burial 11B (Feature 45); one infant of indeterminate sex from Burial 12 (Feature 48); one infant of indeterminate sex from Burial 13 (Feature 49); and one infant of indeterminate sex from Burial 14 (Feature 53). The human remains from 46-MC-1/3 represent one infant of indeterminate sex from Burial 1 (Feature 19); one adult of indeterminate sex from Burial 2 (Feature 8); one infant of indeterminate sex from Burial 3 (Feature 30); one adult (possibly female) from Burial 4 (Feature 28); and one individual of indeterminate sex and age from Burial 6 (C2). No known individuals were identified. The 54 funerary objects are two lots bone beads, one lot C-14 samples, five lots ceramics, two lots charcoal, one lot clay, 12 lots faunal material, three lots flotation samples, four lots lithics, eight lots mixed materials, seven lots shell, six lots shell beads, and three lots soil samples.

On an unknown date, human remains representing, at minimum, one

individual are believed to have been removed from Parkersburg, on the Ohio River, in Wood County, WV. In the 1980s, a display case containing these human remains and unrelated cultural items was donated to the Marshall University by the Huntington Museum of Art. The human remains represent one male aged 24–27. No known individuals were identified. No associated funerary objects are present.

Sometime prior to 1996, human remains representing, at minimum, one individual were removed from the Hogue Site (44-TZ-6) in Tazewell County, VA. The human remains were found in an archeology collection that was donated to Marshall University by a vocational archeologist accessioned by the University in 1996. The human remains are from Burial 32 (Feature 212), and are of indeterminate sex and age. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Marshall University

Officials of Marshall University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context (Clover and Snidow Sites); the surface wear and coloration of the bone, provenience, and the similarity of the human remains to those from the Clover site, a Late Prehistoric site (Parkersburg site); and the preservation of the bones (Site 44-TZ-6).

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of a minimum of 34 individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(3)(A), the 107 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.

- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Cherokee Nation; Chickahominy Indian Tribe; Chickahominy Indian Tribe—Eastern Division; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Band

of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Monacan Indian Nation; Nansemond Indian Tribe; Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin); Oneida Indian Nation (previously listed as the Oneida Nation of New York); Onondaga Nation; Pamunkey Indian Tribe; Rappahannock Tribe, Inc.; Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York); Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Mattaponi Tribe; and the Wyandotte Nation.

- Other authoritative government sources indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Catawba Indian Nation (aka Catawba Tribe of South Carolina); Cheyenne River Sioux Tribe of the Cheyenne River Sioux Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Omaha Tribe of Nebraska; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York); Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon

Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; The Osage Nation (previously listed as the Osage Nation); The Quapaw Tribe of Indians; Tunica-Biloxi Indian Tribe; and the Turtle Mountain Band of Chippewa Indians of North Dakota.

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Consulted and Notified Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jendonnae Houdyschell, Associate General Counsel, Marshall University, One John Marshall Drive, Huntington, WV 25755-1060, telephone (304) 696-6704, email houdyschell2@marshall.edu, by December 19, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Consulted and Notified Tribes may proceed.

Marshall University is responsible for notifying The Consulted and Notified Tribes that this notice has been published.

Dated: October 25, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018-25124 Filed 11-16-18; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0026786; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Utah State Office, Salt Lake City, UT, and Southern Utah University, Cedar City, UT; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management, Utah State Office has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on October 12, 2004. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian

organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Bureau of Land Management, Utah State Office. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Bureau of Land Management, Utah State Office at the address in this notice by December 19, 2018.

ADDRESSES: Diana Barg, Museum Collections Manager, Bureau of Land Management, 440 W 200 S Suite 500, Salt Lake City, UT 84101, telephone (801) 539-4214, email dbarg@blm.gov.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, Bureau of Land Management, Utah State Office, Salt Lake City, UT. The human remains and associated funerary objects were removed from multiple locations in Washington and Kane Counties, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (69 FR 60664-60666, October 12, 2004). Osteological analysis conducted after the original publication of the **Federal Register** Notice in 2004 found that two individuals originally reported on the notice were representative of four individuals. Additionally, one individual that was reported on the original publication of the **Federal Register** Notice was later determined to have been left in situ at the time of excavation and, therefore,

should not have been included in the original NAGPRA inventory nor reported on the initial notice. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (69 FR 60665, October 12, 2004), column 1, paragraph 2 is corrected by deleting the following paragraph:

In 1983, human remains representing a minimum of one individual were removed from site 42Ws392 during legally authorized data recovery efforts as part of the Quail Creek Mitigation Project, Washington County, UT. No known individual was identified. No associated funerary objects are present.

In the **Federal Register** (69 FR 60665, October 12, 2004), column 1, paragraph 3 is corrected by deleting the following paragraph:

Based on ceramic and architectural styles, site organization, and other archeological information, site 42Ws392 has been identified as a multicomponent Pueblo I and late Pueblo II period occupation site. The site has been assigned to the archeologically defined culture known as Virgin Anasazi, a specific regional manifestation of Puebloan culture.

In the **Federal Register** (69 FR 60665, October 12, 2004), column 2, paragraph 4, sentence 1 is corrected by substituting the following sentence:

In 1979, human remains representing a minimum of four individuals were removed from site 42Ws969 Washington County, UT, during legally authorized excavations undertaken by the Southern Utah University Field School.

In the **Federal Register** (69 FR 60665, October 12, 2004), column 3, paragraph 6, sentence 1 is corrected by substituting the following sentence:

Officials of the U.S. Department of the Interior, Bureau of Land Management, Utah State Office have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of 12 individuals of Native American ancestry.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Diana Barg, Museum Collections Manager, Bureau of Land Management, 440 W 200 S Suite 500, Salt Lake City, UT 84101, telephone (801) 539-4214, email dbarg@blm.gov, by December 19, 2018. After that date, if no additional requestors have come

forward, transfer of control of the human remains and associated funerary objects to the Hopi Tribe of Arizona may proceed.

The Bureau of Land Management, Utah State Office is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: October 12, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–25125 Filed 11–16–18; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1046]

Certain Non-Volatile Memory Devices and Products Containing Same; Commission Determination To Rescind Remedial Orders Issued in This Investigation Based Upon License and Settlement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to rescind the limited exclusion order and cease and desist orders issued in this investigation based upon settlement.

FOR FURTHER INFORMATION CONTACT: Panyin Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be 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, Washington, DC 20436, telephone (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>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–1046 on April 12, 2017, based on a complaint filed by Macronix International Co., Ltd. of Hsin-chu, Taiwan and Macronix America, Inc. of

Milpitas, California (collectively, “Macronix”). 82 FR 17687–88 (Apr. 12, 2017). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain non-volatile memory devices and products containing the same that infringe certain claims of U.S. Patent No. 6,552,360; U.S. Patent No. 6,788,602 (“the ‘602 patent’”); and U.S. Patent No. 8,035,417. The Notice of Investigation named the following respondents: Toshiba Corporation of Tokyo, Japan; Toshiba America, Inc. of New York, New York; Toshiba America Electronic Components, Inc. of Irvine, California; Toshiba America Information Systems, Inc. of Irvine, California; and Toshiba Information Equipment (Philippines), Inc. of Binan, Philippines (collectively, “Toshiba”). The Office of Unfair Import Investigations was also named as a party to the investigation.

On June 16, 2017, the Commission determined not to review the ALJ's order (Order No. 11) granting an unopposed motion to amend the Notice of Investigation to add Toshiba Memory Corporation of Tokyo, Japan as a respondent. *See* Order 11, Comm'n Notice of Non-Review (June 16, 2017).

On April 13, 2018, the ALJ issued her final initial determination finding no violation of section 337 violation with respect to the asserted patents. On June 28, 2018, the Commission determined to review the final ID in part. *See* 83 FR 31416–18 (July 5, 2018). On review, the Commission found a violation of section 337 in connection with asserted claim 6 of the '602 patent. *See* 83 FR 51980–82 (Oct. 15, 2018). Having found a violation, the Commission determined that the appropriate remedy is a limited exclusion order (“LEO”) against Toshiba's infringing products and cease and desist orders (“CDOs”) against the domestic Toshiba respondents. *See id.*

On October 15, 2018, Macronix and Toshiba filed a joint petition to rescind the LEO and CDOs based upon a license and settlement agreement. The petition states that rescission is warranted because “the specific conduct covered by the Remedial Orders has become authorized or licensed by way of settlement and license.” Petition at 2. On October 25, 2018, the Commission investigative attorney filed a response in support of the petition. No other party filed response or opposition to the petition.

In view of the settlement agreement between Macronix and Toshiba, the Commission finds that the conditions justifying the remedial orders no longer

exist, and therefore, granting the petition is warranted under 19 U.S.C. 1337(k) and 19 CFR 210.76(a). Accordingly, the Commission has determined to rescind the remedial orders.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 13, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–25091 Filed 11–16–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0026]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Report of Theft or Loss of Explosives—ATF F 5400.5

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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.

DATES: The proposed information collection was previously published in the **Federal Register**, on September 10, 2018, allowing for a 60-day comment period. Comments are encouraged and will be accepted for an additional 30 days until December 19, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Jason Lynch, United States Bomb Data Center (USBDC) either by mail at 3750 Corporal Road, Redstone Arsenal, AL 35898, by email at Jason.Lynch@atf.gov, or by telephone at 256–261–7588.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1. Type of Information Collection (check justification or form 83):

Extension of a currently approved collection.

2. The Title of the Form/Collection: Report of Theft or Loss of Explosives.

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number (if applicable): ATF F 5400.5.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other (if applicable): Individuals or households, Not-for-profit institutions, Farms, Federal Government, and State, Local, or Tribal Government.

Abstract: According to 27 CFR 555.30 (a), "Any licensee or permittee who has knowledge or theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 1-800-800-3855 (nationwide toll free number) and on ATF F 5400.5, Report of Theft or Loss of Explosives, in accordance with the instructions on the form."

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to

respond: An estimated 300 respondents will utilize the form, and it will take each respondent approximately 1 hour and 48 minutes to complete the form.

6. An estimate of the total public burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 540 hours, which is equal to 300 (# of respondents) * 1 (# of responses per respondents) * 1.8 (1 hour and 48 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: November 14, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018-25169 Filed 11-16-18; 8:45 am]

BILLING CODE 4410-14-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On November 9, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of South Carolina in the lawsuit entitled *United States et al. v. Beazer East, Inc.*, Civil Action No. 2:18-cv-03051-DCN.

This case involves claims for natural resource damages under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, and related state law, stemming from contamination at the National Priorities List ("NPL") Superfund site known as the Koppers Co., Inc. (Charleston Plant) NPL Site (the "Site") in Charleston, South Carolina. The settlement resolves the alleged claims by required defendant to: (1) Implement an approximately 70 acre salt marsh wetlands restoration project; (2) pay \$400,000 to the federal and state natural resource trustees (the "Trustees") to fund an additional restoration project; (3) pay \$390,000 to South Carolina Department of Natural Resources for injury to groundwater; and, (4) pay \$1,000,000 to the Trustees for their costs of injury assessment.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney

General, Environment and Natural Resources Division, and should refer to *United States et al. v. Beazer East, Inc.*, D.J. Ref. No. 90-11-2-08343. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| To submit comments: | Send them to: |
|---------------------|---|
| By email | pubcomment-ees.enrd@usdoj.gov . |
| By mail | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$27.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018-25110 Filed 11-16-18; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2018-0012]

Advisory Committee on Construction Safety and Health (ACCSH); Charter Renewal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Renewal of the ACCSH charter.

SUMMARY: The Secretary of Labor (Secretary) has renewed the charter for ACCSH.

FOR FURTHER INFORMATION CONTACT: Mr. Damon S. Bonneau, OSHA Directorate of Construction, Occupational Safety and Health Administration; telephone (202) 693-2020 (TTY (877) 889-5627); email: bonneau.damon@dol.gov.

SUPPLEMENTARY INFORMATION: The Secretary has renewed the ACCSH

charter. The new charter will expire two years from the filing date.

Congress established ACCSH in Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3704(d)(4)), to advise the Secretary in the formulation of construction safety and health standards as well as on policy matters arising under the CSA and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*).

ACCSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102-3), OSHA's regulations on ACCSH (29 CFR part 1912), Secretary of Labor's Order 04-2018 (83 FR 35680, 7/27/18), and Chapter 1600 of Department of Labor Manual Series 3 (7/18/2016). Pursuant to FACA (5 U.S.C. App. 2, 14(b)(2)), the ACCSH charter must be renewed every two years.

The new charter updates the procedures for appointment of individuals to Department of Labor advisory committees.

Authority and Signature: Loren Sweatt, Deputy Assistant Secretary for Occupational Safety and Health, directed the preparation of this document under the authority granted by 29 U.S.C. 656; 40 U.S.C. 3704; 5 U.S.C. App. 2; 29 CFR parts 1911 and 1912; 41 CFR 102-3; and Secretary of Labor's Orders No. 1-2012 (77 FR 3912, 1/25/12).

Signed at Washington, DC, on November 9, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018-25113 Filed 11-16-18; 8:45 am]

BILLING CODE 4510-26-P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Legal Services Corporation's Board of Directors will meet telephonically on November 26, 2018. Immediately following the Board of Directors telephonic meeting, the Audit and Finance Committees will hold a combined closed telephonic meeting. The meetings will commence at 2:00 p.m., EST, and will continue until the conclusion of the combined Committees' agenda.

PLACE: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW, Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in

person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

Call-In Directions for Open Sessions

- Call toll-free number: 1-866-451-4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please immediately "MUTE" your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

Board of Directors Meeting

Status: Open.

Matters To Be Considered:

1. Approval of agenda
2. Consider and act on the Board of Directors' transmittal to accompany the Inspector General's Semiannual Report to Congress for the period of April 1, 2018 through September 30, 2018
3. Public comment
4. Consider and act on other business
5. Consider and act on adjournment of meeting

Combined Audit and Finance Committees Meeting

Status: Closed.

1. Approval of agenda
2. Briefing to update audit issues
 - Jim Sandman, President
3. Consider and act on other business
4. Consider and act on adjournment of meeting

CONTACT PERSON FOR MORE INFORMATION:

Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295-1500. Questions may be sent by electronic mail to FR_NOTICE_QUESTIONS@lsc.gov.

Accessibility: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295-1500 or FR_NOTICE_QUESTIONS@lsc.gov, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every

effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: November 15, 2018.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2018-25334 Filed 11-15-18; 4:15 pm]

BILLING CODE 7050-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 18-089]

NASA Advisory Council; Human Exploration and Operations Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Human Exploration and Operations Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Thursday December 6, 2018, 8:30 a.m. to 4:30 p.m.; and Friday, December 7, 2018, 8:00 a.m. to 11:00 a.m., Eastern Time.

ADDRESSES: NASA Headquarters, Glennan Conference Center, Room 1Q39, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Designated Federal Officer, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-2245, or bette.siegel@nasa.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting will also be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll free access number 1-888-324-9238 or toll access number 1-517-308-9132, passcode 3403297 followed by the # sign, on both days, to participate in this meeting by telephone. *Note:* If dialing in, please "mute" your phone. The WebEx link is <https://nasaenterprise.webex.com/>, the meeting number is 902 972 850, and the password is Exploration@2018 (case sensitive).

The agenda for the meeting includes the following topics:

—Gateway and Power Propulsion Element Update
 —Human Exploration and Operations Overview
 —Exploration Systems
 —International Space Station (ISS) Update
 —Reliability Statistics, Planned vs. Actual, for ISS Components
 —Commercial Crew

Attendees will be required to sign a register and comply with NASA security requirements, including the presentation of a valid picture ID before receiving access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee to Dr. Bette Siegel via email at bette.siegel@nasa.gov. To expedite admittance, U.S. citizens and Permanent Residents (green card holders) are requested to submit full name and citizenship status no less than 3 working days prior to the meeting to Dr. Bette Siegel via email at bette.siegel@nasa.gov. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,
*Advisory Committee Management Officer,
 National Aeronautics and Space
 Administration.*

[FR Doc. 2018–25160 Filed 11–16–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (18–092)]

National Space-Based Positioning, Navigation, and Timing Advisory Board; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, and the President's 2004 U.S. Space-Based Positioning, Navigation, and Timing (PNT) Policy, the National Aeronautics and Space Administration (NASA) announces a meeting of the National Space-Based Positioning,

Navigation, and Timing (PNT) Advisory Board.

DATES: Wednesday, December 5, 2018, from 9:00 a.m. to 5:00 p.m.; and Thursday, December 6, 2018, from 9:00 a.m. to 1:00 p.m., Local Time.

ADDRESSES: Crowne Plaza Redondo Beach, 300 North Harbor Drive, Redondo Beach, CA 90277.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Designated Federal Officer, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, phone (202) 358–4417, fax (202) 358–4297, or email jj.miller@nasa.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register. The agenda for the meeting includes the following topics:

- Update on U.S. Space-Based Positioning, Navigation and Timing (PNT) Policy and Global Positioning System (GPS) modernization
- Prioritize current and planned GPS capabilities and services while assessing future PNT architecture alternatives with a focus on affordability
- Examine methods in which to Protect, Toughen, and Augment (PTA) access to GPS/Global Navigation Satellite Systems (GNSS) services in key domains for multiple user sectors
- Assess economic impacts of GPS/GNSS on the United States and in select international regions, with a consideration towards effects of potential PNT service disruptions if radio spectrum interference is introduced
- Review the potential benefits, perceived vulnerabilities, and any proposed regulatory constraints to accessing foreign Radio Navigation Satellite Service (RNSS) signals in the United States and subsequent impacts on multi-GNSS receiver markets.
- Explore opportunities for enhancing the interoperability of GPS with other emerging international GNSS
- Examine emerging trends and requirements for PNT services in U.S. and international fora through PNT Advisory Board technical assessments, including back-up

services for terrestrial, maritime, aviation, and space users

Patricia Rausch,
*Advisory Committee Management Officer,
 National Aeronautics and Space
 Administration.*

[FR Doc. 2018–25200 Filed 11–16–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 18–090]

NASA Advisory Council; Technology, Innovation and Engineering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Technology, Innovation and Engineering Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Friday, December 7, 2018, 8:00 a.m.–4:30 p.m., Eastern Time.

ADDRESSES: NASA Headquarters, Room 6H41, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Designated Federal Officer, Space Technology Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4710, or g.m.green@nasa.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting will also be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll free access number 1–844–467–6272, passcode: 102421 followed by the # sign to participate in this meeting by telephone. NOTE: If dialing in, please “mute” your phone. The WebEx link is <https://nasaenterprise.webex.com>, the meeting number is 904 275 701, and the password is “N@CTIandE1218” (case sensitive). The agenda for the meeting includes the following topics:

- Space Technology Mission Directorate Update and Discussion
- Gateway and Habitation Capability Development—Human Exploration and Operations Technology Development Efforts
- Cryogenic Fluid Management Update
- Office of the Chief Technologist Update

- In-Situ Resource Utilization Planning and Update
- Ultra-Strong Composites by Computational Design Space Technology Research Institute Update

Attendees will be required to sign a register and to comply with NASA security requirements including the presentation of a valid picture ID before receiving access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ms. Anyah Dembling via email at anyah.dembling@nasa.gov or by telephone at (202) 358-5195. To expedite admittance, U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation no less than 3 working days prior to the meeting to Ms. Anyah Dembling. It is imperative that this meeting be held on this day to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 2018-25161 Filed 11-16-18; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (18-091)]

Heliophysics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Advisory Committee (HPAC). This Committee functions in an advisory capacity to the Director, Heliophysics Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and

technical information relevant to program planning.

DATES: Tuesday, December 18, 2018, from 9:30 a.m.–5 p.m.; Wednesday, December 19, 2018, from 9 a.m.–5 p.m.; and Thursday, December 20, 2018, from 9 a.m.–1 p.m., Eastern Time.

ADDRESSES: NASA Headquarters, Room 1Q39, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-2355, fax (202) 358-2779, or khenderson@nasa.gov.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the capacity of the room. This meeting will also be available telephonically and via WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll free conference call number 1-888-809-8966 or toll number 1-210-234-8402, passcode 2100562, followed by the # sign, to participate in this meeting by telephone on all three days. The WebEx link is <https://nasaenterprise.webex.com/>; the meeting number is 904-821-176 and the password is HPACConf2018! (case sensitive) on all three days.

The agenda for the meeting includes the following topics:

- Heliophysics Division (HPD) News, Updates, and New Initiatives
- HPD Data Management and Computing Topics
- Specific HPD Research and Analysis Program, Operating Mission and Mission Planning Topics

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days in advance by contacting Ms. KarShelia Henderson

via email at khenderson@nasa.gov or by fax at (202) 358-2779. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 2018-25201 Filed 11-16-18; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 19, 2018 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission@OMB.EOP.gov and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Suite 5080, Alexandria, VA 22314, or email at PRAComments@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548-2279, emailing PRAComments@ncua.gov, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133-0004.

Type of Review: Revision of a currently approved collection.

Title: NCUA Call Report and Profile.

Forms: NCUA Forms 5300 and 4501A.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions to make financial reports to the NCUA. Section 741.6 prescribes the method in which federally insured credit unions must submit this information to NCUA.

NCUA Form 5300, Call Report, is used to file quarterly financial and statistical data and NCUA Form 4501A, Credit Union Profile, is used to obtain non-financial data relevant to regulation and supervision such as the names of senior management and volunteer officials, and are reported through NCUA's online portal, Credit Unions Online.

The financial and statistical information is essential to NCUA in carrying out its responsibility for supervising federal credit unions. The information also enables NCUA to monitor all federally insured credit unions with National Credit Union Share Insurance Fund (NCUSIF) insured share accounts.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 132,720.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on November 14, 2018.

Dated: November 14, 2018.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2018-25140 Filed 11-16-18; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Loan Participation

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following renewal of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before January 18, 2019 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 5080, Alexandria, Virginia 22314; Fax No. 703-519-8579; or Email at PRAComments@NCUA.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above or Dawn Wolfgang at 703-548-2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133-0141.

Title: Organization and Operations of Federal Credit Unions—Loan Participation, 12 CFR 701.22.

Type of Review: Extension of a currently approved collection.

Abstract: NCUA rules and regulations, §§ 701.22 and 741.225, outline the requirements for a loan participation program. Federally Insured Credit Unions (FICU) are required to execute a written loan participation agreement with the lead lender. Additionally, the rule requires all FICUs to maintain a loan participation policy that establishes underwriting standards and maximum concentration limits. Credit unions may apply for waivers on certain key provisions of the rule.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 1,876.

Estimated Annual Frequency: 1.

Estimated Total Annual Responses: 3,762.

Estimated Annual Responses per Respondent: 0.80

Estimated Total Annual Burden Hours: 3,010.

Reason for Change: Adjustments are being made to the number of respondents to reflect the current number of credit unions affected and a more accurate assignment of burden per response.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on November 14, 2018.

Dated: November 14, 2018.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2018-25141 Filed 11-16-18; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Social, Behavioral and Economic Sciences (#1171).

Date and Time: December 6, 2018; 8:45 a.m. to 5 p.m., December 7, 2018; 9 a.m. to 1 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Room E 2030, Alexandria, VA 22314.

Type of Meeting: Open.

Contact Person: Dr. Deborah Olster, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Sciences, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292-8700.

Summary of Minutes: Posted on SBE advisory committee website at: <https://www.nsf.gov/sbe/advisory.jsp>.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate (SBE) programs and activities.

Agenda

- SBE Directorate Update
- NSF Sexual Harassment Policy
- Roundtable 1. Exciting SBE Research in AC Member Areas
- Roundtable 2. Communicating the Value of the SBE Sciences
- DARPA Technical Exchange on Complex Social Systems
- The Lab @DC
- Exploring NSF-NIH Collaborations in the SBE Sciences
- Meeting with NSF Leadership
- National Center for Science and Engineering Statistics (NCSES) Update
- Committee on Equal Opportunities in Science and Engineering (CEOSE) Update
- Advisory Committee for Environmental Research and Education (AC-ERE) Update
- Wrap-up, Assignments, Planning for Next SBE AC Meeting

Dated: November 14, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018-25118 Filed 11-16-18; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION**Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: Advisory Committee for Computer and Information Science and Engineering (CISE) (1115).

DATE AND TIME: December 11, 2018: 8:30 a.m. to 4:30 p.m.

PLACE: National Science Foundation, 2415 Eisenhower Avenue, Room E2030, Alexandria, VA 22314.

TYPE OF MEETING: Open.

CONTACT PERSON: Kajuana Mayberry, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–8900.

PURPOSE OF MEETING: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director for CISE on issues related to long-range planning, and to form ad hoc subcommittees and working groups to carry out needed studies and tasks.

AGENDA:

- NSF and CISE updates
- Discussion on NSF and CISE activities in Artificial Intelligence
- Discussion on NSF Big Ideas and Convergence Accelerators

Dated: November 14, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–25119 Filed 11–16–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION**Final Environmental Impact Statement (FEIS) for the Sacramento Peak Observatory, Sunspot, New Mexico**

AGENCY: National Science Foundation.

ACTION: Notice of availability.

SUMMARY: The National Science Foundation (NSF) announces the availability of the Final Environmental Impact Statement (FEIS) for Sacramento Peak Observatory, Sunspot, NM. This Final EIS identifies and analyzes the potential environmental consequences of the following alternatives: *Alternative 1*, Continued Science- and Education-focused Operations by Interested Parties with Reduced NSF Funding; *Alternative 2*, Transition to Partial Operations by Interested Parties with Reduced NSF

Funding (*Agency-preferred Alternative*); *Alternative 3*, Mothballing of Facilities; *Alternative 4*, Demolition and Site Restoration (*Secondary Agency-Preferred Alternative*); and the *No Action Alternative*, Continued NSF Investment for Science-focused Operations. It also proposes mitigation measures to minimize the adverse impacts from alternatives that include demolition where such impacts may occur.

DATES: The National Science Foundation will execute a Record of Decision no sooner than 30 days after the date of publication of the Notice of Availability published in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: The Final EIS is made available for public inspection online at www.nsf.gov/AST. A copy of the FEIS will be available for review at the following libraries:

Michael Nivison Public Library, 90 Swallow Place, Cloudcroft, NM 88317
Alamogordo Public Library, 920 Oregon Avenue, Alamogordo, NM 88310

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Pentecost, Re: Sacramento Peak Observatory, 2415 Eisenhower Avenue, Room W9152, Alexandria, VA 22314, envcomp-AST-sacpeak@nsf.gov; 703–292–4907.

SUPPLEMENTARY INFORMATION:

Sacramento Peak Observatory is located in Sunspot, New Mexico, within the Lincoln National Forest in the Sacramento Mountains. Established by the U.S. Air Force via a memorandum of agreement with the U.S. Forest Service in 1950, the facility was transferred to NSF in 1976. NSF and the U.S. Forest Service executed a land use agreement (signed in 1980) to formalize this transition and the continued use of the land for the Observatory. The primary research facility in operation at the Sacramento Peak site is the Richard B. Dunn Solar Telescope (DST), currently managed by the National Solar Observatory (NSO). The DST is a high-spatial resolution optical/infrared solar telescope.

Through a series of academic community-based and portfolio reviews, NSF identified the need to divest several facilities from its portfolio in order to retain the balance of capabilities needed to deliver the best performance on the key science of the present decade and beyond. In 2016, NSF completed a feasibility study to inform and define options for the site's future disposition that would involve significantly decreasing or eliminating NSF funding of the Sacramento Peak

Observatory. NSF issued a Notice of Intent to prepare an EIS on July 5, 2016, held scoping meetings on July 21, 2016, and held a 30-day public comment period that closed on August 5, 2016.

The Draft EIS was made available for public review and comment from February 8 through March 26, 2018. The full Draft EIS was also posted on the NSF, Division of Astronomical Sciences website (www.nsf.gov/AST) and hard copies were delivered to local libraries. A public meeting on the Draft EIS was held in Alamogordo, NM on February 28, 2018. During the review period, the NSF received over 30 comments. After considering all comments received, the NSF prepared the Final EIS. There are no substantive changes to the range of alternatives considered. *Alternative 2* is identified as the “*Agency-Preferred Alternative*” and *Alternative 4* is identified as the “*Secondary Agency-Preferred Alternative*.”

Dated: November 13, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–25088 Filed 11–16–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION**Proposal Review Panel for International Science and Engineering; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Office of International Science and Engineering—PIRE: U.S.—East Africa Research and Education Partnership: Cassava Mosaic Disease—A Paradigm for the Evolution of Insect-Transmitted Plant Virus Pathosystems—Site Visit.

Date and Time: January 28, 2019, 8 a.m.–9 p.m.; January 29, 2019, 9 a.m.–4:30 p.m.

Place: North Carolina State University, Raleigh, North Carolina, 27695.

Type of Meeting: Part open.

Contact Person: Cassandra Dudka, PIRE Program Manager, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone 703/292–7250.

Purpose of Meeting: NSF site visit to conduct a review during year 3 of the five-year award period. To conduct an in-depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda: See attached.

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 2018.

Crystal Robinson,

Committee Management Officer.

PIRE Site Visit Agenda

January 28, 2019

8 a.m.–9:30 a.m. Introductions (OPEN)
PIRE Rationale and Goals
Partnerships
Human Resource and Infrastructure
Development Institutional Support
9:30 a.m.–10 a.m. NSF Executive
Session/Break (CLOSED)
10 a.m.–Noon Research
Noon–12:30 p.m. NSF Executive
Session (CLOSED)
12:30 p.m.–1:30 p.m. Lunch—
Discussion with Trainees (NSF,
Panel and trainees)
1:30 p.m.–3 p.m. Training and
International Experience (OPEN)
Outreach
Integrating Research and Education
Integrating Diversity
3 p.m.–3:30 p.m. NSF Executive
Session/Break (CLOSED)
3:30 p.m.–4:15 p.m. Administration,
Management, and Budget Plans
(OPEN)
4:15 p.m.–5 p.m. Summary
5 p.m.–6 p.m. Executive Session/
Break-Develop issues for
clarification (CLOSED)
6:15 p.m.–6:30 p.m. Critical Feedback
Provided to PIs & Senior
investigators
7 p.m.–9 p.m. NSF Executive Session/
Working Dinner (CLOSED)
Committee organizes on its own at
hotel

January 29, 2019

9 a.m.–10 a.m. Summary/PI Team
Response to Critical Feedback
(CLOSED)
10 a.m.–4 p.m. Site Review Team
Prepares Site Visit Report
(CLOSED)
(Working Lunch Provided)
4 p.m.–4:30 p.m. Presentation of Site
Visit Report to Principal
Investigator (CLOSED)

[FR Doc. 2018–25198 Filed 11–16–18; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2019–12 and CP2019–12;
MC2019–13 and CP2019–13; MC2019–14
and CP2019–14; MC2019–15 and CP2019–
15; MC2019–16 and CP2019–16]**

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 20, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of

the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).*: MC2019–12 and CP2019–12; *Filing Title:* USPS Request to Add Priority Mail Contract 473 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 9, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.*, and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* November 20, 2018.

2. *Docket No(s).*: MC2019–13 and CP2019–13; *Filing Title:* USPS Request to Add First-Class Package Service Contract 95 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 9, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.*, and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* November 20, 2018.

3. *Docket No(s).*: MC2019–14 and CP2019–14; *Filing Title:* USPS Request to Add Priority Mail Contract 474 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 9, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.*, and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* November 20, 2018.

4. *Docket No(s).*: MC2019–15 and CP2019–15; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 90 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 9, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.*, and 39 CFR 3015.5;

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Public Representative: Christopher C. Mohr; *Comments Due:* November 20, 2018.

5. *Docket No(s).*: MC2019–16 and CP2019–16; *Filing Title:* USPS Request to Add Priority Express & Priority Mail Contract 75 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 9, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.*, and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* November 20, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,
Secretary.

[FR Doc. 2018–25095 Filed 11–16–18; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84578; File No. SR–MIAX–2018–32]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 503 To Adopt Interpretations and Policies .02 and .03

November 13, 2018.

Pursuant to the provisions of 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 November 9, 2018, Miami International Securities Exchange, LLC (“MIAX Options” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to relocate Rule 1809(f) (“SPIKES Index Options Settlement”) and Rule 1809, Interpretations and Policies .06 (“SPIKES Special Settlement Auction”) into Rule 503, Openings on the Exchange, new Interpretations and Policies .02 and .03.

The text of the proposed rule change is available on the Exchange’s website at

<http://www.miaxoptions.com/rule-filings/> at MIAX Options’ principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Interpretations and Policies .02, to Rule 503 (“Openings on the Exchange”), in order to relocate existing Exchange Rule 1809(f), SPIKES Index Options Settlement, to Rule 503. The Exchange also proposes to adopt new Interpretations and Policies .03, to Rule 503, in order to similarly relocate existing Exchange Rule 1809, Interpretations and Policies .06, SPIKES Special Settlement Auction. This proposal seeks to better organize the rules of the Exchange in order to make the rules easier to read and to ensure that these rules apply only to MIAX Options. The Exchange notes that the changes proposed herein are non-substantive rule changes, and do not modify the application the rules which the Exchange proposes to relocate.

The Exchange notes, by way of background, that on June 28, 2018, the Exchange filed with the Commission a proposal to list and trade on the Exchange, options on the SPIKESTM Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, “SPY”).³ To facilitate trading options on the Index the Exchange made certain amendments to Rule 1809.⁴ By virtue of the exemption from the rule filing requirements of Section 19(b) of the Act,

³ See Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR–MIAX–2018–14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKESTM Index).

⁴ See *id.*

the rule amendments were automatically incorporated by reference into the rules of the Exchange’s affiliate MIAX PEARL, LLC (“MIAX PEARL”). However, the procedures described in Rule 1809(f) and Rule 1809, Interpretations and Policies .06 do not apply to MIAX PEARL, as these rules relate to SPIKES Index Options Settlement procedures and the SPIKES Special Settlement Auction, which will not occur on MIAX PEARL. Therefore, the Exchange believes that by now relocating these rules, it will avoid confusion and provide greater clarity and readability to the rules.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed change promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed rule change improves the way the Exchange’s rulebook is organized, making it easier to read, and avoids confusion by moving rules which are not applicable to the Exchange’s affiliate, MIAX PEARL, into a different chapter of rules which is not incorporated by reference into the rules of MIAX PEARL, therefore, helping market participants to better understand the rules of the Exchange and of its affiliate. The Exchange notes that the proposed change does not alter the application of each rule. As such, the proposed amendment would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national exchange system. In particular, the Exchange believes that the proposed change will provide greater clarity to Members⁷ and the

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ The term “Member” means an individual or organization approved to exercise the trading rights

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

public regarding the Exchange's Rules. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will have no impact on competition as it is not designed to address any competitive issues but rather is designed to add additional clarity to existing rules and to make a non-substantive change by relocating the rules to a different chapter in the Exchange's rulebook.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition as the Rules apply equally to all Exchange Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked

the Commission to waive the 30-day operative delay so that the Exchange may relocate these rules immediately so as to improve the organization of its rulebook and to avoid confusion for market participants reading the rules of the Exchange's affiliate, MIAX PEARL. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹²

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MIAX-2018-32 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-MIAX-2018-32. 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

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-MIAX-2018-32 and should be submitted on or before December 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25096 Filed 11-16-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84577; File No. SR-CBOE-2018-068]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Volume Incentive Program

November 13, 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 November 1, 2018, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "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.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend the Volume Incentive Program.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Volume Incentive Program ("VIP").³ By way of background, under the Volume Incentive Program ("VIP"), the Exchange credits each Trading Permit Holder ("TPH") the per contract amount set forth in the VIP table for Public Customer orders ("C" origin code) transmitted by that TPH (with certain exceptions) which is executed electronically on the Exchange, provided the TPH meets certain volume thresholds in a month.⁴ VIP offers both rates for Complex and Simple orders. VIP provides however, that a TPH will only receive the Complex credit rates for both its Complex AIM and Non-AIM volume if at least 40% of that TPH's qualifying VIP volume (in both AIM and Non-AIM) in the previous month was comprised of Simple volume. If the TPH's previous month's volume does not meet the 40% Simple volume threshold, then the TPH's Customer (C) Complex volume will receive credits at

the Simple rate only (*i.e.*, all volume, both Simple and Complex, will receive credits at the applicable Simple rate). The Exchange proposes to reduce the 40% threshold to 38%. The purpose of the proposed change is to make it slightly easier for TPHs to obtain the Complex credits. The Exchange believes the proposed change will still encourage TPHs to continue to send both Simple and Complex volume to the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed amendment to VIP is reasonable because it makes it slightly easier for TPHs to meet the qualifying criteria to receive the Complex credits and notes that no credit amounts are changing. The Exchange notes that VIP will continue to provide an incremental incentive for TPHs to strive for the highest tier level, which provides increasingly higher credits, for both Complex and Simple volume. The Exchange believes the proposed change is equitable and not unfairly discriminatory because the proposed applies to all TPHs uniformly.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act. In particular, the Exchange believes the proposed change does not impose a burden on intramarket competition because it applies uniformly to all TPHs and continues to incentivize the sending of more simple and complex orders to the Exchange, which provides greater liquidity and trading opportunities.

The Exchange believes that the proposed rule change will not cause an unnecessary burden on intermarket competition because the proposed rule change only affects trading on the Exchange. To the extent that the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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 Act⁸ and paragraph (f) of Rule 19b-4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

³ The proposed VIP amendment will be effective November 1, 2018 (*i.e.*, November discounts will be based on October 2018 volume using the proposed threshold change).

⁴ See Cboe Options Fees Schedule, Volume Incentive Program.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f).

• Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2018-068 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-CBOE-2018-068. 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-CBOE-2018-068 and should be submitted on or before December 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25099 Filed 11-16-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84575; File No. SR-NASDAQ-2018-070]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment Nos. 1, 2, and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, to List and Trade Corporate Non-Convertible Bonds on Nasdaq

November 13, 2018.

I. Introduction

On August 27, 2018, The Nasdaq Stock Market LLC ("Nasdaq" or "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 list and trade corporate non-convertible bonds on the Exchange. The proposed rule change was published for comment in the **Federal Register** on September 6, 2018.³ On October 12, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ On October 16, 2018, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ On November 7, 2018, the Exchange filed Amendment No. 2 to the proposed rule change.⁷ On November 8, 2018, the Exchange filed Amendment No. 3 to the proposed rule change.⁸ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 84001 (August 30, 2018), 83 FR 45289 ("Notice").

⁴ In Amendment No. 1, the Exchange made clarifying and technical revisions to the proposal, including to the proposed rule text. The amendment is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-070/srnasdaq2018070-4514560-176013.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 84439, 83 FR 53339 (October 22, 2018). The Commission designated December 5, 2018, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ In Amendment No. 2, the Exchange made additional clarifying and technical revisions to the proposal, including to the proposed rule text. The amendment is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-070/srnasdaq2018070-4629939-176409.pdf>.

⁸ In Amendment No. 3, the Exchange made two clarifying and technical revisions to the proposal, including to the proposed rule text. The amendment is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-070/srnasdaq2018070-4630086-176412.pdf>.

received no comment letters on the proposed rule change. The Commission is publishing notice of the filing of Amendment Nos. 1, 2, and 3 to solicit comment from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment Nos. 1, 2, and 3

The Exchange proposes to amend its rules to permit the initial and continued listing of non-convertible corporate debt securities ("bonds" or "non-convertible bonds") on Nasdaq and to establish fees for listing those bonds.⁹ The Exchange also proposes to adopt rules to trade such listed non-convertible bonds.

A. Listing Rules

For the initial listing of a non-convertible bond, the Exchange proposes to require that the following conditions be satisfied: (1) The principal amount outstanding or market value must be at least \$5 million;¹⁰ and (2) the issuer of the non-convertible bond must have one class of equity security that is listed on the Exchange, the New York Stock Exchange LLC ("NYSE"), or NYSE American LLC ("NYSE American").¹¹

The Exchange proposes the following requirements for the continued listing of a non-convertible bond: (1) The market value or principal amount of non-convertible bonds outstanding is at least \$400,000;¹² and (2) the issuer must be able to meet its obligations on the listed non-convertible bonds.¹³

The Exchange proposes to amend its current Rule 5810(c)(3) to provide that the failure of an issuer of a non-convertible bond to meet the \$400,000 public float requirement stipulated above for a period of 30 consecutive business days will constitute a deficiency. In such an event, the Exchange's Listings Qualifications Department will promptly notify the deficient issuer, and the issuer will have a period of 180 calendar days from such notification to regain compliance. Compliance will be deemed to be regained by meeting the \$400,000 public

⁹ Nasdaq rules currently provide for the initial and continued listing of convertible bonds. See Nasdaq Rule 5515 and 5560.

¹⁰ See proposed Rule 5702(a)(1).

¹¹ See proposed Rule 5702(a)(2). The Exchange anticipates that it will not be ready, prior to the second quarter of 2019, to list non-convertible bonds of issuers whose equity securities are listed on NYSE or NYSE American. The Exchange states that it will post a notification via a trader alert at least seven days prior to accepting applications from issuers to list such non-convertible bonds.

¹² See proposed Rule 5702(b)(1).

¹³ See proposed Rule 5702(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

float requirement for a minimum of 10 consecutive business days, unless the Listing Qualifications Department exercises its discretion to extend this 10-day period as set forth in Rule 5810(c)(3)(G).

The Exchange also proposes to amend its current Rule 5810(c)(1) to provide that the failure of an issuer to meet its obligations on the non-convertible bonds, as determined by the Exchange's Listings Qualifications Department, would result in immediate suspension and the commencement of delisting proceedings.

In addition to the proposed quantitative requirements for listing non-convertible bonds, the issuer of listed bonds would have to comply with other requirements that are generally applicable to companies listed on Nasdaq pursuant to Rule 5250 (Obligations for Companies Listed on The Nasdaq Stock Market).¹⁴ The Exchange proposes to amend its current Rule 5250(e)(3) to require issuers of non-convertible bonds to provide at least 10 calendar days advance notice to the Exchange of certain corporate actions, including redemptions (full or partial calls), tender offers, changes in par value, and changes in identifier (e.g., CUSIP number or symbol). In addition, the Exchange proposes to amend the definition of a "Substitution Listing Event" in its Rule 5005(a)(41) to provide that a change in the obligor of a listed debt security would constitute a Substitution Listing Event and thus require the issuer to notify the Exchange pursuant to Rule 5250(e)(4).¹⁵

In addition to the Exchange's rules that would apply to issuers of non-convertible bonds that list on Nasdaq,¹⁶ the Exchange states that such issuers would also be required to register non-convertible bonds listed on the Exchange with the Commission pursuant to Section 12(a) of the Act.¹⁷

¹⁴ See Nasdaq Rule 5250, requiring, among other things, that issuers provide certain information to the Exchange, make public disclosure of certain material information, and file all required periodic financial reports.

¹⁵ The Exchange proposes to make this change with respect to convertible and non-convertible bonds.

¹⁶ In addition to Nasdaq Rule 5250, the Exchange notes that, currently, the Rule 5600 Series, which sets forth certain corporate governance requirements for listed issuers, would apply to non-convertible bonds listed on the Exchange.

¹⁷ Section 12(a) requires that, in order for an exchange member, broker or dealer to effect a transaction in a security on a national securities exchange, a registration must be effective "as to such security for such exchange." See 15 U.S.C. 78(l)(a). The Exchange notes that, because the Exchange is proposing as an initial listing requirement that the issuer currently list a class of equity security on the Exchange, NYSE, or NYSE American, listed issuers of non-convertible bonds

Finally, the Exchange proposes to make a non-substantive change to its current Rule 5515(b)(4) to replace references to the American Stock Exchange with NYSE American.¹⁸

B. Listing Fees

The Exchange proposes to impose a non-refundable application fee of \$5,000 to list a class of non-convertible bonds.¹⁹ The Exchange proposes to waive this application fee if a company will be switching the listing market for its non-convertible bonds from NYSE or NYSE American to the Exchange.²⁰

The Exchange also proposes to impose an annual fee of \$5,000 on the issuer of each class of non-convertible bonds listed pursuant to Rule 5702.²¹ A company that switches the listing market for its non-convertible bonds from NYSE or NYSE American to the Exchange would not be liable for the annual fee until January 1 of the calendar year following the effective date of the non-convertible bonds listing on the Exchange.²²

The Exchange also proposes to clarify rule text relating to listing fees for convertible bonds.²³

C. Trading Rules

In conjunction with the Exchange's proposal to adopt listing rules for non-convertible bonds, the Exchange is proposing to trade such listed non-convertible bonds on an electronic system ("Nasdaq Bond Exchange") and is proposing rules to govern such trading.²⁴ The Exchange proposes that all orders in non-convertible bonds will be received, processed, executed, and reported by means of the Nasdaq Bond

may already disclose certain information required by Section 12(a) of the Act.

¹⁸ See Securities Exchange Act Release No. 80283 (Mar. 21, 2017), 82 FR 15244 (Mar. 27, 2017) (SR-NYSEMKT-2017-14).

¹⁹ See proposed Rule 5935(a).

²⁰ See *id.*

²¹ See proposed Rule 5935(b).

²² See *id.*

²³ Rule 5920(a)(2) requires a company that submits an application to list any class of convertible debentures on the Nasdaq Capital Market to pay an application fee of \$5,000 and a fee of \$1,000 or \$50 per million dollars face amount of debentures outstanding, whichever is higher. The Exchange proposes to clarify that the second fee is an entry fee, and that it is based upon the face amount of convertible bonds outstanding.

²⁴ The Nasdaq Bond Exchange will only trade non-convertible bonds that are listed on the Exchange. See Proposed Rule 4000B(e). The Exchange states that the Nasdaq Bond Exchange will offer Members certain core trading functionality that will be competitive with the NYSE bond trading platform ("NYSE Bonds"). The Exchange states that the Nasdaq Bond Exchange and the proposed trading rules that govern it are based on NYSE Bonds and NYSE Rule 86, albeit a "pared down version." See Notice, *supra* note 3, at 45292.

Exchange.²⁵ The Exchange's proposed trading rules would apply to: (i) All transactions effected through the Nasdaq Bond Exchange; (ii) all bids and offers made through the Nasdaq Bond Exchange; (iii) the handling of orders and the conduct of accounts and other matters relating to bidding, offering, and trading through the Nasdaq Bond Exchange; and (iv) any non-convertible bond that is traded on the Nasdaq Bond Exchange.²⁶

1. Order Types

The Exchange proposes to allow Users²⁷ of the Nasdaq Bond Exchange to enter two types of orders: (1) Nasdaq Bond Exchange Good for Day Limit Orders, and (2) Nasdaq Bond Exchange Fill-or-Kill All-Or-None Orders. A Nasdaq Bond Exchange Good for Day Limit Order is an order to buy or sell a stated quantity of units of non-convertible bonds at a specified price or at a better price that, if not executed or cancelled, will expire at the end of the trading session on the day on which it is entered.²⁸ A Nasdaq Bond Exchange Fill-or-Kill All-Or-None Order is a market order that is to be executed immediately in its entirety against one or more contra parties at the best prices available, or if it is not executed immediately in its entirety, is cancelled.²⁹ All orders on the Nasdaq Bond Exchange will be displayed and will be anonymous.³⁰

2. Trading Units

The minimum unit of trading on the Nasdaq Bond Exchange will be one non-convertible bond unless the issuer otherwise specifies a larger minimum unit of trading in the bond indenture agreement.³¹ The Nasdaq Bond Exchange will accept and display bids and offers in bonds priced to three decimal places.³²

3. Order Entry and Execution

To post an order in a particular bond on the Nasdaq Bond Exchange, a User will be required to enter certain basic information including CUSIP number, order quantity, order type (e.g., Nasdaq Bond Exchange Good for Day Limit Order), price (up to three decimals), and

²⁵ See proposed Rule 4000B(a).

²⁶ See proposed Rule 4000B(b)(1).

²⁷ A "User" is any Nasdaq Member that has elected to receive access to the Nasdaq Bond Exchange. See Proposed Rule 4000B(b)(2)(D).

²⁸ See proposed Rule 4000B(b)(2)(B)(i).

²⁹ See proposed Rule 4000B(b)(2)(B)(ii).

³⁰ See Notice, *supra* note 3, at 45292.

³¹ See proposed Rule 4000B(c).

³² See proposed Rule 4000B(d). The Exchange states that bonds priced to three decimal places is the market standard. See Notice, *supra* note 3, at 45292.

side (buy or sell).³³ The terms of an order entered into the Nasdaq Bond Exchange may not be modified after entry.³⁴ An order may be cancelled at any time, provided the order has not been executed.³⁵

The Nasdaq Bond Exchange will be an electronic order-driven matching system.³⁶ Orders submitted by Users will be displayed, matched, and executed on a price/time priority basis.³⁷ Orders that are marketable at the time of entry will be matched and executed.³⁸ An order will be marketable when it enters the Nasdaq Bond Exchange system if contra side interest is available at that price or a better price.³⁹ Nasdaq Bond Exchange Good for Day Limit Orders that are not marketable at the time of entry would post to the Nasdaq Bond Exchange order book.⁴⁰

The Nasdaq Bond Exchange will provide an exception to its normal price/time system to allow Users to avoid internalizing orders.⁴¹ Pursuant to proposed Rule 4000B(g)(1)(C), Users may direct that orders entered into the Nasdaq Bond Exchange not execute against orders entered under the same MPID, and Users using the FIX order entry protocol (discussed below) may assign to orders entered through a specific order entry port a unique group identification modifier that will prevent orders with such modifier from executing against each other. In such a case, a User may elect from the following options: (i) Regardless of the size of the interacting orders, cancelling the oldest order in full; or (ii) regardless of the size of the interacting orders, cancelling the most recent of the orders in full.⁴² The foregoing options may be applied to all orders entered under the same MPID or through a specific order entry port (*i.e.*, the FIX order entry protocol).⁴³

The Exchange will charge no fees for posting orders or executing trades on the Nasdaq Bond Exchange.⁴⁴

4. Clearing

According to the Exchange, most orders matched on the Nasdaq Bond Exchange will be locked-in trades and will be submitted without an omnibus account to the National Securities Clearing Corporation using Universal Trade Capture and then to the Depository Trust Company (“DTC”) for clearance and settlement.⁴⁵ Settlement of corporate bond trades will be consistent with current convention, *i.e.*, two day settlement, and bonds that are not eligible for settlement at DTC will be settled manually (“ex-clearing”) between the two counterparties.⁴⁶

5. Bond Trading Session

The Nasdaq Bond Exchange will have one trading session per trading day from 8:30 a.m. until 4:00 p.m. E.T. (“Bond Trading Session”) during which non-convertible bonds will be available for trading.⁴⁷ There will be no pre-market or post-market session; the Nasdaq Bond Exchange will immediately start processing orders as they are entered upon opening.⁴⁸ Orders submitted outside of the Bond Trading Session will not be accepted.⁴⁹

6. Clearly Erroneous Executions

All matters related to clearly erroneous transactions executed on the Nasdaq Bond Exchange will be initiated and adjudicated pursuant to Nasdaq Rule 11890, which governs the process for addressing clearly erroneous trades.⁵⁰ A “Clearly Erroneous Execution” on the Nasdaq Bond Exchange refers to an execution involving an obvious error in any term of an order participating in such execution, such as price, unit of trading, or identification of the non-convertible bond.⁵¹

A User that receives an erroneous execution may request the Exchange to review the transaction.⁵² A request for review of an execution must include certain information, including the time of the transaction, security symbol, number of bonds, price, side (bought or sold), and factual basis for believing that

the trade is clearly erroneous.⁵³ The request for review must be submitted within 30 minutes of the trade in question.⁵⁴ The other party (or parties) to the trade will be notified of the request for review.⁵⁵ Thereafter, an Exchange official will review the transaction and make a determination as to whether it was clearly erroneous within 30 minutes of receipt of the complaint, but in no case later than the start of the Bond Trading Session on the following trading day.

The Exchange proposes that, when determining whether a trade in non-convertible bonds listed on the Nasdaq Bond Exchange is clearly erroneous, a Nasdaq official may consider any and all relevant factors of an execution on a case by case basis including, but not limited to, the following: (i) Execution price; (ii) volume and volatility of a non-convertible bond; (iii) news released for the issuer of the non-convertible bond and/or the related equity security; (iv) trading halts; (v) corporate actions; (vi) general market conditions; (vii) the rating of the non-convertible bond; (viii) interest and/or coupon rate; (ix) maturity date; (x) yield curves; (xi) prior print, if available within a reasonable time frame; (xii) executions inconsistent with the trading pattern of a non-convertible bond; (xiii) current day’s trading high/low; (xiv) recent day’s and week’s trading high/low; (xv) executions outside the 52-week high/low; (xvi) effect of a single large order creating several prints at various prices; and (xvii) quotes and executions of other market centers.⁵⁶

The parties will be promptly notified of the reviewer’s determination and, in the event that the Nasdaq official determines that the transaction in dispute is clearly erroneous, the official will declare the transaction null and void.⁵⁷ If the reviewer determines that the execution is not clearly erroneous, then no corrective action will be taken in relation to the transaction.⁵⁸ If one party does not agree with the determination, then that party may request further review or an appeal to the Nasdaq Review Council pursuant to

³³ See Notice, *supra* note 3, at 45292.

³⁴ See proposed Rule 4000B(g)(2).

³⁵ See *id.*

³⁶ See Notice, *supra* note 3, at 45292.

³⁷ Specifically, buy and sell orders in the Nasdaq Bond Exchange will be displayed, matched, and executed in the Bond Trading Session in the following sequence: (i) According to price, with the highest bid price and the lowest offer price receiving highest priority; and (b) within each price, according to the time of the order entry in the Nasdaq Bond Exchange. See proposed Rule 4000(g)(1).

³⁸ See Notice, *supra* note 3, at 45292.

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ The Exchange states that Users may be interested in self-match prevention in order to run multiple strategies at once that may sit on opposite sides of the book. See Notice, *supra* note 3, at 45292.

⁴² See proposed Rule 4000B(g)(1)(C).

⁴³ See *id.*

⁴⁴ See Notice, *supra* note 3, at 45292.

⁴⁵ See *id.*

⁴⁶ See *id.*

⁴⁷ See proposed Rule 4000B(f).

⁴⁸ See Notice, *supra* note 3, at 45293.

⁴⁹ See proposed Rule 4000B(f).

⁵⁰ See proposed Rule 4000B(h).

⁵¹ See proposed Rule 4000B(b)(2)(C).

⁵² See Nasdaq Rule 11890(a).

⁵³ See Rule 11890(a)(2) (as proposed to be amended).

⁵⁴ See Rule 11890(a)(2)(A).

⁵⁵ See Rule 11890(a)(2).

⁵⁶ See proposed Rule 11890(a)(2)(C)(4). These criteria would be in lieu of the criteria presently used to determine clearly erroneous executions of equity securities, which are set forth in Rule 11890(a)(2)(C)(1)–(C)(3). See *id.*

⁵⁷ See Rule 11890(a)(2)(B).

⁵⁸ See Notice, *supra* note 3, at 45293.

the procedures set forth in Rule 11890(c).⁵⁹

Rule 11890(b) provides that, in the event of any disruption or a malfunction in the operation of any electronic communications and trading facilities of the Exchange, including the Nasdaq Bond Exchange, in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President of the Exchange or any designated officer or senior level employee of the Exchange (each, a "Senior Official") may, without the need for a request for review, review such transactions and determine if any are erroneous.⁶⁰ In addition, Rule 11890(b) further provides that a Senior Official may, on his or her own motion, review potentially erroneous executions.⁶¹ In such situations, the Senior Official will rely on the criteria set forth in proposed Rule 11890(a)(2)(C)(4). Any such action of the Senior Official must be taken within 30 minutes of detection of the erroneous transaction (in extraordinary circumstances, no later than the start of the Bond Trading Session on the trading day following the date of execution(s) under review), and each party to the erroneous transaction will be notified of the situation and the specific action as soon as practicable.⁶² Subject to certain exceptions, a User may appeal an erroneous determination made by a Senior Official acting on his or her own motion or pursuant to a system disruption or malfunction to the Nasdaq Review Council.⁶³

7. Halting and Suspending Bond Trading on the Exchange

The Exchange proposes to halt or suspend trading in a non-convertible bond on the Nasdaq Bond Exchange in certain circumstances.⁶⁴ Proposed Rule 4000B(i)(1) provides that the Exchange may halt or suspend trading in non-convertible bonds listed on the Nasdaq Bond Exchange when: (1) In the exercise of its regulatory function, the Exchange

determines such action is necessary and appropriate to maintain a fair and orderly market, to protect investors, or is in the public interest, due to extraordinary circumstances or unusual market conditions; (2) a class of equity that is issued by the same issuer as the non-convertible bond has been halted or suspended by, or delisted from, the Exchange or its primary listing market (NYSE or NYSE American), as applicable; (3) news reports have a material impact on the non-convertible bond, its issuer, or related stock of its issuer; or (4) the non-convertible bond is to be called for redemption or will mature or become subject to retirement, and thereafter it will be subject to delisting. In the event of a trading halt or suspension under any of the foregoing circumstances, a halt or suspension message will be disseminated by the Exchange to subscribers to the Nasdaq Corporates Totalview Data Feed (discussed below) to signal the commencement and end of the halt or suspension.⁶⁵ Upon commencement of a halt or suspension, all pending orders in the Nasdaq Bond Exchange will be cancelled and new orders entered into the Nasdaq Bond Exchange during a bond halt or suspension will not be accepted.⁶⁶ The Nasdaq Bond Exchange will resume accepting new orders and trading once the Exchange declares an end to a bond halt or suspension.⁶⁷

8. Dissemination of Trading Information

The Exchange will disseminate via the Nasdaq Corporates Totalview Data Feed, a real-time data feed, best bid and offer information for non-convertible bonds for which there are orders posted to the Nasdaq Bond Exchange's order book, as well as last sale information (including sale price and trade size) for trades executed on the Nasdaq Bond Exchange.⁶⁸ The Exchange states that the Nasdaq Corporates Totalview Data Feed would reflect all orders in time sequence in the Nasdaq Bond Exchange's order book.⁶⁹ The Exchange states that the Nasdaq Corporates Totalview Data Feed will be available free of charge to those who request

access and agree to the Exchange's terms.⁷⁰

9. Access to the Nasdaq Bond Exchange System

The Exchange proposes that Members⁷¹ of the Exchange that enter into a Nasdaq U.S. Services Agreement and elect to receive access to the Nasdaq Bond Exchange on their Member application form will be authorized Users and able to access the Nasdaq Bond Exchange.⁷² The Exchange states that existing Members of the Exchange will not be required to amend their Nasdaq U.S. Services Agreements to obtain access to the Nasdaq Bond Exchange; rather, they will be required to complete a form expressing their interest in becoming a Nasdaq Bond Exchange User.⁷³

The Exchange states that Users of the Nasdaq Bond Exchange will gain access to the system via direct or indirect electronic linkages utilizing the Financial Information Exchange or "FIX" protocol.⁷⁴ The Nasdaq Bond Exchange will use the FIX protocol for message transmittal, including for the entry, modification, and cancellation of orders in non-convertible bonds.⁷⁵ The Exchange states that Users may establish connectivity to the Nasdaq Bond Exchange either directly or through third-party connectivity providers.⁷⁶ The Exchange will not charge any fees for FIX port connectivity to the Nasdaq Bond Exchange or to its disaster recovery system.⁷⁷

10. Reports and Recordkeeping

The Exchange proposes that Users of the Nasdaq Bond Exchange will have to comply with all relevant rules of the

⁷⁰ See proposed Rule 7050. See also Notice, *supra* note 3, at 45294.

⁷¹ A "Member" means any registered broker or dealer that has been admitted to membership in Nasdaq. See Rule 0120(i).

⁷² See proposed Rule 4000B(b)(2)(D) (defining "User"). See also Notice, *supra* note 3, at 45294.

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *id.* The Exchange notes that Users that purchase FIX port connectivity to the Exchange will need to obtain one or more additional FIX ports to connect to the Nasdaq Bond Exchange. Separately from port connectivity, the Exchange notes that Users will need to establish physical connections to the Nasdaq Bond Exchange, as set forth in General 8 of the Nasdaq Rules. In addition, the Exchange states that, to the extent that a User already purchases physical connectivity to the Exchange, that purchase will also provide for the User to connect to the Nasdaq Bond Exchange, and the User will not incur an additional fee for the new connection. The Exchange states that new Users that do not already purchase physical connectivity to the Exchange will need to do so pursuant to General 8 of the Nasdaq Rules. See *id.* at nn. 44–45.

⁷⁷ See proposed Rule 7015(b).

⁵⁹ The Exchange states that it expects that the existing Member representatives of the Nasdaq Review Council will adequately represent the interests of Users in appeals of clearly erroneous determinations. The Exchange represents that, if it becomes apparent to the Exchange that the roster of the Nasdaq Review Council does not adequately represent the interests of Users, then it will, at the appropriate time, consider nominating one or more Users to the Nasdaq Review Council. See Notice, *supra* note 3, at 45293, n. 33.

⁶⁰ See Nasdaq Rule 11890(b)(i).

⁶¹ See Nasdaq Rule 11890(b)(ii).

⁶² See Nasdaq Rules 11890(b)(i)–(ii).

⁶³ See Nasdaq Rule 11890(c).

⁶⁴ See proposed Rule 4000B(i)(1).

⁶⁵ See proposed Rule 4000B(i)(2).

⁶⁶ See *id.*

⁶⁷ See *id.*

⁶⁸ See proposed Rule 7050. The Exchange represents that, pursuant to FINRA Rule 6730(e)(2), transactions on the Nasdaq Bond Exchange need not be reported to FINRA's Trade Reporting and Compliance Engine because only bonds listed on Nasdaq may be traded on the Nasdaq Bond Exchange and the transaction information will be disseminated publicly. See Notice, *supra* note 3, at 45294 n. 43.

⁶⁹ See Notice, *supra* note 3, at 45294.

Exchange and the Commission in relation to reports and recordkeeping of transactions on the Nasdaq Bond Exchange, including, but not limited to, Rules 17a-3 and 17a-4 under the Act.⁷⁸

11. Regulation and Surveillance

The Exchange represents that it will regulate the Nasdaq Bond Exchange and enforce compliance with its rules by leveraging its existing infrastructure for operating a national securities exchange in compliance with Section 6 of the Act.⁷⁹ The Exchange states that its existing disciplinary rules and processes, set forth in its Rule 8000 and 9000 Series, will govern the discipline of Members that participate in corporate bond trading.⁸⁰ The Exchange further represents that it will enforce its non-convertible bond listing requirements as well as perform real-time surveillance of trading on the Nasdaq Bond Exchange.⁸¹

The Exchange states that its MarketWatch Department ("MarketWatch") monitors real time trading in all Nasdaq securities during the trading day for price and volume activity.⁸² The Exchange states that MarketWatch will also perform real-time surveillance of the Nasdaq Bond Exchange for the purpose of maintaining a fair and orderly market at all times.⁸³ For example, the MarketWatch will monitor trading on the Nasdaq Bond Exchange market on a real-time basis to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation.⁸⁴

The Exchange further notes that Nasdaq Regulation will oversee the process for determining and implementing trade halts and identifying and responding to unusual market conditions.⁸⁵

12. System Information

The Exchange states that the Nasdaq Bond Exchange will operate out of the same data center in Carteret, New Jersey, as does Nasdaq and other exchanges owned by Nasdaq, Inc., but it will use equipment separate from that used by those other exchanges.⁸⁶

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, is consistent with the requirements of Section 6 of the Act⁸⁷ and the rules and regulations thereunder applicable to the Exchange.⁸⁸ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸⁹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and Section 6(b)(5) of the Act,⁹⁰ which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

A. Listing Rules

The development and enforcement of adequate initial and continued listing standards for securities listed on a national securities exchange is of critical importance to financial markets and the investing public. The Commission believes that the Exchange's proposal is reasonably designed to determine which non-convertible bonds warrant listing on the Exchange and ensure that investors receive the protections of the Exchange's listing standards. Specifically, the Exchange's initial listing standards are reasonably designed to ensure that only companies capable of meeting their financial obligations are eligible to have their non-convertible bonds listed on Nasdaq, as the proposal requires these issuers to also have one class of equity security listed on Nasdaq, NYSE, or NYSE American. In addition, by limiting listing to non-convertible bond issues

with a principal amount outstanding or a market value of at least \$5 million, the proposal is reasonably designed to exclude from Nasdaq Bond Exchange securities that would not have sufficient liquidity for a fair and orderly market. Furthermore, as noted by the Exchange, the proposed initial listing standards for non-convertible bonds are substantially similar to those of NYSE and NYSE American.⁹¹

For continued listing standards, the Exchange requires that the market value or principal amount of non-convertible bonds outstanding is at least \$400,000 and the issuer must be able to meet its obligations on the listed non-convertible bonds. The Commission believes that such continued listing requirements for non-convertible bonds are reasonably designed to enable the Exchange to identify listed issuers that may have insufficient resources to meet their financial obligations or whose non-convertible bonds may lack adequate trading depth and liquidity. In addition, as noted by the Exchange, the proposed continued listing standards for non-convertible bonds are identical to the continued listing requirements for bonds imposed by NYSE American.⁹² Furthermore, the Commission notes that the Exchange's current rules allow Nasdaq to request additional information, either public or non-public, that it deems necessary to make a determination regarding a company's continued listing.⁹³

The Exchange represents that its proposal to amend Rule 5250(e)(3) to require an issuer to provide at least 10 calendar days advance notice of certain corporate actions related to non-convertible bonds listing on the Exchange will aid its Listings Qualification Department in assessing an issuer's compliance with the continued listing standards.⁹⁴ The Commission believes that requiring an issuer of non-convertible bonds to

⁹¹ See Notice, *supra* note 3, at 45289-90. Both NYSE and NYSE American require that a debt issue have an aggregate market value or principal amount of no less than \$5 million for initial listing. See Section 102.03 of the NYSE Listed Company Manual and Section 104 of the NYSE American Company Guide. NYSE also requires that the issuer of the debt security has equity securities listed on the exchange or the debt security meets an alternative standard. See Section 102.03 of the NYSE Listed Company Manual. NYSE American requires that the issuer of the debt security has equity securities listed on the exchange, NYSE, or Nasdaq, or meets an alternative standard. See Section 104 of the NYSE American Company Guide.

⁹² See Notice, *supra* note 3, at 45290. See also Section 1003(b)(iv) of the NYSE American Company Guide.

⁹³ See *id.* at 45290. See also Nasdaq Rule 5250(a)(1).

⁹⁴ See Notice, *supra* note 3, at 45295, n. 58.

⁷⁸ See proposed Rule 4000B(j).

⁷⁹ See Notice, *supra* note 3, at 45294.

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² See Notice, *supra* note 3, at 45291.

⁸³ See Notice, *supra* note 3, at 45294.

⁸⁴ See *id.*

⁸⁵ See *id.*

⁸⁶ See *id.* The Nasdaq Bond Exchange backup data center will be in Chicago, Illinois, and the Exchange represents that it will be designed to resume operations of the Nasdaq Bond Exchange, in the event of a system failure, in accordance with the requirements of Regulation Systems Compliance and Integrity. See *id.*

⁸⁷ 15 U.S.C. 78f(b).

⁸⁸ In approving these 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).

⁸⁹ 15 U.S.C. 78f(b)(4).

⁹⁰ 15 U.S.C. 78f(b)(5).

report such events, as well as requiring an issuer of a convertible or non-convertible bond to report a change in the obligor of a listed debt security as a Substitution Listing event, is appropriate and consistent with the Act, as such information will help the Exchange make determinations regarding the suitability of a debt security to stay listed on its market.

The Commission further believes it is consistent with the Act for the Exchange to immediately institute delisting proceedings if the Exchange determines that an issuer is unable to meet its obligations on its non-convertible bonds, as bonds with little or no value may not be appropriate for continued listing on the Exchange. Furthermore, the Commission believes that providing a 180-day compliance period for an issuer that fails to meet the \$400,000 market value or principal amount outstanding requirement is reasonably designed to ensure that the Exchange has an adequate procedure to permit an issuer to regain compliance before delisting a non-convertible bond that may lack adequate trading depth and liquidity and for which continued exchange trading may not be in the best interests of investors.

B. Trading Rules

The Exchange proposes to establish a new electronic trading platform, the Nasdaq Bond Exchange, to trade non-convertible bonds and to implement rules governing the trading of such bonds. The Commission believes that the establishment of the Nasdaq Bond Exchange to trade non-convertible bonds is generally consistent with the Act and may foster price discovery and competition in the non-convertible bonds market. As described above, the proposal includes provisions regarding access, order entry, order types, manner of execution, priority, trading sessions, trading units, clearing, trade halt and suspension procedures, clearly erroneous executions, reports and recordkeeping, dissemination of trading information, and regulation and surveillance. The Commission finds that these provisions are reasonably designed to promote the efficient functioning of the Nasdaq Bond Exchange and are generally consistent with the Act. The Commission notes that the proposed rules closely parallel, and are substantially similar to, current NYSE Rule 86, which governs trading on NYSE Bonds, and which was filed with and approved by the Commission pursuant to Section 19(b) of the Act.⁹⁵

In addition, the proposed anti-internalization exception to price-time priority execution set forth in proposed Rule 4000B(g)(1)(C) is substantially similar to Nasdaq's anti-internalization exception.⁹⁶

The Commission notes that the Nasdaq Bond Exchange will only trade non-convertible bonds that are listed on Nasdaq. The Commission further notes that the Exchange is not charging any fees to post or execute trades on the Nasdaq Bond Exchange or for FIX port connectivity to the Nasdaq Bond Exchange or for connectivity to the Nasdaq Bond Exchange's disaster recovery system. In addition, the Nasdaq Corporates Totalview Data Feed will be available free of charge to those who request access.

Section 11(a) of the Act⁹⁷ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion, unless an exception applies. The Commission notes that this general prohibition would not generally impact trading on the Nasdaq Bond Exchange because Rule 11a1-4(T) under the Act⁹⁸ deems transactions in bonds on a national securities exchange for a member's own account to be consistent with Section 11(a). Similarly, the Commission notes that Section 11(b) of the Act⁹⁹ and Rule 11b-1 thereunder,¹⁰⁰ which pertain to specialists and market-makers, would not be implicated because there would

The Commission notes that the Exchange's proposed trading rules and the Nasdaq Bond Exchange functionality are more limited in scope than NYSE Rule 86 and NYSE Bonds. The Nasdaq Bond Exchange, like NYSE Bonds, will display, match, and execute buy and sell orders on a price/time basis; however, unlike NYSE Bonds, the Nasdaq Bond Exchange will not conduct auctions or establish prices collars for orders. The Nasdaq Bond Exchange, like NYSE Bonds, will accept good-for-day limit orders and fill-or-kill orders; however, unlike NYSE Bonds, the Nasdaq Bond Exchange will not have additional order types (e.g., reserve orders, minimum quantity orders, good-till-cancelled orders, and timed orders). The Nasdaq Bond Exchange will have only one trading session each day as opposed to NYSE Bonds, which has three sessions. Furthermore, unlike NYSE Bonds, the Exchange is not proposing sponsored access to the Nasdaq Bond Exchange, nor is the Exchange proposing to have market makers on the Nasdaq Bond Exchange. See NYSE Rule 86. See also, Notice, *supra* note 3, at 45292.

⁹⁵ See Nasdaq Rule 4757(a)(4). The Exchange states that proposed Rule 4000B(g)(1)(C) is based on Nasdaq Rule 4757(a)(4). See Notice, *supra* note 3, at 45292.

⁹⁷ 15 U.S.C. 78k(a).

⁹⁸ 17 CFR 240.11a1-4(T).

⁹⁹ 15 U.S.C. 78k(b).

¹⁰⁰ 17 CFR 240.11b-1.

be no specialists or market makers on the Nasdaq Bond Exchange.

C. Listing Fees

The Commission believes that the proposed listing fees for non-convertible bonds are an equitable allocation of reasonable fees. The Exchange states that the proposed \$5,000 application fee and \$5,000 annual fee for listing non-convertible bonds will support the Exchange's regulatory program to review and qualify debt issuances for listing.¹⁰¹ In addition, the Exchange states that the proposed fees are competitive with the initial and annual fees that are currently assessed by NYSE American for the listing of bonds,¹⁰² and that the proposed \$5,000 application fee is the same as the application fee it currently charges for convertible bonds.¹⁰³

The proposed application listing fees will be applicable to all issuers seeking to list non-convertible bonds on the Exchange, other than issuers that switch their listing to the Exchange from NYSE or NYSE American. The Commission believes that the proposed waiver of the application fee and the first year's annual fee for issuers that switch their listings to Nasdaq from NYSE or NYSE American is reasonable and not unfairly discriminatory. The Exchange states that less work is required to process a listing application for a security that is already listed on another exchange than it is to process an application for listing a new security.¹⁰⁴ In addition, the Exchange states that issuers that have already paid their annual fees to NYSE or NYSE American would be disincentivized to switch their listings to the Exchange without the waiver.¹⁰⁵ Finally, the Exchange notes that it currently waives certain listing and annual fees for issuers of equity securities who transfer their listings to the Exchange from another national securities exchange.¹⁰⁶

IV. Solicitation of Comments on Amendment Nos. 1, 2, and 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and

¹⁰¹ See Notice, *supra* note 3, at 45295.

¹⁰² See *id.* NYSE American charges an initial listing fee for bonds of \$100 per \$1 million principal amount (or fraction thereof) with a minimum fee of \$5,000 and a maximum fee of \$10,000. NYSE American charges an annual fee of \$5,000 for listed bonds and debentures of companies whose equity securities are not listed on NYSE American. See NYSE American Listed Company Guide Sections 140 and 141.

¹⁰³ See Nasdaq Rule 5920.

¹⁰⁴ See Notice, *supra* note 3, at 45295.

¹⁰⁵ See Notice, *supra* note 3, at 45296.

¹⁰⁶ See Securities Exchange Act Release No. 34-70418 (Sept. 16, 2013), 78 FR 57909 (Sept. 20, 2013) (SR-NASDAQ-2013-115).

⁹⁵ See Securities Exchange Act Release No. 55496 (March 20, 2007), 72 FR 14631 (March 28, 2007).

arguments concerning whether Amendment Nos. 1, 2, and 3 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-2018-070 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-2018-070. 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-2018-070 and should be submitted on or before December 10, 2018.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 prior to the thirtieth day after the date of publication of notice of the filing of

Amendment Nos. 1, 2, and 3 in the **Federal Register**. The Commission notes that Amendment Nos. 1, 2, and 3 provide clarifications and additional information to the proposed rule change. The changes and additional information in Amendment Nos. 1, 2, and 3 assist the Commission in finding that the proposal is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁰⁷ to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.^{VI}

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰⁸ that the proposed rule change (SR-NASDAQ-2018-070), as modified by Amendment Nos. 1, 2, and 3, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁹

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25093 Filed 11-16-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84576; File No. SR-NYSEArca-2018-67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend NYSE Arca Rule 5.2-E(j)(6) Relating to Equity Index-Linked Securities Listing Standards Set Forth in NYSE Arca Rule 5.2-E(j)(6)(B)(I)

November 13, 2018.

On September 10, 2018, NYSE Arca, Inc. ("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 amend listing standards set forth in NYSE Arca Rule 5.2-E (j)(6)(B)(I) relating to criteria applicable to components of an index underlying an issue of Equity Index-Linked Securities. The proposed rule change was published for comment in the **Federal**

Register on October 1, 2018.³ The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 15, 2018. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates December 30, 2018, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-NYSEArca-2018-67).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25094 Filed 11-16-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33295; 812-14920]

ABR Dynamic Funds, LLC, et al.

November 14, 2018.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under

¹⁰⁷ 15 U.S.C. 78s(b)(2).

¹⁰⁸ 15 U.S.C. 78s(b)(2).

¹⁰⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 84279 (Sept. 25, 2018), 83 FR 49437.

⁴ 15 U.S.C. 78s(b)(2).

⁵ *Id.*

⁶ 17 CFR 200.30-3(a)(31).

sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds.

APPLICANTS: ABR Dynamic Funds, LLC (the "Initial Adviser"), a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940, ETF Series Solutions (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Foreside Fund Services, LLC, (the "Distributor"), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

FILING DATES: The application was filed on June 14, 2018, and amended on October 16, 2018 and November 8, 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 December 10, 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, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants: ABR Dynamic Funds, LLC, 48 Wall Street Suite 1100, New York, New York 10005; ETF Series Solutions, 615 East Michigan Street, Milwaukee, Wisconsin 53202; Foreside Fund Services, LLC, Three Canal Plaza, Portland, Maine 04101.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551-6990, or Andrea Ottomanielli Magovern, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Summary of the Application:

1. Applicants request an order that would allow Funds to operate as index exchange traded funds ("ETFs").¹ Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant," which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-

Tier Affiliate"), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.²

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include

¹ Applicants request that the order apply to the ABR Dynamic Weight ETF and any additional series of the Trust and any other open-end management investment company or series thereof (each, included in the term "Fund"), each of which will operate as an ETF and will track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (each, an "Underlying Index"). Each Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto, an "Adviser") and (b) comply with the terms and conditions of the application. For purposes of the requested order, the term "successor" is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

² Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions, and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.³ The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the

policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such 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. Section 12(d)(1)(J) 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 section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018–25180 Filed 11–16–18; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2018–0029]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces new matching program with the Centers for Medicare & Medicaid Services (CMS). This agreement establishes the terms, and conditions, and safeguards under which CMS will disclose to SSA certain individuals' admission and discharge information for care received in a nursing care facility. SSA will use this data to administer the Supplemental Security Income program efficiently and to identify Special Veterans' Benefits beneficiaries who are no longer residing outside of the United States.

DATES: The deadline to submit comments on the proposed matching

program is 30 days from the date of publication of this notice in the **Federal Register**. The matching program will be applicable on December 6, 2018 or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing MaryAnn.Zimmerman@ssa.gov. All comments received will be available for public inspection by contacting Ms. Zimmerman at this street address.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, by any of the means shown above.

SUPPLEMENTARY INFORMATION: None.

Mary Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and CMS.
Authority for Conducting the

Matching Program: The legal authority for the Supplemental Security Income (SSI) portion of the matching program is sections 1611(e)(1) and 1631(f) of the Act (42 U.S.C. 1382(e)(1) and 1383(f)), and 20 CFR 416.211. The legal authorities for the SVB portion of the matching program are sections 801 and 806(a) and (b) of the Act (42 U.S.C. 1001 and 1006(a) and (b)). Legal authority for CMS' disclosures under this matching program section 1631(f) of the Act (42 U.S.C. 1383(f)) and 45 CFR 164.512(a) Standard: Uses and disclosures required by law (Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule). The legal authority for the agencies to enter into this interagency transaction is the Economy Act, 31 U.S.C. 1535.

Purpose(s): The purpose of this matching program is to set forth the terms, conditions, and safeguards under which CMS will disclose to SSA certain individuals' admission and discharge information for care received in a nursing care facility. Nursing care facility, for purposes of this CMA, means certain facilities referenced in CMS' Long Term Care-Minimum Data Set System Number 09–70–0528 (LTC/

³ The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

MDS). SSA will use this information to administer SSI program efficiently and to identify SVB beneficiaries who are no longer residing outside of the United States.

Categories of Individuals: The individuals whose information is involved in this matching program are those individuals who were admitted or discharged from a nursing care facility and are SSI recipients, or SVB recipients who are no longer residing outside of the United States, or both.

Categories of Records: SSA will provide CMS with a monthly finder file, which will be extracted from SSA's SSI and SVB's records. The finder file will consist of data elements related to an individual's SSI/SVB eligibility. CMS will match the SSA finder file against data maintained pursuant to the Long Term Care-Minimum Data Set (LTC/MDS) systems of records.

System(s) of Records: SSA will provide CMS with a monthly finder file, which will be extracted from Supplemental Security Income Record and Special Veterans Benefits, 60-0103, last fully published on January 11, 2006 (71 FR 1830); and amended on December 10, 2007 (72 FR 69723) and July 3, 2018 (83 FR 31250-31251).

CMS will match the SSA finder file against data maintained pursuant to the Long Term Care-Minimum Data Set (LTC/MDS) (System Number 09 70 0528) SOR, last fully published on March 19, 2007 (72 FR 12801), amended on April 23, 2013 (78 FR 23938), May 29, 2013 (78 FR 32257), and February 14, 2018 (83 FR 6591); and submit its response file to SSA.

[FR Doc. 2018-25050 Filed 11-16-18; 8:45 am]

BILLING CODE 4191-02-P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: October 1-31, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436; email: joyler@srbc.net.

srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR 806.22(f)

1. Inflection Energy (PA), LLC; Pad ID: Hillegas Well Pad, ABR-201308017.R1; Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 11, 2018.
2. Inflection Energy (PA), LLC; Pad ID: Bennett Well Pad, ABR-201308015.R1; Eldred Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 19, 2018.
3. Cabot Oil & Gas Corporation; Pad ID: PavelskiJ Pad 1, ABR-201810001; Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 19, 2018.
4. Repsol Oil & Gas USA, LLC ; Pad ID: DCNR 594 (02 200), ABR-201810002; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 22, 2018.
5. Chief Oil & Gas LLC, Pad ID: HEMLOCK RIDGE ESTATES UNIT PAD; ABR-201810003; McNett Township, Lycoming County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: October 24, 2018.
6. ARD Operating, LLC; Pad ID: Lycoming H&FC Pad F; ABR-201309015.R1; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 26, 2018.

Authority: Pub. L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: November 14, 2018.

Stephanie L. Richardson,
Secretary to the Commission.

[FR Doc. 2018-25199 Filed 11-16-18; 8:45 am]

BILLING CODE 7040-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation: Notice of Availability of the Final Environmental Assessment and Finding of No Significant Impact/Record of Decision for the Shuttle Landing Facility Launch Site Operator License

AGENCY: The Federal Aviation Administration (FAA), Department of Transportation (DOT) is the lead agency. The National Aeronautics and Space Administration (NASA), U.S. Air Force, U.S. Fish and Wildlife Service (USFWS), and National Park Service (NPS) are cooperating agencies for this Environmental Assessment (EA) due to their special expertise and jurisdictions.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), Council on Environmental Quality NEPA implementing regulations, and Federal Aviation Administration (FAA) Order 1050.1F, *Environmental Impacts: Policies and Procedures*, the FAA is announcing the availability of the Final Environmental Assessment and Finding of No Significant Impact/Record of Decision for the Shuttle Landing Facility (SLF) Launch Site Operator License (Final EA and FONSI/ROD).

FOR FURTHER INFORMATION CONTACT: Ms. Stacey M. Zee, Environmental Protection Specialist, Federal Aviation Administration, 800 Independence Avenue SW, Suite 325, Washington, DC 20591; email Stacey.Zee@faa.gov.

SUPPLEMENTARY INFORMATION: The Shuttle Landing Facility (SLF) encompasses about 4,432 acres of property at Kennedy Space Center, including the 15,000 foot long, 300 foot wide runway. The SLF, which previously supported the National Aeronautics and Space Administration's Space Shuttle Program, is now a state-licensed private use airport managed by Space Florida. Under the Proposed Action described in the Final EA, Space Florida would construct launch site facilities and the FAA would issue a launch site operator license to Space Florida for the operation of a commercial space launch site at the SLF. The EA may be used to support the issuance of launch licenses or experimental permits to prospective vehicle operators that propose to conduct launches of horizontal takeoff and horizontal landing launch vehicles from the SLF. However, if a prospective launch vehicle operator's vehicle

parameters fall outside those analyzed in the EA, the FAA would re-evaluate the potential impacts and, if necessary, prepare additional NEPA analysis.

The Final EA addresses the potential environmental impacts of Space Florida's proposal to construct and operate the SLF as a launch location for horizontally launched and landed rockets. The Final EA considers the potential environmental impacts of the Proposed Action and the No Action Alternative. The successful completion of the environmental review process does not guarantee that the FAA Office of Commercial Space Transportation would issue a Launch Site Operator License to Space Florida. The project must also meet all FAA requirements of a Launch Site Operator License. Individual launch operators proposing to launch from the site would be required to obtain a separate launch operator license.

An electronic version of the Final EA and FONSI/ROD is available on the FAA Office of Commercial Space Transportation website at: https://www.faa.gov/about/office_org/headquarters_offices/ast/environmental/nepa_docs/review/documents_progress/space_florida/.

Issued in Washington, DC, on November 13, 2018.

Daniel Murray,

Manager, Space Transportation Development Division.

[FR Doc. 2018-25186 Filed 11-16-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental action taken by the Federal Transit Administration (FTA) for a project from the City of Gary to Michigan City, Indiana. The purpose of this notice is to announce publicly the environmental decision by FTA on the subject project and to activate the limitation on any claims that may challenge this final environmental action.

DATES: By this notice, FTA is advising the public of final agency actions subject to 23 U.S.C. 139(l). A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred

unless the claim is filed on or before April 18, 2019.

FOR FURTHER INFORMATION CONTACT:

Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353-2577 or Juliet Bochicchio, Environmental Protection Specialist, Office of Environmental Programs, (202) 366-9348. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency action by issuing certain approvals for the public transportation project listed below. The action on the project, as well as the laws under which such action was taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project file for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at <https://www.fta.dot.gov>.

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such action was taken, including, but not limited to, NEPA [42 U.S.C. 4321-4375], Section 4(f) requirements [23 U.S.C. 138, 49 U.S.C. 303], Section 106 of the National Historic Preservation Act [54 U.S.C. 306108], and the Clean Air Act [42 U.S.C. 7401-7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and action that is the subject of this notice follow:

Project name and location: Double Track Northwest Indiana Project, Gary to Michigan City, Indiana. *Project sponsor:* Northern Indiana Commuter Transportation District. *Project description:* The Double Track Northwest Indiana (DT-NWI) Project proposes to expand the South Shore Line (SSL) commuter line railroad capacity along an approximately 26.6-mile corridor from Gary at milepost 58.8, west of Virginia Street, to milepost 32.2 near Carroll Avenue in Michigan City, Indiana. The Northern Indiana Commuter Transportation District (NICTD) proposes to expand the existing SSL capacity to meet current and future commuter ridership demand through construction of a continuous double track railroad system (14.2 miles of a

second mainline and five high-speed crossovers), removal/replacement of in-street tracks, four bridges, five station improvements with associated track improvements, one new crossing diamond, replacement of an existing crossing diamond, and installation of signal and overhead contact system infrastructure. This notice applies only to the discrete action taken by FTA at this time, as described below. Nothing in this notice affects FTA's previous decisions, or notice thereof, for this project. *Final agency actions:* Section 4(f) determination, dated September 18, 2017; Section 106 finding of adverse effect, dated August 31, 2017; A Section 106 Memorandum of Agreement, dated December 8, 2017; project-level air quality conformity, and Finding of No Significant Impact for the Double Track Northwest Indiana Project, Gary to Michigan City, Indiana, dated November 1, 2018. *Supporting documentation:* Environmental Assessment and Section 4(f) Evaluation for NICTD Double Track NWI (DT-NWI) Milepost (MP) 58.8 to MP 32.2 dated, September 18, 2017.

Elizabeth S. Riklin,

Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2018-25132 Filed 11-16-18; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2018-0100; Notice No. 2018-21]

Hazardous Materials: Emergency Waiver No. 10

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of emergency waiver order.

SUMMARY: PHMSA is issuing an emergency waiver order to persons conducting operations under the direction of Environmental Protection Agency (EPA) Region 9 or United States Coast Guard (USCG) Eleventh District within the California Wildfire emergency area. The Waiver is granted to support the EPA and USCG in taking appropriate actions to prepare for, respond to, and recover from a threat to public health, welfare, or the environment caused by actual or potential oil and hazardous materials incidents resulting from the California Wildfires. This Waiver Order is effective immediately and shall remain in effect for 30 days from the date of issuance.

FOR FURTHER INFORMATION CONTACT:

Adam Horsley, Deputy Assistant Chief Counsel for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, telephone: (202) 366-4400.

SUPPLEMENTARY INFORMATION:

In accordance with the provisions of 49 U.S.C. 5103(c), the Administrator for the Pipeline and Hazardous Materials Safety Administration (PHMSA), hereby declares that an emergency exists that warrants issuance of a Waiver of the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180) to persons conducting operations under the direction of EPA Region 9 or USCG Eleventh District within the California Wildfire emergency area. The Waiver is granted to support the EPA and USCG in taking appropriate actions to prepare for, respond to, and recover from a threat to public health, welfare, or the environment caused by actual or potential oil and hazardous materials incidents resulting from the California Wildfires.

On November 9, 2018, the President issued an Emergency Declaration for the California Wildfires for the counties of Butte, Los Angeles, and Ventura (EM–3409). The President declared a major disaster in California on November 12, 2018 (DR–4407).

This Waiver Order covers all areas identified in the declarations, as amended. Pursuant to 49 U.S.C. 5103(c), PHMSA has authority delegated by the Secretary (49 CFR 1.97(b)(3)) to waive compliance with any part of the HMR provided that the grant of the waiver is: (1) In the public interest; (2) not inconsistent with the safety of transporting hazardous materials; and (3) necessary to facilitate the safe movement of hazardous materials into, from, and within an area of a major disaster or emergency that has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Given the continuing impacts caused by the California Wildfires, PHMSA's Administrator has determined that regulatory relief is in the public interest and necessary to ensure the safe transportation in commerce of hazardous materials while the EPA and USCG execute their recovery and cleanup efforts in California. Specifically, PHMSA's Administrator finds that issuing this Waiver Order will allow the EPA and USCG to conduct their Emergency Support Function #10 response activities under the National Response Framework to safely remove, transport, and dispose of hazardous materials. By execution of this Waiver

Order, persons conducting operations under the direction of EPA Region 9 or USCG Eleventh District within the California Wildfire emergency area are authorized to offer and transport non-radioactive hazardous materials under alternative safety requirements imposed by EPA Region 9 or USCG Eleventh District when compliance with the HMR is not practicable. Under this Waiver Order, non-radioactive hazardous materials may be transported to staging areas within 50 miles of the point of origin. Further transportation of the hazardous materials from staging areas must be in full compliance with the HMR.

This Waiver Order is effective immediately and shall remain in effect for 30 days from the date of issuance.

Issued in Washington, DC, on November 13, 2018.

Howard R. Elliott,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2018–25112 Filed 11–16–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration**

[Docket No. PHMSA–2018–0100; Notice No. 2018–20]

Hazardous Materials: Emergency Waiver No. 9

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of emergency waiver order.

SUMMARY: PHMSA is issuing an emergency waiver order to persons conducting operations under the direction of Environmental Protection Agency (EPA) Region 9 or United States Coast Guard (USCG) Fourteenth District within the Super Typhoon Yutu emergency area of the Northern Mariana Islands. The Waiver is granted to support the EPA and USCG in taking appropriate actions to prepare for, respond to, and recover from a threat to public health, welfare, or the environment caused by actual or potential oil and hazardous materials incidents resulting from Super Typhoon Yutu. This Waiver Order is effective immediately and shall remain in effect for 30 days from the date of issuance.

FOR FURTHER INFORMATION CONTACT:

Adam Horsley, Deputy Assistant Chief Counsel for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety

Administration, telephone: (202) 366-4400.

SUPPLEMENTARY INFORMATION:

In accordance with the provisions of 49 U.S.C. 5103(c), the Administrator for the Pipeline and Hazardous Materials Safety Administration (PHMSA), hereby declares that an emergency exists that warrants issuance of a Waiver of the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180) to persons conducting operations under the direction of EPA Region 9 or USCG Fourteenth District within the Super Typhoon Yutu emergency area of the Northern Mariana Islands. The Waiver is granted to support the EPA and USCG in taking appropriate actions to prepare for, respond to, and recover from a threat to public health, welfare, or the environment caused by actual or potential oil and hazardous materials incidents resulting from Super Typhoon Yutu.

On October 23, 2018, the President issued an Emergency Declaration for Super Typhoon Yutu for the Northern Mariana Islands for the municipalities of the Northern Islands, Rota, Saipan, and Tinian (EM–3408). The President declared a major disaster in the Northern Mariana Islands on October 26, 2018 (DR–4404).

This Waiver Order covers all areas identified in the declarations, as amended. Pursuant to 49 U.S.C. 5103(c), PHMSA has authority delegated by the Secretary (49 CFR 1.97(b)(3)) to waive compliance with any part of the HMR provided that the grant of the waiver is: (1) In the public interest; (2) not inconsistent with the safety of transporting hazardous materials; and (3) necessary to facilitate the safe movement of hazardous materials into, from, and within an area of a major disaster or emergency that has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Given the continuing impacts caused by Super Typhoon Yutu, PHMSA's Administrator has determined that regulatory relief is in the public interest and necessary to ensure the safe transportation in commerce of hazardous materials while the EPA and USCG execute their recovery and cleanup efforts in the Northern Mariana Islands. Specifically, PHMSA's Administrator finds that issuing this Waiver Order will allow the EPA and USCG to conduct their Emergency Support Function #10 response activities under the National Response Framework to safely remove, transport, and dispose of hazardous materials. By execution of this Waiver Order, persons

conducting operations under the direction of EPA Region 9 or USCG Fourteenth District within the Super Typhoon Yutu emergency area of the Northern Mariana Islands are authorized to offer and transport non-radioactive hazardous materials under alternative safety requirements imposed by EPA Region 9 or USCG Fourteenth District when compliance with the HMR is not practicable. Under this Waiver Order, non-radioactive hazardous materials may be transported to staging areas within 50 miles of the point of origin. Further transportation of the hazardous materials from staging areas must be in full compliance with the HMR.

This Waiver Order is effective immediately and shall remain in effect for 30 days from the date of issuance.

Issued in Washington, DC, on November 13, 2018.

Howard R. Elliott,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2018-25111 Filed 11-16-18; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending September 30, 2018. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

| Last name | First name | Middle name/initials |
|---------------|-------------|----------------------|
| ABBOTT | IVONNE | TERESA |
| ABRAHAMSON | JEFFREY | MARK |
| ACKER | ELISABETH | F.L. |
| ACKER | WILLIAM | JAMES |
| ADAIR | CAROLYN | ANN |
| AERNE | SANDRA | DANIELA |
| AGGERSBJERG | ALEXANDER | |
| AJMONE-MARSAN | GIULIA | |
| AL MANSSORY | NADA | ALI ABDURAZAQ |
| ALBANESE | MICHELE | |
| ALBERT | MICHAEL | JOHN |
| ALEMAN | DIONNE | MICHELLE |
| ALEXANDER | DAWNA | LEE |
| ALIREZA | GHAASSAN | ALI |
| ALMUTAIRI | SHADEN | AHMAD |
| AL-NASR | TOFOL | |
| AL-NOWAISER | SAUD | FAISAL |
| AL-RODAN | FAHAD | HAMAD ROWAIH ALI |
| ANDERSON | CHARLES | EINAR |
| ANDERSON | CHARLES | RICHARD |
| ANDERSON | GARRETT | RUSSELL |
| ANDERSON | JACK | BUDD |
| ANDERSON | LORENE | MARIE |
| ANDERSON | NELS | CHRISTIAN |
| ANDREWS | JEROME | B. |
| ANGER | CLEMENCE | MARIE |
| ARNOLD | MICHAEL | JAMES |
| ARONOFF | ALAN | EVAN |
| ASHLEY | ROSS | CLIFFORD |
| ASPER | LISA | JEAN |
| ATTIE | JONATHAN | DAVID |
| AXENROTH | PATRICIA | |
| AXFORD | JAMES | HERBERT |
| AYRES | MELANIE | |
| AZHAR | EMAD | A. |
| BADEN | SUZANNE | MARIE |
| BAE | HYUN-JI | |
| BAETEN | MICHELLE | CATHERINE |
| BALTRUS | ELIZABETH | MARY |
| BANAGAN | ROBERT | FRANCIS |
| BANDEIRA | LYNETTE | LEVY |
| BANGEN | JANINE | CHARLOTTE |
| BARKER | ALEXA-MARIA | RATHBONE |
| BARNARD | JOSHUA | DAVID |
| BARNES | SUSAN | LORETTA |
| BARNICOT | MICHELE | SANDRA |
| BARRITT | KATHERINE | SYBIL |
| BATCHELOR | MOLLY | MARGARET |
| BATTJES | FORREST | NICHOLAS |
| BAUMANN | SUSAN | ELIZABETH |
| BAUMGARTEN | EVELYN | MARIA |

| Last name | First name | Middle name/initials |
|--------------------|------------|----------------------|
| BAXENDINE | EMILY | YERKES |
| BAXTER | JORDAN | PATRICK |
| BECK | BARBARA | HARDIN |
| BECK | JAMES | AUSTIN |
| BECK | RACHEL | LYNN |
| BECKER | HELEN | SUZANNA |
| BECKER | MARY | HESTER |
| BEGOUGNE DE JUNIAC | ELISABETH | MARIE A. |
| BELKNAP | JESSICA | SARAH |
| BELL | ANDREW | JAMES |
| BENITEZ | MERCEDES | MARIA FABREGA DE |
| BENN | DAVID | WESLEY |
| BENSON | COHEN | WYBORN |
| BENTHIEN | BRENDA | RUMMLER |
| BERBIGIER | CECILE | JENNIFER GENEVIEVE |
| BERCHTOLD | NATHALIE | MICHELE |
| BERDAN | ANTHONY | RYAN |
| BERGER | CONNIE | |
| BERK | MAURICE | ABRAHAM |
| BERLI | CHRISTOPH | A. |
| BERN | CAROLYN | N. |
| BERNSTEIN | STEVEN | CHARLES |
| BERROETA | XIAOLI | |
| BIERSDORFF | KATHLEEN | KAROL |
| BIETH | VIVIANE | YVONNE |
| BILDNER | NICHOLAS | JAMES |
| BINDER | MICHAEL | ANDREAS |
| BINSWANGER | IKA | DANIELA |
| BIRCHMEIER | LINDA | MARIE-LOUISE |
| BIRD | KRISTINA | DIANA |
| BITAR | ANA | MARIA |
| BLACKORBY | CHARLES | EDWARD |
| BLACKWELL | TRISTAN | MARK |
| BLISS | MARY | ALLISON |
| BLOCH | ANETTE | |
| BLOCH | DAVID | M. |
| BLOCH | PATRICK | HARRY |
| BLOCK | AMY | ELLEN |
| BLOECHLINGER-ERNST | DANIELA | ROSA |
| BLOM | MARY | FAITH |
| BLOOM | WALTER | SINGER |
| BLUME | MICHAEL | STEPHEN |
| BOARDMAN | EMILY | JULIA |
| BOCCHINO | ROBERT | MARIO |
| BODDEN | AMANDA | MARIE |
| BOETTCHER-MEIER | BARBARA | VIRGINIA |
| BOLLETER | THOMAS | EDWARD |
| BOLLIGER | MICHAEL | JAY |
| BONNEVIOT | MADELEINE | MARIE-DOMINIQUE |
| BOROWSKI | HELEN | ABELMAN |
| BORTOLI | FRANCA | ANTONIA |
| BOTSIS | MARIA | |
| BOULTON | DANE | ANTHONY |
| BOUX DE CASSON | SEBASTIEN | AMAURY |
| BOYCE | ANDREW | DANIEL |
| BOYCE | DANIEL | GERARD |
| BOYCE | SUZANNE | WASLEY |
| BOYLE | MICHAEL | TYSON |
| BRACQ | JEREMIE | THOMAS |
| BRADY | MEGAN | CAITLIN |
| BRAIN | TRACY | EILEEN |
| BRAUDE | JONATHAN | PAUL |
| BREEDERLAND | LEVI | WESLEY |
| BREEDERLAND | MEHALA | JOY |
| BREEDERLAND | TYSON | MARTIN |
| BREEN | HILDEGARDE | |
| BREMNER | DAVIN | LEDRIKH |
| BRENNAN | WLADIMIR | HUBERT |
| BRINTRUP | ASTRID | MARIE |
| BROEREN | THOMAS | WILLIAM |
| BROT | KIERAN | PATRICK |
| BROT | YANNICK | A. |
| BROWN | CHARLOTTE | ANN |
| BROWN | KATHLEEN | ANNE GRACE |

| Last name | First name | Middle name/initials |
|-------------------------|-----------------|----------------------|
| BROWN | STEPHANIE | AREHART |
| BROWNEE | KATHLEEN | PHYLLIS |
| BRUNEL | ARNAUD | M. |
| BRUNNER | NOAM | SIMON |
| BRUNNER | SIMON | STONE |
| BUCHS | DOMINIC | |
| BULLIMORE | LANA | KAY |
| BUNGE | ERIK | WILLEM |
| BURGIN | MICHELLE | CHRISTINE |
| BURNS | BRUCE | THOMASSEN |
| BURRI-SHAVER | LORENA | ANN |
| BURT | BENJAMIN | EDWARD |
| BURT | KEVIN | |
| BURT | LYNNE | |
| BURTON WINTER | ALEXIS | CHAVAH |
| BUSHNELL | SUSAN | MARY |
| BUSUTTIL | NINA | BURAWOY |
| BUTLER | GERALDINE | SUE |
| CALABRO | PAULETTE | ANN |
| CALLAN | MITZI | MERCEDES |
| CAMPBELL | CASEY | GEORGE |
| CANNON | TRINA | ELIZABETH |
| CARCANO | WENDY | ARLENE |
| CARLSON | BARRY | MARCUS |
| CARNOHAN | OLIVIER | SEAN |
| CARNOT | FANNY | VICTORIA |
| CASALI | INGRID | |
| CATHCART | LUTJE | MARIEKE |
| CHAI | JONATHAN | WE JIE |
| CHANG | BETHANY | XUJIE |
| CHANG | KENNY | YU |
| CHANG | MICHELLE | ELIZABETH |
| CHANG | WAN-LING | |
| CHANG | YUN | TENG |
| CHAPDELANIE | SOPHIE | CORINNE |
| CHAUHAN | NADIA | |
| CHENG | BEVERLY | |
| CHEONG | JOSEPH | HO CHO |
| CHERVENAK-PESSLER | MIGUELA | MARIE |
| CHIDIAC | BARBAR | ANN |
| CHIHARA | NORIO | |
| CHILTON | JESSICA | MEGAN |
| CHOI | CINDY | |
| CHOI | HOWARD | JAY |
| CHOI | YUN | BOK |
| CHOU | CHARLES | GUA-HAO |
| CHOW | DONALD | WAN HOK |
| CHOW | JOHNNY | YUNG-MING |
| CHOW | PO | CHEE |
| CHRISTENSEN | CAROL | ELAINE |
| CHU | ABRAHAM | |
| CHUANG | WALTER | TWON-YALL |
| CHUKAT | BRACHA | BATYA |
| CHUN | BRADLEY | ALAN |
| CHUNG | HUBERT | PING-HUANG |
| CHUNG | TERUYO | |
| CHURCH | DARREN | RUSSELL |
| CLARK | FLORA | SABINA |
| CLASS | JENNIFER | ANN |
| CLAYTON | JEANNINE | JOCELYN |
| COHEN | CHAVA | YENTA |
| COHEN | MEIR | AARON |
| COLBORNE | MELANIE | TALULAH |
| COLE | JAMES | ANDREW |
| COLEMAN | REBECCA | JANE |
| COLLIN | JOCELYNE | |
| COLLINS | CLAUDINE | GWENNETH |
| COLLINS | LACHLAN | LAMONT |
| CONLIN | KAREN | ELIZABETH |
| COOK | SHERRY | ANN |
| COOKE | BARBARA | LYNN |
| COOKE | MICHELLE | C. |
| COOPER | SIMON | ROBERT |
| CORBIN | HEATHER | MARIE |

| Last name | First name | Middle name/initials |
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| CORCOSTEGUI | ANGEL | EDUARDO |
| CORDRAY | LINDA | PATRICIA |
| CORRIAS | ALESSANDRO | GEORGE |
| CORRIGAN GIBSON | MADELEINE | |
| CORY | HUGO | |
| COTTAAR | JOLIIN | |
| CRAGG | GEOFFREY | PHILIP |
| CRAIG | DONALD | CHARLES |
| CRAWFORD | ELIZABETH | LINDE |
| CRAWFORD | LILY | ELIAS |
| CRESSMAN | DAVID | EDWARD |
| DAMANT | JOHANNA | CAROLINA |
| DANEKER | VINCENT | JOSEPH |
| DANI | MD | WIRA |
| DANIEL | JAMES | RICHARD |
| DAO | RAMSEY | DAVID |
| DARAKANANDA | VIPARPHAN | |
| DARLING-DOIDGE | DAVID | WILLIAM |
| DASHINEAU | ROBERT | C. |
| DAVENPORT | ETHAN | MATTHEW |
| DAVENPORT | SUZANNE | ELIZABETH |
| DAVEY | SUSAN | |
| DAVIDSON | JANE | KATHLEEN |
| DAVIDSON | WESTERLY | BOW |
| DAVIES | JUDITH | PLACKO |
| DAVIES | LAURA | JANE |
| DAVIS | DAVID | EDWARDS |
| DAVIS | DIANNE | |
| DAVIS | EDITH | J. |
| DAVIS | LANCE | ASHTON |
| DAVOUDI | LEONARDO | |
| DAWSON | MICHELLE | CARRIE KARP |
| DAYAT | VALERIE | EVELYN |
| DAYOUB | PAUL | ROBERT |
| DE ALBERGARIA | MARIA | VICTORIA TEIXEIRA |
| DE CARVALHO NETO | RAUL | DAHAS |
| DE GRAAF | ANNE | MAUREEN |
| de GRAAF | DANIEL | DEREK |
| DE JESUS CRISTO | ANGELIKA | RENATE |
| DE JESUS CRISTO | CAITLIN | CASSANDRA |
| DE LA OSSA | MADELAINE | MERCEDES |
| DE LESSEPS | NADJA | DIANA |
| DE OBALDIA | MARIA | ISABEL |
| DE RIBES | OLIVIER | MARC |
| DE SAUSSURE-VONECHE | MARINA | PAOLA |
| DE SILVA | ISABELLE | YOLANDE |
| DE VITRLY D'AVAUCCOURT | OLIVIA | CELIA |
| DE VORE | CRAIG | ALAN |
| DEESON | HELEN | MARY |
| DEIBLER | KATHARIN | |
| DELANNEY | LAURENT | LOUIS |
| DELISLE | VINCENT | |
| Della Faille Dhuyssse | Charlotte | M. |
| DEN DAAS | CHRISTIAN | DIANA |
| DEN DAAS | JAN | WILLEM THOMAS |
| DEN DAAS | LIA | JUDITH JOHANNA |
| DENKE | SYBIL | LEILANI ANN |
| DENWIGROM | JIRAPA | |
| DESJARDINS | CRYSTAL | |
| DEVEREUX | HELEN | |
| DEVILLE | ANOUE | |
| DEWIT | ALYSSA | NEELTJE |
| DIBATTISTA | DAVID | |
| DIMMICK | JOSEPH | TIANLI |
| DION | KRISTEN | MARIE |
| DIOP | MOMAR | |
| DOLAN | TIMOTHY | EDWARD |
| DOMINGUE | CANDIDE | THERESE |
| DOOHAN | NEIL | PATRICK |
| DOYLE | JENNIFER | ANNE |
| DOYLE | KAREN | KAY |
| DRAGHI | FEDERICA | |
| DREISE | JEREMY | MICHAEL |
| DRIVER | KELLY | LOUISE |

| Last name | First name | Middle name/initials |
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| DROOKER | STEPHEN | EDWARD |
| DUDA | MARCEL-TITUS | |
| DUECK | REBECCA | JOANNE |
| DUGAN | CHARLES | HAMMOND |
| DUMAIS | LYNNE | MARIE |
| DURNERIN | SYLVIE | MARIE-GENEVIEVE |
| DUSCHLETTA | GIANNA | |
| DUSSOL | CHRISTINE | MARIE |
| DUYNHOUWER | JOHN | DEREK |
| EARLY | FRANCES | HORN |
| EDE | SEGOLENE | |
| EDWARDS-DAVIS | CATHY | |
| EGGERSCHWILER | LUCA | |
| EHRENSTROM | PHILIPPE | HAROLD |
| EINIG | KEVIN | KEITH |
| EKHOLM | BRADLEY | GERALD |
| ELEFANT | MARTIN | |
| EN CI KOH | ANDREW | JOSHUA |
| ENDERBY | MAUREEN | |
| ENGLAND | JENNIFER | SARAH |
| ENNS | BRONWEN | |
| EPP | MARK | ANDREW |
| ETCHEBERRY | DIEGO | SOLARI |
| EVERITT | TRACEY | LEE |
| EYTON | PAMELA | JANE |
| FAWAZ | MAHA | JAMAL |
| FEELEY | MICHAEL | FRANCIS |
| FELKER | ELSA | MAY |
| FENSKE | JOHN | ARTHUR |
| FILAN | SUSAN | LOUISE |
| FINDLEY | ANGELA | RENE |
| FINDLEY | LUCAS | WILLIAM |
| FIRER-GILLESPIE | ELIZABETH | ANN LEE |
| FITZ | JACOB | JAMES |
| FITZGERALD | DANIEL | JOSEF |
| FLETCHER | BRETT | STUART |
| FOLKERTH | DAVID | DALE |
| FORWARD | LINDA | MILDRED |
| FOSTER | SANDRA | MARIE |
| FRANCO | JOSE | L. |
| FRANKEN | CHANDRA | RAE |
| FRANKEN | DIANE | VICTORIA |
| FRANKEN | JESSICA | EMILY |
| FRANKLIN | JUDITH | ANN |
| FRANZEN | ELIZABETH | ERIN |
| FRASER | KATHERINE | JEAN |
| FREEMAN | JENNIFER | THERESA |
| FREEMAN | LAURA | SHIRLEY |
| FREW | STACIA | A. |
| FROEHLICH | MARCO | PETER |
| FROST | PETER | DAVID |
| FU | KENT | HOU THAI |
| FUNG | PEGGY | SIU YING |
| GABBIANI HAGERTY | WILLIAM | PATRICK |
| GALENTINE | LINDA | JANE |
| GALLIANO | LISA | LUCILLE |
| GARCIA | LUIS | MIGUEL |
| GARCIA VALDEZ | CARMEN | VERONICA |
| GATTIKER | BEATRICE | IRENE |
| GAUT | GRETA | BASHAWN |
| GEMMER | SEBASTIEN | PATRICK |
| GERMAN, SR | EFREN | POLICARPIO |
| GERSON | ALAN | JAMES |
| GHITTINI | GWENDOLYN | FRANCESCA |
| GILES-STEWART | ALICIA | DOLORES |
| GILHAM | CAROL | ANN |
| GILLESPIE | CAROLINE | HARRIET |
| GILLMAN | PAMELA | JANE |
| GILLMAN | STEPHEN | SCOTT |
| GILMAN | HARRY | DALE |
| GILMORE | RUTH | ESTHER |
| GINSBURG | LUCY | |
| GLADSTONE-GELMAN | RACHEL | GWYN |
| GLOVER | JESSICA | |

| Last name | First name | Middle name/initials |
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| GOH | ALEXANDER | WEI JUN |
| GOH | BRIAN | JOSHUA |
| GOLD | MELISSA | PETTY |
| GOLDSTEIN | JONATHAN | HILTON |
| GOLDSTEIN | SHIRLEY | |
| GOMEZ DE MESQUITA | FRANCOIS | DAVID |
| GOODRICH | KALON | BRYCE |
| GORECKI | ANNE-MARIE | GABRIELLE L'HEUREUX |
| GORIS | MARC | AUGUST PAUL |
| GORRELL | RONALD | GENE |
| GOTSIS | ANASTASIOS | |
| GOTTLIEB | KRISTINE | SUSAN |
| GOTTSCALK | ANDRE | R.G.M. |
| GOURD | LOUIS | MICHAEL |
| GRADY | JOHN | PATRICK |
| GREEN | ERYN | LEIGH |
| GREEN | WAYNE | KENT |
| GREGORY | DEBORAH | ANN |
| GRIFFITH-KOERFGEN | ANDREA | ELIZABETH |
| GROS | GABRIEL | LOUIS MICHEL |
| GROSLIN | CATHERINE | JENNIFER |
| GROSS | MORDECAI | YOSEF |
| GROSSMAN | JENNIFER | ANDREA |
| GUERQUIN-KERN | PIERRE-OLIVIER | STEVEN |
| GUEVARA | KARMEN | ANITA |
| GUILLEMNOT | CEDRIC | PAUL MAX |
| GUPTA | AGAM | KUMAR |
| GUPTA | ARJUN | |
| GUPTA | SAVIRA | |
| GUPTA | SUNIL | KUMAR |
| GUPTA | URVASHI | |
| GUYON | L. | ELIZABETH |
| HAASE | VIRGINIA | LEE |
| HAEGER | ROBERT | CHARLES |
| HAFKEMEIJER | GERALDINE | ISAURE MONIQUE |
| HAFNER | STEPHANIE | ELISABETH |
| HAGENBERG | HENDRIK | WILLEM |
| HAGERTY | MARY-LOUISE | |
| HAHN | FABIAN | ANDREAS |
| HAIDAR | STEVE | AHMAD |
| HAIDER | BARBARA | ELLEN |
| HAILPERIN | PAUL | |
| HAINES | ALPHONSINE | THERESE |
| HALL | CHRISTOPHER | FRIEDL |
| HALLWOOD | COURTENAY | NATASHA |
| HAMILL | JAMES | MICHAEL |
| HAMILTON | CHERYL | LYNN |
| HAMILTON | NEIL | DOUGLAS |
| HAMMOND | EMILY | E. |
| HAMPTON | CARMEN | RAMONA |
| HAN | LIAN | |
| HAN | RAPHAEL | MINGYONG |
| HANNON | TARA | JEANNE |
| HANSON | KALLIN | JAMES |
| HAPPACH | SHANE | JEFFREY |
| HARAKIS | EMMA | LAUREN |
| HARRIS | PETER | LEONARD |
| HARWOOD | SIMON | PHILLIP |
| HATCH | RONNY | STEVEN |
| HATZIDIMITRIOU | KELLY | |
| HAUG | BERNHARD | |
| HAVER | ROBERT | MALCOLM |
| HAWKEY | STEPHANIE | ANN |
| HAWKINS | GILLIAN | LAURA |
| HAWKINS | JOHN | RICHARD |
| HAYDICKY | JILLIAN | ANN |
| HAYS | SUSAN | |
| HE | LI | |
| HEARD CARNOT | JANET | MARIE |
| HEEGAARD | CHRISTINE | PASCALE |
| HEEGAARD | JEAN | HENRIK |
| HEISEL | JACQUELINE | MARY |
| HEISIG | CARSTEN | DIETMAR |
| HELAL | JANET | |

| Last name | First name | Middle name/initials |
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| HELLINGA | TODD | MICHAEL |
| HENDERSON | EMMA | KATHERINE |
| HENNEN | DAGMAR | GUDRUN INGEBORG |
| HENRY | DUANE | GLENN |
| HEWSON | NATHANIAL | JEREMY |
| HIGGINGS | DEBBIE | |
| HIGGINS | ERIC | SIMON |
| HIGGINS | MICHAEL | PATRICK |
| HILLIARD | JOE | HANNAH |
| HILL-TOUT | KIMBERLY | NHU |
| HIPOLITO | STANLEIGH | C.B. |
| HJERPE | JOHAN | OSCAR |
| HO | MICHIKO | |
| HO JUNG | WINSTON | RYONG |
| HODSDON | NICHOLAS | JAMES |
| HOLDEN | DARIA | HANNA |
| HOLDEN | ELIZABETH | SARA |
| HOLLEY | KARIN-ANN | |
| HOLLINGDALE | CHRISTIE | ROSE |
| HOLLOWAY | MEGAN | JANE |
| HOLLOWAY | RICHARD | ALAN |
| HOLLOWAY | STEPHEN | RICHARD |
| HOLTZ | JEFFREY | CHARLES |
| HONEGGER | DIANA | MARIA |
| HOOKER | ROSS | WALTON |
| HORII | YOSHIYUKI | |
| HORLACHER | DANIEL | HUFUTIEN |
| HORVATH | STEVE | |
| HOUREH | NADA | |
| HOUREZ | REGIS | MARCEL GEORGE |
| HOWETT | KO | DANIEL |
| HOWIE | KERSTIN | DAWN |
| HRECHDAKIAN | TATYANA | KATARINA |
| HSIEH | JOSEPH | MING |
| HUANG | JIA-HORNG | |
| HUANG | STEPHANIE | SHIN-HOU |
| HUDSON | RANDY | |
| HUELS | NICHOLAS | CHRISTOPHER |
| HUGGINS | KELCEY | JAYNE |
| HUGHES | ELAINE | MARY |
| HUNT | ANDREW | FRASER |
| HUSS | FIONA | CAROLINE |
| HUTT JR | DONALD | JOSEPH |
| I CHANG | POLLY | SHIH |
| I HUANG | CINDY | CHING |
| IWERSEN | JOHN-HOLGER | |
| IWERSEN | KAI-CHRISTIAN | |
| IZRAELI | ORI | |
| JABOULET-VERCHERRE | PIERRE | |
| JACOBS | MICHAEL | FRANCIS |
| JACQUEMOUND | FREDERIC | NICHOLAS |
| JACQUES | VESNA | |
| JAMES | MARY | PATRICIA |
| JANYK | JOANNE | JEAN |
| JANZEN | MICHAEL | KONRAD |
| JAQUES | DAVID | ANDRE |
| JAQUES | MARIE-CHLOE | |
| JEFFRIES | RACHEL | ANN |
| JENKINS | SAMUEL | JAMES |
| JENSEN | JESSICA | ELODIE |
| JESKE | NANCY | |
| JEYES | VICTORIA | CANDACE |
| JOHNSON | JUDITH | TRASK |
| JOHNSON | MORRIS | CLIFFTON |
| JOHNSON | SEKOIA | ANNE |
| JOHNSTON | JANELLE | CHARISSE |
| JOLY | DANIEL | E.M. |
| JONES | JAMES | VICTOR |
| JONES | LIA | ALEXANDRA |
| JONES | MARY | LYNNE HAYWOOD |
| JORDI | ANDREW | RICO |
| JOSKI-JETHI | CAYLIN | |
| JULIENNE | BEATRICE | MARIE HELENE |
| JURANEK | NICOLAS | JOHANN CYRIL |

| Last name | First name | Middle name/initials |
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| KABBA | ALIE | |
| KARIKOMI | AUDREY | SOU |
| KARIMOV | ISLAM | KARIM |
| KATAYAMA | JUNO | LILY |
| KEEGAN | PATRICIA | ANN |
| KEHR | JOACHIM | HEINRICH R. |
| KELLY | ARIANNA | KAYE ELYSE |
| KENNEDY | MARY | AGNES |
| KENNEDY | SEAN | PATRICK |
| KENNEDY | WILLIAM | JOHN |
| KENNETT | KEVIN | ALBERT |
| KEUPER | EMILY | ANN |
| KHAN | HISHAM | INAMULLAH |
| KHAN | SEEMA | NATASHA |
| KHUWAIBER | SARA | |
| KIDD | KOLLEEN | |
| KIM | DAREN | CHANG JIN |
| KIM | IVON | FREESIA |
| KIM | SOLBORI | |
| KIM | SUNYOUNG | |
| KIM | WILLIAM | JOONG |
| KINLEY | CECIL | EDWIN |
| KIRSCHNER | RALPH | KOLBJORNSEN |
| KITAO | SAGIRI | |
| KITAY | GERALD | BENNETT |
| KIYOFUMI | TAMIAKI | |
| KLINDWORTH | CHERYL | M. |
| KLUMP | MARTHA | A. |
| KNACKMUSS | STEFAN | HANS-JOACHIM |
| KNIPMEYER | KIRK | MORRISON |
| KNOP | BEVERLY | KATHRYN |
| KO | IAN | TSUN-YI |
| KOECHI | NATASHA | M. |
| KOEHLER | JOHN | WOLFGANG |
| KOEHLER | RORY | ALBERT OTTO |
| KOHLER | ERIK | |
| KOLLER | JOHANNES | CHRISTOPH |
| KONG | YUN-ZHEN | CLARA |
| KORNOFF | JESSE | |
| KOTLINSKI | ANNA-CASSANDRA | MADELAINE |
| KRAAY | RACHEL | ANNE DEKONING |
| KRAGSKOW | JON | G.C. |
| KRAMER | HERBERT | JOHANNES |
| KRANE | ANN | ROBINS |
| KRIJGSMAN | MAARTEN | CORNELIS |
| KRIZ | BONNIE | LYNN |
| KURZ | JOHANNA | FRANZISKA |
| KUYPERS | PAUL | DIRK LEONARD |
| KWAK | MYOUNG | CHAI |
| LAFORCE | NATHALIE | MARIE |
| LAI | ALLAN | JIM |
| LAISHLEY | RICHARD | GEORGE |
| LAM | CHENG | JUN |
| LAMARRE | THOMAS | GREGORY |
| LAMICHHANE | MR. RABI | |
| LANCRENON | CHANTAL | MARIE ODILE |
| LANGRIAL | MUHAMMAD | ALI |
| LARMOUR | ROBERT | JOHN |
| LASHBROOK | TONI | LEE |
| LASNIER | JULIE | ANNE |
| LATNER | LYNDA | ROBIN |
| LAUER | HYE | I. |
| LAUREYSSSENS | AMY | |
| LaVIER | PALIPORN | LADPLI |
| LAVIN | ASHLEY | |
| LAVIN | LISA | |
| LAVIN | TOM | |
| LAWLOR | KIRSTEN | |
| LAWSON | LINDLE | MORGAN |
| LAYCOCK | JONATHAN | EDWARD |
| LEBLANC | MICHELLE | MACDONALD |
| LECHUGA JR | ARMANDO | JOSE |
| LEE | ALBERT | HONG-WEN |
| LEE | ALLEN | CHEUK-LUN |

| Last name | First name | Middle name/initials |
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| LEE | AMY | HYUN-JUNG |
| LEE | ARTHUR | |
| LEE | HYUNJI | HANNAH |
| LEE | JONATHAN | JAEWOO |
| LEE | KEVIN | HUN |
| LEE | KUO-HWA | |
| LEE | MU-YI | TIFFANY |
| LEE | SEAN | BERNARD |
| LEE | TIMOTHY | ALEXANDER |
| LEECE | PRISCILLA | ANN |
| LEHMANN-BENDER | BRITT | MORISSA |
| LEIGH | JENNIFER | LLOY |
| LEMON | JOHN | ROBERT |
| LEMON | JUDITH | ELAINE |
| LENZEN | JOHN | CHARLES |
| LEONG | LANCE | MUN |
| LEVET | RAPHALLE | MARIE-THERESE JULIETTE |
| LEVMAN | RACHEL | TALIA |
| LHOIR | JEREMY | KNIGHT |
| LI | GARY | |
| LIAO | JONATHAN | |
| LIN | CHE-I | |
| LIN | QING | LAN |
| LINDHOLM | KNUT | |
| LINDLEY | KRISTIN | RAFFLI |
| LINGARD | RICHARD | IAN |
| LIQULIS | STYLIANOS | |
| LITTNER | CLAUDE | MANUEL |
| LIU | DIANA | |
| LO | FRANCIS | CHATEN |
| LOMASNEY | PETER | WICK |
| LONNSTROM | ANDREW | ERIK |
| LOPINOT | QUENTIN | SAM |
| LOTT | WILLIAM | BERRY |
| LOWRY | ROBERT | WAYNE |
| LUCKENSMYER | DRINDA | DENICE |
| LUCKENSMYER | RICHARD | LEE |
| LUDOLPH | ROBERT | CARL |
| LUECK | CHRISTIAN | JOSEPH |
| LUKIANENKO | KIRILL | |
| LUSK | LAURA | BETH |
| LUTHI | PIETER | |
| LYNCH | JEAN | LORRAINE |
| MacCONNELL | ROBERT | WILLIAM |
| MacINNIS | BRUCE | BALDWIN |
| MacINNIS | HILLARY | ANN |
| MACKAY | COURTNEY | MICHAEL |
| MacKINNON | VANESSA | KATHLEEN |
| MACKINTOSH | ETHAN | ALEXANDER |
| MACLEOD | MARY | AMBER |
| MAEDA | KENT | CREIGHTON |
| MAHENDRA WARD | AMRITHA | VELLORE |
| MAHMOOD | RAVI | LAILA |
| MAIER | GAIL | N. |
| MAKI | HIDEKI | GEORGE |
| MALCOMSON | MATHEW | JOHN |
| MALERBA | MICHELE | ANGELO |
| MALKO | VASSILISSA | |
| MANET | CONRAD | P.F. |
| MANNIS | PATRICIA | JANINE |
| MARANO | HEATHER | JOYCE |
| MARCHANT | DANA | LOUISE |
| MARET | SUZANNE | REGAL |
| MARINA | JUSTINIAN | OVIDIU |
| MARKOCIC | VANESSA | MEGAN |
| MARPLE | DAVID | MICHAEL |
| MARSH | NATHAN | ALEXANDER |
| MARSTALLER | SUZANNE | G. |
| MARTENS | ERIC | PAUL |
| MARTI | CARLOS | JOSE |
| MARTIN | DAWN | IRENE |
| MARTIN | HEATHER | SUSAN |
| MARTIN | LAURE | GENEVIEVE |
| MARTIN | RANDALL | FOSTER |

| Last name | First name | Middle name/initials |
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| MARTINELLI | MARCELLO | BRUNO |
| MASI | JEANNETTE | MULARONI |
| MASLIN | ANDREW | LEE |
| MASON | KRISTINA | VINCENZA |
| MASSON | LAURA | ELIZABETH |
| MATSUI | KEIGO | |
| MATSUI | YUKI | |
| MATTOCK | JEANNINE | MARIE |
| MAUTH | KEVIN | DOUGLAS |
| MAY | CLAIRE | |
| MAY | RADMILA | MONICA |
| MC CREERY | SARAH | L. |
| MC KINNEY JR | WILLIAM | KENNETH |
| McALLISTER | LEANNE | GWENNYTH |
| MCCAFFREY | JACQUELINE | KATHLEEN |
| McCOMB | MICHAEL | SCOTT |
| MCCUTCHAN | JEFFREY | JACK |
| McDIARMID | JAMES | ALEXANDER |
| MCDONALD | DAVID | ROBERT |
| MCDONALD | MANABU | SHIBUYA |
| McELROY III (aka McELROY) | HARRY (AKA SANDY) | HUBBARD |
| MCGOWAN | HAROLD | CHARLES |
| MCGOWAN | SUSAN | ELEANOR |
| MCKAY | DUSTIN | MERRITT SETH |
| MCLVER | IAN | GARTH |
| MCTMAHON | TUCKER | JACKSON |
| MCNALLY | CATHERINE | ELIZABETH |
| MCNAMARA | ERIC | JOSEPH |
| McNAUGHT | ROBERT | |
| MEDLEY | ALICE | JANE |
| MEHDI | FADI | NABEEL A.Q. |
| MEHTA | PREENA | |
| MEHTA | SANGEETA | SHENOY |
| MEIER | JEREMIAS | EMANUEL |
| MEIKLEJOHN | ELLEN | EVERSZ |
| MELOCHE | GISELE | |
| MENDOZA | ROSA | ADAMS |
| MERCER | PETER | JAMES |
| MERRITT | DANIEL | CHRISTOPHER |
| METZGER | STEVEN | WAYNE |
| MEYER | ILLANA | SARAH |
| MEYER | SEAN | ZEV |
| MEYLER | SUSAN | |
| MIAU | SCOTT | MATTHEW |
| MICHAEL | ALAN | |
| MICOCCIO | DAVID | ANTON |
| MIFFLIN SCHMID | ELIZABETH | PARKER |
| MILES | ELISA | MARIA |
| MILLER | JOAN | ELIZABETH |
| MILLER | MARSHALL | GRANT |
| MILLER | RONALD | DOUGLAS |
| MILLIGAN | LEISEL | CIEL |
| MILLIS | MARTHA | JEANNE |
| MILORADOVICH | TATIANA | |
| MINOGUCHI | KENTA | AXEL |
| MITCHELL | DANIEL | JOSEPH |
| MITTEL | DAVID | ALAN |
| MOK | NGAIMING | |
| MOLDOWAN | JASON | RYAN |
| MONAGHAN | MARTIN | RICHARD |
| MONCADA | BENEDETTA | MARIA |
| MONCADA | FRANCESCO | CORRADO |
| MONEY | JONATHAN | HOWARD |
| MONEY-COUTTS TREPAGNIER | PATRICIA | ANN |
| MONTGOMERY | LISA | MARIE |
| MONTGOMERY | TOMMIE | SUE |
| MOOK | BYRON | TELFER |
| MOON | CATHERINE | JOY |
| MOORE | JOHN | STUART |
| MOORE | SHEILA | KATHLEEN |
| MOORE | WILLIAM | ALAN |
| MOORE, II | CHARLES | RAY |
| MOORING | CHRISTOPHER | FORD |
| MORASSUTTI-VITALE | STEFANO | |

| Last name | First name | Middle name/initials |
|---------------------|------------------|----------------------|
| MORE | GERARD | NORBERT |
| MORENCY | RONALD | GORDON |
| MORICE | KAY | LORRAINE |
| MORLEY | DORIANNA | |
| MORREY | DAWN | ELIZABETH |
| MOY DE VITRY | MATTHEW | TOBIAS |
| MUELLER | THOMAS | PETER |
| MULLIE | MARLEEN | |
| MUNKEL | DIANA | MARIE |
| MURDOCK | KATHLEEN | MARIE |
| MURPHY | ROSEMARY | ANN |
| MURTAGH | DEBORAH | ANNE |
| MUSTARD | WALTER | GERALD |
| MYRE | INGER-LYNN | |
| NAKAGAMI | YURIKO | |
| NAOR-HAKE | TAMAR | ZIPORA |
| NASCHOLD | DANIELA | |
| NAVARRO | CRISTINA | |
| NEATE | MELANIE | CATHERINE |
| NELSON | DWIGHT | LYMAN |
| NETO | ALBERTO | TEIXEIRA PAES |
| NEWTON | NICHOLAS | JOHN |
| NG | SANDRA | LI-WEN |
| NICHOLS | OSCAR | KARL FRANCIS |
| NICHOLSON | JODY | DARLENE |
| NOH | HANNAH | |
| NORQUOY | PETER | |
| NUYTS | IOLAINE | E.L. |
| O'CONNOR | JEREMIAH | DAVID |
| O'DEA | MARK | CHRISOPHER |
| OECHSLIN | ARNAUD | DOMINIQUE |
| OEPEN | DIETLIND | CORA |
| OKADA | GRACE | SETSUKO |
| OLIVER | LINDA | ANN |
| OMATSU | ATSUYA | |
| OMSTEAD | DANA | DUANE |
| O'NEILL | DIANA | JEAN |
| ONG | KEVIN | JIT-ENG |
| ONO | KENT | NAGAYAMA |
| ORZYNSKI | ADOLFO | MARTINEZ |
| OSTRO | STEVEN | GRAHAM |
| OUYOUB | HAMID | |
| OVERBY | RANDALL | PAUL |
| OW | VANESSA | YAN-PING |
| PAAUWE | CAREL | DIEDERIK |
| PAILLART | NICHOLAS | PHILLIPPE |
| PALLEY | NICOLAS | JEAN |
| PANDHARIPANDE | RAHUL | VIJAY |
| PAOLUCCI | NICHOLAS | GIOVANNI |
| PARK | JAE | SUK |
| PARKER | LAURIE | ELLEN |
| PASZKOWSKI | CYNTHIA | ANN |
| PATEL | KUNAL | |
| PATERSON | SALLY | ELLEN |
| PAYNE | WILLIAM | LAW |
| PAZZI | MATTEO | JONATHAN |
| PEARCE | PATSY | STEIG |
| PEARSON | DONALD | JAMES |
| PEARSON | SUZANNA | NANCY |
| PEDERSEN | SERENE | CALRISSIAN |
| PENN | DANIEL | MORRIS |
| PENRUDDOCKE | THOMAS | MILES |
| PENSALFINI | ANNE | JUDITH |
| PEPIN | FELICIEN | HANS MARC ANDRE |
| PERCLE | JAMES | JOSEPH |
| PERNET | RAPHAEL | BRYAN |
| PERROT | MURIELLE | HENRIETTE LEPOUTRE |
| PERRY | DWIGHT | G. |
| PETERS | TILO | STRATTON |
| PETERSON | EMILY | MIREILLE PATRICIA |
| PHILIPS | HANNAH | ELEANOR |
| PHILLIPS | IAN | DAVID |
| PICKERING | ELIZABETH | ANNE MILLIS |
| PIKE | HARLAN | EDSON |

| Last name | First name | Middle name/initials |
|--------------------------|--------------------|----------------------|
| PIRAJNO | PATRICK | ANGELO |
| POWELL | PHILIP | ERIC |
| POWELL | WILLIAM | ANDREW |
| PRESCOTT | JEAN | ELIZABETH |
| PRESTON | MARK | JOHM |
| PRICE | KEVIN | CURTISS |
| PUGLIESE | MARC | DOMINIC |
| PULFORD | TRISTAN | VICTOR |
| PYPE | LOBKE | LAURA |
| PYRONNET-MASTERSON | CHRISTINE | MARIE |
| RADI | MARC | MICHAEL |
| RAMOS | LUIS | ALBERTO |
| RAPOPORT | LORNA | CARMEN |
| RATHBONE | CORA | LYNN H. |
| RATNER | HAILEY | LAURA |
| RAWSON | CLAUDE | J. |
| RAZZOUK | ROSHAN | RAOUL |
| REDDY BEZWADA | SUDHA | |
| REID | CHERYL | A. |
| REID | SHARON | ELAINE |
| REIMER | STEPHEN | RAY |
| REDA | AMY | CAMERON |
| RICCI | RAOUL | |
| RICHARDSON | JOHN | NICHOLAS |
| RICHARDSON | PAULA | LYNN |
| RIDHA | MOHAMED | AHMED |
| RO | JINWOO | PAUL |
| ROBERT | SOPHIE | AGNES |
| ROBERTSON | ELISE | EILEEN |
| ROBINSON | GEORGE | ERNEST |
| ROBSON | ESTHER | LORRAINE |
| ROCCHI | CHARLES | ALEXANDER |
| ROCK | MATILDA | CECILY |
| ROFF | HELEN | EMMA |
| ROGOWSKI | LINNEA | NOEL |
| ROH | PATRICIA | LEBUN |
| ROLFSEN | CATHERINE | F.S. |
| ROLLWAGE | DANA | EVELINE |
| ROMAN | LAUREN | PASCALE |
| ROMANS | LEWIS | HERBERT |
| ROSARIO VINUELAS | ALBERTO | |
| ROSENBERG | JOSEPH | N. |
| ROSENSTOCK | REGULA | MONIKA |
| ROSSIER | VIRGINIE | AVA |
| ROTERING | MARIANNA | |
| ROTHKOPF | ROBERT | |
| ROTHMAN | STEPHEN | JOHN |
| ROUS | GISELE | MADELEINE |
| RUAN | EVA | WEI HUA |
| RUBADEAU | DONNA | CANDY |
| RUBADEAU | RONALD | JAMES |
| RUPPRECHT | THOMAS | ALFRED |
| RUSHFORTH | JOHN | PATRICK |
| RUSSELL | CYNTHIA | ANN |
| RUSSELL | TANIA | RENEE |
| RYHTI | BRUCE | VICTOR |
| SABELLA | ALEXANDER | JOHN |
| SALAM | SARA | JOYEMAYA |
| SALLEY | DANIELLE | MARIE |
| SANCHEZ | LELAND | MILTON |
| SANDERS-DE BRUYN | JULIE | RACHEL |
| SANDROCK | JESSICA | MARIE |
| SANGAMPALAYAM | SUNDARARAMAN | KANDASAMI |
| SANTOS | JUANITA | |
| SARLES | NIKOLAI | SANDEN |
| SAULNIER | RICHARD | FREDERICK |
| SCHIER | CLARA | FAE |
| SCHLAG | KATHERINE | ELLA |
| SCHLEIN | BENJAMIN | DANIELE |
| SCHMIT | BRIAN | JOHN |
| SCHNEIDER | DANIEL | FRED |
| SCHOLEY | RICHARD | ALAN |
| SCHREIBMAN | EPHRAIM | HARRY ABRAHAM |
| SCHUMAN | DANIELLE | AMBER |

| Last name | First name | Middle name/initials |
|---------------------|-----------------|----------------------|
| SCHURTER | BRUNO | H. |
| SCHUURMAN | NEIL | |
| SCHWEIZER | GEORGIA | |
| SCIRETTA | JEAN-NOEL | ANTOINE |
| SCOTT | WALTER | PALMER |
| SCULLY | AARON | ROBERT |
| SCULLY | CHAD | JAMES |
| SCURR | SARAH | PHOEBE |
| SEBERT | CAROL | ELIZABETH |
| SEGALAS | HARIKLIA | |
| SELBIE | OLIVIA | LENNARD |
| SENIOR | NANCY | MOORE |
| SENTOSA | JUNIAR | GRACE LEENARDO |
| SENTOSA | NICHOLAS | |
| SEUSS | MICHAEL | WILHELM |
| SHAMIE | LYNDA | |
| SHANAHAN | PATRICK | EMMETT |
| SHEELEY | MARK | FLOYD |
| SHEHADEH | ERIC | IMAD |
| SHERRIFFS | ALASTAIR | JAMES |
| SHIDEH | GRACE | NEGIN |
| SHIMADA | LEONA | |
| SHOCHAT | TZIPPORA | |
| SHONIWA | RUSERE | JOHN DIETER |
| SHUBERT | LEE | |
| SIBBALD | MARY | BLANCHE |
| SIEPERT | SEULGI | LEE |
| SII | KATELYN | EN-CHEE |
| SILVERBERG | ALEXANDRA | EDEN |
| SILVERBERG | MICHAEL | JOSEPH |
| SIMANTOV | ISAAC | |
| SIMMONS | TREVOR | JAMES |
| SIMON-NICKELL | SZILVIA | |
| SIMPSON | JUSTIN | VAUGHN |
| SINGH | SAHEB | |
| SKEVOFEELAX | VENETIA | M. |
| SLAATS | JOSEPHUS | JOHANNES |
| SMITH | CECELIA | LOUISE |
| SMITH | CINDI | CHANTAL |
| SMITH | COLLEEN | MARIE |
| SMITH | SIMONE | L. |
| SMITH | THOMAS | EDWARD |
| SMITH 3RD | WILLIAM | HAMILTON |
| SOALHAT | ARNAUD | |
| SOETRISNO | DIANA | BOEDI |
| SOGGE | DAVID | GEORGE |
| SOH | LUKE | YAN HAO |
| SOLIS | EVA | MATILDE |
| SOMEYA | MONICA | ANGELINA |
| SOUTHERN | RONALD | MICHAEL |
| SPANOPOULOS | MICHAIL | |
| SPRANZA | SARAH | HELEN |
| STADLER | JOSEPH | DAVID |
| STALEY | RANDY | LEE |
| STAUDINGER | CONSTANZE | SOPHIA |
| STECK | MELANIE | ALEXANDRA |
| STEINBERG | THEODORE | AARON |
| STENSKE | MICHAEL | JAMES |
| STEPHENSON | DONALD | W. |
| STEPTOE | GLORIA | JEAN |
| STERN | KENNETH | |
| STERN | RONALD | BRUCE |
| STERNHEIMER | JOHN | DAVID |
| STEWART | CHASE | ERIN |
| STEWART | JANE | IVERSON |
| STICKINGS | GRACE | CATHERINE |
| STIDDER | GARETH | THOMAS |
| STORMONT | FIONA | CLAIRE |
| STREATFEILD | HENRY | RICHARD |
| STREIFEL | SHANNON | VALAW |
| STRICKLAND | GERALD | MARK |
| STUCKI | MARIE | J.D. |
| STURMAN | MARIANNE | ELIZABETH |
| SU | I MAN | |

| Last name | First name | Middle name/initials |
|-------------------------|-------------------|----------------------|
| SUARAZ | ARMAND | JOSEPH |
| SUBOTIC | NEVEN | |
| SUMIDA | STEPHANIE | YUUKO ISO |
| SUMRA | SARVAN | SINGH |
| SUNG | MIJIN | KATHERINE |
| SURESH | PRASHANTH | KALKUNTE |
| SUTER | BEATRICE | KARIN |
| SUTHERLAND | IAN | MICHAEL |
| SUTTER | BROOKE | ERIN |
| SUTTER | MERRICK | BRENT |
| SUZUKI | BETH | ANN |
| SWAIN | MARGARET | STEPHANIE |
| SWIFT-HILL | ELIZABETH | JOAN |
| SYMONS | KELLIE | JUNE |
| TAFTO | ANDERS | AMDAL |
| TAKAHAMA | HIROCHIKA | |
| TAKAHASHI | DANIEL | JO |
| TAKAHASHI | SHYUNSUKE | ROBERT |
| TANG | SARAH | WAI YEE |
| TARDIF | JEAN-PIERRE | J.M. |
| TARRANT | LAUREN | HELEN |
| TAVANO | GUY | |
| TAYLOR-WEZEMAN | PAMELA | SUSANNAH |
| TEICHER | YEHUDA | |
| TERHUNE | JULIA | MARIE |
| TESSIER | LUIS | MARIE |
| THOMPSON | JORDAN | STEVEN WILLIAM |
| THOMPSON | MARJORIE | ELLIS |
| THUT | LUISE | |
| TILLNER | KATHERINE | SUSAN |
| TILNEY | CHARLES | JOHN |
| TILNEY | JAMES | ANTHONY |
| TJIA | SA | BIN |
| TOLSON | ROBERT | CHRISTOPHER |
| TONG | KATHERINE | K.W. |
| TRANCU | IOANA | THEODORA |
| TRUBOW | MATTHEW | AARON |
| TRUDEAU | NADINE | MARGARET |
| TRUSCOTT | DERRA | ANN |
| TURMEL | TRACEY | ANNE |
| TYPALDOS | MARIELENA | |
| UCEDA | VERONICA | MARIA |
| ULLMANN | MARTIN | GERHARD |
| UMBLE | MATTHEW | |
| UMBLE | SAMUEL | |
| UN | MARY | ELLEN |
| UNSWORTH | EMILY | MARIE VIOLETA |
| UNSWORTH | JULIETTE | CHLOE MATILDA |
| UTIKAL | SOPHIE | CHARLOTTE |
| UTOMO | MORIANO | STEFAN |
| UUSIOJA | DAVID | SHANE |
| VALOIS | JOYCE | ROSE |
| VAN BEEST | ELINE | CHRISTIANE |
| VAN DEN BERG | PATRICIA | FRANCISCA |
| VAN DER ELST | TANGUY | ANDRE BERNARD |
| Van EGDOM | KAYLA | ELIZABETH |
| VAN KAMMEN | JESSIKA | RIEMSKE |
| VAN MELLAERT | CATHERINE | EMILIA MARCELLA |
| VAN OSTRAND | ROBIN | SUE |
| VanDenBroeder | CHRISTOPHER | ALEXANDER |
| VANDENDRIES | FRANS | LUC |
| VARELA | MARTIN | IVAN |
| VAS | ALLISTAIR | LLOYD |
| VASILOPOULOU | SOPHIE | MARGETI |
| VASILOPOULOU | SPIRIDOULA | |
| VAWDA | FESAL | |
| VAZEEN | ALEXANDER | ROBERT |
| VEENENDAAL | SASKIA | MELISSA |
| VEJBY-CHRISTENSEN | MICHAEL | |
| VELLA | CHRISTOPHER | M. |
| VELLA | STEPHANIE | S. |
| VENNER | CHRISTOPHER | PAUL |
| VENUS | MICHAEL | DAVID |
| VERBEEM | GETRUDE | MARIE |

| Last name | First name | Middle name/initials |
|--------------------|------------|----------------------|
| VERNON | BRIONY | MICHELE |
| VIAL | GERALDINE | HELEN |
| VIDAL | LUCIE | MARIE |
| VIHER | FLORENCE | VIOLA |
| VITELIS | ALEXANDROS | |
| VITTI | JAMES | ANTHONY |
| VOCK-VERLEY | NATHALIE | SANDRA |
| VOGEL | SUSAN | NICHOLE |
| VON DER LINDEN | HELEN | KATHRYN |
| VONDERSCHMITT | ZITA | MARIA |
| VRANCKEN-CALAFIORE | MICHELE | |
| WADDELL | NORMAN | ALAN |
| WADE | MALCOLM | ALEXANDER |
| WALCZAK | DAVID | JERZY |
| WALLIS | ADRIANNA | |
| WALLIS | JENNIFER | VALENTINE |
| WALLIS | MARTIN | |
| WANG | ANDREW | YEN LAP |
| WANG | HSIU | MEI |
| WANG | PATRICK | YUN-HWA |
| WANG | SUZANNE | SHU FEN |
| WANG | TIFFANY | |
| WARNER | BRITNEY | THERESE |
| WARNER | ROSEMARY | MAXINE |
| WARR | CAROLYN | SUSAN |
| WAUCQUEZ | CLEMENT | AMAURY |
| WEBSTER | ANDREW | KYLE |
| WEINBERG | JEREMY | BEN |
| WEINSTEIN | CAROL | M. |
| WEINSTEIN | HOWARD | CHARLES |
| WELCH | ELIZABETH | JANE |
| WELCH | GORDON | D. |
| WERREN | DANIEL | PETER |
| WERTS | MARGOT | NOELLE |
| WHEATLAND | PETER | CHRISTOPHER |
| WHEELER | VIRGINIA | BARRETT |
| WHEELER | YOAQUINA | CHRISTINE |
| WHITAKER | CHARLES | W.A. |
| WHITE | ERIC | CAMERON |
| WHITE | MARTIN | ANDREW |
| WHITEHOUSE | ADRIANNA | STELLA |
| WHITTINGTON | BRENDA | KAY |
| WHITTINGTON | BRETT | EDWARD |
| WHOOLEY | NIAMH | MARIE |
| WIGHT SMITH | PAULA | ANN |
| WIJSTMA | SJOERD | |
| WILLETT | DWIGHT | ARTHUR |
| WILLIAMS | ANN | |
| WILLIAMSON IV | WILLIAM | ABNER |
| WILLOUGHBY | ALEXANDER | THOMAS |
| WILLOUGHBY | THOMAS | VELBERT |
| WILSON | DIRK | GUY |
| WILSON | LORRAINE | |
| WILSON | MICHAEL | |
| WITT | JOHN | HENRY |
| WOELLHAF | THOMAS | OSKAR |
| WOLFE | ASHLEY | ELIZABETH |
| WONG | ELSA | YATYING |
| WONG | JORDAN | |
| WONG | SHIU | YING IRIS |
| WOO | NATHANIEL | JAMES |
| WOODHOUSE | PETER | HUBERT |
| WOOLF | ANDREW | L. |
| WOOLF | MICHELLE | A. |
| WORTHEN | BRIAN | GEORGE |
| WRIGHT | NICOLE | |
| WRIGHT-SMITH | ELIZA | MARGARET |
| WRIGHT-SMITH | JULIA | ELIZABETH |
| WROHAN | JEAN | DUVAL |
| WU | NANCY | SUN |
| WUH | CHRISTY | HSIA-HUEI |
| YAKOPIN | VIVIEN | ROSALIND |
| YANAGI | MAYUMI | |
| YANG | NAM | HEE |

| Last name | First name | Middle name/initials |
|------------------|----------------|----------------------|
| YASHIRO | YUKA | |
| YEE | LAUREN | |
| YEN | JAY | CHIN |
| YOUNG | BRIGITTA | |
| YOUNG | THOMAS | CAMPBELL |
| YU | ANTHONY | CHE YOUNG |
| YUAN | TA AN | |
| YUAN LIN | SHU | MIN |
| ZEENNY | TAMARA | |
| ZENDEL | MARY | DIANA |
| ZHANG | YAN | |
| ZHENG | JOLENE | LISI |
| ZICKERMANN | JOHANNES | ERICH |
| ZION | RONEN | |
| ZIRKNITZER | PETRA | |
| ZUBER | JENNIFER | ANN |
| ZUBER | TANJA | VICTORIA |

Dated: November 8, 2018.

Diane Costello,

*Manager Classification Team 82413,
Examinations Operations—Philadelphia
Compliance Services.*

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November 19, 2018

Part II

Securities and Exchange Commission

17 CFR Parts 240 and 242

Disclosure of Order Handling Information; Final Rule

SECURITIES AND EXCHANGE COMMISSION**17 CFR Parts 240 and 242**

[Release No. 34–84528; File No. S7–14–16]

RIN 3235–AL67

Disclosure of Order Handling Information**AGENCY:** Securities and Exchange Commission.**ACTION:** Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission” or “SEC”) is adopting amendments to Regulation National Market System (“Regulation NMS”) under the Securities Exchange Act of 1934 (“Exchange Act”) to require additional disclosures by broker-dealers to customers regarding the handling of their orders. The Commission is adding a new disclosure requirement which requires a broker-dealer, upon request of its customer, to provide specific disclosures related to the routing and execution of the customer’s NMS stock orders submitted on a not held basis for the prior six months, subject to two de minimis exceptions. The Commission also is amending the current order routing disclosures that broker-dealers must make publicly available on a quarterly basis to pertain to NMS stock orders submitted on a held basis, and the Commission is making targeted enhancements to these public disclosures. In connection with these new requirements, the Commission is amending Regulation NMS to include certain newly defined and redefined terms that are used in the amendments. The Commission also is amending Regulation NMS to require that the public order execution report be kept publicly available for a period of three years. Finally, the Commission is adopting conforming amendments and updating cross-references as a result of the rule amendments being adopted in this rule.

DATES: *Effective date:* January 18, 2019.
Compliance date: May 20, 2019.

FOR FURTHER INFORMATION CONTACT:

Theodore S. Venuti, Assistant Director, at (202) 551–5658, Steve Kuan, Special Counsel, at (202) 551–5624, Sarah Albertson, Special Counsel, at (202) 551–5647, Michael Bradley, Special Counsel, at (202) 551–5594, Amir Katz, Special Counsel, at (202) 551–7653, Emerald Greywoode, Special Counsel, at (202) 551–7965, or Andrew Sherman, Special Counsel, at (202) 551–7255, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting: (1) Amendments to 17 CFR 242.600 and 242.606 (respectively, “Rule 600” and “Rule 606” of Regulation NMS) under the Exchange Act to require additional disclosures by broker-dealers to customers about the routing of their orders; (2) amendments to 17 CFR 242.605 (“Rule 605” of Regulation NMS) to require that the public order execution reports be kept publicly available for a period of three years; and (3) conforming changes and updated cross-references in 17 CFR 240.3a51–1(a) (“Rule 3a51–1(a) under the Exchange Act”), 17 CFR 240.13h–1(a)(5) (“Rule 13h–1(a)(5) of Regulation 13D–G”), 17 CFR 242.105(b)(1) (“Rule 105(b)(1) of Regulation M”), 17 CFR 242.201(a) and 242.204(g) (“Rules 201(a) and 204(g) of Regulation SHO”), 17 CFR 242.600(b), 242.602(a)(5) and 242.611(c) (“Rules 600(b), 602(a)(5), and 611(c) of Regulation NMS”), and 17 CFR 242.1000 (“Rule 1000 of Regulation SCI”).

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I. Introduction

In July 2016, the Commission proposed to amend Rules 600 and 606 under Regulation NMS to require additional disclosures by broker-dealers to customers about the handling of their orders, to amend Rules 605 and 607 for consistency with the proposed amendments to Rule 606, and to amend other rules to update cross references as appropriate.¹ As discussed below, after careful review and consideration of the comments received, the Commission is adopting these amendments with certain modifications.

Transparency has long been a hallmark of the U.S. securities markets, and the Commission continuously strives to ensure that investors are provided with timely and accurate information needed to make informed investment decisions. In recent years, the Commission and its staff have undertaken a number of reviews of market structure and market events, and much of this effort has aimed to enhance transparency for investors.² The amendments being adopted today to Rule 606 of Regulation NMS represent the Commission's continued commitment to enhance transparency for investors.

Rule 606 encourages competition by enhancing the transparency of broker-dealer order handling and routing practices.³ Rule 606(a) requires broker-

dealers to provide a publicly available quarterly report of information regarding routing of non-directed orders.⁴ Rule 606(b) requires broker-dealers to provide customers, upon request, certain information about the routing of their orders. Prior to the amendments being adopted today, the Rule 606(a) requirements applied to smaller dollar-value orders more typical of retail investors but did not apply to large dollar-value orders more typical of institutional investors.⁵ As discussed in detail in the Proposing Release, equity market structure, as well as order handling and routing practices, have changed significantly since Rule 606 was adopted in 2000, presenting a need to update the rule such that it provides transparency into broker-dealer order handling and routing practices that continues to be useful in today's automated and vastly more complex national market system.⁶

As the Commission noted when it originally adopted Rule 606, in a fragmented market "the order routing decision is critically important" and "must be well-informed and fully subject to competitive forces,"⁷ and, further, the public disclosure of order routing practices "could provide more vigorous competition on . . . order routing performance."⁸ By updating the Rule 606 disclosure regime, the rule as amended will provide disclosures more relevant to today's marketplace that encourage broker-dealers to provide effective and competitive order handling and routing services, and that improve the ability of their customers to

determine the quality of such broker-dealer services.⁹

II. Overview of Adopted Rule Amendments

To facilitate enhanced transparency regarding broker-dealers' handling and routing of orders in NMS stock, the Commission proposed to amend Rules 600(b) and 606 such that all orders of any dollar value in NMS stock¹⁰ submitted by a customer to a broker-dealer would be covered by order handling and routing disclosure rules. Under the proposed amendments, new Rule 606(b)(3) would require broker-dealers to make detailed, customer-specific order handling disclosures for NMS stock orders available to institutional customers in particular, who previously were not entitled to disclosures under the rule for their order flow, or were entitled to disclosures that have become inadequate in today's highly automated and more complex market.¹¹ The Commission also proposed to require a broker-dealer to make publicly available a report that aggregates the information required for the detailed customer-specific order handling reports for all NMS stock orders that it receives across all of its customers.¹² Further, the Commission proposed updating Rule 606(a) to provide retail customers in particular with certain enhanced disclosures regarding a broker-dealer's order routing practices.¹³

The Commission received comments on the Proposal.¹⁴ The commenters, many of which also commented on Rule 606 in connection with the Concept Release on Equity Market Structure, overwhelmingly supported updating the disclosures required by Rule 606. Most also expressed support for, or offered constructive critiques of, specific components of the Proposal, and several suggested alternatives to specific provisions of the Proposal, but all comments received recognized a need for enhanced transparency and

2010) ("Concept Release on Equity Market Structure").

⁴ A "non-directed order" means any customer order other than a directed order. See 17 CFR 242.600(b)(48). A "directed order" means a customer order that the customer specifically instructed the broker-dealer to route to a particular venue for execution. See 17 CFR 242.600(b)(19). As discussed below, these definitions are being revised in connection with the amendments to Rule 606 so that they no longer only apply to "customer orders," but otherwise are remaining the same. See *infra* Section III.A.1.b.vii.

⁵ The Commission limited the scope of Rule 606(a) to smaller dollar-value orders by defining a "customer order" to which the rule applied as an order to buy or sell an NMS security that is not for the account of a broker-dealer, but not any order for a quantity of a security having a market value of at least \$50,000 for an NMS security that is an option contract and a market value of at least \$200,000 for any other NMS security. See 17 CFR 242.600(b)(18).

⁶ See Proposing Release, *supra* note 1, at 49433–44 for a detailed description of the history and the market developments leading to the Proposal.

⁷ See Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414, 75415 (December 1, 2000) ("Rule 606 Predecessor Adopting Release"). For clarity, when this release references "Predecessor Rule 606," it is referring to the version of the rule adopted in the Rule 606 Predecessor Adopting Release.

⁸ See *id.* at 75417.

⁹ If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

¹⁰ "NMS stock" and "NMS security" are defined in Rule 600 of Regulation NMS. See 17 CFR 242.600(b)(46)–(47).

¹¹ See proposed Rule 606(b)(3); see also Proposing Release, *supra* note 1, at 49447.

¹² See proposed Rule 606(c); see also Proposing Release, *supra* note 1, at 49447.

¹³ See proposed Rule 606(a); see also Proposing Release, *supra* note 1, at 49462.

¹⁴ Comments received on the Proposal are available on the Commission's website, available at <https://www.sec.gov/comments/s7-14-16/s71416.htm>.

¹ See Securities Exchange Act Release No. 78309, 81 FR 49432 (July 27, 2016) ("Proposing Release" or "Proposal").

² The Commission recently adopted amendments to Regulation ATS that enhance the operational transparency of alternative trading systems ("ATSs") that transact in National Market System ("NMS") stocks ("NMS Stock ATSs"). See Securities Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38768 (August 7, 2018) ("ATS–N Adopting Release"). In addition, the Commission has proposed a Transaction Fee Pilot for NMS stocks to help inform the Commission, market participants and the public about the effects, if any, that transaction-based fees and rebates may have on order routing behavior, execution quality, and market quality. See Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018) ("Transaction Fee Pilot Proposing Release").

³ See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3602 (January 21,

supported the goals of the Proposal.¹⁵ In addition, the Equity Market Structure Advisory Committee (“EMSAC”) provided recommendations with respect to Rules 605 and 606 on November 29, 2016, to provide meaningful execution quality and order handling disclosures from a retail and an institutional perspective.¹⁶

After careful review and consideration of the comment letters and upon further consideration by the Commission concerning how to further the goal of more useful and effective disclosure of order handling information under Regulation NMS, the Commission is adopting the proposed amendments to Rules 600 and 606 (and the other corresponding proposed amendments) with certain modifications.¹⁷

Specifically, the Commission is amending Rule 606(b) of Regulation NMS¹⁸ to require a broker-dealer, upon request of a customer that places, directly or indirectly, one or more orders in NMS stock that are submitted on a “not held” basis with the broker-dealer,¹⁹ to provide customer-specific disclosures, for the prior six months, broken down by calendar month, regarding: (1) Its internal handling of such orders; (2) its routing of such orders to various trading centers;²⁰ (3) the execution of such orders; and (4) the extent to which such orders provided liquidity or removed liquidity, and the average transaction rebates received or fees paid by the broker-dealer.²¹ Generally, the information is available upon request by customers who

submitted “not held” NMS stock orders through the broker-dealer, and is required to be provided for each venue and divided into separate sections for directed orders and non-directed orders.²² This new disclosure requirement is subject to two de minimis exceptions.²³ A “not held” NMS stock order that is subject to either de minimis exception is covered by the existing customer-specific disclosures in Rule 606(b)(1), as is any “held” NMS stock order submitted by a customer to any broker-dealer.²⁴ For the reasons explained below, the Commission is not adopting the proposed requirement that the Rule 606(b)(3) disclosures be divided into passive, neutral, and aggressive order routing strategies.

In connection with the new disclosure requirement, the Commission is amending Rule 600(b) of Regulation NMS²⁵ to include definitions of the terms “actionable indication of interest,” “orders providing liquidity,” and “orders removing liquidity,” and to revise the existing definitions of the terms “directed order” and “non-directed order.”²⁶ The Commission is not adopting the proposed defined term “institutional order” in Rule 600(b) and therefore also is not adopting the proposed \$200,000 market value threshold for orders to qualify for the new customer-specific disclosures in Rule 606(b)(3).²⁷

As discussed in Section III.A.7, *infra*, the Commission is not adopting the proposed amendment to Rule 606 of Regulation NMS to require a broker-dealer to make publicly available, on an aggregate basis, the order handling information required under Rule 606(b)(3).²⁸

The Commission is amending Rule 606(a) of Regulation NMS such that the aggregated order routing disclosures that broker-dealers must make publicly available on a quarterly basis pertain to orders of any dollar value in NMS stock that are submitted on a “held” basis. Further, the Commission is making targeted enhancements to these public disclosures to: (1) Require limit order information to be split into marketable and non-marketable categories (relatedly, the Commission is adopting a definition of the term “non-marketable limit order” under Rule 600(b));²⁹ (2) require more detailed disclosure of the net aggregate amount of any payments received from or paid to certain trading centers; (3) require broker-dealers to describe any terms of payment for order flow arrangements and profit-sharing relationships with certain venues that may influence their order routing decisions; and (4) require that broker-dealers keep the order routing reports posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website.³⁰ In addition to what was proposed, the Commission is replacing the Rule 606(a) requirement to group order routing information for NMS stocks by listing market with a requirement to group such information by stocks included in the S&P 500 Index as of the first day of the quarter and other NMS stocks.

Finally, consistent with the amendments to Rule 606(a), the Commission is amending Rule 605 to require market centers³¹ to keep execution reports required by the rule posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website. The Commission also is adopting

under the Proposal, is not being renumbered as such and remains unchanged as Rule 606(c).

²⁹ A “marketable limit order” is any buy order with a limit price equal to or greater than the national best offer at the time of order receipt, or any sell order with a limit price equal to or less than the national best bid at the time of order receipt. 17 CFR 242.600(b)(39). “National best bid and national best offer” is defined in Rule 600 of Regulation NMS. 17 CFR 242.600(b)(42). The Commission is adopting new Rule 600(b)(54) to define “non-marketable limit order” to mean “any limit order other than a marketable limit order,” as discussed in more detail below. *See infra* Section III.B.2.

³⁰ *See* Rule 606(a); *see also* Proposing Release, *supra* note 1, at 49462. “Payment for order flow” has the meaning provided in 17 CFR 240.10b–10. *See* 17 CFR 242.600(b)(54). A “profit-sharing relationship” is defined in Rule 600 of Regulation NMS. *See* 17 CFR 242.600(b)(56).

³¹ A “market center” means any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association. *See* 17 CFR 242.600(b)(38).

¹⁵ *See, e.g.*, Letter from John A. McCarthy, General Counsel, KCG Holdings, Inc., dated October 31, 2016 (“KCG Letter”) at 1; Letter from Joseph Kinahan, Managing Director, Client Advocacy and Market Structure, TD Ameritrade, Inc., dated October 18, 2016 (“Ameritrade Letter”) at 1; Letter from Tyler Gellash, Executive Director, Healthy Markets Association, dated September 26, 2016 (“HMA Letter”) at 3–4; Letter from Micah Hauptman, Financial Services Council, Consumer Federation of America, dated September 26, 2016 (“CFA Letter”); Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, dated September 23, 2016 (“MFA Letter”) at 1.

¹⁶ *See* EMSAC Recommendations Regarding Modifying Rule 605 and Rule 606 (“EMSAC Rule 606 Recommendations”), November 29, 2016, available at <https://www.sec.gov/spotlight/emsac/emsac-recommendations-rules-605-606.pdf>.

¹⁷ The amendments to Rule 606 would not limit any other obligations that broker-dealers may have under applicable federal securities laws, rules, or regulations, including the anti-fraud provisions of the federal securities laws.

¹⁸ 17 CFR 242.606(b).

¹⁹ Typically, a “not held” order provides the broker-dealer with price and time discretion in handling the order, whereas a broker-dealer must attempt to execute a “held” order immediately.

²⁰ A “trading center” is defined in Rule 600 of Regulation NMS. *See* 17 CFR 242.600(b)(78).

²¹ *See* Rule 606(b)(3).

²² *See id.*

²³ *See* Rules 606(b)(4) and (b)(5).

²⁴ *See* Rule 606(b)(1). As discussed below, while the amendments to Rule 606(b)(1) modify the orders that are covered by Rule 606(b)(1), the required disclosures under Rule 606(b)(1) are not changing. *See infra* Section III.A.1.b.vi.

²⁵ 17 CFR 242.600(b).

²⁶ The newly defined terms are being incorporated into Rule 600(b) in alphabetical order, in keeping with Rule 600(b)’s existing alphabetical organization of the terms defined therein, and the numbered provisions for existing defined terms in Rule 600(b) are being adjusted accordingly. For ease of reference however, throughout this release, citations to pre-existing defined terms in Rule 600(b) are to their pre-existing numbered provisions, unless otherwise indicated.

²⁷ *See* Rule 606(b)(3); *see also infra* Section III.A.1.b.ii. Relatedly, the Commission also is not amending Rule 600(b) to rename the term “customer order” as “retail order,” as was proposed.

²⁸ *See* proposed Rule 606(c). Because the Commission is not adopting proposed Rule 606(c), pre-existing Rule 606(c), which addresses “Exemptions” from the rule and which the Commission proposed to renumber as Rule 606(d)

amendments to other rules to update cross-references in connection with the other rule amendments being adopted today.³²

Consistent with the Proposal, the Commission continues to believe that generally requiring more detailed, standardized, baseline order handling information to be made available to customers upon request for orders in NMS stocks should enable those customers—and particularly institutional customers—to more effectively assess how their broker-dealers are carrying out their best execution obligations and the impact of their broker-dealers' order routing decisions on the quality of their executions, including the risks of information leakage and potential conflicts of interest.³³ In addition, the Commission believes that these more detailed customer-specific disclosures will further encourage broker-dealers to minimize information leakage,³⁴ as well as better enable customers to verify that their broker-dealers are following their order handling instructions. Unlike the Proposal and in response to commenters' feedback, the Commission believes that the applicability of these new order routing disclosures should be based on order type ("not held" orders in NMS stocks) rather than the dollar value of an order.

Similar to the Proposal, the Commission believes that simplifying and enhancing the current publicly available disclosures, particularly with respect to financial inducements from trading centers, should assist customers in evaluating better the order routing services of their broker-dealers and how well they manage potential conflicts of interest.³⁵ Unlike the Proposal and in response to commenters' feedback, the Commission believes that this goal would be targeted more effectively by having these disclosures apply to "held" orders in NMS stocks rather than those under \$200,000.

III. Amendments to Rule 600, Rule 605, and Rule 606

Section III discusses in detail the adopted rule amendments. Subsection A addresses the customer-specific order handling disclosures required by new Rule 606(b)(3) and amended Rule

606(b)(1). This section also discusses a part of the Proposal we are not adopting: Proposed Rule 606(c)'s requirement that broker-dealers make publicly available an aggregated report of the Rule 606(b)(3) customer-specific order handling information across all of their customers. Subsection B addresses the enhanced public report required under amended Rule 606(a). The newly defined and re-defined terms that the Commission is adopting in Rule 600 in connection with the amendments to Rule 606 are discussed where relevant in subsections A and B. The adopted amendment to Rule 605 is discussed in subsection C.

The staff will review these amendments, including in particular the de minimis exceptions described in Section III.A.1.b.iv below, not later than one year after the compliance date of the amendments, and report to the Commission.

A. Customer-Specific Order Handling Reports

1. Applicability of Customer-Specific Disclosures in Rule 606(b)

a. Proposal

The Commission proposed to delineate the types of orders that would trigger a broker-dealer's obligation to provide a customer with the order handling disclosures required by new Rule 606(b)(3) by amending Rule 600(b) to include a definition of "institutional order."³⁶ Specifically, the Commission proposed to define an "institutional order" as an order to buy or sell a quantity of an NMS stock having a market value of at least \$200,000, provided that such order is not for the account of a broker-dealer.³⁷ As proposed, Rule 606(b)(3) would apply only to such "institutional orders."

The Commission's proposed definition of "institutional order" dovetailed with the current definition of "customer order,"³⁸ such that all orders in NMS stocks routed by broker-dealers for their customers, regardless of order dollar value, would be covered by order routing disclosure rules.³⁹ The Commission's proposed definition maintained a dollar-value threshold analysis to identify the "institutional orders" for which the Rule 606(b)(3)

disclosures would be available and distinguish them from "retail orders" that were too small to meet the dollar-value threshold in the definition and for which other disclosures would be available.⁴⁰

The Commission solicited comment on alternatives to a dollar-value threshold approach. For example, the Commission asked commenters among other things: (1) Whether dollar value is the proper criterion for defining an institutional order, and (2) whether there are other order characteristics the Commission should consider to distinguish between retail and institutional orders, in addition to, or instead of, a dollar-value threshold.⁴¹

The Commission also asked whether commenters believe a de minimis exemption from customer-specific reporting under proposed Rule 606(b)(3) is appropriate. Specifically, the Commission asked if commenters believe that the rule should include a de minimis exemption for broker-dealers that receive, in the aggregate, less than a certain threshold number or dollar value of institutional orders.⁴² The Commission also asked if the rule should be applicable, with respect to disclosures to any particular customer, only if a broker-dealer receives greater than a certain threshold number or dollar value of institutional orders from that customer.⁴³

The Commission received comments on the proposed dollar-value threshold as well as comments in response to its questions regarding a potential de minimis exemption from Rule 606(b)(3) and, after further consideration, is modifying its approach.

b. Final Rule and Response to Comments

i. Comments Regarding Dollar-Value Threshold

The Commission received significant comment on the proposed definition of "institutional order" that criticized the proposed \$200,000 threshold as an ineffective proxy for institutional trading interest.⁴⁴ Many commenters

³² The Commission is adopting amendments to: Rule 3a51-1(a) under the Exchange Act; Rule 13b-1(a)(5) of Regulation 13D-G; Rule 105(b)(1) of Regulation M; Rules 201(a) and 204(g) of Regulation SHO; Rules 600(b), 602(a)(5), and 611(c) of Regulation NMS; and Rule 1000 of Regulation SCI.

³³ See *infra* Section III.A; see also Proposing Release, *supra* note 1, at 49434.

³⁴ See *id.*

³⁵ See Proposing Release, *supra* note 1, at 49434.

³⁶ See proposed Rule 600(b)(31).

³⁷ See *id.* The proposed definition of institutional order applied only to orders for NMS stocks and, therefore, did not include orders in NMS securities that are options contracts.

³⁸ See *supra* note 5.

³⁹ See Proposing Release, *supra* note 1, at 49445. Relatedly, the Commission proposed to rename term "customer order" in Rule 600(b) as "retail order." See *infra* Section III.B.1.

⁴⁰ See *id.* The Commission preliminarily believed that this would be an effective method of focusing the Rule 606(b)(3) disclosures on orders from institutional customers. See Proposing Release, *supra* note 1, at 49444-45 for additional detail on the Proposal.

⁴¹ See *id.* at 49445.

⁴² See *id.* at 49449.

⁴³ See *id.*

⁴⁴ See, e.g., Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, The Securities Industry and Financial Markets Association, dated October 17, 2016 ("SIFMA Letter") at 2-3; Letter from Mary Lou Von Kaenel, Managing Director, Financial Information Forum,

expressed concern that defining institutional order using the proposed \$200,000 threshold would be both over-inclusive by including orders from retail investors with a market value over \$200,000 and under-inclusive by excluding orders from institutional customers with a market value less than \$200,000, and result in the misclassification of a large number of orders.⁴⁵ Two commenters stated that they receive retail investor orders that exceed \$200,000 in market value.⁴⁶

Several commenters stated that, for reasons such as obtaining a better price, achieving faster execution, avoiding potential information leakage, avoiding market effect, or the advancement in the sophistication of institutional trading systems, many institutional customers, before submitting their order flow to their broker-dealers, internally divide their order flow into smaller “child” orders that may not meet the proposed \$200,000 dollar-value threshold.⁴⁷ Multiple commenters offered their own analyses of internal and external data indicating that a large percentage of

orders from institutional customers would fall below the \$200,000 threshold.⁴⁸ One of these commenters stated that the proposed definition of institutional order could exclude disproportionately more orders of smaller funds, orders in less liquid stocks that fall below the \$200,000 threshold, and larger orders that are broken up into smaller child orders by institutional customers.⁴⁹

One commenter expressed concern that the dollar-value threshold would exclude the majority of orders from institutions from the enhanced institutional order handling disclosure requirements, diminishing the value of the disclosure and forcing institutional investors to continue individual negotiations to obtain order handling information.⁵⁰ Another commenter stated that excluding an unknown portion of a large institution’s orders (and perhaps all of a smaller institution’s orders) from heightened scrutiny may create opportunities for abuse and evasion, and that investors may therefore seek to deliberately avoid identifying their orders as institutional orders.⁵¹ Another commenter stated that different securities trade differently based on available liquidity and their capacity to move the market.⁵² The commenter stated that the proposed definition may force customers to choose between placing orders above the threshold to receive disclosures but at the risk of higher market impact costs or staying below the threshold to protect order information but sacrificing their right to disclosures.⁵³

As illustrated by these comments, there was broad opposition to the \$200,000 dollar-value threshold in the proposed definition of institutional order. The Commission is not adopting the proposed definition. Rather than attempt to capture within a definition of “institutional order” the orders that account for most institutional order dollar volume, the comments indicate that market participants would prefer a different approach to order handling

disclosures.⁵⁴ In light of these comments, the Commission believes that a modified approach to delineating the orders covered by new Rule 606(b)(3) would be more consistent with the expectations of market participants.

ii. Commenter Recommendations Regarding a Modified Approach

Many commenters urged the Commission to replace the proposed dollar-value threshold with a different approach for identifying the orders covered by the new customer-specific order routing disclosures.⁵⁵ They generally supported two different approaches: A number of commenters suggested that the applicability of the new order routing disclosures be based on order type (“held” versus “not held” orders);⁵⁶ and a number of other commenters suggested that their applicability be based on the characteristics (e.g., type or regulatory status) of the entity placing the order.⁵⁷

Commenters who supported an order type-based approach suggested that the not held order type classification would be an effective proxy for identifying orders typical of institutional investors for which the existing customer-specific disclosures are inapplicable or inadequate because institutional investor orders are generally not held to the market.⁵⁸ Commenters attributed

dated September 26, 2016 (“FIF Letter”) at 2–3; Letter from Mary Lou Von Kaenel, Managing Director, Financial Information Forum, dated November 7, 2016 (“FIF Addendum”) at 2; Letter from David W. Blass, General Counsel, Investment Company Institute, dated September 26, 2016 (“ICI Letter”) at 3–7; Letter from John Russell, Chairman of the Board, and James Toes, President and Chief Executive Officer, Security Traders Association, dated September 26, 2016 (“STA Letter”) at 4; HMA Letter at 5–6; Letter from Tyler Gellach, Executive Director, and Chris Nagy, Director, Healthy Markets Association dated January 6, 2017 (“HMA Letter II”) at 2; CFA Letter at 6–7; Letter from Dennis M. Kelleher, President and Chief Executive Officer, Stephen W. Hall, Legal Director and Securities Specialist, and Lev Bagramian, Senior Securities Policy Advisor, Better Markets, Inc., dated September 26, 2016 (“Better Markets Letter”) at 5; MFA Letter at 3.

⁴⁵ See, e.g., Letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, dated September 26, 2016 (“Wells Fargo Letter”); Letter from David M. Weisberger, Managing Director, IHS Markit, dated September 26, 2016 (“Markit Letter”); Letter from Jeff Brown, Senior Vice President, Legislative and Regulatory Affairs, Charles Schwab & Co. Inc., dated September 26, 2016 (“Schwab Letter”).

⁴⁶ See Schwab Letter at 3; Letter from Marc R. Bryant, Senior Vice President and Deputy General Counsel, Fidelity Investments, dated September 26, 2016 (“Fidelity Letter”) at 2–3.

⁴⁷ See Markit Letter at 6–7; Letter from Greg Babyak, Head, Global Regulatory and Policy Group, Bloomberg LP, and Gary Stone, Market Structure Strategy, Bloomberg Tradebook and Bloomberg LP, dated September 26, 2016 (“Bloomberg Letter”) at 11; Letter from Erin K. Preston, Chief Compliance Officer and Associate General Counsel, Dash Financial LLC, dated September 26, 2016 (“Dash Letter”) at 3; Letter from Richard Foster, Senior Vice President and Senior Counsel for Regulatory and Legal Affairs, Financial Services Roundtable, dated September 26, 2016 (“FSR Letter”) at 3–4; MFA Letter at 3; FIF Letter at 3; FIF Addendum at 2; Letter from Nathaniel N. Evarts, State Street Global Advisors, dated September 26, 2016 (“SSGA Letter”) at 1.

⁴⁸ See Markit Letter at 6–7; Letter from Matt D. Lyons, Global Trading Manager, The Capital Group of Companies, Timothy J. Stark, Market and Transactional Research, The Capital Group of Companies, and Michael J. Triessl, Senior Vice President and Senior Counsel, Capital Research and Management Company, dated September 30, 2016 (“Capital Group Letter”) at 2; Bloomberg Letter at 11–12.

⁴⁹ See Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, dated October 13, 2016 (“Citadel Letter”) at 2.

⁵⁰ See ICI Letter at 3.

⁵¹ See HMA Letter at 6.

⁵² See CFA Letter at 7.

⁵³ See *id.*

⁵⁴ See, e.g., ICI Letter at 3, 6–7 (noting that adopting a definition of institutional order that would apply to all orders, regardless of size, that an institutional customer submits to its broker-dealer would best enable the Commission to accomplish the objective of providing information necessary for institutional investors to understand broker-dealers’ order routing decisions); Letter from Amy B.R. Lancellotta, Managing Director, Independent Directors Council, dated September 26, 2016 (“IDC Letter”) at 2 (supporting ICI’s recommendation); Capital Group Letter at 2–3; HMA Letter II (agreeing with Capital Group, and noting that covering all institutional orders is one of the most important aspects of the rule).

⁵⁵ See, e.g., MFA Letter at 3–4; CFA Letter at 6–8; FIF Letter at 2–3, 14–15; ICI Letter at 3, 6–7; STA Letter at 3–4; SIFMA Letter at 1–3; FIF Addendum at 2; Healthy Markets Letter at 2; Jon Schneider, Chairman of the Board, and James Toes, President and Chief Executive Officer, Security Traders Association, dated April 11, 2017 (“STA Letter II”) at 2.

⁵⁶ See, e.g., SIFMA Letter at 3; Bloomberg Letter at 12; Citadel Letter at 2–3; FIF Letter at 2–3, 14–15; FIF Addendum at 2; STA Letter II at 2. See also EMSAC Rule 606 Recommendations, *supra* note 16.

⁵⁷ See SSGA Letter at 1; ICI Letter at 3, 6–7; IDC Letter at 2; MFA Letter at 3; Fidelity Letter at 3; CFA Letter at 8; Better Markets Letter at 5.

⁵⁸ See Ameritrade Letter at 2; Letter from Richie Prager, Senior Managing Director, Head of Trading, Liquidity and Investments Platform, Hubert De Jesus, Managing Director, Co-Head of Market Structure and Electronic Trading, Supurna VedBrat, Managing Director, Co-Head of Market Structure and Electronic Trading, and Joanne Medero, Managing Director, Government Relations and Public Policy, BlackRock, Inc., dated September 26, 2016 (“BlackRock Letter”) at 2; Citadel Letter at

this to the fact that a broker-dealer has time and price discretion in executing a not held order, and institutional investors in particular rely on such discretion for reasons such as minimizing price impact, whereas a broker-dealer must attempt to execute a held order immediately, which typically better suits retail investors who seek immediate executions and rely less on broker-dealer order handling discretion.⁵⁹ As one commenter put it, the Rule 606(b) disclosure requirements should be based on whether the broker-dealer has discretion when handling the client's order and, as a general matter, broker-dealers have no discretion in handling retail investor held orders but do have discretion in handling institutional investor not held orders.⁶⁰ One commenter also stated that the held/not held approach would provide a targeted, deterministic solution to the issues presented by the proposed order dollar-value-based distinction between retail and institutional orders, and would alleviate the need to identify certain orders as institutional and others as retail for purposes of order routing disclosure.⁶¹

Several commenters also stated that basing the Rule 606(b) disclosure requirements on whether an order is held or not held would be straightforward and minimally burdensome because: Broker-dealers and other market participants are very familiar with these order type classifications; classifying orders as held or not held would be consistent with current industry practice; and the terms held and not held are common terms of usage in the securities markets.⁶² One of these commenters stated that broker-dealers already must mark orders that they execute as held or not held,⁶³ and another commenter stated that the held/not held order classifications are commonly recognized in the FIX Protocol.⁶⁴ Two commenters pointed out that the held and not held order classifications are already utilized in the

Commission's definition of "covered order" in Rule 600(b)(15).⁶⁵ One of these commenters stated that not held orders are generally distinguished from held orders in regulations and firms' monitoring processes, and specifically noted that broker-dealers already characterize orders on a held or not held basis to comply with Rule 605's covered order requirement, OATS technical specifications, and other rules such as FINRA Rule 5320.⁶⁶

Two commenters objected to the held or not held analysis and stated that the applicability of the new customer-specific disclosures should not be based on order type because the held/not held classification is within the control of the order sender.⁶⁷ One commenter stated that the held/not held order type-based distinction is an imprecise proxy for the status of the underlying customer, would not cover all institutional orders, and that the distinction may leave out many smaller investment advisers that currently trade through or have some portion of assets under management through "retail" channels.⁶⁸ This commenter also stated that the distinction would allow for potential gaming, and that amidst rising concerns with broker-dealers' conflicts of interests, some institutional investors have increasingly come to use held orders.⁶⁹ Another commenter, however, understood that some not held orders may come from retail customers, and that institutional clients may send broker-dealers a small amount of held orders, but nevertheless supported scoping the disclosures by the held and not held order classifications.⁷⁰

Some commenters suggested that the applicability of the customer-specific disclosures should be based on the type of the entity placing the order.⁷¹ One commenter argued that this approach would be preferable to an approach based on order type classification because broker-dealers already must know whether their customers are institutional investors.⁷² Another commenter stated that orders should not be classified according to the unique

order handling typical of an entity, as that characteristic may change over time, whereas the entity type itself remains constant.⁷³

Most of the commenters that supported an entity-centric approach suggested that the Commission rely on FINRA Rule 4512(c), which defines the term "institutional account" for purposes of that rule, as a source for such an approach.⁷⁴ Two commenters also suggested as a source FINRA Rule 2210(a)(4), which defines the term "institutional investor" for purposes of that rule, and also incorporates the definition of "institutional account" from FINRA Rule 4512(c).⁷⁵ One commenter stated that, because all broker-dealers that handle customer orders for equity securities are FINRA members, they should be accustomed to using the standards supplied in FINRA's rules.⁷⁶

Some commenters offered additional considerations or recommendations regarding how an entity-based approach should be crafted. For example, one commenter suggested that the new customer-specific disclosures should apply to any order attributed to any entity that is a "large trader" under Section 13(h) of the Exchange Act.⁷⁷ Another commenter stated that institutional and retail investors should be defined according to whether the investor is an entity or individual.⁷⁸

In addition to the foregoing commenter recommendations, a few commenters suggested that there should be no distinction between retail and institutional customers for purposes of the new Rule 606(b)(3) order handling reports and that all orders should be

⁷³ See Better Markets Letter at 5.

⁷⁴ See ICI Letter at 6–7 n.19; MFA Letter at 3–4; Fidelity Letter at 3; STA Letter at 4; CFA Letter at 8; Bloomberg Letter at 13; *see also* FIF Letter at 3.

⁷⁵ See MFA Letter at 3–4; ICI Letter at 6–7 n.19.

⁷⁶ See ICI Letter at 6–7 and n.19; *see also* CFA Letter at 8.

⁷⁷ See SSGA Letter at 1; *see also* 15 U.S.C. 78m(h). Another commenter expressed concern that a large trader-based definition of institutional order would result in considerable overlap among retail customers that also are large traders under Rule 13h–1. See STA Letter at 4. This is one of several examples of commenters critiquing or supporting the views expressed by other commenters regarding the definition of institutional order. *See, e.g.*, IDC Letter at 2 (supporting ICI Letter's recommendations on how to expand the definition of "institutional" order); STA Letter at 4 (supporting remarks made in FIF Letter); Citadel Letter at 3 (noting support for similar proposal from Blackrock Letter and ICI Letter); Ameritrade Letter at 2 (noting commenter support for defining institutional orders by the type of order submitted); HMA Letter II at 2–3 (noting broad commenter support for not defining institutional orders by dollar size).

⁷⁸ See Better Markets Letter at 5.

Group Letter at 2–3; KCG Letter at 4; FIF Letter at 2–3; FIF Addendum at 2; STA Letter II at 2. One commenter noted its belief that the vast majority of orders entered by institutional customers are with not-held instructions and the vast majority of orders entered by retail investors are with held instructions. See STA Letter at 4.

⁵⁹ See Wells Fargo Letter at 5; Markit Letter at 3 n.7; Capital Group Letter at 3; Schwab Letter at 3; Ameritrade Letter at 2 n.2; KCG Letter at 4; FIF Addendum at 2.

⁶⁰ See SIFMA Letter at 3; *see also* Capital Group Letter at 2; KCG Letter at 4.

⁶¹ See FIF Letter at 2–3, 14–15.

⁶² See Citadel Letter at 3; Markit Letter at 3, 7–8; KCG Letter at 4; Capital Group Letter at 2–3; SIFMA Letter at 3.

⁶³ See Capital Group Letter at 3.

⁶⁴ See Citadel Letter at 3.

⁶⁵ See SIFMA Letter at 3 and n. 4; Market Letter at 3 and n. 8.

⁶⁶ See Markit Letter at 3–4, 7.

⁶⁷ See HMA Letter at 7; Dash Letter at 4.

⁶⁸ See HMA Letter II at 2–3.

⁶⁹ See *id.*

⁷⁰ See SIFMA Letter at 3; *see also* Markit Letter at 7–8; Schwab Letter at 3; Letter from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated September 26, 2016 ("Thomson Reuters Letter") at 1; Citadel Letter at 3.

⁷¹ See, e.g., ICI Letter at 6–7; MFA Letter at 3; Fidelity Letter at 3; STA Letter at 4; CFA Letter at 8.

⁷² See HMA Letter II at 2.

covered by the Rule 606(b)(3) reports,⁷⁹ or that retail and institutional customers should receive the same disclosures.⁸⁰ One commenter stated that the goal with respect to both retail investor and large institutional orders should be best execution.⁸¹

iii. The Commission's Adopted Approach

The Commission is not adopting a definition of "institutional order" or an order dollar value-based approach to delineate the applicability of new Rule 606(b)(3).⁸² Generally, the amendments to Rule 606(b) are designed to apply required order handling disclosures to any NMS stock order regardless of its dollar value and to require more detailed disclosures regarding how broker-dealers exercise discretion when handling and routing customers' NMS stock orders in today's electronic markets. These disclosures are designed to provide transparency to customers for whom the existing customer-specific disclosures under Rule 606(b) are inapplicable or have become inadequate. Upon further consideration and in light of the views expressed by commenters, the Commission believes that these goals can best be accomplished if the detailed, customer-specific, order handling disclosures set forth in Rule 606(b)(3) generally apply to orders of any dollar value for NMS stock that customers submit to their broker-dealers on a "not held" basis. Accordingly, under Rule 606(b)(3), a broker-dealer must provide the disclosures set forth therein, upon customer request, to any customer that places, directly or indirectly, one or more orders in NMS stock that are submitted on a not held basis with the broker-dealer, subject to two de minimis exceptions discussed below.⁸³

We believe that basing the applicability of this requirement on whether orders are held or not held serves the purposes of the disclosures. A broker-dealer must attempt to execute a held order immediately; a not held order instead provides the broker-dealer with price and time discretion in handling the order. As a result, the Rule 606(b)(3) disclosures apply to NMS stock orders for which customers have provided their broker-dealers with price and time order handling discretion, and do not apply to orders that the broker-dealer must attempt to execute immediately. The Commission believes that since the disclosures are designed to provide greater transparency into a broker-dealer's exercise of order handling discretion, they should be provided for orders for which broker-dealers actually exercise such discretion. Focusing the customer-specific report in this way will better enable customers to understand their broker-dealers' order routing decisions and the extent to which those decisions may be affected by conflicts of interest or create information leakage. Customers also will be better able to assess their broker-dealers' skill and effectiveness in handling their orders and achieving satisfactory executions.

Importantly, as noted by multiple commenters, broker-dealers and other market participants are familiar with the held and not held order type classifications, classifying orders as held or not held would be consistent with current industry practice, and the terms "held" and "not held" are common terms of usage in the securities markets.⁸⁴ Indeed, broker-dealers already utilize the "held" and "not held" order classifications to comply with FINRA OATS technical specifications,⁸⁵ and existing Commission rules, such as the definition of "covered order" in Rule 600(b), rely on market participants' ability to distinguish between "held" and "not held" orders. As such, the Commission is not adding definitions of these terms to Rule 600(b). The Commission intends for broker-dealers to rely on their current methods for classifying orders as "held" or "not

held" for purposes of complying with Rule 606. By leveraging the established not held order classification, Rule 606(b)(3)'s applicability should be easily understood by market participants and the implementation burdens broker-dealers encounter in order to comply with Rule 606(b)(3) should be lessened to the extent that their order handling and routing systems are already configured for not held order classifications.

Further, under the Commission's adopted approach, any customer is entitled to receive the Rule 606(b)(3) disclosures for their not held NMS stock orders, subject to two de minimis exceptions. The Commission is not adopting definitions of "institutional order" or "retail order," and the adopted amendments make no such distinction, based on dollar value of the order or otherwise. In this regard, the Commission's adopted approach is consistent with comments that stated that no such distinction is necessary. Under final Rule 606(b)(3), customers may request the disclosures for any not held NMS stock orders that they submit (subject to the de minimis exceptions, discussed below), including not held NMS stock orders for less than \$200,000 in market value, which would have been defined as "retail orders" and not subject to the Rule 606(b)(3) disclosures under the Proposal. The Commission believes it is appropriate to make the Rule 606(b)(3) disclosures available for all not held NMS stock orders (subject to the de minimis exceptions) so customers have information sufficient to evaluate the broker-dealers that are exercising order handling and routing discretion.

The Commission believes that it is appropriate for broker-dealers to provide the Rule 606(b)(3) disclosures to those customers for whom the existing customer-specific order routing disclosures in Rule 606(b) are inapplicable or inadequate. Specifically, the Rule 606(b)(3) disclosures are particularly suited to customers that submit not held NMS stock orders because the disclosures set forth detailed order handling information that is useful in evaluating how broker-dealers exercise the discretion attendant to not held orders and, in the process, carry out their best execution obligations and manage the potential for information leakage and conflicts of interest. Moreover, many of the commenters that criticized the Commission's proposed definition of institutional order suggested that all or nearly all of an institutional customer's orders should be covered by the Rule 606(b)(3) disclosures regardless of order

⁷⁹ See HMA Letter at 5; Dash Letter at 3; HMA Letter II at 1–2; Letter from Abraham Kohen, President, AK Financial Engineering Consultants, LLC, dated September 28, 2016 ("Kohen Letter").

⁸⁰ See, e.g., Better Markets Letter at 5–7.

⁸¹ See HMA Letter at 5.

⁸² Relatedly, as discussed below, the Commission is not renaming the term "customer order" as "retail order" in Rule 600(b). See *infra* Section III.B.1.

⁸³ See *infra* Section III.A.1.b.iv; see also Rule 606(b)(3). Consistent with what was proposed, Rule 606(b)(3) applies only to orders for NMS stocks and does not include orders in NMS securities that are options contracts. Some commenters supported this approach. See STA Letter II at 2–3; FIF Letter at 12. Other commenters recommended that options be included in the amended order handling disclosures being adopted today. See Dash Letter at 1–2; HMA Letter at 12; Markit Letter at 14. The Commission continues to believe that, as noted in the Proposing Release, due to differences in the current market structure for NMS securities that are options contracts—in particular the lack of an over-the-counter market in listed options—the same

market structure complexities that exist for NMS stocks do not exist at this time for NMS securities that are options contracts to a degree that warrants the more detailed order handling disclosures proposed herein. See Proposing Release, *supra* note 1, at 49444 n.101.

⁸⁴ See Citadel Letter at 3; Markit Letter at 3, 7–8; KCG Letter at 4; Capital Group Letter at 2–3; SIFMA Letter at 3.

⁸⁵ See FINRA OATS Reporting Technical Specifications, September 12, 2016, at pp. 4–2 to 4–3, available at http://www.finra.org/sites/default/files/TechSpec_9122016.pdf.

dollar value. Some of these commenters supported accomplishing this via an entity-based approach to Rule 606(b)(3)'s applicability,⁸⁶ which the Commission has not chosen to adopt for reasons set forth below, and some of these commenters supported the adopted approach.⁸⁷ By using the not held order distinction rather than the proposed \$200,000 threshold, Rule 606(b)(3) as adopted will cover more order flow than would have been covered under the Proposal.⁸⁸ In addition, by using the not held order distinction, Rule 606(b)(3) as adopted will likely result in more Rule 606(b)(3) disclosures for order flow that is typically characteristic of institutional customers—not retail customers—and will likely cover all or nearly all of the institutional order flow.

While some commenters suggested that the new customer-specific disclosures in Rule 606(b)(3) should be available to all orders without any limitation based on entity type or order classification or otherwise, the Commission believes that it is appropriate to differentiate between not held orders and held orders for purposes of order handling information disclosure because broker-dealers generally handle not held orders differently from held orders due to the discretion they are afforded with not held orders but not with held orders.⁸⁹ As a result, the information pertinent to understanding broker-dealers' order handling practices for not held orders is not the same as for held orders.

Indeed, in recent years, routing and execution practices for not held orders have become more automated, dispersed, and complex.⁹⁰ In today's electronic markets, broker-dealers' commonly handle such orders by using sophisticated institutional order execution algorithms and smart order routing systems that decide the timing, pricing, and quantity of orders routed to a number of various trading centers, and that may divide a large "parent" order into many smaller "child" orders, and route the child orders over time to different trading centers in accordance with a particular strategy.⁹¹ The order handling disclosures required by Rule 606(b)(3) are designed to take this into account and provide relevant disclosures that, in the Commission's view, will enable customers to better

assess their broker-dealers' order execution quality and order handling ability overall and methods for complying with best execution obligations, as well as, more specifically, the degree to which their broker-dealers' order routing practices may involve information leakage or the potential for conflicts of interest.

By contrast, the Commission's concern regarding how broker-dealers handle held orders is less about the difficulties posed by more automated, dispersed and complex order routing and execution practices. Rather, the Commission believes that enhanced disclosures for held orders should provide customers with more detailed information including with respect to the financial inducements that trading centers may provide to broker-dealers to attract immediately executable trading interest, as opposed to the different information geared towards not held NMS stock orders that is set forth in Rule 606(b)(3). As noted above and discussed below, the quarterly public disclosures required under Rule 606(a) are indeed being enhanced to provide more detail regarding financial inducements to broker-dealers, and the Commission believes that these disclosures are more appropriately tailored to the characteristics of held order flow and the needs of customers that use held orders.⁹²

Also, the Commission does not disagree with one commenter's statement that best execution should be the goal for orders from both institutional customers and retail investors, and that both types of investors deserve to know how their orders are routed and executed.⁹³ Best execution is the broker-dealer's legal obligation for all orders, whether from retail or institutional customers.⁹⁴ While meeting their best execution obligations, broker-dealers frequently may choose to handle orders in a variety of different ways and choose among a host of available order routing destinations. Because the choices broker-dealers make in this regard are informed by the type of order at hand, for the reasons stated above, the Commission believes that separate disclosures for not held orders and held orders are the better way to help customers understand how their broker-

dealers are handling and routing their orders and how well their broker-dealers are performing these functions. While this commenter also stated that the Proposal's reforms for retail customers are inadequate, for the reasons stated above, as well as in Section III.B *infra*, the Commission disagrees.

As noted above, other commenters suggested basing Rule 606(b)(3)'s applicability on the characteristics of the customer that submits the order to the broker-dealer. This entity-centric approach suggested by commenters would require the Commission to set forth the types of customers that may request the Rule 606(b)(3) disclosures for their NMS stock orders, but would not entail any differentiation in the types of orders covered by Rule 606(b)(3). As a result, NMS stock orders from qualifying customers that are submitted on a held basis would be covered by the Rule 606(b)(3) disclosures. This is a sub-optimal outcome. Broker-dealers must attempt to execute held orders immediately and are afforded no discretion in handling them; therefore, applying the Rule 606(b)(3) disclosures to held orders would not provide insight into how a broker-dealer exercises order handling and routing discretion. Moreover, including a customer's held orders in the Rule 606(b)(3) report could obfuscate the reports' depiction of the discretion actually exercised by the broker-dealer with respect to not held orders and undermine the very purpose of these disclosures.

An entity-based approach also would require the Commission to prescribe institutional status criteria that customers must fit in order to be entitled to receive the disclosures. A risk with such an approach is that the criteria could be over-inclusive or under-inclusive. The Commission is particularly concerned about potential under-inclusiveness because customers that do not fit the criteria would not be entitled to receive the disclosures. To mitigate this risk, the Commission, as suggested by commenters, could leverage certain existing rules that already set forth institutional status criteria. For example, several commenters suggested as sources the definitions of "institutional account" and "institutional investor" in FINRA Rules 2210(a)(4) and 4512(c), respectively.⁹⁵ But these definitions serve a purpose for the noted FINRA rules that is different from the purpose similar prescribed criteria would serve

⁹² As noted *supra* and *infra*, the Commission is also amending Rule 606(a) such that it applies to held orders of any size in NMS stock.

⁹³ See HMA Letter at 5.

⁹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37538 (June 29, 2005) ("Regulation NMS Adopting Release"). FINRA has codified a duty of best execution into its rules. See FINRA Rule 5310.

⁹⁵ See *supra* notes 74 and 75 and accompanying text.

⁸⁶ See *supra* note 58.

⁸⁷ See *supra* note 56.

⁸⁸ See *infra* Section V.C.1.a.i.3.

⁸⁹ See, e.g., Schwab Letter at 3.

⁹⁰ See *supra* Section I; see also Proposing Release, *supra* note 1, at 49436.

⁹¹ See *id.*

for the purpose of Rule 606(b)(3). Under FINRA Rule 4512, a broker-dealer is not required to obtain for “institutional accounts” certain additional information that it is required to obtain for accounts that are not “institutional accounts.”⁹⁶ Likewise, under FINRA Rule 2210(a)(4), a broker-dealer is subject to less prescriptive review requirements for “institutional communications” that are solely to “institutional investors” than it is subject to for other, “retail communications.”⁹⁷ Under both of these FINRA rules, exclusion from the defined “institutional” criteria triggers a more stringent due diligence or review obligation for the broker-dealer. The opposite would be true under an entity-centric approach to Rule 606(b)—if the institutional status criteria adopted by the Commission were not met, the market participant would be *excluded* from the more detailed disclosure regime.⁹⁸

This categorical exclusion of some customer types from Rule 606(b)(3)’s purview is avoided under the Commission’s adopted approach. By basing the application of Rule 606(b)(3) on the held and not held order classifications, no customer is categorically excluded from receiving the Rule 606(b)(3) disclosures. The Commission acknowledges that some commenters stated that an entity-centric approach to Rule 606(b)(3)’s coverage based on the noted FINRA rules would coincide with familiar industry standards regarding the types of market participants that are considered to be

“institutional.”⁹⁹ But adapting the FINRA rules for the Commission’s purposes in Rule 606(b) would present challenges. For example, private funds such as hedge funds may not be covered by the “institutional” definitions in FINRA Rules 2210 or 4512,¹⁰⁰ yet in the Proposing Release the Commission noted, by way of example, that “[a]n institutional customer includes . . . hedge funds,” among others.¹⁰¹ If the Commission relied solely on the FINRA rules, contrary to the Commission’s contemplation in the Proposing Release, hedge funds may not be defined as “institutional” for Rule 606(b) purposes and would not be entitled to the more detailed Rule 606(b)(3) disclosures. Of course, the Commission could modify the criteria used in the FINRA rules to better suit its purposes here, but even then there would still be a risk of under-inclusiveness in the adapted criteria. There also could be new types of market participants that evolve and that trade in an institutional manner, but if they were not covered by the Commission’s prescribed institutional status criteria, they would not be entitled to receive the Rule 606(b)(3) disclosures under the rule.

Moreover, as noted above, commenters also highlighted the industry familiarity with the not held order classification.¹⁰² And, unlike the “institutional” definitions in the referenced FINRA rules, which apply in contexts completely different from broker-dealer order handling, the not held order classification is already used by broker-dealers specifically for order handling purposes, among other things. For example, FINRA Rule 7440 requires broker-dealers to record certain information, including any “special

handling requests,” when an order is received, originated, or transmitted.¹⁰³ FINRA’s OATS Reporting Technical Specifications state that, when a FINRA member originates or receives an order and then subsequently transmits that order to another desk or department within the firm, the member is required to record and report to OATS, among other things, “special handling instructions that are communicated by the receiving department to a desk or other department, such as ‘Not Held.’”¹⁰⁴

Basing the applicability of Rule 606(b)(3) on customers’ not held NMS stock orders is, in the Commission’s view, the most tailored approach to aligning the orders covered by Rule 606(b)(3) with the Commission’s intent for the rule to provide more detailed disclosure and enhanced transparency regarding how broker-dealers handle NMS stock orders, and to provide such transparency to customers for whose NMS stock orders the current disclosure regime is inapplicable or inadequate. This approach also is likely to avoid the problems inherent in an entity-centric approach. Further, many commenters, as well as EMSAC, supported basing Rule 606(b)(3)’s application on the not held order classification. Accordingly, under Rule 606(b)(3), a broker-dealer must provide the disclosures set forth therein, upon customer request, to any customer that places, directly or indirectly, one or more orders in NMS stock that are submitted on a not held basis with the broker-dealer, subject to the de minimis exceptions discussed below.

iv. De Minimis Exceptions

The Commission is adopting in new Rules 606(b)(4) and (b)(5) two de minimis exceptions from Rule 606(b)(3)’s requirements, either of which excepts a broker-dealer from the Rule 606(b)(3) requirements. One of the exceptions focuses on the broker-dealer firm and the other focuses on the individual customer. Specifically, a broker-dealer is not obligated to provide the Rule 606(b)(3) report: (i) To any customer if not held NMS stock orders constitute less than 5% of the total shares of NMS stock orders that the broker-dealer receives from its customers over the prior six months,¹⁰⁵

⁹⁶ See FINRA Rule 4512(a)(2).

⁹⁷ See FINRA Rule 2210.

⁹⁸ One commenter suggested that the “large trader” designation under Section 13(h) of the Exchange Act serve as the source for the Commission’s institutional status criteria (see SSGA Letter at 1, *supra* note 77). This approach would, however, include held orders from large traders within the required disclosures. Moreover, to qualify as a large trader under Rule 13h–1, a person must meet daily or monthly aggregate share volume or market value thresholds for transactions in NMS securities. See 17 CFR 242013h–1. Therefore, such an approach would exclude orders from an institutional customer that does not meet the designated thresholds. In addition, because the large trader definition is based on transactions in NMS securities, it takes into account transactions in option contracts that are NMS securities whereas the Commission’s amendments to Rule 606(b) apply only to orders for NMS stock. Another commenter stated that institutional and retail investors should be defined according to whether the investor is an entity or individual (see Better Markets Letter at 5, *supra* note 78). This approach similarly would include held orders within the Rule 606(b)(3) disclosures. Further, certain natural persons may take on the characteristics of institutions in their trading behavior and utilize not held orders to a significant degree, but they would be categorically excluded from receiving the Rule 606(b)(3) disclosures for such orders under an approach based on an individual versus entity distinction.

⁹⁹ See HMA Letter II at 2; CFA Letter at 8; STA Letter at 4.

¹⁰⁰ FINRA Rule 4512(c)(3) contains a catch-all provision that includes within the definition of “institutional account” the account of any person with at least \$50 million in total assets. An entity that is not otherwise expressly covered by FINRA Rule 4512(c)(1) or (2), such as a hedge fund for example, is not covered by the definition if it has total assets of less than \$50 million. As such, if the Commission were to rely on the FINRA rules as suggested by some commenters, smaller entities with less than \$50 million in total assets may be excluded from Rule 606(b)(3) even though they may have less bargaining power than their larger competitors and therefore may benefit most from required, standardized order routing disclosures. There also could be disparate results—for example, a registered investment company with less than \$50 million in assets would be covered because it is expressly identified in the rule, while a hedge fund with less than \$50 million in assets would not be covered.

¹⁰¹ See Proposing Release, *supra* note 1, at 49433, n.1.

¹⁰² See Citadel Letter at 3; Markit Letter at 3, 7–8; KCG Letter at 4; Capital Group Letter at 2–3; SIFMA Letter at 3.

¹⁰³ See FINRA Rule 7440(b)(15) and (c)(1)(G).

¹⁰⁴ See FINRA OATS Reporting Technical Specifications, September 12, 2016, at pp. 4–2 to 4–3, available at http://www.finra.org/sites/default/files/TechSpec_9122016.pdf.

¹⁰⁵ See Rule 606(b)(4). Under the rule, the first time a broker-dealer meets or exceeds the 5% threshold, it has a grace period of up to three calendar months to provide the Rule 606(b)(3)

or (ii) to a particular customer if that customer trades through the broker-dealer, on average each month for the prior six months, less than \$1,000,000 of notional value of not held orders in NMS stock.¹⁰⁶ These de minimis exceptions are designed such that the Rule 606(b)(3) requirements apply when a broker-dealer's order flow consists primarily of not held orders for NMS stock and when a customer's trading profile is such that it relies heavily on the discretion of the broker-dealer and so would sufficiently benefit from the Rule 606(b)(3) disclosures.

The Commission received several comments in response to its questions regarding a potential de minimis exception from customer-specific reporting under proposed Rule 606(b)(3). Multiple commenters supported an exception from Rule 606(b)(3) reporting for broker-dealers that have either a de minimis level of institutional customers or a de minimis amount of institutional trading activity as measured by executed shares as a percentage of all executed shares.¹⁰⁷ These commenters also supported disclosure based on whether an order is held or not held and generally discussed the reasoning for a de minimis exception in that context.¹⁰⁸ Commenters also suggested that firms that receive less than 5% of orders from institutions should be exempt from requirements to provide disclosures for institutional orders, both at the individual investor level and in the aggregate.¹⁰⁹ One commenter stated that the de minimis threshold should be set at 5% of not held orders received.¹¹⁰ Two commenters noted that there currently is a 5% threshold in Rule 606(a) in connection with the rule's requirement that broker-dealers disclose the identity of any venue to which 5% or more of non-directed orders were routed for execution.¹¹¹ One of these

commenters stated that the purpose of a de minimis exception is to provide relief so that reporting obligations for a given entity more closely match its actual core business and targeted customer profile.¹¹²

Some commenters stated that the costs incurred by retail broker-dealers to create systems to generate the Rule 606(b)(3) reports would exceed any benefits.¹¹³ One of these commenters stated that the Rule 606(b)(3) statistics are not relevant to retail-oriented brokers' customer base and would provide them no added benefit, and that requiring retail broker-dealers to generate the statistics would be an onerous task with significant added expense.¹¹⁴ Two commenters recommended an exemption from Rule 606(b)(3) reporting for firms with a de minimis amount of not held order flow in light of the fact that retail customers occasionally submit not held orders.¹¹⁵ One commenter believed that, if broker-dealers with a de minimis amount of not held orders are exempted, the majority of the exemptions would be for retail brokers.¹¹⁶

Other commenters did not support a de minimis exception even if a broker-dealer has limited institutional customer order flow, so that institutional customers can compare order routing among all broker-dealers.¹¹⁷ One commenter stated that, if a small broker-dealer is able to effectively manage orders from institutional customers in the current complex market environment, it should be able to provide customers with information on their order routing practices.¹¹⁸

The Commission believes that a de minimis exception from Rule 606(b)(3) reporting, as set forth in Rule 606(b)(4), presents advantages for certain broker-dealers. Broker-dealers handle different types of order flow, and not all broker-dealers handle a significant amount of

not held NMS stock order flow. Indeed, some broker-dealers focus mainly on servicing customers that use held orders in NMS stock, and as such, typically do not handle not held order flow in NMS stock. The Commission believes that it is appropriate to relieve broker-dealers with minimal or zero not held order flow from the obligation to incur the costs associated with having the capability to provide the new Rule 606(b)(3) disclosures for not held NMS stock orders. The Commission does not believe that it would be appropriate to require every broker-dealer, regardless of its customer base and core business, to be compelled to incur the costs required to create the systems and processes necessary to generate the Rule 606(b)(3) reports. The Commission does not intend to introduce a wholesale change in order handling and routing disclosure requirements such that broker-dealers whose order flow consists almost entirely of held orders must also become prepared to provide disclosures that focus on trading activity characteristics of not held orders.

In the Commission's view, the potential benefits of the Rule 606(b)(3) disclosures for customers of such broker-dealers do not justify the costs to such broker-dealers of developing the necessary systems and mechanisms for providing the disclosures. There would be no expected benefits of Rule 606(b)(3) in circumstances where a broker-dealer does not currently handle any not held NMS stock order flow. Nevertheless, absent a de minimis exception, such a broker-dealer could feel compelled to incur the costs and burdens associated with being able to provide the Rule 606(b)(3) disclosures in order to ensure compliance with the rule should it receive not held orders in the future. The Commission believes that it is appropriate to relieve any such broker-dealers of these potential costs and unnecessary burdens.

Likewise, there would be only limited benefits of Rule 606(b)(3) in circumstances where broker-dealers handle a minimal amount of not held orders, and the Commission does not believe that such benefits would justify the costs to broker-dealers in these circumstances. While some commenters opposed a de minimis exemption on grounds that institutional customers should be able to compare orders across all broker-dealers and that broker-dealers capable of handling institutional customer orders should be able to provide the Rule 606(b)(3)

report. There is no such grace period for compliance after the first time the threshold is met or exceeded. *See id.*

¹⁰⁶ See Rule 606(b)(5). As discussed below, however, when either de minimis exception applies, the broker-dealer still must provide, if requested, the Rule 606(b)(1) customer-specific disclosures for not held NMS stock orders that it receives from customers. *See infra* Section III.A.1.b.vi.

¹⁰⁷ See, e.g., FIF Letter at 5, 10; STA Letter at 6; Citadel Letter at 3.

¹⁰⁸ See, e.g., FIF Letter at 5, 10; STA Letter II at 2; Citadel Letter at 3; Thomson Reuters Letter at 1; Ameritrade Letter at 2.

¹⁰⁹ See STA Letter II at 2; Ameritrade Letter at 2; Wells Fargo Letter at 5. *See also* Letter from Jeff Brown, Senior Vice President, Legislative and Regulatory Affairs, Charles Schwab & Co. Inc., dated October 30, 2018 ("Schwab Letter II").

¹¹⁰ See Schwab Letter II at 2.

¹¹¹ See Ameritrade Letter at 2; Wells Fargo Letter at 5.

¹¹² See Wells Fargo Letter at 5. *See also* Letter from Stephen John Berger, Managing Director, Government and Regulatory Policy, Citadel Securities, dated October 23, 2018 ("Citadel Letter II") at 1–2 (noting that the 5% threshold suggested by other commenters should ensure that smaller broker dealers are not adversely affected by the new disclosure requirement, and noting that a threshold based on a percentage of orders or shares received could potentially be set lower than a threshold based on a percentage of executed shares).

¹¹³ See Ameritrade Letter at 2; Citadel Letter at 3; FIF Letter at 5, 10.

¹¹⁴ See FIF Letter at 5. *See also* Markit Letter at 17.

¹¹⁵ See Thomson Reuters Letter at 1; Schwab Letter at 3.

¹¹⁶ See STA Letter at 8–9.

¹¹⁷ See, e.g., Bloomberg Letter at 15; MFA Letter at 4–5. *See also* Markit Letter at 28.

¹¹⁸ See Capital Group Letter at 4.

information,¹¹⁹ the Commission believes that these comments rest on an unlikely premise that it is broker-dealers that handle primarily institutional customer orders that would be excepted under Rule 606(b)(4). To the contrary, consistent with other commenters' views,¹²⁰ the Commission expects the de minimis exceptions to be relevant mainly in the context of broker-dealers that handle almost entirely held orders from customers but may occasionally handle not held orders from customers. Indeed, commenters noted that a small percentage of retail customers may submit not held orders, whether for purposes of working an order in illiquid securities or for other purposes. In these circumstances, the Commission believes that broker-dealers that focus on servicing such customers should not be required to incur the costs or burdens associated with building the systems and other capabilities necessary to provide the Rule 606(b)(3) disclosures when they are likely to handle not held orders only occasionally and separate from their core business of handling held orders.¹²¹

Accordingly, the firm-level de minimis exception to Rule 606(b)(3), as expressed in Rule 606(b)(4), focuses on the broker-dealer's overall order flow across all of its customers. The Commission believes that the scope of this exception will appropriately cover most broker-dealers that handle almost entirely held order flow. A broker-dealer that handles not held NMS stock order flow that is less than 5% of the total shares of NMS stock orders in a six calendar month period that it receives from its customers most likely does not make, as a matter of course, the routing decisions for which Rule 606(b)(3) is designed to provide enhanced transparency. 95% or more of such a broker-dealer's NMS stock order flow would be held orders. The Commission does not believe that it is appropriate to require such a broker-dealer to expend the effort and incur the expense necessary to be able to provide disclosures that are primarily aimed at order handling that is rarely, if ever, employed by the broker-dealer.

The Commission is adopting a firm-level de minimis exception that is based on the "percentage of *shares* of not held orders in NMS stocks the broker or dealer received from its customers" (emphasis added) rather than the percentage of not held *orders* in NMS

stocks or other measures suggested by commenters.¹²² The purpose of the firm-level de minimis exception is to except from the Rule 606(b)(3) disclosure requirements those broker-dealers that receive zero or minimal not held NMS stock order flow from their customers and whose core business does not involve handling or routing such order flow. The Commission believes that the percentage of shares of not held orders is an appropriate measure for the calculation of the firm-level de minimis exception because it more accurately reflects the nature of a broker-dealer's business activities than other suggested approaches.

The other methods that commenters suggested for calculating a firm-level de minimis threshold—e.g., based on the percentage of not held orders (not shares) in NMS stocks—are in the Commission's view less accurate indicia of the broker-dealers to whom this aspect of Rule 606 is intended to apply and therefore would result in a less tailored exception. For example, the use of a "per order" threshold for the firm-wide de minimis exception would result in the equal treatment for purposes of a firm's de minimis calculation of, on the one hand, a single order for 10 shares of Corporation X, and on the other hand, a single order for 100,000 shares of Corporation X. The Commission believes that in this example, the two orders should not be afforded equal treatment and that the order for 100,000 shares is more indicative of the broker-dealer's business and thus should be given greater weight than the order for 10 shares.

Indeed, in the aforementioned example, the broker-dealer would likely need to apply more discretion when executing the order for 100,000 shares (to minimize potential information leakage and price impact) than for an order for 10 shares. As discussed above, the new Rule 606(b)(3) disclosures are intended to provide customers with detailed information concerning how broker-dealers exercise discretion, particularly for larger orders (including those broken up into several smaller child orders). Thus, if the firm-level de minimis threshold were calculated in a manner that did not account for shares received, there would be greater risk that a broker-dealer exercising discretion in handling larger orders, potentially as a meaningful portion of its business, would not be subject to the new Rule 606(b)(3) disclosure requirement.

As noted below, Commission supplemental staff analysis found that

among 342 broker-dealers that receive not held orders from customers, about 8% (28 broker-dealers) would receive a de minimis exception from Rule 606(b)(3) requirements pursuant to Rule 606(b)(4).¹²³ 23 of the 28 broker-dealers that would be eligible for the de minimis exception receive not held orders less than 2.5% of the total shares of their orders in the sample and five of the 28 broker-dealers receive not held orders greater or equal to 2.5% and less than 5% of the total shares of their orders in the sample.¹²⁴ Thus, the 5% threshold in Rule 606(b)(4) creates a narrow exception from Rule 606(b)(3) among broker-dealers that receive not held orders from customers and would allow for a reasonably small increase in not held order flow as a percentage of total order flow before one of these broker-dealers would be subject to the requirements of Rule 606(b)(3). Those broker-dealers covered by the exception likely handle not held NMS stock order flow only occasionally and separate from their core business, and therefore, in the Commission's view, should not be subject to the requirements of Rule 606(b)(3). In addition, some commenters that supported a firm-level de minimis exception specifically suggested that the threshold be set at the 5% level.¹²⁵ Accordingly, the Commission believes that the 5% threshold for the firm-level de minimis exception is reasonable given the goals of the rule.

A broker-dealer is covered by the firm-level de minimis exception as long as its customer not held NMS stock order flow continues to be less than the 5% firm-level threshold. A broker-dealer is no longer excepted from the purview of Rule 606(b)(3) once and as long as it meets or surpasses the firm-level threshold of the de minimis exception. Specifically, when a broker-dealer has equaled or exceeded the firm-level threshold, it must comply with Rule 606(b)(3) for at least six calendar months ("Compliance Period") regardless of the volume of not held NMS stock orders the broker-dealer receives from its customers during the Compliance Period.¹²⁶ Therefore, during the Compliance Period, the broker-dealer must provide the Rule 606(b)(3) report to a customer for any of the customer's not held NMS stock orders submitted to the broker-dealer during the Compliance Period (subject to the customer-level de minimis exception set forth in Rule 606(b)(5)). The Compliance Period begins the first

¹¹⁹ See MFA Letter at 4–5; Capital Group Letter at 4.

¹²⁰ See, e.g., Ameritrade Letter at 2; Citadel Letter at 3.

¹²¹ See Wells Fargo Letter at 5.

¹²² See, e.g., Schwab Letter II at 2.

¹²³ See *infra* Section V.C.1.a.ii.

¹²⁴ See *id.*

¹²⁵ See *supra* note 109.

¹²⁶ See Rule 606(b)(4).

calendar day of the next calendar month immediately following the end of the six calendar month period for which the broker-dealer equaled or exceeded the firm-level threshold, unless it is the first time the broker-dealer has equaled or exceeded the threshold.¹²⁷ The first time a broker-dealer equals or exceeds the firm-level threshold, there is a grace period of three calendar months before the Compliance Period begins and the broker-dealer must comply with Rule 606(b)(3) requirements.¹²⁸ The customer is not entitled to receive Rule 606(b)(3) reports for orders handled during the grace period, as the grace period is not part of the Compliance Period. After the three calendar month grace period, beginning the first calendar day of the fourth calendar month after the end of the six calendar month period for which the broker-dealer equaled or exceeded the firm-level threshold, the broker-dealer must provide the Rule 606(b)(3) report prospectively for not held NMS stock orders submitted by customers from that date through the next six calendar months.

The Commission believes that the limited three-month grace period is appropriate because it will allow a firm time to come into compliance with the Rule 606(b)(3) requirements when its not held NMS stock order flow crosses the Rule 606(b)(4) firm-level de minimis threshold for the first time. The grace period affords a broker-dealer time to develop the systems and processes and organize the resources necessary to generate the Rule 606(b)(3) reports. At the same time, should such a broker-dealer subsequently fall below the de minimis threshold, the Commission believes that no such grace period for Rule 606(b)(3) is necessary if and when that broker-dealer's not held NMS stock order flow again meets or crosses the firm-level de minimis threshold such that the broker-dealer is again subject to the Rule 606(b)(3) requirements. The broker-dealer should already have developed the necessary systems and processes for providing the Rule 606(b)(3) report in connection with its subjection to Rule 606(b)(3).¹²⁹

Rule 606(b)(4) requires compliance with Rule 606(b)(3) for "at least" six calendar months for a broker-dealer that equals or exceeds the firm-level de minimis threshold. The Commission believes that it is appropriate to require a minimum Compliance Period of six calendar months in order to coincide with the six-month timeframe of Rule 606(b)(3). Customers of a broker-dealer that is or becomes subject to Rule 606(b)(3) therefore will be able to request a Rule 606(b)(3) report that contains at least one full time period of disclosures contemplated by Rule 606(b)(3).¹³⁰ There is no maximum period of time that a broker-dealer may be subject to Rule 606(b)(3)—a broker-dealer that consistently receives not held NMS stock orders from its customers at a rate that equals or exceeds the 5% threshold will be required to comply with Rule 606(b)(3) month after month. Rule 606(b)(4) is designed to require broker-dealer compliance with Rule 606(b)(3) for as long as the broker-dealer's not held NMS stock order flow from its customers equals or exceeds the 5% threshold, subject to the minimum Compliance Period of six calendar months.

Rule 606(b)(4) also is designed to enable a broker-dealer that is subject to Rule 606(b)(3) for six calendar months (or longer) subsequently to avail itself of the firm-level de minimis exception if its not held NMS stock order flow no longer equals or exceeds the 5% threshold. Specifically, under Rule 606(b)(4), if, at any time after the end of the Compliance Period, the broker-dealer's not held NMS stock order flow falls below the 5% threshold for the prior six calendar months, the broker-dealer is not required to comply with Rule 606(b)(3), except with respect to orders received during the Compliance

60 days after **Federal Register** publication, broker-dealers that equaled or exceeded the 5% threshold during the six calendar month period ending in the calendar month that includes the effective date will have nearly four months between the effective date and compliance date to prepare to provide the Rule 606(b)(3) reports.

¹³⁰ As noted above, a broker-dealer is not required to provide the Rule 606(b)(3) report for orders received when the broker-dealer was not subject to Rule 606(b)(3). So, for example, a broker-dealer that is subject to Rule 606(b)(3) as of June 1 would be required to provide the Rule 606(b)(3) information for not held NMS stock orders received from a customer on June 1 through at least November 30 of that calendar year (subject to the customer-level de minimis exception and a three-month grace period if first time the firm is required to provide a report pursuant to Rule 606(b)(3)). A customer could request a Rule 606(b)(3) report prior to the end of that period, but the report would only be required to include disclosures as of June 1 (if there is no three-month grace period).

Period.¹³¹ Thus, after the broker-dealer's initial Compliance Period, Rule 606(b)(4) provides for a rolling month-to-month assessment of whether the broker-dealer must continue to comply with Rule 606(b)(3) or may avail itself of the Rule 606(b)(4) de minimis exception.

For example, suppose a broker-dealer has equaled or exceeded the firm-level threshold and therefore must comply with Rule 606(b)(3) for a six calendar month period that begins on January 1 and ends on June 30 (assuming this Compliance Period started after a three-month grace period, if this was the first time the broker-dealer has had to comply with Rule 606(b)(3)). If, in the beginning of July, the broker-dealer determines that its not held NMS stock order flow equaled or exceeded the threshold for January 1 through June 30, the broker-dealer must continue to comply with Rule 606(b)(3) for July. If, on the other hand, the broker-dealer determines that its not held NMS stock order flow was below the 5% threshold for January 1 through June, the broker-dealer would not be required to comply with Rule 606(b)(3) for July 1 through July 31. In the beginning of August, the broker-dealer would determine if it is subject to Rule 606(b)(3) based on its order flow for the prior six calendar month period, which this time would be the period from February 1 through July 31. If the broker-dealer met the threshold for that six calendar month period, and had also met it for the period January 1 through June 30 such that it was required to comply with Rule 606(b)(3) for July, the broker-dealer would be required to continue complying with Rule 606(b)(3) through August. If the broker-dealer met the threshold for the February 1 through July 31 period but had not met it for the January 1 through June 30 period and was not required to comply with Rule 606(b)(3) for July, the broker-dealer would start a new Compliance Period that would run from August 1 through January 31 of the following calendar year. In this scenario, the broker-dealer would be required to provide Rule 606(b)(3) disclosures for not held NMS stock orders received from a customer during the prior six calendar months, except for any such orders that the broker-dealer received during July when the broker-dealer was not required to provide reports pursuant to Rule 606(b)(3).

Table A below contains an example of a broker-dealer firm that meets or exceeds the 5% de minimis threshold

¹³¹ See Rule 606(b)(4). An example is set forth in the paragraph below.

¹²⁷ See *id.*

¹²⁸ See *id.*

¹²⁹ A broker-dealer whose not held NMS stock order flow from its customers equals or exceeds the five percent threshold must be able to provide the Rule 606(b)(3) reports to its customers beginning on the compliance date for these rule amendments. As such, broker-dealers will need to determine whether their customer not held NMS stock order flow equaled or exceeded the 5% threshold for the six calendar month period that ends in the calendar month that includes the effective date of these rule amendments. Since the compliance date for these rule amendments is 180 days after publication in the **Federal Register**, and since the effective date is

for the first time and enters a six-month Compliance Period after a three-month grace period. Table A below also reflects that, after the initial six-month Compliance Period, the broker-dealer's

required compliance with Rule 606(b)(3) continues on a rolling month-to-month basis. Table B below contains an example where there is no grace period and a previously compliant broker-

dealer firm begins a new Compliance Period after an intervening period of not meeting the 5% threshold.

TABLE A—FIRM EQUALS OR EXCEEDS 5% THRESHOLD FOR THE FIRST TIME

| Event | Period examined for qualifying threshold | Obligation |
|---|--|--|
| Firm determines in Jan. 2020 that it equaled/exceeded threshold for first time; grace period begins. | July 1–Dec. 31, 2019 | Prepare to collect and report required data for Compliance Period beginning Apr. 1, 2020. |
| On Apr. 1, 2020, grace period ends and six-month Compliance Period begins. | Reporting is mandatory during Compliance Period regardless of whether threshold is equaled or exceeded in prior six calendar months. | Begin collection of required data for orders received during Compliance Period. |
| May 2020 ..... | ..... | Provide reports for Apr. 1 to Apr. 30, 2020 |
| June 2020 ..... | ..... | Provide reports for Apr. 1 to May 31, 2020 (continue adding prior month's data to report each successive month of the Compliance Period). |
| Initial Compliance Period ends on Sept. 30, 2020. | ..... | Provide reports for full Compliance Period, Apr. 1 to Sept. 30, 2020 (Sept. data not required to be provided before 7th business day of Oct.). |
| On Oct. 1, firm determines that it equaled/exceeded threshold; Compliance Period extends through Oct. 31, 2020. | Apr. 1 to Sept. 30, 2020 | Provide reports for May 1 to Oct. 31, 2020. |
| On Nov. 1, firm determines that it equaled/exceeded threshold; Compliance Period extends through Nov. 30, 2020. | May 1 to Oct. 31, 2020 | Provide reports for June 1 to Nov. 30, 2020. |
| Continue assessing, on a rolling basis, whether equal/exceed threshold for prior six month period. | Prior six calendar months, on a rolling basis .. | Provide reports for prior six month period as long as threshold continues to be met. |

TABLE B—PREVIOUSLY COMPLIANT FIRM EQUALS OR EXCEEDS 5% THRESHOLD AFTER INTERVENING PERIOD OF NOT MEETING THRESHOLD

| Event | Period examined for qualifying threshold | Obligation |
|---|--|---|
| Firm determines in Jan. 2020 that it equaled/exceeded 5% threshold (not for the first time); six-month Compliance Period begins Jan. 1, 2020. | July 1 to Dec. 31, 2019 | Begin collection of required data for orders received during Compliance Period. |
| Six-month Compliance Period ends on June 30, 2020. | Reporting is mandatory during Compliance Period regardless of whether threshold is equaled or exceeded in prior six calendar months. | Provide reports for full Compliance Period, Jan. 1 to June 30, 2020 (June data not required to be provided before 7th business day of July). |
| Firm determines in July 2020 that it did not equal/exceed threshold; Compliance Period not extended. | Jan. 1 to June 30, 2020 | Firm not required to collect or report data for July 2020 but must continue to provide reports for prior Compliance Period, Jan. 1 to June 30, 2020. |
| Firm determines in Aug. 2020 that it equaled/exceeded threshold; new Compliance Period begins. | Feb. 1 to July 31, 2020 | Begin collection of required data for orders received during new Compliance Period, Aug.–Jan. 31, 2021; provide reports for portion of prior six months that is covered by a Compliance Period, <i>i.e.</i> , Feb. 1 to June 30, 2020 (July 2020 not within Compliance Period). |
| Oct. 2020 | Reporting is mandatory during Compliance Period regardless of whether threshold is equaled or exceeded in prior six calendar months. | Provide reports for Apr. 1 to June 30, 2020; Aug. 1 to Sept. 30, 2020. |
| Six-month Compliance Period ends on Jan. 31, 2021. | ..... | Provide reports for Aug. 1, 2020 to Jan. 31, 2021 (Jan. 2021 data not required to be provided before 7th business day of Feb. 2021). |

The other de minimis exception to Rule 606(b)(3) focuses on each

customer's order flow.¹³² Whereas the

¹³² See Rule 606(b)(5).

firm-level de minimis exception is designed to relieve mainly broker-dealers that do not regularly handle not

held orders of the Rule 606(b)(3) obligations, the customer-level exception is designed to relieve broker-dealers from the obligation to provide the Rule 606(b)(3) disclosures to particular customers that do not trade NMS stocks in a manner that generally relies on a broker-dealer's use of discretion over order routing and handling.

The Commission expects that the benefits of the Rule 606(b)(3) disclosures will accrue mainly for customers that trade regularly with significant levels of not held NMS stock order flow. The new customer-specific order handling disclosures are intended to provide such customers with insight into how their brokers exercise order handling discretion over a period of time. In order to accurately reflect a broker's order handling behavior, the customer-specific disclosures must contain ample order data. The Commission believes that \$1,000,000 of notional value traded on average each month for the prior six months is a level of order flow that would allow for meaningful order handling disclosures. A Rule 606(b)(3) report covering a customer's prior six months of trading activity would include at least \$6 million worth of the customer's trades. The Commission believes that such a sample of trading activity would be large enough to not be misleadingly colored by one-off or infrequent routing choices by the broker-dealer or order handling requests by the customer. Therefore, such a sample size would provide the customer with an accurate and reliable depiction of how its broker-dealer generally handles its not held NMS stock order flow.

The Commission also believes that the customer-level *de minimis* threshold is set at a sufficiently low level such that the exception captures customers that do not trade regularly or in significant quantity and who would not therefore realize the benefits of the rule. Based on the Commission's experience and understanding of the frequency and quantities in which various market participants tend to trade, the Commission believes that this threshold is a relatively low one for more active traders, including customers that have an interest in evaluating their broker-dealers' order handling services, but high enough such that the exception will capture customers that trade infrequently or in small quantities and for whom the detailed Rule 606(b)(3) report would not be warranted or meaningful. Indeed, customers that trade on average each month for the prior six months less than \$1,000,000 of notional value of not held orders

through the broker-dealer are not likely to require the more complex order handling tools offered by the broker-dealer that would warrant or make meaningful a detailed review of the broker-dealer's order handling decisions. Even if a customer is sufficiently sophisticated to utilize not held orders and analyze the Rule 606(b)(3) information, unless the customer submits not held orders to a degree that generates a meaningful sample of order handling and routing data, the Rule 606(b)(3) report will not provide a reliable basis for assessing the broker-dealer's activity.

In addition, as discussed below,¹³³ part of the reason why the Rule 606(b)(3) information is provided in the aggregate for all orders sent to each venue, and not on an order-by-order basis, is to protect broker-dealers from potentially disclosing sensitive or proprietary information regarding their order handling techniques. If the rule allowed customers to request the disclosures for discrete not held orders or a *de minimis* level of not held order flow, there would be heightened risk that customers could gain insight into the broker-dealer's order handling techniques by perhaps reverse engineering how the broker-dealer handled a particular order. A broker-dealer's internal process for determining how to handle and route individual orders—such as, for example, the specific routing destinations chosen and the timing for sending child orders—is typically highly sensitive and proprietary information that broker-dealers guard closely. By requiring the Rule 606(b)(3) disclosures only for non-*de minimis* levels of not held trading activity, the customer-level *de minimis* exception helps ensure that the aggregated information provided under Rule 606(b)(3) reflects a robust amount of trading activity from which a customer is unable to glean this sensitive or proprietary information.

While broker-dealers may, by rule, be excepted from Rule 606(b)(3) due to the firm-level *de minimis* exception, or excepted from providing the Rule 606(b)(3) disclosures to certain customers due to the customer-level *de minimis* exception, the Commission notes that some broker-dealers, for business reasons, may choose to provide the new customer-specific order handling disclosures to their customers regardless of the *de minimis* exceptions and that customers below the customer-level *de minimis* threshold could move their order flow to such firms.

v. Orders for the Account of a Broker-Dealer

As noted above, the Commission's proposed definition of institutional order explicitly excluded orders for the account of a broker-dealer, and such orders were not covered by proposed Rule 606(b)(3). Consistent with what was proposed, Rule 606(b)(3), as adopted, does not apply to orders from broker-dealers. Some commenters argued that orders for the account of a broker-dealer should be included in the order handling reports required under Rule 606 and, therefore, such orders should not be excluded from the proposed definition of institutional order in Rule 600(b).¹³⁴ The Commission understands these comments to pertain to the proper scope of a broker-dealer's reporting obligations under Rule 606(b)(3), and as such they are discussed in detail in Section III.A.3, *infra*. As discussed in Section III.A.3, *infra*, the Commission continues to believe that the scope of a broker-dealer's obligation under Rule 606(b)(3) properly does not extend to orders placed by a broker-dealer.

vi. Rule 606(b)(1)

To incorporate new Rule 606(b)(3) into the existing regulatory structure, the Commission must make corresponding revisions to Rule 606(b)(1), which is the pre-existing customer-specific order routing disclosure rule. Prior to today, Rule 606(b)(1) did not differentiate between NMS stock orders from customers submitted on a held or not held basis. As a result, absent amendment to Rule 606(b)(1), not held orders in NMS stock that are covered by Rule 606(b)(3) also would be covered by Rule 606(b)(1). This is not the Commission's intent. As discussed above, the Commission is requiring Rule 606(b)(3) disclosures to be available for not held NMS stock orders, subject to two *de minimis* exceptions. For held NMS stock orders, or for instances when a *de minimis* exception would except a broker-dealer from providing Rule 606(b)(3) disclosures, the existing disclosure requirements of Rule 606(b)(1) would apply.

The Commission is amending Rule 606(b)(1) to require a broker-dealer, upon customer request, to provide the disclosures set forth in Rule 606(b)(1) for orders in NMS stock that are submitted on a held basis, and for orders in NMS stock that are submitted on a not held basis and for which the

¹³³ See *infra* Section III.A.6.

¹³⁴ See Markit Letter at 3 n.6, 18; Dash Letter at 1, 4–5; FIF Letter at 2, 8, 16–17; SIFMA Letter at 1, 3.

broker-dealer is not required to provide the customer a report under Rule 606(b)(3).¹³⁵ As a result, any NMS stock order from a customer triggers Rule 606(b) order handling disclosure requirements. This is consistent with the Commission's stated intent in the Proposal for all orders in NMS stock routed by broker-dealers for their customers to be encompassed by order routing disclosure rules regardless of order size.¹³⁶

Because there is no dollar-value threshold in Rule 606(b) as adopted, there are two categories of NMS stock orders that would have been covered by Rule 606(b)(3) under the Proposal but instead are covered by Rule 606(b)(1) under the adopted approach. First, a customer's held NMS stock order that has a market value of at least \$200,000 will be covered by the Rule 606(b)(1) disclosures (and, as discussed below, the Rule 606(a) public disclosures) whereas, under the Proposal, such an order would have been covered by the Rule 606(b)(3) disclosures.¹³⁷ As discussed above,¹³⁸ because broker-dealers must attempt to execute held NMS stock orders immediately and have no price or time routing discretion with such orders, the Commission does not believe that the Rule 606(b)(3) disclosures are appropriate for such orders, even if they are for \$200,000 or more. Indeed, as explained *supra* and *infra*,¹³⁹ the Commission's concerns with respect to broker-dealer handling of held NMS stock orders relate mainly to financial inducements to attract held order flow from broker-dealers, and those concerns persist regardless of the size of the held order. Held NMS stock orders of any dollar value should therefore be covered by disclosures designed to provide more transparency into such financial inducements and the potential conflicts of interest faced by broker-dealers which, as discussed *infra*, is what the enhancements to Rule

606(a) in particular are designed to achieve.¹⁴⁰

Second, compared to the Proposal, a not held NMS stock order for at least \$200,000 that is from a customer that does not meet the customer-level de minimis threshold or that the customer submits to a broker-dealer that qualifies for the firm-level de minimis exception will be covered by Rule 606(b)(1) whereas, under the Proposal, any not held NMS stock order for at least \$200,000 would have been covered by Rule 606(b)(3). The Commission believes that it is the appropriate result for Rule 606(b)(3) not to apply to such an order and for Rule 606(b)(1) to apply instead. As discussed above,¹⁴¹ the firm-level de minimis exception in Rule 606(b)(4) targets broker-dealers that mainly handle customer held orders but may occasionally handle a not held order from one of their customers. The Commission believes that such a broker-dealer should be entitled to the relief from Rule 606(b)(3) provided by the firm-level de minimis exception if it receives a large not held NMS stock order, including one that is for \$200,000 or more, yet still does not receive aggregate not held NMS stock order flow that exceeds the firm-level de minimis threshold.

The Commission believes that, in most cases, a customer that trades in NMS stock order dollar values of \$200,000 or more and is sufficiently sophisticated to utilize not held orders, will also be sufficiently sophisticated to submit such orders to broker-dealers that are not excepted from Rule 606(b)(3) by the firm-level de minimis exception, should the customer desire the Rule 606(b)(3) information (and meet or surpass the customer-level de minimis threshold). In addition, as discussed above, the customer-level de minimis exception targets customers whose trading activity is not substantial enough to provide a sample of data that would accurately and reliably reflect a broker-dealer's order handling behavior and make the Rule 606(b)(3) disclosures meaningful. Thus, should a customer that submits a not held NMS stock order for \$200,000 or more not meet the customer-level de minimis threshold (a scenario that the Commission believes is unlikely to occur in most cases), the Commission believes that Rule 606(b)(1) is the appropriate recourse for the customer regardless of the dollar value of any of the customer's individual orders. If requested, the Rule 606(b)(1) disclosures provide the customer with information as to the venues to which

its orders were routed, whether the orders were directed or non-directed, and the time of any transactions that resulted from the orders. The Commission believes that these disclosures provide information that is more meaningful in light of the overall extent to which the customer trades, and are sufficient to provide a basis for the customer to engage in further discussions with its broker-dealer regarding the broker-dealer's order handling practices.

vii. Definitions of "Directed Order" and "Non-Directed Order"

The Commission is adopting revised definitions of the terms "directed order"¹⁴² and "non-directed order"¹⁴³ under Rule 600(b). These terms are used throughout Rule 606. They are referenced in Rule 606(a) and Rule 606(b)(1) and, as discussed *infra*,¹⁴⁴ are referenced in new Rule 606(b)(3). Therefore, these terms are being defined compatibly with Rule 606 as amended, which as adopted does not distinguish between NMS stock orders based on order dollar value.

Specifically, Rule 600(b) prior to these amendments defines the terms directed order and non-directed order in reference to a "customer order," and the term "customer order" includes a \$200,000 dollar value threshold for NMS stock orders that the Commission is not incorporating into Rule 606 as amended. Thus, the Commission is removing the reference to "customer order" from the definitions of "directed order" and "non-directed order" to eliminate the \$200,000 dollar-value threshold for NMS stock orders incorporated into those terms. Accordingly, as amended, the term "directed order" means an order from a customer that the customer specifically instructed the broker-dealer to route to a particular venue for execution, and the term "non-directed order" means any order from a customer other than a directed order.¹⁴⁵ By eliminating the term "customer order" and instead referring to "an order from a customer," these amended definitions do not incorporate the dollar value limitations in the definition of the term "customer order."

Otherwise, however, the amended definitions of "directed order" and

¹⁴² A directed order is a customer order that the customer specifically instructed the broker-dealer to route to a particular venue for execution. See 17 CFR 242.600(b)(19).

¹⁴³ A non-directed order is any customer order other than a directed order. See 17 CFR 242.600(b)(48).

¹⁴⁴ See Section III.A.5.b.

¹⁴⁵ See Rules 600(b)(20) and 600(b)(49).

¹³⁵ See Rule 606(b)(1). Rule 606(b)(1) also requires a broker-dealer to provide the disclosures for orders (whether held or not held) in NMS securities that are option contracts. As explained above (see *supra* note 83), the Commission is not altering Rule 606(b)'s application to orders for NMS securities that are option contracts, and so the adopted amendments to Rule 606(b)(1) continue the rule's prior application to option contract orders.

¹³⁶ See Proposing Release, *supra* note 1, at 49445.

¹³⁷ Conversely, a customer's not held order in NMS stock that has a market value less than \$200,000 will be covered by the Rule 606(b)(3) disclosures whereas, under the Proposal, such an order would have been covered by the Rule 606(b)(1) disclosures (and the Rule 606(a) public disclosures). The Commission believes this is the proper result for the reasons set forth *supra* in Section III.A.1.b.

¹³⁸ See *supra* Section III.A.1.b.iii.

¹³⁹ See *id.*; see also *infra* Section III.B.1.b.

¹⁴⁰ See *infra* Section III.B.1.b.

¹⁴¹ See *infra* Section III.A.1.b.iv.

“non-directed order” are consistent with the pre-existing definitions. While the amended definitions eliminate the previously existing order dollar value limitation in the cross-referenced term “customer order,” they maintain the pre-existing definitions’ exclusion of orders from a broker-dealer. In this regard, the Commission notes that the amended definitions of “directed order” and “non-directed order” continue to incorporate the term “customer,” which is defined in Rule 600(b) as any person that is not a broker-dealer.¹⁴⁶ Thus, the defined terms “directed order” and “non-directed order,” as amended, apply only to orders that are from a person that is not a broker-dealer.

2. Definition of Actionable Indication of Interest

a. Proposal

To further facilitate the updated order handling disclosure regime, the Commission proposed to amend Rule 600 to include a definition of “actionable indication of interest.”¹⁴⁷ Specifically, the Commission proposed that, under proposed Rule 600(b)(1) of Regulation NMS, an actionable IOI be defined as “any indication of interest that explicitly or implicitly conveys all of the following information with respect to any order available at the venue sending the indication of interest: (1) Symbol; (2) side (buy or sell); (3) a price that is equal to or better than the national best bid for buy orders and the national best offer for sell orders; and (4) a size that is at least equal to one round lot.”¹⁴⁸

b. Final Rule and Response to Comments

The Commission is adopting as proposed the definition of actionable indication of interest under Rule 600(b)(1) of Regulation NMS.¹⁴⁹ Accordingly, under final Rule 600(b)(1),

actionable IOI means any indication of interest that explicitly or implicitly conveys all of the following information with respect to any order available at the venue sending the indication of interest: (1) Symbol; (2) side (buy or sell); (3) a price that is equal to or better than the national best bid for buy orders and the national best offer for sell orders; and (4) a size that is at least equal to one round lot.

By defining actionable IOIs in this manner, the Rule 606(b)(3) order handling reporting requirements mandate that a broker-dealer disclose its activity communicating to external liquidity providers for them to send an order to the broker-dealer in response to a not held NMS stock order of a customer of the broker-dealer. The Commission continues to believe that including these disclosures relating to actionable IOI activity in the Rule 606(b)(3) order handling reports would better enable customers to understand and evaluate how broker-dealers handle their orders, in particular with respect to the potential for information leakage stemming from broker-dealers’ use of actionable IOIs. The Commission also continues to believe that the definition of actionable IOI is appropriately designed to capture trading interest that is the functional equivalent to an order or quotation.

Commenters generally supported the creation of a definition of actionable IOI in Rule 600(b), but some commenters expressed concerns about and suggested revisions to the Commission’s proposed definition.¹⁵⁰ One of the main concerns was that it was not sufficiently clear from the Proposal what it means for an IOI to be “actionable.”¹⁵¹ In this regard, some commenters suggested that the proposed definition could be read to capture conditional orders or IOIs that require additional negotiation or “firming up” to be executable by the broker-dealer,¹⁵² and several

commenters asserted that such conditional trading interest is distinguishable from an actionable IOI and therefore should be excluded from the definition of actionable IOI and the disclosures required by Rule 606.¹⁵³

As stated above and in the Proposing Release, for an IOI to be actionable it must convey (explicitly or implicitly) information sufficient to attract immediately executable orders to the venue sending the indication of interest.¹⁵⁴ In addition, Rule 3b–16 defines an order as any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order.¹⁵⁵ When the Commission adopted Rule 3b–16 in connection with the adoption of Regulation ATS, the Commission stated:

Whether or not an indication of interest is ‘firm’ will depend on what actually takes place between the buyer and seller. . . . At a minimum, an indication of interest will be considered firm if it can be executed without further agreement of the person entering the indication. Even if the person must give its subsequent assent to an execution, however, the indication will still be considered firm if this subsequent agreement is always, or almost always, granted so that the agreement is largely a formality. For instance, indications of interest where there is a clear prevailing presumption that a trade will take place at the indicated price, based on understandings or past dealings, will be viewed as orders.¹⁵⁶

The Commission believes that this language is instructive here in light of the Commission’s intention for the definition of actionable IOIs to apply to IOIs that are the functional equivalent of orders or quotations, *i.e.*, firm representations of trading interest. Specifically, the Commission intends that the actionable IOI definition would include, at a minimum, an IOI that represents an order that can be executed against by the IOI recipient without

¹⁴⁶ See 17 CFR 242.600(b)(16).

¹⁴⁷ See proposed Rule 600(b)(1). As the Commission indicated in 2009, an actionable IOI is a privately transmitted message by certain trading centers, such as an ATS or an internalizing broker-dealer, to selected market participants to attract immediately executable order flow to such trading centers, and functions in some respects similarly to a displayed order or a quotation. See Securities Exchange Act Release No. 60997 (November 13, 2009), 74 FR 61208, 61210 (November 23, 2009) (“Regulation of Non-Public Trading Interest Proposing Release”).

¹⁴⁸ See proposed Rule 600(b)(1). See also Proposing Release, *supra* note 1, at 49445–49447 for additional detail on the Commission’s proposal. As noted in the Proposing Release, this definition is based on and substantively similar to the Commission’s description of actionable IOIs in the Regulation of Non-Public Trading Proposing Release in 2009. See Regulation of Non-Public Trading Interest Proposing Release, *supra* note 147.

¹⁴⁹ See Rule 600(b)(1).

¹⁵⁰ See, e.g., Fidelity Letter at 3–4; FIF Letter at 7; Bloomberg Letter at 13–15; SIFMA Letter at 6.

¹⁵¹ See, e.g., FSR Letter at 2, 6–7; Bloomberg Letter at 13–14; FIF Letter at 7; HMA Letter at 10. One of these commenters stated that broker-dealer order routers respond to IOIs but do not send them, and that the inclusion of IOIs in the Proposal appeared out of context with order routing transparency. See Bloomberg Letter at 13. This is not consistent with the Commission’s understanding, which, as noted in the Proposing Release, is that broker-dealers may send an actionable IOI to select external liquidity providers to communicate to send orders to the broker-dealer to trade with the order that is represented by the actionable IOI at the broker-dealer. See Proposing Release, *supra* note 1, at 49453; see also Section III.A.6.a, *infra*.

¹⁵² See FSR Letter at 2, 6–7; Fidelity Letter at 4; Letter from Timothy J. Mahoney, Chief Executive Officer, BIDS Trading L.P., dated October 7, 2016 (“BIDS Letter”).

¹⁵³ See Markit Letter at 4, 12–13; Bloomberg Letter at 14; BIDS Letter; SIFMA Letter at 6; EMSAC Rule 606 Recommendations, *supra* note 16, at 3. One commenter stated that, absent clarification, the Proposing Release’s definition of actionable IOIs would be inconsistent with the Commission’s published understanding of conditional orders in the ATS–N Proposing Release. See BIDS Letter at 4. The clarification, set forth below, of the difference between actionable IOIs versus IOIs or conditional orders that require additional agreement of the broker-dealer responsible for the IOI or conditional order before an execution can take place is consistent with what is stated in the ATS–N Adopting Release. See ATS–N Adopting Release, *supra* note 2, at 38847–38848.

¹⁵⁴ See Proposing Release, *supra* note 1, at 49446.

¹⁵⁵ See 17 CFR 240.3b–16.

¹⁵⁶ See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70850 (December 22, 1998).

further agreement of the broker-dealer that communicated the IOI. Moreover, indications of interest where the agreement of the parties to the terms of a trade is presumed from the facts or circumstances, such as past dealings or a course of conduct between the parties, may also be considered actionable IOIs. Indeed, in the context of dark pools, the Commission has previously noted that IOIs may communicate information explicitly or implicitly, such as through a course of conduct, based on which the recipient of the IOI can reasonably conclude that sending a contra-side marketable order responding to the IOI will result in an execution if the trading interest has not already been executed against or cancelled.¹⁵⁷ The Commission believes that, generally, it would consider an IOI from a broker-dealer to be actionable if it fits this description, *i.e.*, if the IOI recipient can reasonably conclude that sending a contra-side marketable order to the broker-dealer will result in an execution against trading interest represented by the IOI that has not already been executed against or cancelled.

So-called “conditional” orders referenced by several commenters would not, therefore, constitute actionable IOIs if they require additional agreement by the broker-dealer responsible for the conditional order before an execution can occur, unless facts or circumstances suggest that the broker-dealer’s agreement can be presumed. The Commission believes that IOIs that do not enable the IOI recipient to send a marketable order to the IOI sender that is executable against the interest represented by the IOI without further agreement by the IOI sender may not function equivalently to orders or quotations and therefore do not represent the sort of order handling activity that the Rule 606(b)(3) order handling reports are meant to capture.

Moreover, as noted in the Proposal, actionable IOIs have the capacity to communicate information about the existence of a large parent order, and as such their usage, like other components of broker-dealers’ order handling and routing practices, creates the potential for information leakage.¹⁵⁸ The Commission believes that disclosing in the Rule 606(b)(3) order handling reports information regarding a broker-dealer’s use of actionable IOIs could help enable its customers to assess the degree to which the trading interest they route to the broker-dealer is subject to potential information leakage. By

contrast, the Commission does not believe that this same utility would exist if non-actionable IOIs (those that are not executable without further agreement) were to be included in the customer-specific order handling reports, as the Commission does not understand such non-actionable IOIs to present the same risk of information leakage as actionable IOIs.

In addition, the Commission continues to believe that the four elements contained in the definition of actionable IOI (symbol, side, price, and size) are all necessary pieces of information for an external liquidity provider to respond with an order that is immediately executable against trading interest of a customer of the broker-dealer responsible for the IOI. The Commission emphasizes that these pieces of information may be implicitly conveyed, such as via a course of dealing between the IOI sender and the recipient. For example, given that Rule 611 of Regulation NMS generally prevents trading centers from executing orders at prices inferior to the NBBO, if a broker-dealer sends an IOI communicating an interest to buy a specific NMS stock, the IOI recipient reasonably can assume that the associated price is the NBBO or better.¹⁵⁹ Moreover, the IOI recipient may have responded previously with orders to the IOI sender and repeatedly received executions at the NBBO or better with a size of at least one round lot.¹⁶⁰ In this example, the IOI communicated by the broker-dealer would be actionable, with explicit conveyance of the symbol and side elements and implicit conveyance of the price and size elements. Indeed, the Commission understands that IOIs are frequently conveyed with explicit side and symbol terms and implicit price and size terms, and can be executed against by the IOI recipient without further agreement of the IOI sender.

One commenter stated that, for the purpose of routing brokers determining whether to send an order to a non-displayed venue, an IOI should have, at a minimum, a symbol.¹⁶¹ Another commenter stated that, at a minimum, symbol and side (buy or sell) must be included with an IOI in order for it to be an actionable IOI, and that size or price do not need to be explicitly included.¹⁶² While these comments may suggest that an IOI could still be

actionable with less than the four noted elements in the definition, the Commission believes that, without the inclusion of all four elements (symbol, side, price, and size) explicitly or implicitly with the IOI, the IOI recipient could require additional information before executing against the IOI and the IOI therefore may not be actionable. To the extent these comments suggest that one or more of the four noted elements of an actionable IOI may be implicitly conveyed, as noted above, the Commission agrees. One commenter stated that the Commission has captured all the necessary elements for the actionable IOI definition, but that the definitions of two of the elements—quantity and price—should be expanded to include relative measures in addition to absolute measures.¹⁶³ The Commission notes in response that if each of the four elements is communicated—explicitly or implicitly—such that the IOI recipient can respond to the IOI with an order that is executable against trading interest represented by the IOI without further agreement by the IOI sender (taking into account the relevant facts and circumstances, including any course of dealing between the parties), that communication would constitute an actionable IOI under the definition in Rule 600(b)(1).

The Commission does not believe that it is necessary for purposes of the definition of actionable IOI to draw a distinction between IOIs that are communicated manually (such as via the telephone, for example) versus IOIs that are communicated electronically. Some commenters drew such a distinction, and suggested that only IOIs that are communicated and accessible electronically should constitute actionable IOIs under Rule 600(b)(1).¹⁶⁴ The Commission believes that whether an IOI is actionable should not turn on the level of automation involved in the communication of the IOI. Once an IOI is communicated by a broker-dealer to the IOI recipient, regardless of whether the communication is manual (such as via telephone) or electronic, if that IOI recipient can respond to the IOI with an order that is executable against the trading interest represented by the IOI without further agreement by the broker-dealer responsible for the IOI, then the IOI should be considered an actionable IOI under Rule 600(b)(1). An actionable IOI has the potential to leak information as to the existence of an

¹⁵⁷ See Regulation of Non-Public Trading Interest Proposing Release, *supra* note 147, at 61211.

¹⁵⁸ See Proposing Release, *supra* note 1, at 49446.

¹⁵⁹ See Regulation of Non-Public Trading Interest Proposing Release, *supra* note 147, at 61211.

¹⁶⁰ See *id.*

¹⁶¹ See Markit Letter at 15.

¹⁶² See Letter from Elizabeth K. King, General Counsel and Corporate Secretary, NYSE Group, dated October 31, 2016 (“NYSE Letter”) at 2.

¹⁶³ See Capital Group Letter at 3–4.

¹⁶⁴ See Bloomberg Letter at 13–15; FIF Letter at 7; FIF Addendum at 4 n.7; Fidelity Letter at 4; SIFMA Letter at 6.

order regardless of whether the actionable IOI is transmitted electronically or manually. Thus, order handling statistics regarding both electronic and manual actionable IOIs could be valuable to customers in evaluating the order routing practices of their broker-dealers and the degree to which those practices may leak information regarding their not held NMS stock orders.

One commenter urged the Commission to follow the commenter's characterization of how IOIs were described in the Regulation of Non-Public Trading Interest Proposing Release by targeting IOIs sent by venues such as ATSs, and to consider whether other market participants that send IOIs, such as exchanges, should be included within the scope of the rule.¹⁶⁵ The purpose of the Regulation of Non-Public Trading Interest Proposing Release, however, was different from the Commission's purposes here in adopting the definition of actionable IOI for the new customer-specific order handling reports. There, due to the Commission's concern about potentially deleterious effects of dark pools' transmission to selected market participants, and not the public broadly via the consolidated quotation data, of valuable pricing information in the form of actionable IOIs that function similarly to quotations, the Commission proposed to amend the Exchange Act quoting requirements in Rule 602 of Regulation NMS and Rule 301(b)(3) of Regulation ATS to apply expressly to actionable IOIs.¹⁶⁶ Here, by contrast, the Commission's purpose is to require broker-dealers to provide order handling and routing information that is sufficient for their customers to understand the methods their broker-dealers use to carry out their best execution obligations and assess the potential impact of information leakage and conflicts of interest, not to provide public access to comprehensive pricing information or encourage the public display of quotations. The Commission believes that the definition of actionable IOI being adopted today is appropriately tailored to serve the purpose of this rulemaking, and that the concerns it expressed in the Regulation of Non-Public Trading Interest Proposing Release are outside the scope of this rulemaking.

For similar reasons, the Commission is not excluding from the definition of actionable IOI in Rule 600(b)(1) an IOI

for a quantity of NMS stock having a market value of at least \$200,000 that is communicated only to those who are reasonably believed to represent current contra-side trading interest of at least \$200,000, as suggested by one commenter.¹⁶⁷ The Commission likewise is not requiring broker-dealers to disclose in the publicly available reports the percentage of orders that were exposed through so-called "size-discovery IOIs," as suggested by another commenter.¹⁶⁸ These commenters noted that the Regulation of Non-Public Trading Interest Proposing Release proposed to exclude such "size-discovery IOIs" from the rule amendments proposed therein,¹⁶⁹ but the Commission again notes that the purpose of the Commission's actions here is different from what it was in the Regulation of Non-Public Trading Interest Proposing Release. There, the Commission recognized that the benefits of certain size-discovery mechanisms could be undermined if their narrowly tailored IOIs for large size were required to be included in the public quotation data.¹⁷⁰ Here, by contrast, the Commission is not requiring that actionable IOIs be included in public quotation data, and thus the Commission does not believe that the same concern is implicated.

Finally, in response to commenters who requested clarification as to whether rules, regulations, and guidance applicable to quotes or orders would be applicable to actionable IOIs under the final rule,¹⁷¹ the Commission is defining actionable IOIs at this time for purposes of the Rule 606 amendments also being adopted today. The Commission is not expanding the scope of existing rules, regulations, or guidance related to orders or quotations, other than Rule 606 and guidance related thereto, with regard to actionable IOIs.

3. Scope of Broker-Dealer's Obligation Under Rule 606(b)(3)

a. Broker-Dealer Required To Provide Report on Its Order Handling To Customer Placing Order With the Broker-Dealer

i. Proposal

The Commission proposed in Rule 606(b)(3) that every broker-dealer shall, on request of a customer that places, directly or indirectly, an institutional order with the broker-dealer, disclose to such customer a report on its handling

of institutional orders for that customer.¹⁷² The Commission noted in the Proposal that, pursuant to this rule language, a broker-dealer would be required to provide the order handling report to the customer placing the institutional order with the broker-dealer, even if the customer is acting on behalf of others and is not the ultimate beneficiary of any resulting transactions.¹⁷³ Thus, the broker-dealer would not be required to provide the order handling report to the underlying clients of that customer.

The Commission also noted that the proposed report would cover instances where an institutional order is handled either directly by the broker-dealer or indirectly through systems provided by the broker-dealer.¹⁷⁴ By way of example, the Commission stated that an institutional order would have been placed with a broker-dealer if a broker-dealer receives an institutional order directly from a customer and works to execute the order itself, as well as if a broker-dealer receives an institutional order indirectly from a customer, where the customer self-directs its institutional order by entering it into a routing system or execution algorithm provided by the broker-dealer.¹⁷⁵

Further, the Commission did not propose to change the existing definition of customer in Rule 600(b), which states that "customer" means any person that is not a broker-dealer.¹⁷⁶ In utilizing this defined term, proposed Rule 606(b)(3) therefore required a broker-dealer to provide the customer-specific institutional order handling report only to a non-broker-dealer.¹⁷⁷

ii. Final Rule and Response to Comments

Notwithstanding that Rule 606(b)(3) is modified from what was proposed such that the adopted rule covers not held NMS stock orders of any dollar value (subject to the two de minimis exceptions), the person or entity to which the broker-dealer must provide the Rule 606(b)(3) report is the same as under the Proposal. Specifically, under Rule 606(b)(3), every broker-dealer must, on request of a customer that places, directly or indirectly, one or more orders in NMS stock that are submitted on a not held basis with the broker-dealer, disclose to such customer a report on its handling of such orders

¹⁶⁵ See Bloomberg Letter at 13–15; see also Regulation of Non-Public Trading Interest Proposing Release, *supra* note 147.

¹⁶⁶ See Regulation of Non-Public Trading Proposing Release, *supra* note 147, at 61211–12.

¹⁶⁷ See Bloomberg Letter at 14–15.

¹⁶⁸ See NYSE Letter at 1–2.

¹⁶⁹ See Bloomberg Letter at 14; NYSE Letter at 2.

¹⁷⁰ See *id.* at 61213.

¹⁷¹ See Fidelity Letter at 4; SIFMA Letter at 6.

¹⁷² See proposed Rule 606(b)(3).

¹⁷³ See Proposing Release, *supra* note 1, at 49448.

¹⁷⁴ See *id.* at 49447.

¹⁷⁵ See *id.*

¹⁷⁶ See 17 CFR 242.600(b)(16).

¹⁷⁷ See Proposing Release, *supra* note 1, at 49447–48 for additional detail on the Commission's proposal.

for that customer. In other words, the broker-dealer must provide the Rule 606(b)(3) report to the customer that places with the broker-dealer the orders covered by Rule 606(b)(3), even if the customer is acting on behalf of others and is not the ultimate beneficiary of any resulting transactions. In addition, broker-dealers remain excluded from the definition of “customer” in Rule 600(b), and that exclusion is maintained for purposes of Rule 606(b)(3), which cross-references the defined term “customer.” As a result, under Rule 606(b)(3) as adopted, a broker-dealer is required to provide the report only to non-broker-dealers.

For the same reasons as stated in the Proposal, the Commission continues to believe that a broker-dealer should be required to provide the customer-specific order handling report to the customer that places the order with the broker-dealer, even if that customer may be acting on behalf of others and is not the ultimate beneficiary of any resulting transactions, such as when an investment adviser, as the customer of a broker-dealer, places an order with the broker-dealer that represents the trading interest of clients of the investment adviser.¹⁷⁸ Multiple commenters supported this delineation of Rule 606(b)(3)’s scope.¹⁷⁹ In addition, the Rule 606(b)(3) report requirement covers instances where an order is handled either directly by the broker-dealer or indirectly through systems provided by the broker-dealer. The Commission continues to believe that requiring the reports to be provided to the customer that places the order with the broker-dealer—whether the customer is the account holder or an investment adviser or other fiduciary—is appropriate because it would require the broker-dealer to provide detailed information to the person that is responsible for making the routing and execution decisions for such order and for assuring the effectiveness of those functions. Despite one commenter’s assertion that an investment adviser’s underlying client also should be entitled to receive the Rule 606(b)(3) report from the adviser’s broker-dealer,¹⁸⁰ the Commission does not believe it is appropriate to require a broker-dealer to create individualized order handling reports for and make its execution data

available to an end user with whom the broker-dealer may have no direct relationship.

One commenter stated that an account-level report should not be required because accounts often are assigned after the order is entered via an allocation process that is different from the system that handles routing, and thus it would be costly.¹⁸¹ This commenter also stated it would require brokers, when using a third party to generate the reports, to transmit client account numbers, which are more sensitive and confidential than the name of the institutional manager.¹⁸² This commenter also stated, however, that reporting information in the aggregate should prevent any secret routing strategies from being divulged.¹⁸³ In addition, another commenter stated it did not believe that customers will be able to reverse engineer the way a smart order router works or discern any other proprietary information about the broker’s technology or order handling techniques from the proposed disclosure information.¹⁸⁴

Consistent with these comments, the Commission continues to believe that, because the Rule 606(b)(3) customer-specific order handling disclosures will aggregate information to be disclosed to a specific customer across all of the customer’s not held NMS stock orders, the risk that such disclosures would reveal sensitive, proprietary information about broker-dealers’ order handling techniques should be minimal. The customer-level de minimis exception from Rule 606(b)(3) also is relevant in this regard, as it should help ensure that there is a significant level of trading activity reflected in the aggregated information provided to the customer under Rule 606(b)(3), and not information regarding just one or a few orders from which the customer may be able to discern aspects of the broker-dealer’s sensitive or proprietary order handling techniques. A broker-dealer’s sensitivity lies with its methods for determining how, where, and when to route a specific, individual order. By providing information for all of the customer’s orders in the aggregate, the report conceals a broker-dealer’s proprietary determinations with respect to any specific, individual order. Even if the report reflected that the broker-dealer sent a small number of orders to a particular venue, the report would not reveal why the broker-dealer chose that

particular venue, when the broker-dealer routed the orders to that venue, what market signals informed the broker-dealer’s choices as to venue and timing, or what type of routing strategy the broker-dealer utilized. As to one commenter’s assertion that account-level disclosure would require broker-dealers that use third-parties to generate the Rule 606(b)(3) report to disclose sensitive client account numbers to such third-parties, the Commission is not adopting any requirement that the Rule 606(b)(3) disclosures be provided at the client account level, and thus nothing in Rule 606(b)(3) compels a broker-dealer to disclose client account numbers to third-parties.

The Commission further notes that, because it is not altering the broker-dealer exclusion from the definition of customer, and because Rule 606(b)(3) utilizes this defined term, the rule does not require a broker-dealer to report to another broker-dealer. This is consistent with what was proposed and with the order routing disclosure regime that has existed under Rules 606(a) and 606(b)(1).¹⁸⁵

Some commenters argued that the broker-dealer exclusion should be eliminated because a broker-dealer should be required, under Rule 606(b)(3), to report to the customer that places the order with the broker-dealer even if that customer is itself a broker-dealer.¹⁸⁶ Two commenters stated that, absent a modification to the Proposal, the Rule 606 report received by the end-customer of a broker-dealer that utilizes another broker-dealer’s technology for execution would reflect only that the customer’s orders were sent by its broker-dealer to the other executing broker-dealer, and lack the level of detail that is necessary for the customer to assess execution quality.¹⁸⁷ Another commenter suggested that the Rule 606 reports exclude only those orders received from other broker-dealers and foreign banks acting as broker-dealers and routing to U.S. execution venues that were directed by such broker-dealers and foreign banks acting as broker-dealers to a particular execution venue.¹⁸⁸

On the other hand, one commenter asserted that, in a “white-labeling” or leveraged outsourced technology

¹⁷⁸ As discussed *infra* in this section, a broker-dealer is required to report to the customer that places the order with the broker-dealer so long as the customer is not itself a broker-dealer.

¹⁷⁹ See Markit Letter at 16, 18; Bloomberg Letter at 16; Capital Group Letter at 4; FIF Letter at 7–8, 16; EMSAC Rule 606 Recommendations, *supra* note 16, at 3.

¹⁸⁰ See Better Markets Letter at 7–8.

¹⁸¹ See Markit Letter at 16, 19–20.

¹⁸² See *id.*

¹⁸³ See *id.* at 19.

¹⁸⁴ See Capital Group Letter at 5.

¹⁸⁵ The Commission did not propose to modify the definition of “customer” in Rule 600(b)(16), which defines “customer” to mean any person that is not a broker or dealer.” See Rule 600(b)(16).

¹⁸⁶ See Markit Letter at 3 n.6, 18; Dash Letter at 1, 4–5; FIF Letter at 2, 8, 16–17; SIFMA Letter at 1, 3.

¹⁸⁷ See Dash Letter at 5; FIF Letter at 8 n. 9, 16–17.

¹⁸⁸ See Markit Letter at 3 n.6.

arrangement, where a broker that receives an order from an institutional customer outsources another broker's smart order routing or algorithmic trading technology, the broker that received the order should be evaluating the effectiveness of the outsourced technology and should fulfill the obligation of being able to provide clients' reports on request.¹⁸⁹ Another commenter asserted that the Proposal is unclear as to whether a broker-dealer that provides algorithmic trading services would be required to provide an order handling report to a broker-dealer that utilizes those algorithmic trading services in the course of executing orders on behalf of institutional customers.¹⁹⁰

In response to these comments, as an initial matter, it is worth highlighting that Rule 606(b)(3) requires a broker-dealer, upon request of a customer that places not held NMS stocks order with the broker-dealer, to disclose to such customer a report with respect to *its*—*i.e.*, the broker-dealer's—handling of such orders for that customer. As such, Rule 606(b)(3) is designed to require a broker-dealer to disclose the information required by Rule 606(b)(3) to the extent of its involvement in routing and executing its customers' orders. If the broker-dealer exercises discretion with regard to how an order is routed and ultimately executed, such as (but not limited to) by determining particular venue destinations for an order, choosing among different trading algorithms, adjusting or customizing algorithm parameters, or performing other similar tasks involving its own judgment as to how and where to route and execute orders, the broker-dealer is required to provide the information required by Rule 606(b)(3) with regard to the customer's order flow with the broker-dealer as well as the order routing and execution information set forth in subparagraphs (b)(3)(i) through (iv) of the rule. If, by contrast, the broker-dealer simply forwards its customers' orders on to another broker-dealer and that second broker-dealer exercises all discretion in determining where and how to route and execute the orders, then the first broker-dealer is not required to provide disclosures under Rule 606(b)(3) beyond those relevant to its activity in forwarding orders to the executing broker. In either case, the broker-dealer reports the required information under Rule 606(b)(3) with respect to *its* order handling for a customer.

This language from the rule informs the scope of a broker-dealer's obligation in the types of scenarios that commenters raised. As noted by some commenters, broker-dealers sometimes license or outsource technology offerings, such as trading algorithms, from third-parties, including other broker-dealers, to use for routing and executing orders. In these so-called “white-labeling” scenarios, the broker-dealer typically exercises discretion in determining what trading algorithm or other technology offering to utilize on behalf of its customer, as well as how to handle the customer's orders using that technology. For example, the broker-dealer may be able to adjust discretionary parameters that determine the aggressiveness of a particular algorithm,¹⁹¹ otherwise determine where or how an order is routed and executed using the algorithm or other technology, or determine when the algorithm is turned “on” or “off.” In this type of scenario, it is the broker-dealer utilizing the trading algorithm or other technology offering—and not the third-party provider of such algorithm or other technology—that handles the customer's order and that is obligated to provide the information required by Rule 606(b)(3). The broker-dealer's obligation in this scenario extends to the routing and execution of child orders that, for example, the trading algorithm may have placed after being “turned on” by the broker-dealer.¹⁹²

The Commission understands that broker-dealers typically have access or rights to the execution data for trades made using algorithms or other technology that they license or outsource. As such, the Commission believes that most broker-dealers should be well-positioned to provide the Rule 606(b)(3) information to their customers for orders (or child orders thereof) that they routed or executed using a trading algorithm or other type of technology offering. Ultimately, however, when relying on third-party technology in this manner, broker-dealers will need to ensure that they can provide the information required by Rule 606(b)(3), should it be requested by a customer. Further, consistent with the exclusion of customer, broker-dealers are required to report the Rule 606(b)(3) information only to non-broker-dealers.

In another type of arrangement raised by commenters, one broker-dealer, sometimes referred to as an introducing broker-dealer, will route an order on behalf of its customer to another broker-

dealer, sometimes referred to as an executing broker-dealer, and the executing broker-dealer will carry out the further routing and ultimate execution of the order, perhaps utilizing trading algorithms or other technology. In this type of scenario, the executing broker-dealer's customer is the introducing broker-dealer because it is the introducing broker-dealer that places the order with the executing broker-dealer. Since, as discussed above, a broker-dealer is required to report only to the customer that places the order with the broker-dealer, in the introducing-broker-dealer/executing-broker-dealer arrangement, the executing broker-dealer is not required to report the Rule 606(b)(3) information to the introducing broker-dealer's customer. Moreover, Rule 606(b)(3) does not require the executing broker-dealer to report to the introducing broker-dealer in light of the broker-dealer exclusion from the definition of customer.

As noted above, some commenters argued that a different result would be appropriate under the rule; specifically, they argued that broker-dealers should be required to provide the Rule 606(b)(3) reports for broker-dealer orders.¹⁹³ The Commission intends, however, for Rule 606(b)(3) to be focused on the relationship between a customer (that is not a broker-dealer) and its broker-dealer, and the information that the customer receives from its broker-dealer with respect to how the broker-dealer handles the customer's not held NMS stock orders. Rule 606(b)(3) is designed to provide a customer with access to baseline information that would enable the customer to assess the nature and quality of services provided by its broker-dealer with respect to such orders, as many customers may not have the sophistication or leverage necessary to receive adequate information in the absence of a rule. The Commission does not believe that broker-dealer to broker-dealer relationships carry the same level of risk of an imbalance of information or sophistication on one side of the relationship as compared to customer to broker-dealer relationships. Therefore, the Commission has determined not to depart from the current practice under Rule 606 by including broker-dealer orders in Rule 606(b)(3).

For similar reasons, the Commission believes it is appropriate for the Rule 606(b)(3) requirements not to extend to orders handled by exchange-affiliated routing brokers, which are also excluded from Rule 606(b)(3)'s coverage

¹⁸⁹ See Bloomberg Letter at 16.

¹⁹⁰ See STA Letter at 4–5; STA Letter II at 1.

¹⁹¹ See, e.g., Markit Letter at 20; FIF Letter at 6.

¹⁹² See *infra* Section III.A.3.b.

¹⁹³ See *supra* note 186.

by virtue of the broker-dealer exclusion from the definition of customer. Three commenters suggested that requiring the Rule 606(b)(3) disclosures for orders handled by exchange-affiliated routing brokers would provide market participants with a more complete picture as to how their orders are handled.¹⁹⁴ But since only broker-dealers can be members of an exchange, by the time an order reaches an exchange-affiliated routing broker, it first has traveled from the end customer to a broker-dealer, from a broker-dealer to the exchange (or perhaps from an end customer through a broker-dealer's systems via a market access arrangement and onto an exchange), and then from the exchange to the exchange's affiliated routing broker. Like an executing broker-dealer, an exchange-affiliated routing broker has no direct relationship with the customer that sent the order in the first place. Thus, the Commission does not believe that it would be appropriate to require an exchange-affiliated routing broker to provide the Rule 606(b)(3) information to the customer from whom the order originated. As noted above, the Commission's goal is for Rule 606(b)(3) to provide non-broker-dealer customers with access to baseline information that would enable them to assess the discretion exercised by their broker-dealers and the nature and quality of services provided by their broker-dealers with respect to their not held NMS stock orders. The Commission believes that this goal will still be achieved without including orders routed by exchange-affiliated routing brokers.

A broker-dealer is still required to provide the Rule 606(b)(3) report to its customer, upon request, with respect to its handling of orders for that customer (assuming the customer is not a broker-dealer) even if the broker-dealer's handling of the customer's orders amounts mainly to routing them to another broker-dealer (including perhaps one affiliated with an exchange) for further routing. In such a situation, the report is required to include the information regarding the customer's order flow with the introducing broker-dealer required by Rule 606(b)(3), as well as the information on order routing required by subparagraph (b)(3)(i) of the rule, as this information pertains to the introducing broker-dealer's order handling even if that order handling amounts mainly to routing to an executing broker-dealer. But, in this

scenario, Rule 606(b)(3) would not require the broker-dealer to provide the information on order executions required by subparagraphs (b)(3)(ii) through (iv) in its report to its customer. Because Rule 606(b)(3) requires a broker-dealer to provide the required information only with respect to "its" order handling, an introducing broker-dealer's obligation under Rule 606(b)(3) does not extend to the order handling activities of another broker-dealer.

Nevertheless, the Commission believes that competitive forces in the market may enable a customer whose orders are routed by its broker-dealer to another broker-dealer to receive detailed order execution information, such as that required by Rule 606(b)(3)(ii) through (iv), for such orders. Customers could choose not to send not held NMS stock orders to broker-dealers that are unable to provide detailed order execution information, the prospect of which could cause such broker-dealers to request the information from their executing broker-dealers that, in turn, may risk losing broker-dealers as customers unless they provide the information. Even if this type of information sharing does not occur, a customer will still be entitled to receive information from its broker-dealer under Rule 606(b)(3) that illustrates how the broker-dealer is handling the customer's orders. With that information, the customer should be in a better position to determine whether its broker-dealer is adequately serving its investing and trading needs, as well as whether it would be better served by utilizing the services of a broker-dealer that is able to provide the full suite of detailed order handling information set forth in Rule 606(b)(3).

b. Smaller Orders Derived From the Order Submitted to the Broker-Dealer (i.e., Child Orders)

i. Proposal

The Commission proposed that, for purposes of the customer-specific order handling report required under proposed Rule 606(b)(3), the handling of an institutional order would include the handling of all smaller orders derived from the institutional order.¹⁹⁵

ii. Final Rule and Response to Comments

The Commission is adopting this requirement as proposed. Any child orders derived from an order that is covered by Rule 606(b)(3) are also covered by the rule. Accordingly, Rule

606(b)(3) states that, for purposes of the customer-specific order handling report required under the rule, the handling of an NMS stock order submitted by a customer to a broker-dealer on a not held basis includes the handling of all child orders derived from that order.¹⁹⁶

Thus, the broker-dealer is required to include any such child orders in the Rule 606(b)(3) customer-specific order handling report. For example, if a broker-dealer splits a customer's not held NMS stock parent order into several child orders to be executed across different venues, the rule adopted today would require that the broker-dealer provide the required information regarding the execution of those child orders in the customer's Rule 606(b)(3) order handling report.

The Commission believes that such a result is consistent with the views of commenters. No commenter suggested that the Rule 606(b)(3) order handling report should not include child orders that were derived from a customer's parent order. To the contrary, several commenters suggested that it is essential that the broker-dealer order handling disclosures include the handling of all smaller (child) orders derived from the parent order.¹⁹⁷ In addition, several commenters noted that institutional investors often break up orders in a security across several broker-dealers, so that the aggregate may exceed \$200,000 where the individual child orders do not.¹⁹⁸ The Commission believes that the rule adopted today addresses commenters' concerns regarding child orders by requiring the routing of any customer's not held NMS stock order and any child order derived therefrom, regardless of size or monetary value, to be included in the Rule 606(b)(3) order handling report (subject to the two de minimis exceptions) while at the same time achieving the Commission's stated goals.

4. Timing and Frequency Requirements for Customer-Specific Order Handling Report

a. Proposal

Proposed Rule 606(b)(3) required a broker-dealer to provide the customer-specific order handling report to the customer within seven business days of receiving the customer's request, and required that the report contain information on the broker-dealer's

¹⁹⁶ See Rule 606(b)(3).

¹⁹⁷ See, e.g., Capital Group Letter at 4; FSR Letter at 4; SSGA Letter at 1; Citadel Letter at 2; Bloomberg Letter at 11; Dash Letter at 3; HMA Letter at 5–6; FIF Letter at 3–4, 17; FIF Addendum at 2.

¹⁹⁸ See, e.g., Citadel Letter at 2; Bloomberg Letter at 11; Dash Letter at 3.

¹⁹⁴ See SIFMA Letter at 4; Markit Letter at 24; FIF Letter at 2, 8; EMSAC Rule 606 Recommendations, *supra* note 16.

¹⁹⁵ See proposed Rule 606(b)(3). See Proposing Release, *supra* note 1, at 49448 for additional detail on the Commission's proposal.

handling of orders for that customer for the prior six months, broken down by calendar month.¹⁹⁹ To allow time for broker-dealers to develop the ability to produce such reports, the Commission stated that it would not require broker-dealers to produce Rule 606(b)(3) order handling reports containing information to cover months before broker-dealers are required to comply with Rule 606(b)(3), if adopted.²⁰⁰

b. Final Rule and Response to Comments

The Commission is adopting as proposed Rule 606(b)(3)'s requirement that a broker-dealer provide the customer-specific order handling report to the customer within seven business days of receiving the customer's request, and that the report contain information on the broker-dealer's handling of orders for that customer for the prior six months, broken down by calendar month.²⁰¹ The Commission received varied comments supporting certain aspects of the rule as proposed and other commenters suggesting different approaches. These comments and the Commission's responses on various aspects of the rule are discussed below.

Seven Business Days for Broker-Dealer to Respond to Customer Request. Two commenters believed that seven business days is a reasonable amount of time for a broker-dealer to respond to a customer's request to produce a monthly report.²⁰² One of those commenters also posited that, if the reports prove important to clients, they will likely be produced in shorter timeframes due to competitive forces.²⁰³ Another commenter stated that 20 days to respond to a customer data request would be appropriate until generating portions of the Rule 606(b)(3) reports and responding to customer requests is automated, and that upon automation and implementation of the program, the proposed seven days may be a reasonable period of time to respond.²⁰⁴ Another commenter stated that seven business days may not be enough time to respond to a customer request, particularly since broker-dealers do not know how many customers will request the reports, and suggested that the seven-business day limit be removed.²⁰⁵ Another commenter stated that seven

days is not achievable if the customer request is made within the first half of the month because broker-dealers typically do not receive the rebate/fee information from an execution venue until the end of the first or second week of the month, and suggested that customer-level reports should not be required to be ready until the month following receipt of the fee/rebate information.²⁰⁶ One commenter stated that, given that some broker-dealers offer fee pass-through arrangements (known as Cost-Plus), the commenter believed that the capabilities are in the industry to track net execution fee or rebate information.²⁰⁷

The Commission continues to believe, at this juncture, that it is appropriate to require a broker-dealer to provide the Rule 606(b)(3) report to a customer within seven business days of the customer's request. While Rule 606(b)(1) does not set forth a time limit for broker-dealers to respond to a customer's request for a report, the Rule 606(b)(1) disclosures are not as detailed as the disclosures set forth in Rule 606(b)(3). Furthermore, customers that submit not held NMS stock orders face a greater risk of information leakage than customers that submit held NMS stock orders. As a result, the Commission believes that requiring broker-dealers to respond within seven business days is designed to ensure that customers receive the Rule 606(b)(3) disclosures in a manner that is timely enough to enable them to assess the risk of information leakage from how their orders are routed while still providing the broker-dealer with adequate time to prepare the report.

The Commission acknowledges, as noted in the Proposal, that broker-dealers will need to configure their systems to capture the information necessary to produce the Rule 606(b)(3) reports and, therefore, may not have the ability to produce historical reports about the routing of orders and executions that occurred before such systems are updated.²⁰⁸ The Commission also notes that many broker-dealers' systems may already compile some of the order routing statistics required to be included in the Rule 606(b)(3) reports, thus mitigating to a degree the burden incurred by many broker-dealers in updating their systems and processes to be able to provide Rule

606(b)(3) reports to customers within seven business days. Further, the Commission has provided time between the effected date and the compliance date during which broker-dealers will be able to update their systems as necessary. Once such system updates are completed, the Commission expects broker-dealers to be able to generate the Rule 606(b)(3) reports in a largely automated fashion. As such, the Commission believes that the seven business day turnaround time will not be difficult for most broker-dealers to meet, and a longer time period for broker-dealers to respond is not necessary especially in light of the expected high level of automation for generating these reports.

Even though one commenter expressed concern that a seven business day response window would not be achievable because broker-dealers typically do not receive rebate/fee information from execution venues until the end of the first or second week of the following month, the Commission continues to believe that the seven business day timeframe is important in requiring that all customers receive their order handling information in a timeframe that will allow them to act in a timely fashion in response to the information contained in the report. Relatedly, the Commission notes that the six-month period covered by Rule 606(b)(3) is a six calendar month period.²⁰⁹ Because there is no limit on the number of times that a customer may make a request for information under Rule 606(b)(3), the customer could subsequently make another request for information under Rule 606(b)(3) once the broker-dealer has obtained the fee/rebate information for the immediately preceding month.²¹⁰ Therefore, the Commission is not altering the seven business day time period for broker-dealers to respond to a customer request for the Rule 606(b)(3) disclosures.

²⁰⁹ Thus, for example, if a customer requests a Rule 606(b)(3) report during the month of July, the customer would be entitled (subject to the de minimis exceptions) to a report that covers the not held NMS stock orders it submitted to the broker-dealer during January through June, unless the broker-dealer does not yet have fee and rebate information for the month of June at the time of the customer's request, in which case the report would be required to cover the not held NMS stock orders that the customer submitted to the broker-dealer during December of the prior calendar year through May of the current calendar year.

²¹⁰ In this scenario, the broker-dealer would be required to provide a Rule 606(b)(3) report covering the immediately preceding month if the customer's trading activity for the six month period including the immediately preceding month meets the customer-level de minimis threshold.

¹⁹⁹ See proposed Rule 606(b)(3). See Proposing Release, *supra* note 1, at 49447–50 for additional detail on the Commission's proposal.

²⁰⁰ See Proposing Release, *supra* note 1, at 49448.

²⁰¹ See Rule 606(b)(3).

²⁰² See Capital Group Letter at 4; Markit Letter at 17.

²⁰³ See Markit Letter at 17.

²⁰⁴ See Bloomberg Letter at 15.

²⁰⁵ See Fidelity Letter at 4–5.

²⁰⁶ See FIF Letter at 17–18.

²⁰⁷ See HMA Letter at 11.

²⁰⁸ See Proposing Release, *supra* note 1, at 49448. Broker-dealers are required to provide the Rule 606(b)(3) reports for dates going forward from the compliance date of this rulemaking and are not required to provide the reports for dates prior to the compliance date.

Frequency of Responses to Requests for Rule 606(b)(3) Report. Two commenters believed that Rule 606(b)(3) does not need to specify the number of times that a broker-dealer is required to respond to a customer request for a report on order handling.²¹¹ One of these commenters stated that the competitive dynamics of customer service in the free market should control and that, if the frequency of requests becomes a problem, the Commission can address this at a later date.²¹² One commenter stated that broker-dealers should be required to provide the proposed data on a weekly basis if requested by the customer, and that the timeframe for providing aggregated data should be no longer than monthly.²¹³

Proposed Rule 606(b)(3) did not specify the number of times a broker-dealer is required to respond to a customer request for a report on order handling, and the Commission is not adopting any such specification in final Rule 606(b)(3). Consistent with the Commission's guidance in the Proposing Release, Rule 606(b)(3) does not limit the number of times that a customer may place a request for an order handling report and does not preclude a customer from making a standing request to its broker-dealer, whereby the customer would automatically receive a recurring report on a periodic basis without the need to make repeated requests.²¹⁴ Rule 606(b)(3) also does not require the broker-dealer to provide order handling information that is duplicative of information that the broker-dealer previously provided the customer pursuant to a prior request under the rule.²¹⁵ For example, if a broker-dealer provides a report to a customer for the prior six months, and that customer requests an additional report the following month, the broker-dealer would only need to provide a report for the latest month, subject to the customer-level de minimis threshold being met for the six month period that includes the latest month.

Six-Month Period Covered by the Report. One commenter stated that six months is a reasonable timeframe for broker-dealers to make historical data available for the Rule 606(b)(3) report, and suggested that historical data be retained at the broker-dealer for two years to fill any gaps in data collection

from counterparties.²¹⁶ Another commenter suggested that the report cover the previous quarter, not six months.²¹⁷ The Commission continues to believe that it is appropriate to require the Rule 606(b)(3) report to provide order handling data for a six-month period because it would provide customers with historical data to evaluate their broker-dealers' order routing practices to gauge the risk of information leakage and the potential for conflicts of interest. The Commission believes that a six-month period is reasonable to judge the performance of an execution venue, and the time period is long enough to offset any potential market moving event that may distort the data.²¹⁸ In addition, while one commenter requested a record retention period of two years for the Rule 606(b)(3) data, the Commission believes that such a retention period is unwarranted because the purpose of the Rule 606(b)(3) report is to provide customers with baseline information on a current or near-current basis that better enables them to understand how a broker-dealer is exercising discretion when routing their NMS stock orders. The purpose of the Rule 606(b)(3) report is not to enable a historical perspective on how broker-dealers routed orders. Moreover, broker-dealer order routing practices may be altered frequently, in connection with, among other things, an ever-evolving equity market structure, and so how a broker-dealer routed NMS stock orders more than six months prior to a request for a Rule 606(b)(3) report may not be consistent with the broker-dealer's more current routing practices. At the same time, if a Rule 606(b)(3) report is requested by a broker-dealer's customer, the broker-dealer is required to provide all of the information set forth in the rule, as applicable. As noted above, a broker-dealer is required to fulfill the customer's request with the most recent six months-worth of complete order handling information that the broker-dealer has already obtained at the time of the customer's request, subject to the de minimis exception.

Report Data Broken Down by Calendar Month. One commenter stated that broker-dealers should be required to provide the proposed data on a weekly basis if requested by the customer, and that this frequency of data would be most useful to firms, particularly if data is provided in eXtensible Markup Language ("XML")

format.²¹⁹ This commenter also stated that the time frame for providing the data should be no longer than monthly. This commenter asserted that the Commission correctly noted in the Proposal that changes in fee structures at trading centers may affect a broker-dealer's routing decisions and that these fee changes mostly take place at the beginning of the month. According to this commenter, broker-dealers typically adjust mid-month to fee structure changes in order to meet targeted volume tiers that may have changed and having monthly data will enable a customer to monitor for such changes in order routing behavior.²²⁰

The Commission continues to believe that it is appropriate for the data in the Rule 606(b)(3) report to be broken down by calendar month. Consistent with this calendar month breakdown, as noted above, the six month period covered by the Rule 606(b)(3) report is a six calendar month period. Grouping the report data by calendar month should enable customers to assess how changes in fee structures at trading centers, which typically occur on a monthly basis, may affect a broker-dealer's routing decisions. Further, the Commission continues to believe that requiring the report data to be grouped by calendar month will help enable customers to assess how a broker-dealer's order handling practices may change in response to other internal or external factors. Grouping the data by calendar month allows a small aggregation of data, since it is possible that certain trading days may not yield any data points. Therefore, allowing grouping by calendar month may enable customers to evaluate the performance of their broker-dealers based on more meaningful data, and enable customers and broker-dealers to further discuss in a more meaningful manner how orders are routed and executed. The Commission does not believe that the rule should require a finer time period, such as weekly, as suggested by one commenter. The adopted rule does not limit what a customer may request from its broker-dealer, and in certain situations, a customer may request and receive weekly reports from its broker-dealer. The Commission believes that to require by rule a weekly report could increase compliance costs that may not be commensurate with the expected benefits. As such, the Commission does not believe that it is necessary to change the calendar month time period.

Annual Notice of Availability of Rule 606(b)(3) Report. Rule 606(b)(2) requires

²¹¹ See Bloomberg Letter at 16; Markit Letter at 18.

²¹² See Bloomberg Letter at 16.

²¹³ See Capital Group Letter at 5.

²¹⁴ See *id.* at 49448.

²¹⁵ See *id.*

²¹⁶ See Capital Group Letter at 4–5.

²¹⁷ See Markit Letter at 16.

²¹⁸ See Rule 606 Predecessor Adopting Release, *supra* note 7, at 75430 n.81.

²¹⁹ See Capital Group Letter at 5.

²²⁰ See *id.*

broker-dealers to notify customers in writing at least annually of the availability on request of the information specified in Rule 606(b)(1), and the Commission solicited comment as to whether the Commission should include a similar requirement for the new Rule 606(b)(3) disclosures. Four commenters stated that broker-dealers should not be required to provide an annual notice of the availability of the Rule 606(b)(3) report to institutional customers,²²¹ as institutional customers that do not request the report are unlikely to need it.²²² One commenter stated that institutional customers are sophisticated market participants who can best judge the type of information they need.²²³ Accordingly, the Commission is not adopting an annual notification requirement with respect to the Rule 606(b)(3) reports.

Automatic Report to Customers. In the Proposing Release, the Commission noted that it considered an alternative to proposed Rule 606(b)(3) that would not require that customers request customer-specific standardized reports on order handling, but would instead require broker-dealers to provide them to customers automatically even in the absence of a customer request. The Commission also raised the notion of whether broker-dealers should be required to provide an internet portal where customers can view or download the reports.²²⁴

One commenter supported the Commission's proposed approach and stated that some institutional customers may request firm-specific customized reports and may not need the additional information in the order handling report.²²⁵ Another commenter did not believe that the Commission should mandate delivery of the Rule 606(b)(3) order handling reports via internet portal.²²⁶ Another commenter suggested that the process of sending reports to the customer should be automated such that it is emailed to the customer, either with a trade confirmation or on a periodic basis.²²⁷ Two commenters stated that broker-dealers could make customer's data available via the internet for broker-dealers with customer-specific portals.²²⁸ Another commenter stated that customer specific information should be sent periodically to investors,

rather than on an ad hoc user-requested basis.²²⁹

The Commission is adopting as proposed the aspect of Rule 606(b)(3) that requires a broker-dealer to provide the order handling report upon customer request, and is not adopting any requirement regarding automatic provision of the report in the absence of a customer request or via an internet portal. Commenters that did support such automated delivery mechanisms did not provide a persuasive rationale for the Commission at this time to impose the likely cost to broker-dealers of developing such mechanisms. Not all customers may feel the need to request Rule 606(b)(3) reports from their broker-dealer, and as such it would not be a productive use of resources for broker-dealers automatically to provide reports to such customers. Moreover, under the adopted rule, a customer that wishes to receive the report can request it from the customer's broker-dealer. Mandating an automatic push to all customers would not be efficient, and could provide additional costs to broker-dealers. The Commission believes that the adopted rule strikes an appropriate balance between broker-dealers and customers, and does not believe that the rule should require the disclosure of order information when it is not requested by the customer. Likewise, customers that do request Rule 606(b)(3) reports may not desire to receive them via an internet portal, rendering the provision of internet portal access to such customers unnecessary.

5. Format of Customer-Specific Order Handling Reports

a. Breakdown by Order Routing Strategy Category at Each Venue

i. Proposal

The Commission proposed to require that the Rule 606(b)(3) order handling report be categorized by order routing strategy category for institutional orders for each venue.²³⁰ The Commission proposed that order routing strategies be categorized into three general strategy categories for purposes of the Rule 606(b)(3) report: (1) A "passive order routing strategy," which emphasizes the minimization of price impact over the speed of execution of the entire institutional order; (2) a "neutral order routing strategy," which is relatively neutral between the minimization of price impact and speed of execution of the entire order; and (3) an "aggressive order routing strategy," which emphasizes speed of execution of the

entire order over the minimization of price impact.²³¹

ii. Final Rule and Response to Comments

The Commission is not adopting the proposed requirement that the Rule 606(b)(3) disclosures be categorized by order routing strategy for each venue to which the broker-dealer routed the customer's orders. The Commission received a significant amount of comment on this proposed requirement, nearly all of which expressed concern about, and none of which supported, the requirement as proposed. Commenters generally believed that the proposed categorization of the Rule 606(b)(3) order handling information for each venue by passive, neutral, or aggressive routing strategies category would be unnecessarily subjective and complex.²³² Several commenters stated that broker-dealers may categorize similar routing strategies differently, which could limit the utility and comparability of the reports.²³³ Multiple commenters stated that the proposed strategies could be impacted by investor-specific customization.²³⁴ In addition, several commenters stated that the proposed routing strategy categorization would be unworkable in light of the fact that trading algorithms may use multi-layered methodologies that would fit into more than one of the proposed categories,²³⁵ and can be dynamic and adjust to market conditions in real-time.²³⁶ Commenters also asserted, broadly, that the proposed order routing strategy breakdown would be of little to no value to institutional investors.²³⁷

²³¹ See proposed Rule 606(b)(3)(v). See Proposing Release, *supra* note 1, at 49450–52 for additional detail on the Commission's proposal.

²³² See, e.g., SIFMA Letter at 4; FIF Letter at 4, 15–16; FIF Addendum at 3; ICI Letter at 8; MFA Letter at 5; STA Letter at 5, 7–8; STA Letter II at 1; EMSAC Rule 606 Recommendations, *supra* note 16, at 3, 5.

²³³ See, e.g., SIFMA Letter at 4; FIF Letter at 4, 15–16; FIF Addendum at 3; MFA Letter at 5; Dash Letter at 6. One of these commenters agreed with the Commission's proposal to require broker-dealers to document their assignment of institutional orders to a particular routing strategy category, and suggested that the documentation be publicly available. See Dash Letter at 6–7.

²³⁴ See SIFMA Letter at 4; FIF Letter at 4; KCG Letter at 5–6; Markit Letter at 20.

²³⁵ See FIF Letter at 4, 15.

²³⁶ See ICI Letter at 8; Capital Group Letter at 6; FIF Letter at 4, 15; MFA Letter at 5.

²³⁷ See Markit Letter at 20–22; STA Letter at 5; Fidelity Letter at 5, KCG Letter at 6. The Commission also received comment that suggested alternative methods to characterize order routing strategies or proposed breaking down the venue data by categories other than routing strategy, which the Commission is not adopting. See, e.g., MFA Letter at 5; Dash Letter at 6; HMA Letter at

²²¹ See FIF Letter at 17; Fidelity Letter at 5; Bloomberg Letter at 15; Markit Letter at 17.

²²² See Bloomberg Letter at 15; Fidelity Letter at 4.

²²³ See Fidelity Letter at 4.

²²⁴ See Proposing Release, at 49501–02.

²²⁵ See Fidelity Letter at 4.

²²⁶ See Markit Letter at 18.

²²⁷ See Kohen Letter.

²²⁸ See Capital Group Letter at 4; FIF Letter at 18.

²²⁹ See HMA Letter at 8–10.

²³⁰ See proposed Rule 606(b)(3).

The Commission acknowledged in the Proposing Release that the proposed order routing strategy categorization had limitations similar to many of those raised by commenters, including the potential for inconsistency in how broker-dealers categorize an order routing strategy and reduced comparability of order handling reports across broker-dealers, mixed routing strategies that could reasonably fit into more than one category, and customers that provide specific or market condition-dependent order handling instructions to their broker-dealers that affect how a broker-dealer handles an institutional order.²³⁸ The Commission preliminarily believed that such limitations would occur mainly at the margins, and that grouping order routing strategies into the three proposed categories would still allow for meaningful comparison of order handling practices across broker-dealers, and would allow customers to better evaluate a broker-dealer's order handling practices for orders that are handled using similar strategies.²³⁹ In addition, a breakdown by routing strategy within each venue category was suggested by a group of commenters who submitted to the Commission, in advance of the Proposal, a proposed template for the customer-specific institutional order handling report.²⁴⁰

The comments received on this topic indicate, however, that interested market participants widely believe that the proposed order routing strategy categorization would not provide a sufficient benefit that justifies adopting the categorization notwithstanding its limitations. Commenters appear to believe that these limitations are more pervasive and potentially more deleterious to the quality and usefulness of the Rule 606(b)(3) order handling reports than the Commission preliminarily believed. Indeed, the Commission acknowledges that several commenters believed that the proposed order routing strategy categorization would not provide information to customers that is useful for assessing their broker-dealers' order handling

performance and, in fact, could impair the utility and comparability of the Rule 606(b)(3) order handling reports. Accordingly, the Commission is persuaded not to include in final Rule 606(b)(3) the proposed order routing strategy categorization and therefore has not included proposed subparagraph (b)(3)(v) in the adopted rule.²⁴¹ Final Rule 606(b)(3) requires that the customer-specific order handling report categorize the data specified in subparagraphs (b)(3)(i) through (iv) for each venue to which the broker-dealer routed orders covered by the rule for the customer, without further categorization within each venue category.

As discussed *infra*,²⁴² the Commission believes that the order handling data points specified in subparagraphs (b)(3)(i) through (iv) of the rule, separated according to each venue to which the broker-dealer routed orders for the customer, will provide the customer with sufficient information to evaluate its broker-dealer's routing performance and compare it to that of other broker-dealers. This data would also allow a customer to ascertain at a high level what type of routing strategies a broker-dealer may have utilized for the customer's not held NMS stock order flow. For example, as discussed *infra*,²⁴³ subparagraphs (b)(3)(iii) and (iv) of Rule 606(b) require broker-dealers to disclose specific information regarding orders that provided liquidity and orders that removed liquidity, respectively. Orders that provided liquidity may reasonably be associated with routing strategies that operate more passively, while orders that remove liquidity may be associated with routing strategies that operate more aggressively. Even if such associations cannot be made reliably, however, the Commission believes that Rule 606(b)(3) is more likely to provide appropriate and useful order handling information, and information that is more uniform across broker-dealers and therefore more likely to facilitate comparisons across broker-dealers, by requiring that the information specified in subparagraphs

(b)(3)(i) through (iv) be separated for each venue to which the broker-dealer routed orders for the customer without further categorization within each venue category. The requirements of Rule 606(b)(3) provide a standardized baseline of customer-specific order handling disclosures, and customers remain free to negotiate for additional disclosures or categorizations, such as categorizations by routing strategy, with their broker-dealers if they so desire.

b. Segregation of Directed Orders and Non-Directed Orders

i. Proposal

The Commission did not propose to require that the Rule 606(b)(3) customer-specific order handling report differentiate between orders that the customer directed the broker-dealer to route to a particular venue versus orders that the customer did not so direct.

ii. Final Rule and Response to Comments

Several commenters suggested that directed orders and non-directed orders be segregated in the Rule 606(b)(3) order handling reports. As noted above, several commenters asserted that the disclosures in the Rule 606(b)(3) reports would be most useful to customers if they are focused on orders for which the broker-dealer exercised discretion in handling.²⁴⁴ In addition, commenters suggested that directed orders be clearly segregated in the reports from orders that were routed according to the broker-dealer's default routing behavior, otherwise the broker-dealer's normal routing behavior could be misrepresented.²⁴⁵ One commenter requested that directed orders be included, but as a separate category, in Rule 606 reports in order to expand the universe of covered orders.²⁴⁶

The Commission is modifying Rule 606(b)(3) to require that the customer-specific order handling report for not held NMS stock orders be divided into separate sections for the customer's directed orders and non-directed orders, with each section containing the disclosures regarding the customer's order flow with the broker-dealer specified in Rule 606(b)(3), as well as the disclosures for each venue to which the broker-dealer routed orders specified in Rules 606(b)(3)(i)–(iv). The two types of orders are fundamentally different in that, with directed orders,

10; HMA Letter II at 4; Better Markets Letter at 5; SIFMA Letter at 4–5; FIF Letter at 4; FIF Addendum at 3; ICI Letter at 8.

²³⁸ See Proposing Release, *supra* note 1, at 49451.

²³⁹ See *id.*

²⁴⁰ See Letter to Mary Jo White, Chair, Commission, from Dorothy M. Donohue, Deputy General Counsel, Investment Company Institute, Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, and Randy Snook, Executive Vice President, Securities Industry and Financial Markets Association, dated October 23, 2014 ("Associations Letter"), available at <http://www.sec.gov/comments/s7-02-10/s70210-428.pdf>.

²⁴¹ The Commission has not identified an appropriate alternative. The Commission believes that the commenters' suggestions such as categorizations based on "scheduled" versus "non-scheduled" distinctions, broker-dealers' intent, order types, or the state of the market, would all face similar issues as the originally proposed categorization because, as expressed in the comment letters, order routing strategies are difficult to place into well-defined categories due to the complex nature of today's order execution algorithms and smart order routing systems. The Commission believes that requiring categorization of order routing strategies could lead to inaccurate and potentially misleading disclosures.

²⁴² See *infra* Section III.A.6.

²⁴³ See *id.*

²⁴⁴ See *supra* Section III.A.1.b.ii. See also Bloomberg Letter at; Markit Letter at 8; STA Letter at 6.

²⁴⁵ See FIF Letter at 5; Better Markets Letter at 5–6.

²⁴⁶ See HMA Letter at 3.

the customer directs the broker-dealer to route its orders to a particular venue, whereas the broker-dealer exercises discretion in determining where to route and execute the customer's non-directed orders. Segregating directed not held orders from non-directed not held orders in the customer-specific report would provide a customer with one report that reflects all of its not held NMS stock orders handled by the broker-dealer while separately providing disclosures for orders for which the broker-dealer exercises venue routing discretion.

By providing the order handling information separately for non-directed not held orders, the Rule 606(b)(3) report will provide a customer with a more precise reflection of how and where its broker-dealer is routing the customer's not held NMS stock orders pursuant to the discretion afforded to the broker-dealer. A primary utility of the Rule 606(b)(3) reports is to enable customers to better understand how their broker-dealers exercise discretion in handling their not held orders, and this will be more easily achieved if the reported disclosures for directed and non-directed orders are separate. Otherwise, with directed not held orders and non-directed not held orders commingled in the report, a customer may not be able to accurately differentiate routing behavior for which its broker-dealer exercised discretion in determining where to route an order from routing behavior where the customer itself directed the routing destination. Separating the Rule 606(b)(3) order handling disclosures for non-directed not held orders from those for directed not held orders should help customers evaluate their broker-dealers order handling performance and how their broker-dealers are achieving best execution for their non-directed not held orders while managing the potential impact of information leakage and conflicts of interest.

In addition, the Commission believes that customers will benefit from being able to analyze Rule 606(b)(3) routing disclosures that are specific to their directed not held orders for NMS stock. As discussed below, the Rule 606(b)(3) reports require the broker-dealer to disclose, among other things, information on order execution.²⁴⁷ This information would be relevant to a customer assessing its broker-dealer's execution of its directed not held orders, including a customer interested in validating that its broker-dealer is routing its directed not held orders

consistent with the customer's instructions.

c. XML Format and Standardization

i. Proposal

The Commission proposed to require that the customer-specific order handling report required under proposed Rule 606(b)(3) be made available using an XML schema and associated PDF renderer published on the Commission's website.²⁴⁸ To provide a standardized presentation for the report, the Commission also proposed a chart form for the report's required disclosures of information regarding orders that a broker-dealer executes internally or routes to other venues.²⁴⁹ Specifically, the Commission proposed to require that each report contain rows that would be categorized by venue and by order routing strategy category for each venue,²⁵⁰ with certain columns of information for each of the required rows.²⁵¹ Thus, as proposed, each report would have been formatted so that a customer would be readily able to observe its order activity at a particular venue, as further subdivided by order routing strategy category for that venue.²⁵²

The Commission also proposed new format requirements for the existing customer-specific order handling disclosures in Rule 606(b)(1). Specifically, the Commission proposed to require that the customer-specific order routing report required by Rule 606(b)(1) be made available using an XML schema and associated PDF

renderer published on the Commission's website.²⁵³

ii. Final Rule and Response to Comments

The Commission is adopting as proposed the requirement that the customer-specific order handling report required under Rule 606(b)(3) be made available using an XML schema and associated PDF renderer published on the Commission's website.²⁵⁴

The Commission received several comments on the proposed reporting format,²⁵⁵ with a number of commenters supporting a machine-readable or standardized format²⁵⁶ or XML in particular,²⁵⁷ and other commenters criticizing the proposed use of XML and a PDF renderer and suggesting different formats such as JavaScript Object Notation ("JSON"), comma-separated values ("CSV"), spreadsheet, or flat text.²⁵⁸

The Commission believes that while XML predates JSON as a standard, XML has proven to be a flexible standard that continues to be incorporated into common desktop applications and is the basis for a variety of financial reporting languages in a way that JSON is not. Moreover, if the Commission did not specify a particular format and instead left it to the discretion of the filer, users of the data would lose their ability to compare the data easily and easily ensure their consistency between filers. XML's Schema is a widely used, stable metadata standard which is better suited for validation than JSON. Validations help ensure data consistency and comparability, which enhances overall data quality for both broker-dealers and customers. Market participants have the necessary tools and experience with analyzing a variety of financial data in the XML format. The use of XML has been adopted in a number of recent Commission rulemakings²⁵⁹ and the

²⁴⁸ See proposed Rule 606(b)(3). The Commission's schema is a set of custom XML tags and XML restrictions designed by the Commission to reflect the proposed disclosures in Rule 606. XML enables data to be defined, or "tagged," using standard definitions. The tags establish a consistent structure of identity and context. This consistent structure can be automatically recognized and processed by a variety of software applications such as databases, financial reporting systems, and spreadsheets, and then made immediately available to the end-user to search, aggregate, compare, and analyze. In addition, the XML schema could be easily updated to reflect any changes to the open standard. XML and PDF are "open standards," which is a term that is generally applied to technological specifications that are widely available to the public, royalty-free, at no cost.

²⁴⁹ See Proposing Release, *supra* note 1, at 49450. The Commission also noted that, for purposes of the Rule 606(b)(3) order handling report, a venue would be any trading center to which an order is routed or where an order is executed. See Rule 600(b)(78); Proposing Release, *supra* note 1, at 49450.

²⁵⁰ See proposed Rule 606(b)(3); *see also* Proposing Release, *supra* note 1, at 49450.

²⁵¹ See proposed Rule 606(b)(3)(i) through (iv); *see also* Proposing Release, *supra* note 1, at 49450.

²⁵² See Proposing Release, *supra* note 1, at 49450.

²⁵³ See proposed Rule 606(b)(1). See Proposing Release, *supra* note 1, at 49448–51 for additional detail on the Commission's proposal.

²⁵⁴ See Rule 606(b)(3).

²⁵⁵ See Capital Group Letter at 4; Kohen Letter; HMA Letter at 12; Better Markets Letter at 2; FIF Letter at 17; Markit Letter at 17; CFA Letter at 11; FIA Letter at 2; Thomson Reuters Letter at 2.

²⁵⁶ See, e.g., HMA Letter at 12; Markit Letter at 17.

²⁵⁷ See, e.g., Capital Group Letter at 4; Better Markets Letter at 2; FIF Letter at 17; FIA Letter at 2.

²⁵⁸ See HMA Letter at 12; Markit Letter at 17; Kohen Letter.

²⁵⁹ See, e.g., Securities Exchange Act Release Nos. 79095, 81 FR 81870 (November 18, 2016) (adopting Investment Company Reporting Modernization); 74246, 80 FR 14437 (March 19, 2015) (adopting Security-Based Swap Data Repository Registration, Duties, and Core Principles); 72982 (September 4,

²⁴⁷ See *infra* Section III.A.6.

Proposal to use an XML format here was supported by a number of commenters.²⁶⁰

As for the suggestions to adopt a CSV, spreadsheet file, or flat-text file format, the Commission does not believe that these formats would be as suitable as XML, since the hierarchical nature of the disclosures required by the amendments being adopted today would require more than a single set of uniformly structured rows, and these formats would not support representing such disclosures easily. Moreover, neither of those formats can incorporate robust validations to address issues such as completeness, required relationships, and correct formatting. If used, a CSV, spreadsheet, or flat text file format would likely have data quality issues of consistency and comparability that would make the data less usable and require repeated corrections by the broker-dealers. Accordingly, the Commission is adopting as proposed the requirement that the customer-specific order handling report be made available using an XML schema to be published on the Commission's website.

While one commenter criticized the use of the PDF renderer, that commenter criticized its use because PDF files cannot be processed and analyzed.²⁶¹ The Commission notes, however, that the rule, as amended, requires that the data be provided "using the most recent versions of the XML schema and the associated PDF renderer" (emphasis added). The PDF file and underlying data in an XML format both will be required. The requirement to use the Commission's XML schema is designed to ensure that the data is provided in an XML format that is structured and machine-readable, so that the data can be more easily processed and analyzed. As a result, all data that would appear in a PDF file would be required to have a corresponding file provided in XML that has been used to generate the PDF file using the renderer. The Commission received no other comments opposing the Proposal to require that the reports be provided in a human-readable format through the use of a PDF renderer, and one commenter supported requiring a human-readable format.²⁶² The Commission continues to believe that the reports should be provided in a human-readable format for those customers that prefer only to review

individual reports and not necessarily aggregate or conduct large-scale data analysis on the data. The Commission believes that by requiring use of the associated PDF renderer published on the Commission's website, the XML data would be instantly presentable in a human-readable PDF format and consistently presented across reports. Accordingly, the Commission is adopting as proposed the requirements that the customer-specific order handling report be made available using an XML schema and associated PDF renderer published on the Commission's website.

One commenter suggested that the Commission should add headers to rows and columns in the customer-specific report that explains what each category of information means,²⁶³ and another commenter stated that the fields in the report should be explicitly defined.²⁶⁴ For purposes here, the Commission assumes that the latter comment pertains to defining the terms used in Rule 606(b)(3)(i) through (iv). No commenters stated that any of the undefined terms in proposed Rule 606(b)(3)(i) through (iv) were unclear or inconsistent or would otherwise impede comparability, and the Commission believes that adding headers and definitions may result in unnecessary confusion and complexity. Accordingly, the Commission is not adopting definitional headers for the customer-specific reports and is not adopting definitions for the terms used in proposed Rule 606(b)(3)(i) through (iv). The Commission is adopting as proposed the chart form for the required disclosures set forth in Rule 606(b)(3)(i) through (iv).²⁶⁵

The Commission also is adopting as proposed the requirement that the customer-specific order handling report required under Rule 606(b)(1) be made available using an XML schema and associated PDF renderer published on the Commission's website.²⁶⁶ The Commission believes that providing the customer-specific Rule 606(b)(1) reports in the proposed XML/PDF format will promote the consistency and comparability of the reports. The Commission received two comments specifically questioning the need for providing such reports in the proposed XML/PDF format, stating that customers rarely request these reports, and stating their view that the cost of implementing the proposed format would outweigh

the benefits.²⁶⁷ As discussed above, the Commission is amending the categories of orders to which the existing disclosure requirements of Rule 606(b)(1) apply to include orders in NMS stock that are submitted on a not held basis and for which the broker-dealer is not required to provide the customer a report under Rule 606(b)(3).²⁶⁸ The Commission believes that customers that submit orders on a not held basis that are not entitled to receive the disclosures required by Rule 606(b)(3) may still analyze and compare the data they receive under Rule 606(b)(1) and engage in informed discussions with their broker-dealers about the broker-dealer's order handling practices. The use of the XML/PDF format will enable those customers to more easily analyze and compare the individualized data provided.

6. Rule 606(b)(3) Report Content

a. Information on the Customer's Order Flow With the Reporting Broker-Dealer i. Proposal

The Commission proposed that the Rule 606(b)(3) order handling report include information on the order flow sent by the customer to the broker-dealer. Specifically, the Commission proposed to require disclosure of: (1) Total number of shares of orders sent to the broker-dealer by the customer during the reporting period; (2) total number of shares executed by the broker-dealer as principal for its own account; (3) total number of orders exposed by the broker-dealer through an actionable IOI; and (4) venue or venues to which orders were exposed by the broker-dealer through an actionable IOI.²⁶⁹

ii. Final Rule and Response to Comments

The Commission is adopting, with certain modifications, the requirement that the Rule 606(b)(3) order handling report include information on the customer's not held NMS stock order flow with the broker-dealer. The Commission believes that this information would be useful for customers to evaluate their not held order flow with a particular broker-dealer during the reporting period, the broker-dealer's methods for achieving best execution for such order flow, and the potential for conflicts of interests and information leakage associated with

2014), 79 FR 57183 (September 24, 2014) (adopting Asset-Backed Securities Disclosure and Registration).

²⁶⁰ See, e.g., Capital Group Letter at 4; Better Markets Letter at 2; FIF Letter at 17; CFA Letter at 11.

²⁶¹ See Kohen Letter.

²⁶² See Markit Letter at 28.

²⁶³ See CFA Letter at 10–11.

²⁶⁴ See FIF Letter at 17.

²⁶⁵ See Rule 606(b)(3).

²⁶⁶ See Rule 606(b)(1).

²⁶⁷ See Thomson Reuters Letter at 2; FIF Letter at 9, 12.

²⁶⁸ See *supra* Section III.A.1.b.vi.

²⁶⁹ See proposed Rule 606(b)(3). See *Proposing Release*, *supra* note 1, at 49452–54 for additional detail on the Commission's proposal.

such methods. Specifically, the Commission is adopting as proposed the requirement that the Rule 606(b)(3) report disclose the total number of shares of not held NMS stock orders sent to the broker-dealer by the customer during the reporting period, as well as the requirement that the Rule 606(b)(3) report disclose the total number of shares executed by the broker-dealer as principal for its own account.²⁷⁰ One commenter expressed support for these requirements.²⁷¹ The Commission continues to believe that the information would be useful to customers in understanding how much of their not held order flow was handled by a particular broker-dealer during the reporting period, which should help customers make comparisons across broker-dealers, as well as how often a particular broker-dealer trades against the customers' not held orders, which is relevant information to customers assessing their broker-dealers' compliance with best execution obligations and potential conflicts of interest that their broker-dealers face when trading as principal.

The Commission also is adopting the requirement that the Rule 606(b)(3) report disclose the total number of not held NMS stock orders exposed by the broker-dealer through actionable IOIs. One commenter expressed support for this requirement.²⁷² The Commission continues to believe that identifying the total number of not held NMS stock orders exposed by a broker-dealer through actionable IOIs should give customers a more complete view of how their broker-dealers handle their not held orders and allow them to better evaluate how their broker-dealer manages information leakage.

The Commission is adopting, with modifications discussed below, the requirement that broker-dealers disclose the venue(s) to which not held NMS stock orders were exposed by the broker-dealer through an actionable IOI. The Commission continues to believe that disclosure of the specific venue(s) to which a broker-dealer exposed such an order by an actionable IOI would be useful for the customer to further assess the extent, if any, of information leakage of their not held orders and potential conflicts of interest facing their broker-dealers. Specifically, the Commission believes that such information will enable customers to assess whether their broker-dealers are exposing their not held orders to select market participants with which the broker-dealer has

affiliations or business relationships, or from which the broker-dealer receives other incentives. In addition, the Commission believes that disclosure of this information will provide the customer with a more complete understanding of the broker-dealer's order handling activities for purposes of assessing the broker-dealer's execution quality generally.

Commenters generally supported requiring a broker-dealer to identify the venue(s) that were sent actionable IOIs.²⁷³ One commenter expressed broad support for requiring a broker-dealer to identify for customers the total number of orders exposed, and the venue(s) to which orders were exposed, through actionable IOIs.²⁷⁴ This commenter also stated that the venue information is necessary for an institution to evaluate the exposure of its orders through actionable IOIs for information leakage and conflicts of interest.²⁷⁵

Some commenters suggested that the Commission should clarify that the reference in proposed Rule 606(b)(3) to the venue(s) to which not held NMS stock orders were exposed by the broker-dealer through an actionable IOI does not include IOIs that a broker-dealer may send to its institutional customers.²⁷⁶ They stated that including broker-dealers' institutional customers as "venues" under the rule would be problematic from a competitive perspective, as broker-dealers would be required to disclose their customer lists, and many customers likely would not want their identities to be disclosed.²⁷⁷ Some of these commenters suggested that, to effectuate the suggested clarification, the Commission should require disclosure of actionable IOI information only with respect to actionable IOIs sent to "market centers" as defined in Rule 600(b)(38), which would not include broker-dealers' customers.²⁷⁸

The Commission's reference to "venues" for purposes of Rule 606(b)(3) is meant to refer to external liquidity providers to which the broker-dealer may send actionable IOIs. To provide the clarity requested by commenters, the Commission intends in this context for

these external liquidity providers generally to include market participants that operate a business of providing liquidity by buying and selling securities for their own account and seek to profit from the spread between such trades, and that may reasonably be assumed by a broker-dealer to be willing to take the opposite side of a trade in connection with that business. The Commission believes that this category of market participants likely would include market centers as defined in Rule 600(b)(38), but may not be limited to such market centers. For example, as noted above, for purposes of Rule 606(b)(3), the Commission believes that the venues referenced by Rule 606(b)(3) generally would include an external liquidity provider that trades proprietarily. Rule 600(b)(38) defines market centers to include OTC market makers, among other things. In this context, an external liquidity provider that trades proprietarily, and to which a broker-dealer sends an actionable IOI, may be an OTC market maker and thus a market center under Rule 600(b)(38). But even if such an external liquidity provider is not an OTC market maker and does not qualify as a market center under Rule 600(b)(38), the Commission generally would consider a venue to be covered by Rule 606(b)(3) if it operates a business of providing liquidity by buying and selling securities for its own account and seeks to profit from the spread from such trades, and may reasonably be assumed by a broker-dealer to be willing to take the opposite side of a trade in connection with that business.

The Commission has considered commenters' concerns regarding the potential disclosure of customer identities if customers to which broker-dealers send actionable IOIs are "venues" under the rule. The Commission believes that it is appropriate to protect the confidentiality of broker-dealer customer information, which can be proprietary. At the same time, the Commission believes that it is important for a customer to receive detailed, standardized disclosures from its broker-dealer that enable the customer to better evaluate the broker-dealer's handling of its not held NMS stock orders. If a broker-dealer exposes a customer's not held NMS stock order to one or more of its other customers via an actionable IOI, the customer should be entitled to that information as it may inform its assessment of its broker-dealer's performance in handling its orders. Accordingly, the Commission is adopting a modification to Rule

²⁷⁰ See Rule 606(b)(3).

²⁷¹ See Markit Letter at 22.

²⁷² See *id.* at 23.

²⁷³ See HMA Letter at 10; NYSE Letter at 1–2; Markit Letter at 4, 11–12; FIF Letter at 7; Fidelity Letter at 4; STA Letter II at 3.

²⁷⁴ See NYSE Letter at 1.

²⁷⁵ See *id.* at 2.

²⁷⁶ See Markit Letter at 4, 11–12; FIF Letter at 7; Fidelity Letter at 4; STA Letter II at 3.

²⁷⁷ See Market Letter at 12; FIF Letter at 7; Fidelity Letter at 4; STA Letter II at 3.

²⁷⁸ 17 CFR 242.600(b)(38). See FIF Letter at 7; FIF Addendum at 4 n.7; Fidelity Letter at 4; STA Letter II at 3.

606(b)(3) that requires broker-dealers to disclose the fact that actionable IOIs were sent to other customers, but not the identity of such customers. The Commission believes that this approach strikes an appropriate balance between protecting the identities of broker-dealers' customers and sufficient and meaningful disclosure to customers of the venues to which broker-dealers expose their not held NMS stock orders through actionable IOIs. Thus, in pertinent part, final Rule 606(b)(3) requires that the broker-dealer's customer-specific order handling report include the venue(s) to which not held NMS stock orders were exposed by the broker-dealer through an actionable IOI provided that, where applicable, a broker-dealer must disclose that it exposed a customer's order through an actionable IOI to other customers but need not disclose the identity of such customers.²⁷⁹ In other words, where a broker-dealer exposes a customer's not held NMS stock order through an actionable IOI to a venue that is a person or entity that may place an order, such as another of the broker-dealer's customers, the broker-dealer's disclosure in the Rule 606(b)(3) report with respect to this exposure may be aggregated and anonymized, and simply state that the customer's order was exposed to other customers of the broker-dealer via an actionable IOI.

One commenter suggested that IOIs should be reported separately from orders.²⁸⁰ This commenter stated that the execution quality and routing characteristics of IOIs are fundamentally different from normal parent and child orders, and must be reported separately for investors to properly analyze how orders are being handled; otherwise, according to this commenter, the IOIs could generate potentially misleading information.²⁸¹ Consistent with this comment and what was proposed, actionable IOIs are required to be reported separately under Rule 606(b)(3). Specifically, with respect to the order flow sent by the customer to the broker-dealer, Rule 606(b)(3) requires disclosure of, among other things: The total number of not held NMS stock orders exposed by the broker-dealer through an actionable IOI and the venue or venues to which such orders were exposed by the broker-dealer through an actionable IOI. These are the only disclosures for actionable IOIs under Rule 606(b)(3), and each such disclosure must be set forth separately in the Rule 606(b)(3) report.

The other Rule 606(b)(3) disclosures pertain to customers' not held NMS stock orders (and any child orders derived therefrom). They are distinct from the actionable IOI disclosures, and they generally should not include actionable IOIs in the reported information.

Finally, one commenter stated that Rule 606 should require disclosure of routing statistics in response to IOIs received by smart order routers.²⁸² According to this commenter, many smart order routers accept IOIs and use them to make routing decisions, while few smart order routers send IOIs. This commenter suggested that the amendments to Rule 606 should require disclosure of routing statistics in response to IOIs received by SORs including the fill rates on orders sent to external liquidity providers or other venues, categorized by the receipt of a contra-side IOI or not.²⁸³

As the commenter acknowledged, Rule 606(b)(3) focuses on requiring the disclosure of IOIs sent by routing broker-dealers on behalf of orders received from their customers, not of IOIs received by broker-dealers.²⁸⁴ The Commission, at this time, intends to maintain the focus of the rule's disclosure requirement for actionable IOIs on IOIs sent by the broker-dealer. The required disclosures are intended to be a baseline from which customers can, if they so choose, negotiate with their broker-dealers for further data. The Commission believes that such a baseline is provided, with respect to actionable IOIs, through requiring disclosure of the actionable IOIs sent by a broker-dealer on behalf of an order received from its customer. The Commission also believes that this information would provide an adequate basis for customers to assess the extent, if any, of information leakage of their orders and potential conflicts of interest facing their broker-dealers, as well as enable such customers to assess whether their broker-dealers are exposing their orders to select market participants with which the broker-dealer has affiliations or business relationships, or from which the broker-dealer receives other incentives. The Commission does not believe, at this juncture, that also including disclosures related to IOIs received by broker-dealers would provide significantly more useful information to customers in making those assessments with respect to their broker-dealers.

Accordingly, Rule 606(b)(3) requires, with respect to the not held NMS stock order flow sent by the customer to the broker-dealer, the total number of shares of orders sent to the broker-dealer by the customer during the relevant period; the total number of shares executed by the broker-dealer as principal for its own account; the total number of orders exposed by the broker-dealer through an actionable indication of interest; and the venue or venues to which orders were exposed by the broker-dealer through an actionable indication of interest, provided that the identity of such venue or venues may be anonymized if the venue is a person or entity that may place an order with the broker-dealer.²⁸⁵

b. Information For Each Venue to Which the Broker-Dealer Routed Orders For the Customer

i. Proposal

The Commission proposed that the customer-specific order handling report required under proposed Rule 606(b)(3) include specific columns of information for each venue to which the broker-dealer routed orders for the customer, in the aggregate and broken down by passive, medium, and aggressive order routing strategies.²⁸⁶ The proposed rule identified four categories of such information: Information on order routing, information on order execution, information on orders that provided liquidity, and information on orders that removed liquidity.²⁸⁷

Information on Order Routing. With respect to information on order routing, the Commission proposed to require, within each venue and order routing strategy category, disclosure of: (1) Total shares routed; (2) total shares routed marked immediate or cancel;²⁸⁸ (3) total shares routed that were further routable; and (4) average order size routed.²⁸⁹

Information on Order Execution. With respect to information on order execution, the Commission proposed to require disclosure of: (1) Total shares executed; (2) fill rate;²⁹⁰ (3) average fill size;²⁹¹ (4) average net execution fee or

²⁸⁵ See Rule 606(b)(3).

²⁸⁶ See proposed Rule 606(b)(3). As discussed above, the Commission is not adopting the proposed order routing strategy categorization. See *supra* Section III.A.5.a.

²⁸⁷ See proposed Rule 606(b)(3)(i) through (iv). See also *Proposing Release*, *supra* note 1, at 49453–58 for additional detail on the Commission's proposal.

²⁸⁸ See *Proposing Release*, *supra* note 1, at 49453.

²⁸⁹ See proposed Rule 606(b)(3)(i). See also *Proposing Release*, *supra* note 1, at 49453–54.

²⁹⁰ Fill rate would be calculated by the shares executed divided by the shares routed.

²⁹¹ Average fill size would be the average size, by number of shares, of each order executed on the venue.

²⁷⁹ See Rule 606(b)(3).

²⁸⁰ See HMA Letter at 10.

²⁸¹ See *id.*

²⁸² See Markit Letter at 4, 11–12, 23, 34.

²⁸³ See *id.* at 23.

²⁸⁴ See *id.* at 12.

rebate;²⁹² (5) total number of shares executed at the midpoint;²⁹³ (6) percentage of shares executed at the midpoint; (7) total number of shares executed that were priced on the side of the spread more favorable to the order; (8) percentage of total shares executed that were priced on the side of the spread more favorable to the order; (9) total number of shares executed that were priced on the side of the spread less favorable to the order; and (10) percentage of total shares executed that were priced on the side of the spread less favorable to the order.²⁹⁴

Information on Orders that Provided Liquidity. In addition to the order routing and execution data described above, the Commission proposed to require disclosure of information on orders that provided liquidity.²⁹⁵ Specifically, the Commission proposed to require disclosure of: (1) Total number of shares executed of orders providing liquidity; (2) percentage of shares executed of orders providing liquidity; (3) average time between order entry and execution or cancellation for orders providing liquidity (in milliseconds); and (4) the average net execution rebate or fee for shares of orders providing liquidity (cents per 100 shares, specified to four decimal places).²⁹⁶ In connection with this new proposed requirement, the Commission proposed to define the term “orders providing liquidity” to mean “orders that were executed against after resting at a trading center.”²⁹⁷

Information on Orders that Removed Liquidity. Similar to orders that provided liquidity, the Commission proposed to require the disclosure of information on orders that removed liquidity.²⁹⁸ Specifically, the Commission proposed to require disclosure of: (1) Total number of shares executed of orders removing liquidity; (2) percentage of shares executed of orders removing liquidity; and (3) average net execution fee or rebate for shares of orders removing liquidity (cents per 100 shares, specified to four decimal places).²⁹⁹ Relatedly, the

Commission also proposed to define the term “orders removing liquidity” as “orders that executed against resting trading interest at a trading center.”³⁰⁰

ii. Final Rule and Response to Comments

The Commission is adopting as proposed the requirement that the Rule 606(b)(3) customer-specific order handling report include specific columns of information for each venue to which the broker-dealer routed orders for the customer,³⁰¹ and is adopting as proposed the specific pieces of information set forth in Rules 606(b)(3)(i) through (iv) that are required to be included in the reports.³⁰² Specifically, the Commission is adopting as proposed the required data points for information on order routing specified in Rule 606(b)(3)(i), for information on order execution specified in Rule 606(b)(3)(ii), for information on orders that provided liquidity specified in Rule 606(b)(3)(iii), and for information on orders that removed liquidity specified in Rule 606(b)(iv).³⁰³ The Commission also is adopting as proposed the definitions of the terms “orders providing liquidity” and “orders removing liquidity.”

Commenters broadly supported the Proposal to require broker-dealers to provide more detailed order handling information to their customers upon request, and expressed varied views on what specific or additional metrics would be most useful and should be included in the report. Some commenters suggested requiring additional execution quality-related metrics in Rule 606(b)(3),³⁰⁴ such as: A spread capture metric that measures the execution price relative to the NBBO or displayed quote,³⁰⁵ information concerning the realized spread and the effective spread and quoted spread

percentages,³⁰⁶ price improvement statistics,³⁰⁷ average time between order entry and execution or cancellation for orders that remove liquidity,³⁰⁸ and median order size routed and median fill size.³⁰⁹ Other comments related to fee and rebate disclosures. Specifically, some commenters suggested revising the data points in Rule 606(b)(3) by requiring an estimate of execution fees and rebate information.³¹⁰ One commenter asserted that the fee and rebate disclosures in proposed Rule 606(b)(3)(iv) lack actionable data, and recommended a completely revised version of the Rule 606(b)(3) report.³¹¹ Another commenter, by contrast, supported disclosure of the net execution fee or rebate and believed that broker-dealers have the capability to track this information.³¹² Another commenter suggested that broker-dealers should disclose to institutional (and retail) customers the nature of payment for order flow and profit-sharing relationships, including whether or not they pass any of the rebates or order-flow payments to their customers, as well as additional information that the commenter asserted is designed to help investors understand the state of the market at the time of execution and whether the broker-dealer was using a venue in which there is a conflict of interest or economic routing inducement.³¹³ One commenter believed that the Proposal does not address the economic pressures or transaction-based costs incurred by the broker-dealer prior to receiving the order, particularly in light of broker-dealer use of order management systems (“OMSs”) and fees associated with OMSs and connectivity, and suggested

³⁰⁶ See, e.g., BlackRock Letter at 2; Markit Letter at 24.

³⁰⁷ See, e.g., ICI Letter at 9; Markit Letter at 24.

³⁰⁸ See, e.g., FSR Letter at 6; ICI Letter at 10.

³⁰⁹ See Capital Group Letter at 6.

³¹⁰ See Fidelity Letter at 5; Markit Letter at 16 and n.37, 25. One of these commenters also sought clarity as to what fee a broker should use if a broker executes a trade on its own ATS. See Fidelity Letter at 5. Rules 606(b)(3)(ii) through (iv) requires the broker-dealer to disclose the average net execution fees or rebates. Thus, the Commission believes that a broker generally would need to disclose this information to the extent relevant to execution of a trade on its own ATS. If the broker incurs no fee or rebate for such an execution, then that is what should be disclosed.

³¹¹ See Markit Letter at 8–10, Appendix A.

³¹² See HMA Letter at 11.

³¹³ See Better Markets Letter at 7–8. This commenter also stated that, while broker-dealers are under “best execution” obligations, venues they route their orders to (which may themselves re-route to other venues) are not subject to the same obligations, and that the Commission should harmonize the duties of care. See *id.* The Commission notes that harmonization of duties of best execution and care across venues and broker-dealers is outside the scope of this rulemaking.

²⁹² The fee and rebate would be measured in cents per 100 shares, specified to four decimal places.

²⁹³ The midpoint would be the price halfway between the national best bid and national best offer.

²⁹⁴ See proposed Rule 606(b)(3)(ii). See also Proposing Release, *supra* note 1, at 49454–55.

²⁹⁵ See proposed Rule 606(b)(3)(iii).

²⁹⁶ See *id.* See also Proposing Release, *supra* note 1, at 49456.

²⁹⁷ See proposed Rule 600(b)(58).

²⁹⁸ See proposed Rule 606(b)(3)(iv).

²⁹⁹ See proposed Rule 606(b)(3)(iv)(A) through (C). See also Proposing Release, *supra* note 1, at 49458.

³⁰⁰ See proposed Rule 600(b)(56).

³⁰¹ See Rule 606(b)(3). As discussed above, the Commission is making two modifications to the format of the Rule 606(b)(3). First, the Commission is not adopting the proposed order routing strategy categorization. See *supra* Section III.A.5.a. Second, the Commission is requiring that the Rule 606(b)(3) report be divided into two separate sections—one for directed orders and the other for non-directed orders. See Section III.A.5.b. The Commission also is revising the Rule 600(b) definitions of the terms “directed order” and “non-directed order.” See *id.*; see also *supra* Section III.A.1.b.vii.

³⁰² See Rule 606(b)(3).

³⁰³ See *id.*

³⁰⁴ See, e.g., HMA Letter at 4, 11; ICI Letter at 9–10; Markit Letter at 8–10, 24–26, Appendix A.

³⁰⁵ See, e.g., HMA Letter at 11; ICI Letter at 9; BlackRock Letter at 2. https://ffj.com/images/Retail_Execution_Quality_Statistics/FIF_Rule_605-606_WG_-_Retail_Execution_Quality_Stats_Wholesaler_Template.pdf.

that broker-dealers be required to disclose such fees to their customers.³¹⁴ Finally, some commenters suggested requiring execution venues to provide standard liquidity indicators to broker-dealers,³¹⁵ and one commenter broadly recommended that the Rule 606(b)(3) order handling disclosures build off the FIX Trading Community's *FIX Execution Venue Reporting Recommended Best Practices* in order to achieve standardization and objectivity in the disclosures.³¹⁶

While commenters suggested different order handling metrics that could be useful to customers and provide more in-depth insight into how broker-dealers handle not held NMS stock orders, the Commission's intent in establishing the Rule 606(b)(3) disclosures is not to require broker-dealers to provide every specific piece of data that may be available for an order and potentially valuable to certain customers. Rather, the Commission's intent is to provide a baseline of standardized order handling information that (subject to two de minimis exceptions) all customers that submit not held NMS stock orders to broker-dealers are entitled to receive from their broker-dealers and that customers can use to evaluate their broker-dealers' order handling performance. Rules 606(b)(3)(i) through (iv) require broker-dealers to provide detailed information regarding order routing, order execution, orders that provided liquidity, and orders that removed liquidity. Each of those four categories of information is further divided into several subcategories of specific pieces of data that must be disclosed. The Commission continues to believe that these data points are sufficient to provide the Commission's intended baseline, standardized set of information that customers can use to evaluate how their broker-dealers

handle their orders and, in particular, assess how their broker-dealers comply with best execution obligations and manage the potential for information leakage and conflicts of interest.

The Commission does not believe that it is necessary for the achievement of this goal to require, at this time, that the Rule 606(b)(3) order handling report include the additional order handling statistics suggested by commenters. There is a large spectrum of types of customers, and commenters suggested a wide range of order handling statistics. While certain additional data metrics may be more useful to certain types of market participants, the Commission does not view any particular data element suggested by commenters as likely to significantly enhance the degree to which the Rule 606(b)(3) report provides a standardized baseline of order handling information that is broadly useful to all customers that submit orders to their broker-dealers.

Moreover, incorporating additional metrics into the Rule 606(b)(3) report may increase the complexity of the report and the associated costs, and the Commission believes at this time that such costs and complexity would not be justified by the expected benefits to customers in evaluating the order handling performance of their broker-dealers. As summarized above, commenters suggested revised or additional disclosures related to execution quality and fee/rebate information.³¹⁷ While incorporating the suggested execution quality and fee/rebate disclosures into the Rule 606(b)(3) reports may add extra utility to the reports for certain customers, in adopting Rule 606(b)(3) the Commission must balance the cost of compliance against the usefulness of the information that is required to be disclosed under the rule. Requiring broker-dealers to make mandatory disclosures imposes a cost on broker-dealers, and each additional required data item potentially raises that compliance cost, as well as potentially increases the complexity of the report. Incorporating commenters' suggested disclosures into the Rule 606(b)(3) reports would, therefore, likely raise compliance costs and add to the complexity of the report. As but one example, requiring the broker-dealer to disclose the displayed

quote at the time when the broker-dealer routed an order to an exchange could increase reporting complexity and costs in calculating the displayed quote and the synchronization of clocks between a broker-dealer and the venue.

In light of the fact that the Commission believes that the Rule 606(b)(3) disclosures are sufficient to provide a baseline, standardized set of information that customers can use to evaluate how their broker-dealers handle their orders, the Commission believes that the compliance costs and added complexity associated with commenters' suggested additional disclosures would not be justified by the marginal utility that these disclosures may add to the report beyond that which is provided by the disclosures. Specifically, the additional metrics related to fees and rebates and economic incentives suggested by commenters could provide customers with additional information on how venue fees and rebates impact how their broker-dealers' handle their orders, particularly in light of the potential for conflicts of interest caused by fees and rebates; however, the Commission believes that the Rule 606(b)(3) disclosures already contain sufficient fee and rebate information for customers to adequately evaluate their broker-dealers' potential conflict of interest. Thus, any added value in the report created by the suggested fee and rebate information would, in the Commission's view, not justify the additional complexity, as well as the additional costs, associated with including the information. Likewise, the additional execution quality metrics suggested by commenters could provide customers with more information regarding how their broker-dealers achieve best execution and attempt to prevent information leakage, but the Commission believes that the Rule 606(b)(3) disclosures, as proposed, already provide a sufficient basis for customers to evaluate their broker-dealers' performance in this regard. Thus, any added value in the report created by the suggested execution quality disclosures would not, in the Commission's view, be justified by the additional costs and complexity associated with including the information.

The Commission believes that adopting the Rule 606(b)(3) report content as proposed will help minimize the reporting complexity and costs, while creating a report that is universally useful across the spectrum of customer types, some of which may be more sophisticated than others in their ability to digest the reported

³¹⁴ See Bloomberg Letter at 2–7. This commenter also contended that the Proposal is predicated on positions regarding depth of book data and a broker-dealer's duty of best execution that are odds with an Initial Decision in a Commission Administrative Proceeding, and that the Commission should address the fees charged by exchanges for their market data products. See *id.* at 2–3, 7–11. The Commission separately has issued an order dated October 16, 2018. See Securities Exchange Act Release No. 84432 (October 16, 2018), available at <https://www.sec.gov/litigation/opinions/2018/34-84432.pdf>.

³¹⁵ See Fidelity Letter at 5; Thomson Reuters Letter at 2.

³¹⁶ See KCG Letter at 6–7; see also EMSAC Rule 606 Recommendations, *supra* note 16, at 3. As the KCG Letter acknowledged, however, these FIX recommended best practices focus on institutional execution information and not order routing data. See *id.* at 7. As such, the Commission does not believe that they would be an appropriate basis for the order handling disclosures that are the focus of the Commission's amendments to Rule 606(b)(3).

³¹⁷ As is also summarized above, some commenters suggested requiring execution venues to provide standard liquidity indicators to broker-dealers. See *supra* note 315. The rule amendments being adopted today enhance the order handling information that broker-dealers must provide to their customers, and do not address standardization of the information that execution venues provide to broker-dealers. As such, these comments are outside the scope of this rulemaking.

information. The Commission did not receive comments suggesting that the order handling statistics set forth in Rule 606(b)(3) as proposed would be too difficult or complex for broker-dealers to generate or for institutional customers in particular to use.

This determination is not an indication that the Commission has formed a decision on the validity or usefulness of the various different order handling metrics that commenters suggested. Rather, in light of the fact that, as noted above, the Commission believes that Rule 606(b)(3), as proposed, is reasonably designed to provide a standardized baseline of order handling disclosures that (subject to two de minimis exceptions) all customers that submit not held NMS stock orders to their broker-dealers are entitled to receive, the Commission has determined to adopt Rule 606(b)(3) as proposed.

As stated elsewhere herein, customers remain free to negotiate with their broker-dealers for additional disclosures regarding broker-dealers' handling of their orders, and broker-dealers of course remain free to compete by providing more detailed information than is required under Rule 606(b)(3). As a result of the rules being adopted today, customers that choose to negotiate with their broker-dealers for additional disclosures will be doing so from a more standardized baseline of enhanced order routing disclosures, and in the case of customers that previously did not receive detailed order handling disclosures from their broker-dealers, from a strengthened and more informed negotiating position. In light of the Commission's belief that the disclosures required by Rule 606(b)(3), as proposed and as adopted, are reasonably designed to provide such a standardized baseline of order handling information for customers to use to assess their broker-dealers' order handling performance, the Commission believes, at this juncture, that the disclosure of additional order handling statistics would be best left to competitive forces in the market and should not be mandated by Commission rule.

Accordingly, the Commission is adopting as proposed the requirement that certain order routing information be disclosed within the proposed venue segmentation in the Rule 606(b)(3) order handling report. Specifically, Rule 606(b)(3) requires that the order handling information specified in subparagraphs (b)(3)(i) through (iv) of the rule be provided for each venue to which the broker-dealer routed orders for the customer.³¹⁸ In addition, Rules

606(b)(3)(i) through (iv) specify the same required information on order routing, order execution, orders that provided liquidity, and orders that removed liquidity as was proposed. Further, Rule 606(b) is being amended to define the term "orders providing liquidity" to mean orders that were executed against after resting at a trading center,³¹⁹ and the term "orders removing liquidity" to mean orders that executed against resting trading interest at a trading center.³²⁰ The Commission received no comments regarding these defined terms, and is adopting them as proposed.

7. Rule 606(c) Quarterly Aggregated Public Report of Rule 606(b)(3) Information

a. Proposal

The Commission proposed to require a broker-dealer that receives orders covered by Rule 606(b)(3) to make publicly available³²¹ a report that aggregates the Rule 606(b)(3) order handling information for all such orders that it receives.³²² As proposed, broker-dealers would be required to make the report publicly available for each calendar quarter, broken down by calendar month, within one month after the end of the quarter.³²³ The Commission proposed that this public aggregated order handling report be mandatory for all of the orders subject to Rule 606(b)(3) that a broker-dealer handles within a calendar quarter regardless of whether any of its customers request customer-specific order handling reports pursuant to Rule 606(b)(3).³²⁴

In addition, similar to the customer-specific order handling reports required under proposed Rule 606(b),³²⁵ the Commission proposed to require that the public aggregated order handling report be made available using an XML schema and associated PDF renderer published on the Commission's website.³²⁶ Further, the Commission proposed to require that broker-dealers keep such public aggregated order handling reports posted on a website that is free and readily accessible to the public for a period of three years from

the initial date of posting on the website.³²⁷

b. Final Rule and Response to Comments

The Commission is not adopting proposed Rule 606(c), and thus the Commission is not adopting the proposed requirement that broker-dealers publicly report, on a quarterly basis, aggregated Rule 606(b)(3) order handling information. As a result, under the rule amendments being adopted today, for not held orders in NMS stock, broker-dealers are required only to provide the customer-specific order handling reports required by Rule 606(b)(3) (or Rule 606(b)(1), as applicable),³²⁸ and there is no public reporting component of the information set forth in Rule 606(b)(3).

Multiple commenters stated that directed orders should be excluded from the proposed Rule 606(c) public aggregated reports, or alternatively, that directed orders should be reported separately.³²⁹ Commenters asserted that including a customer's directed orders in the public aggregated report could cause the report to be misleading because routing behavior that was directed by the customer pursuant to a directed order would be misrepresented in the report as routing behavior determined by the broker-dealer itself pursuant to its independent routing logic.³³⁰ One commenter stated that even a directed versus non-directed order distinction in the public report would be insufficient because institutional clients provide instructions on orders without explicitly directing an order to a venue, such as by directing a large portion of their order flow to high-rebate venues or directing their brokers to avoid routing to a specific

³²⁷ See *id.* See Proposing Release, *supra* note 1, at 49458–59 for additional detail on the Commission's proposal.

³²⁸ See *supra* Sections III.A.1.b.iv–v.

³²⁹ See SIFMA Letter at 2, 5; FIF Letter at 5; Fidelity Letter at 6; STA Letter at 5–6; STA Letter II at 2; EMSAC Rule 606 Recommendations, *supra* note 16, at 3. One commenter suggested that orders from individuals should be reported separately in the quarterly public reports under proposed Rule 606(c), but that suggestion was premised on the commenter's view that the proposal to define "institutional order" based on dollar amount would result in large orders from retail customers being considered institutional orders. See ICI Letter at 10. Similarly, another commenter stated that the quarterly public reports under proposed Rule 606(c) should exclude retail block-sized orders. See Fidelity Letter at 6. As discussed above, the Commission is adopting Rule 606(b) disclosure requirements based on whether an order is held or not held and is not adopting proposed Rule 606(c). As a result, retail block-sized orders will not be included in quarterly public reports unless these orders are subject to Rule 606(a)(1).

³³⁰ See SIFMA Letter at 5; FIF Letter at 5; Fidelity Letter at 6; ICI Letter at 3.

³¹⁸ See Rule 606(b)(3).

³¹⁹ See Rule 600(b)(54).

³²⁰ See Rule 600(b)(55).

³²¹ "Make publicly available" is defined in Rule 600 of Regulation NMS. See 17 CFR 242.600(b)(36).

³²² See proposed Rule 606(c).

³²³ See *id.*

³²⁴ See *id.*; see also Proposing Release, *supra* note 1, at 49459.

³²⁵ See *supra* Section III.A.3.

³²⁶ See proposed Rule 606(c).

venue or type of venue, and instead the commenter suggested a more nuanced distinction in the report between orders that solely reflect the broker-dealer's routing decisions and orders that are subject to specific client routing instructions.³³¹ One commenter stated that the proposed Rule 606(c) aggregated order handling report would not serve its intended use and that a modified version should be available only to institutional customers upon request.³³² This commenter expressed concern that the public aggregated report would be easy for market analysts to misinterpret, creating confusion in the market, and that it could present potential competitive concerns for broker-dealers, such as with respect to the confidentiality of their business operations and book of business.³³³ Some commenters believed that public disclosure of aggregated order handling information could be useful to market participants.³³⁴

In light of the comments submitted and after further consideration, the Commission is not adopting Rule 606(c) or any requirement that a broker-dealer make publicly available an aggregated report with respect to its handling of customers' not held NMS stock orders.³³⁵ The Commission believes, upon further consideration, that the proposed quarterly public reports of aggregated Rule 606(b)(3) order handling information would be of limited utility. As discussed in greater detail below, the Commission believes that the proposed reports would not allow for fair "apples-to-apples" comparisons, and instead could generate misleading impressions of broker-dealer order handling practices. As a result, the aggregated Rule 606(b)(3) information in the proposed public report may not allow for meaningful insight into the quality of broker-dealers' order routing performance or comparisons of order handling performance across broker-dealers, and is unlikely to provide the same benefits as the aggregated Rule 606(a) public disclosures for held orders in NMS stock because of the disparate nature and trading behavior of

customers that use not held orders in NMS stock.³³⁶

As noted above, broker-dealers may have different types of customers that utilize not held orders in NMS stock. For example, one broker-dealer may serve as a broker-dealer for only quantitative trading firms, while another broker-dealer may serve only investment advisers. Each customer has a unique set of circumstances, goals, and order flow that dictates how a broker-dealer handles that customer's orders. For example, the trading objectives of a quantitative firm primarily trading principally are different from the trading objectives of another type of customer, such as a diversified mutual fund. In light of this, the Commission believes that there would be limited ability to understand the quality of broker-dealers' routing performance or meaningfully compare broker-dealer order handling performance based on the aggregated information for not held NMS stock orders in the proposed public reports without requiring additional disclosures regarding customers and potentially sensitive proprietary information.

Indeed, broker-dealers' order routing behavior differs based on the customers they serve, and understanding the quality of their routing performance would likely require an understanding of the investment or trading needs of their underlying customers, which would not be obtainable from the aggregated information in the public reports. Moreover, some customers give complete discretion to a broker-dealer in handling their orders while other customers may place limits on or provide instructions regarding how a broker-dealer can handle their orders. In fact, orders from certain customers frequently limit broker-dealer discretion in some manner. For example, cost-sensitive customers may place restrictions on the venues a broker-dealer may use to execute their orders, which could have a significant impact on how the broker-dealer routes those orders and the resulting execution metrics. In particular, some customers choose cost-plus fee arrangements and specify a desire to maximize rebates or low pricing venues to the extent practicable. Or, customers may instruct broker-dealers to use certain algorithms or strategies that preference certain routing options or behavior. A taking algorithm acts differently than a posting

algorithm, and there may also be routing strategies or configurations available with both taking and posting algorithms. Further, the Commission believes based on its experience that quantitative firms, for example, represent a large segment of the institutional marketplace and a significant portion of them use largely passive trading strategies, which can result in a demand for advantageous pricing arrangements, including cost-plus arrangements with their broker-dealers. This, in turn, can result in selecting rebate maximization strategies. Such strategies are often meaningfully different than the posting strategies used by long-only mutual funds, for example. The Commission believes based on its experience that aggregating the order handling information of cost-sensitive customers or customers that have specified certain algorithms or trading strategies for the broker-dealer to utilize with customers that have given the broker-dealer complete routing discretion creates dilutive effects in the aggregated information that wash out the routing nuances that are relevant to each type of customer and important to understanding a broker-dealer's routing decisions when granted full discretion.

The proposed aggregated public disclosures for not held NMS stock orders could therefore be unclear, and potentially misleading, due to the nature or requests of a broker-dealer's specific customers. A report may reflect apparently standard order handling practices even though the broker-dealer is performing competently or is satisfying specific customer requests. Even a customer interested in comparing the performance of its specific orders to other orders handled by its own broker-dealer would likely be unable to meaningfully analyze the aggregate order handling report because the customer likely would not know the nature of, practices and requests of the broker-dealer's other customers. Due to the limited utility of the public reports as proposed, the Commission further believes that the burden of compiling and publishing aggregate order handling information for not held NMS stock orders does not at this time justify the expected benefits.

In addition, the Commission recognizes that broker-dealers have proprietary methods for order handling, and is cognizant of the sensitive nature of such business practices and intellectual property. The Commission believes that quarterly public disclosures as proposed may risk the exposure of sensitive proprietary information on the broker-dealers' order handling techniques. The Commission noted in the Proposing Release that it

³³¹ See SIFMA Letter at 5.

³³² See Fidelity Letter at 6.

³³³ See Fidelity Letter at 6 and n.14.

³³⁴ See HMA Letter at 4; CFA Letter at 9; Markit Letter at 27; Better Markets Letter at 3–6.

³³⁵ The Commission also received comment that provided suggestions and modifications to proposed Rule 606(c), which the Commission is not adopting. See, e.g., Capital Group Letter at 4–5; Fidelity Letter at 6; Citadel Letter at 1; FIF Letter at 13; Markit Letter at 27, 29.

³³⁶ For similar reasons, the Commission is not requiring broker-dealers to disclose additional information or a more detailed order handling report as part of regular public reporting as was suggested by some commenters. See, e.g., Better Markets Letter at 3–6.

believed that any such risk would be minimal, but in combination with the potentially limited utility of the public reports as proposed, the Commission believes it is not appropriate to impose any such risk, no matter how small. In addition, the risk may be more pronounced for certain segments of customers than it is for others. In particular, new or small broker-dealers with only a few customers may end up disclosing confidential order routing information if such information is required to be included in public reports. This could significantly disadvantage new or small broker-dealers.

Furthermore, the Commission believes that not held order handling is not analogous to held order handling and that the benefits that accrue from the public disclosure of aggregated held order handling reports are not likely to accrue from the public disclosure of aggregated not held order handling reports. Currently, Rule 606(a) requires public aggregated reporting of certain order handling information.³³⁷ As noted in the Proposing Release, some market participants have stated that the public disclosure of meaningful data in Rule 606 reports can assist broker-dealers in evaluating their own performance relative to other firms.³³⁸ The Commission also has previously noted its belief that these public aggregated disclosures spur competition among broker-dealers to provide enhanced order routing services and better execution quality.³³⁹

The Commission does not believe the same benefits would accrue to customers that utilize not held orders due to the fundamental differences between held order flow and not held order flow. Held orders are typically non-directed orders with no specific order handling instructions for the broker-dealer. Moreover, held order flow generally is handled similarly by broker-dealers—held orders are generally small orders that are internalized or sent to OTC market makers if marketable or fully executed on a single trading center if not marketable.³⁴⁰ By contrast, not held order flow is diverse and fundamentally different from held order flow in that customers may provide specific order handling instructions to their broker-

dealers or limit the order handling discretion of their broker-dealers in some manner. As discussed above, broker-dealers' handling of customer not held orders is impacted by specific customer needs such as cost sensitivity, the preferencing or disfavoring of specific market venues, or other requests that limit broker-dealer discretion. The disparate behavior of customers when using not held orders limits the ability of both customers and broker-dealers to utilize the aggregated Rule 606(b)(3) order handling information in the public reports to better understand broker-dealers' routing behavior or perform meaningful comparisons of order routing performance across broker-dealers.

B. Public Order Routing Report Under Rule 606(a)

Prior to today, Rule 606(a) required, among other things, that broker-dealers that route customer orders—which do not include orders for NMS stock above \$200,000 in market value or orders for options contracts above \$50,000 in value³⁴¹—provide a quarterly public report of certain information regarding non-directed orders in NMS securities that is organized by listing market and that sets forth material aspects of their relationships with the ten venues to which they routed the largest number of total non-directed orders and with any venue to which they routed 5% or more of such orders (collectively, “Specified Venues”).³⁴² In the Commission's view, customers have benefited from the Rule 606(a) reporting requirements for customer orders, as the Rule 606(a) reports spurred competition among broker-dealers to provide enhanced order routing services and better execution quality, which in turn motivated trading centers to deliver more efficient and innovative execution services as they competed for order flow.

But as noted above and detailed in the Proposing Release, changes to market structure and order routing practices have led the Commission to analyze the current requirements for public order routing disclosure under Rule 606(a).³⁴³ The U.S. equity markets have evolved in recent years to become more automated, dispersed, and complex, and the resulting competition among trading centers has intensified practices to attract order flow, including order flow from retail customers. As a result of this market evolution, the utility of the Rule

606(a) public reports and the degree to which they help achieve the rule's intended benefits may be diminished. It is, therefore, important for the Commission to enhance the Rule 606(a) public order handling reports in a manner designed to update them consistent with market developments.

Accordingly, the Commission believes that it is appropriate to make limited updates to the Rule 606(a) requirements regarding broker-dealers' public disclosure of their order routing practices, and in conjunction with Rule 606(b)(3)'s applicability to NMS stock orders of any size that are submitted on a not held basis, amend Rule 606(a) such that it applies to NMS stock orders of any size that are submitted on a held basis. Commenters were broadly supportive of enhanced Rule 606(a) order routing disclosures.³⁴⁴ The Commission believes that the amendments being adopted today to Rule 606(a), discussed in detail below, should enhance broker-dealers' public order handling disclosures by bringing them more up-to-date with current market and order routing practices, and by focusing them on the types of NMS stock orders for which the public disclosures are most relevant and would be most useful. As a result, customers—and retail investors in particular—that submit orders to their broker-dealers should be better able to assess the quality of order handling services provided by their broker-dealers and whether their broker-dealers are effectively managing potential conflicts of interest.

1. Orders Covered By Rule 606(a) Public Disclosures

a. Proposal

As discussed above,³⁴⁵ the proposed definition of “institutional order” dovetailed with the current definition of “customer order.” This would allow the Commission to maintain Rule 606(a)(1)'s applicability to orders in NMS stocks with a market value less than \$200,000 and NMS securities that are options contracts, and propose enhancements to the existing disclosure requirements under Rule 606(a)(1) for such orders, without altering the substance of the current definition of “customer order” in Rule 600(b). However, the Commission proposed to rename the current “customer order” definition as “retail order” without changing the substance of the definition

³³⁷ See Rule 606(a).

³³⁸ See Proposing Release, *supra* note 1, at 49461.

³³⁹ See *id.*

³⁴⁰ See Proposing Release, *supra* note 1, at 49460. Internalization is the process in which a broker-dealer fills an order to buy a security from its own inventory, or fills an order to sell by taking a security into its inventory. See Proposing Release, *supra* note 1, at 49439 n. 64.

³⁴¹ See Rule 600(b)(18).

³⁴² See Rule 606(a).

³⁴³ See *supra* Section I; see also Proposing Release, *supra* note 1, at 49461.

³⁴⁴ See, e.g., KCG Letter at 1–3; Ameritrade Letter at 3; SIFMA Letter at 1; Better Markets Letter at 1, 8–9; HMA Letter at 3; FSR Letter at 1; Citadel Letter at 1; and CFA Letter at 1.

³⁴⁵ See *supra* Sections III.A.1.a.

itself, such that an order for NMS stock would be categorized as either an “institutional order” or a “retail order” under Rule 600(b) and for the purposes of Rule 606 depending on its dollar value, and an order for an NMS security that is an option contract for less than \$50,000 in market value would be categorized as a “retail order.”³⁴⁶

b. Final Rule and Response to Comments

As discussed above,³⁴⁷ the Commission is not adopting a definition of “institutional order” or an order dollar value-based approach to delineate the NMS stock orders covered by new Rule 606(b)(3). Consequently, the Commission is not renaming the term “customer order” as “retail order” in Rule 600(b), and the Commission is amending Rule 606(a)(1) without any order dollar value limitation on the rule’s coverage of NMS stock orders.³⁴⁸ As amended, Rule 606(a)(1) applies to NMS stock orders of any size that are submitted on a held basis. Rule 606(a)(1) also continues to apply to any order (whether held or not held) for an NMS security that is an option contract with a market value less than \$50,000, as the Commission did not propose, and is not adopting, any modifications to Rule 606’s coverage of option orders.³⁴⁹

Specifically, Rule 606(a)(1), as amended, states that every broker-dealer must make publicly available for each calendar quarter a report on its routing of non-directed orders in NMS stocks that are submitted on a held basis and in non-directed orders that are customer orders in NMS securities that are option contracts during that quarter broker down by calendar month. As noted above,³⁵⁰ the Commission is adopting a modified definition of the term “non-directed order” that no longer includes a dollar-value limitation on NMS stock orders,³⁵¹ but continues to exclude orders from a broker-dealer. Because Rule 606(a)(1) explicitly references “non-directed orders” in NMS stock, the

rule no longer covers only NMS stock orders with a market value less than \$200,000; rather, the rule now applies to NMS stock orders of any size that are submitted on a held basis. With respect to orders for NMS securities that are option contracts, however, Rule 606(a)(1) explicitly references “non-directed orders” that are “customer orders.” By virtue of this reference to “customer orders,” Rule 606(a)(1) continues to apply to an order for an NMS security that is an option contract only if the order has a market value less than \$50,000. In both cases—held orders for NMS stock and orders for NMS securities that are option contracts—Rule 606(a)(1) applies only if the order is not from a broker-dealer.

Rule 606(a)(1)’s application to held NMS stock orders of any size works in unison with the customer-specific disclosures contained in Rule 606(b)(1) and Rule 606(b)(3) to ensure that all NMS stock orders are covered by order handling disclosure rules and to avoid overlap between such rules.³⁵² If Rule 606(a)(1)’s coverage were not amended in conjunction with Rules 606(b)(1) and (3), there would be overlap between the these rules—e.g., Rule 606(a)(1) would apply to NMS stock orders of less than \$200,000 in market value, and Rule 606(b)(3) also would apply to such orders to the extent that they were not held. As discussed above, numerous commenters criticized the proposed order dollar value-based distinction between the orders covered by Rule 606(a)(1) versus Rule 606(b)(3), and the Commission believes that it would be more appropriate to differentiate the NMS stock orders covered by each rule according to whether an order is held or not held.

For the same reasons as discussed above,³⁵³ the Commission believes that this method of differentiation is appropriate because broker-dealers generally handle not held orders differently from held orders due to the discretion they are afforded with not held orders but not with held orders. As a result, the information pertinent to understanding broker-dealers’ order handling practices for not held orders is not the same as for held orders. Unlike with not held orders, the Commission’s concern regarding how broker-dealers handle held orders is less about the difficulties posed by more automated, dispersed and complex order routing and execution practices. Rather, the Commission’s main concern with held NMS stock orders is the impact of intensified competition for customer

order flow—particularly retail investor order flow—that has arisen concomitant with the rise in the number of trading centers and the introduction of new fee models for execution services.³⁵⁴ Financial inducements to attract order flow from broker-dealers that handle retail investor orders have become more prevalent and for some broker-dealers such inducements may be a significant source of revenue.³⁵⁵ These financial inducements create new, and in many cases significant, potential conflicts of interest for broker-dealers with respect to how they handle held orders from customers—and retail customers in particular. The Commission believes that enhanced public disclosures should focus on providing more detailed information regarding these financial inducements, as opposed to the different information geared towards not held orders from customers that is set forth in Rule 606(b)(3).

In practice, the coverage of Rule 606(a)(1) as amended is likely to be largely similar to the rule’s coverage under its pre-existing application to NMS stock orders of less than \$200,000 in market value. The Commission expects that the majority of customer (i.e., non-broker-dealer) NMS stock orders having a market value of at least \$200,000 will be not held orders and therefore not be covered under Rule 606(a)(1).³⁵⁶ Retail investors’ orders are typically submitted on a held basis and are typically smaller in size.³⁵⁷ So the smaller NMS stock orders that were covered by the pre-existing rule likely also were held orders and therefore will be covered by Rule 606(a)(1) as amended. The difference is that, under the rule as amended, any non-broker-dealer NMS stock orders that are for at least \$200,000 in value and submitted on a held basis will now be covered by Rule 606(a)(1) and thus subject to public aggregated required order routing disclosures for the first time.

Under the Proposal, a non-broker-dealer NMS stock order with a market value of at least \$200,000 would have been defined as an institutional order—regardless of whether it was a held or

³⁴⁶ See Proposing Release, *supra* note 1, at 49434, 49465–66 for additional detail on the Commission’s proposal.

³⁴⁷ See *supra* Section III.A.1.b.

³⁴⁸ Moreover, in light of the fact that the Commission is not adopting the proposed amendment to rename “customer order” as “retail order” in Rule 600(b), and instead is maintaining “customer order” as currently defined, there is no longer any need, as proposed, to revise existing cross-references to “customer order” in Rules 600(b)(19), 600(b)(23), 600(b)(48), 605, 606, and 607. See Proposing Release, *supra* note 1, at 49466.

³⁴⁹ See *supra* notes 37 and 135.

³⁵⁰ See *supra* Section III.A.1.b.vii.

³⁵¹ Consistent with the modifications discussed in Section III.A.1.b.vii, *supra*, Rule 606(a)(1)(i) also is revised to no longer refer to the defined term “customer order.”

³⁵² See *supra* Section III.A.1.b.

³⁵³ See *id.*

³⁵⁴ See *supra* Section I; see also Proposing Release, *supra* note 1, at 49434.

³⁵⁵ See *id.*

³⁵⁶ See *supra* Section III.A.1.b.vi (citing Eric Kelley and Paul Tetlock, How Wise Are Crowds? Insights from Retail Orders and Stock Returns, 68 Journal of Finance 1229–1265 (2013) and Brad M. Barber and Terrence Odean, Trading Is Hazardous to Your Wealth: The Common Stock Investment Performance of Individual Investors, 55 Journal of Finance 773 (2000)).

³⁵⁷ Accordingly, the Commission believes that the number of higher value held orders for NMS stock that will be included in the Rule 606(a)(1) public reporting regime will be limited.

not held order—and subject to the new customer-specific disclosures set forth in proposed Rule 606(b)(3) and the new public aggregated order handling report set forth in proposed Rule 606(c). The adopted approach to NMS stock order handling disclosure is based on whether an NMS stock order is submitted on a held or not held basis. In addition to being appropriate for non-broker-dealer NMS stock held orders with a market value of less than \$200,000, the Commission believes that the Rule 606(a)(1) public disclosures are appropriate for non-broker-dealer NMS stock held orders with a market value of \$200,000 or more because, regardless of the order's dollar value or the nature of the customer that submitted the order, broker-dealers must attempt to execute held orders immediately. Thus, the Commission's concerns noted above for held NMS stock orders are implicated regardless of the order's dollar value or the nature of the customer that submitted the order. The Rule 606(a)(1) public disclosures are designed to address these concerns in particular by focusing on providing enhanced transparency for financial inducements faced by broker-dealers when determining where to route held NMS stock order flow. Moreover, to the extent that it is a retail customer that submits a larger held NMS stock order for \$200,000 or more, commenters appeared to agree that such orders would be appropriately covered by Rule 606(a)(1).³⁵⁸ The Commission believes that this enhancement over the current reporting regime will benefit customers that submit held NMS stock orders, including large-sized ones. They will be better able to assess the nature and quality of the order handling services being provided by their broker-dealers, including the potential for broker-dealer conflicts of interest. They will also benefit to the extent that broker-dealers are spurred to compete further by providing enhanced order routing services and better execution quality, which in turn could motivate trading centers to deliver more efficient and innovative execution services as they compete for order flow.

2. Marketable Limit Orders and Non-Marketable Limit Orders

a. Proposal

The Commission proposed to amend Rule 606(a)(1)(i) and (ii) to require the public order routing report to split limit orders and separately disclose them as

marketable and non-marketable.³⁵⁹ In connection with this new requirement, the Commission also proposed to amend Rule 600(b) of Regulation NMS to include a definition of the term “non-marketable limit order,” which the Commission proposed to define to mean any limit order other than a marketable limit order.³⁶⁰

b. Final Rule and Response to Comments

The Commission is adopting as proposed the amendments to Rule 606(a)(1)(i) and (ii) to require the disclosure of order routing information for marketable limit orders separately from non-marketable limit orders.³⁶¹ The Commission also is adopting as proposed the definition of the term “non-marketable limit order” to mean any limit order other than a marketable limit order.³⁶² While one commenter believed that the separation is unlikely to be valuable to retail customers and that the separation will not promote additional competition amongst broker-dealers,³⁶³ most commenters who addressed this issue supported distinguishing between non-marketable and marketable limit orders in the Rule 606(a) disclosures and believed that this separation would provide customers with valuable and more useful information.³⁶⁴

As noted in the Proposing Release,³⁶⁵ historically, trading centers have offered payment for order flow or other financial inducements to broker-dealers based upon whether their order flow is marketable or non-marketable. As a result, whether an order is marketable or non-marketable will often determine where the broker-dealer routes the order. Certain broker-dealers route a large portion of marketable investor orders to OTC market makers with whom they have payment for order flow or other arrangements.³⁶⁶ Non-marketable investor orders, on the other hand, are more frequently routed to exchanges with a “maker-taker” fee schedule, to capture a rebate when the non-marketable order is executed.³⁶⁷

³⁵⁹ See Proposing Release, *supra* note 1, at 49462.

³⁶⁰ See proposed Rule 600(b)(51). See Proposing Release, *supra* note 1, at 49462 for additional detail on the Commission's proposal.

³⁶¹ See Rule 606(a)(1)(i)–(ii). As noted above, the Commission also has revised Rule 606(a)(1)(i) to remove the reference to the term “customer order.” See *supra* note 351.

³⁶² See Rule 600(b)(50).

³⁶³ See FIF Letter at 9.

³⁶⁴ See, e.g., EMSAC Rule 606 Recommendations, *supra* note 16, at 3; CFA Letter at 4–5, 9; Fidelity Letter at 8–9; Ameritrade Letter at 3.

³⁶⁵ See Proposing Release, *supra* note 1, at 49440.

³⁶⁶ See *id.*

³⁶⁷ See *id.*

In light of the different incentives broker-dealers encounter when handling marketable limit orders versus non-marketable limit orders, and the resulting differences in how and where broker-dealers route marketable limit orders versus non-marketable limit orders, the Commission believes that requiring that the Rule 606(a) reports disclose order routing information separately for marketable limit orders and non-marketable limit orders will significantly enhance their utility. The Commission continues to believe that classifying limit orders into marketable and non-marketable categories will provide greater transparency into broker-dealers' different routing practices for these two categories of limit orders, which will allow customers and other market participants to more fully assess broker-dealers' routing decisions for each type of order and the potential impact on execution quality, including whether broker-dealers are effectively managing their potential conflicts of interest. Providing greater public transparency as to broker-dealers' distinct routing practices for marketable limit orders and non-marketable limit orders also may increase competition among broker-dealers and minimize the potential conflicts of interest between maximizing revenue and the duty of best execution.³⁶⁸

3. Payment for Order Flow Disclosures—Rules 606(a)(1)(iii) and (iv)

a. Proposal

The Commission proposed to amend Rule 606(a)(1) to require more detailed disclosures regarding a broker-dealer's relationships with the venues to which it routes orders.³⁶⁹ Specifically, the Commission proposed to amend Rule 606(a)(1) to include in a new Rule 606(a)(1)(iii) a requirement that, for each Specified Venue, the broker-dealer must report the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and on a per share basis, for each of the following non-directed order types: (1) Market orders; (2) marketable limit orders; (3)

³⁶⁸ See Transaction Fee Pilot Proposing Release, *supra* note 2, at 13310; see also Robert Battalio, Shane A. Corwin, and Robert Jennings, *Can Brokers Have it All? On the Relation between Make-Take Fees and Limit Order Execution Quality*, 71 Journal of Finance 2193, 2195 (2016) (“Battalio, Corwin, and Jennings Paper”) (finding that fill rates for displayed limit orders are lower on exchanges with higher take fees).

³⁶⁹ See Proposing Release, *supra* note 1, at 49463.

³⁵⁸ See, e.g., Fidelity Letter at 2–3; Wells Fargo Letter at 5; KCG Letter at 4; Thomson Reuters Letter at 1; FSR Letter at 3–4; Citadel Letter at 2–3; Ameritrade Letter at 2.

non-marketable limit orders; and (4) other orders.³⁷⁰

The Commission also proposed to amend the existing payment for order flow disclosures and re-locate them to new Rule 606(a)(1)(iv), which would require that the discussion of the material aspects of the broker-dealer's relationship with a Specified Venue include any terms, written or oral, of payment for order flow arrangements or profit-sharing relationships that may influence a broker-dealer's order routing decision including among other things: (1) Incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment; (2) disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee; (3) volume-based tiered payment schedules; and (4) agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue.³⁷¹

b. Final Rule and Response to Comments

i. Rule 606(a)(1)(iii)

The Commission is adopting Rule 606(a)(1)(iii) as proposed, and therefore is requiring that, for each Specified Venue, the broker-dealer report the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and on a per share basis, for each of the following non-directed order types: (1) Market orders; (2) marketable limit orders; (3) non-marketable limit orders; and (4) other orders.³⁷² Since these requirements are part of Rule 606(a)(1), they apply to a non-directed NMS stock order of any size that is submitted on a held basis as well as a non-directed order (whether held or not held) for an NMS security that is an option contract with a market value less than \$50,000.³⁷³ The Commission continues to believe that identifying specific information regarding payments or rebates received by the broker-dealer and fees paid by the broker-dealer for each category of order type by Specified Venue will provide customers and investors broadly with useful information to more completely evaluate the order handling services

provided by broker-dealers. Specifically, the Commission continues to believe that disclosure of the information required by Rule 606(a)(1)(iii) will allow customers to better understand a broker-dealer's management of conflicts of interest when routing orders to a particular Specified Venue.

One commenter supported requiring the disclosure of the net aggregate amount of any payment for order flow or rebates received from or transaction fees paid to each venue based on order type on a dollar amount and per share basis.³⁷⁴ Two other commenters stated that an aggregate measure would not be meaningful and would vary based on the amount of order flow handled by the broker.³⁷⁵ One of these commenters suggested that a combination of average payment for order flow with a description of the terms of any payment for order flow and any profit sharing arrangements would be more meaningful,³⁷⁶ and the other commenter argued that a more meaningful disclosure is the amount of payment received on a per share/contract basis.³⁷⁷

The Commission agrees with commenters that the disclosure of payment for order flow on a per share basis will provide meaningful information to customers regarding the importance of a specific venue to their broker-dealer. The disclosure of the aggregate amount of payment for order flow to a broker-dealer from a specific venue will give customers an even greater understanding of the overall importance of a specific venue to their broker-dealer. The additional cost to a broker of providing this payment for order flow information in aggregate form, if that broker-dealer is already providing this information on a per share basis, will be minimal. The Commission believes that an aggregate measure of a broker-dealer's financial arrangements with Specified Venues will provide additional information to investors and customers regarding the incentives and disincentives underpinning a broker-dealer's routing strategy for customer orders. In turn, this should help give investors and customers a more complete understanding and comprehensive view

of the potential conflicts of interest faced by a broker-dealer when routing orders and how the broker-dealer manages those conflicts. The aggregate measure will, by its nature, vary with the amount of the order flow handled by the broker-dealer, but the Commission does not believe that this renders the measure meaningless. To the contrary, an aggregate measure will provide customers and investors with transparency beyond that available prior to these amendments regarding the volume of orders that a broker-dealer handles subject to payment for order flow, profit sharing, or other arrangements. This could be useful information to investors and customers trying to assess what size or type of broker-dealer would best suit their investment needs and goals.

Moreover, the Commission adopted Predecessor Rule 606 primarily to address the serious problems that can arise from market fragmentation.³⁷⁸ As noted above,³⁷⁹ since Predecessor Rule 606 was adopted in 2000, the equity markets have become significantly more fragmented, dispersed, and complex, particularly in light of the onset of electronic, automated trading. In addition, financial inducements to attract order flow from broker-dealers that handle retail investor orders have become more prevalent and for some broker-dealers such inducements may be a significant source of revenue.³⁸⁰ The Commission understands that most broker-dealers that handle a significant amount of retail investor orders receive payment for order flow in connection with the routing of such orders or are affiliated with an OTC market maker that executes the orders.³⁸¹ Thus, while one commenter pointed out that the Commission declined to require an aggregate measure of a broker-dealer's payment for order flow in Predecessor Rule 606(a)(1),³⁸² the Commission believes that the market landscape has changed significantly since the adoption of Predecessor Rule 606 such that an aggregate measure is now warranted. With increased market fragmentation and pervasive payment for order flow and other financial arrangements between broker-dealers and execution venues, the Commission believes that its prior concerns expressed in the Rule 606 Predecessor Adopting Release about requiring an aggregate measure—

³⁷⁴ See CFA Letter at 9.

³⁷⁵ See Schwab Letter at 2; Ameritrade Letter at 3–4. One of these commenters noted that the Commission previously considered and rejected imposing a requirement for brokers to disclose the aggregate amount of payment for order flow from each venue. See Ameritrade Letter at 3–4 (citing Rule 606 Predecessor Adopting Release, *supra* note 7, at 75427).

³⁷⁶ See Schwab Letter at 2.

³⁷⁷ See Ameritrade Letter at 3–4.

³⁷⁸ See Rule 606 Predecessor Adopting Release, *supra* note 7, at 75415.

³⁷⁹ See *supra* Section I; see also Proposing Release, *supra* note 1, at 49436.

³⁸⁰ See Proposing Release, *supra* note 1, at 49441.

³⁸¹ See *id.*

³⁸² See *supra* note 375.

³⁷⁰ See proposed Rule 606(a)(1)(iii).

³⁷¹ See proposed Rule 606(a)(1)(iv). See Proposing Release, *supra* note 1, at 49462–63 for additional detail on the Commission's proposal.

³⁷² See Rule 606(a)(1)(iii).

³⁷³ See Rule 606(a)(1); see also *supra* Section III.B.1.b.

namely, potential difficulty, subjectivity and costliness in generating the measure due to variance in payment for order flow arrangements, and a potentially inaccurate portrayal of the relative financial incentives created by payment for order flow arrangements versus profit sharing arrangements³⁸³—today are outweighed by the need to provide investors and customers with a more complete understanding of the degree to which broker-dealers are bound to such arrangements.

Additional commenters suggested other changes or limitations to proposed Rule 606(a)(1)(iii).³⁸⁴ Specifically, one commenter suggested removing fee and payment information from Rule 606(a)(1)(iii) and instead providing it in a narrative section of the report, which would include the net fees paid and net payments received in cents per share for each execution destination.³⁸⁵ One commenter suggested a more “general disclosure” that is more easily digestible around net payment for order flow, as the commenter did not believe that the proposed disclosures would contribute favorably to transparency for retail customers due to the voluminous amounts of information that they would produce according to the commenter.³⁸⁶ Another commenter suggested that payment for order flow be characterized as “negotiated volume tiers,” “standard volume tiers,” and “value based” to represent arrangements that are negotiated with the venue that reflect the perceived value of the order flow to that venue.³⁸⁷

As noted above, prior to today’s rule amendments, Rule 606(a)(1) required a broker-dealer to provide a discussion of the material aspects of its relationship with a Specified Venue, including a description of any arrangement for payment for order flow or any profit-sharing relationship. The Commission believes that the disclosures set forth in Rule 606(a)(1)(iii) as adopted are reasonably designed to provide an additional level of quantification and detail regarding a broker-dealer’s relationship with Specified Venues that

would help customers better assess the degree to which a broker-dealer faces conflicts of interests in connection with its customer order routing decisions, and how the broker-dealer manages those conflicts of interest. At the same time, the Commission does not believe that the information required by Rule 606(a)(1)(iii) would be overly complicated or burdensome for customers—and retail customers in particular—to consume. For example, Rule 606(a)(1) currently requires, in general, disclosure of any amounts per share or per order that the broker-dealer receives pursuant to any payment for order flow arrangement, any transaction rebates, and the extent to which the broker-dealer would share in profits derived from the execution of non-directed orders under any profit sharing relationship with a Specified Venue.

While some commenters suggested that the rule require different methods of quantification or that the broker-dealer disclose different metrics related to its financial arrangements with Specific Venues, at this juncture, the Commission believes that the required disclosures set forth in Rule 606(a)(1)(iii) are reasonably designed to provide a significant enhancement in the usefulness of the information that customers receive from broker-dealers’ with respect to order routing, and should help provide customers with a more complete understanding of the conflicts of interest faced by broker-dealers and how those conflicts are managed.

ii. Rule 606(a)(1)(iv)

The Commission also is adopting Rule 606(a)(1)(iv) as proposed, and therefore is requiring that the broker-dealer report the material aspects of its relationship with each Specified Venue, including a description of any arrangement for payment for order flow and any profit-sharing relationship and a description of any terms of such arrangements, written or oral, that may influence a broker’s or dealer’s routing decision including, among other things, incentives for meeting or disincentives for not meeting an agreed upon order flow threshold, volume-based tiered payment schedules, and minimum order flow agreements.³⁸⁸ The Commission has acknowledged that payment for order flow arrangements are intensively fact-based in nature and may vary across broker-dealers.³⁸⁹ At the same time, in light of market structure changes since the Rule 606 Predecessor Adopting Release, among other things, the

Commission continues to believe that disclosure of any terms, written or oral, that may influence a broker-dealer’s order routing decision would be useful for customers to assess the potential conflicts of interest facing broker-dealers when implementing their order routing decisions and would provide more complete information for customers to better understand and evaluate a broker-dealer’s order routing decision.³⁹⁰

The Commission is requiring that a broker-dealer disclose any incentives that a Specified Venue provides to the broker-dealer for equaling or exceeding a volume threshold by offering additional payments or a higher rate of payment, or conversely, any disincentives that a Specified Venue provides to the broker-dealer for failing to meet an agreed upon minimum order flow threshold, such as a lower payment or charging a fee.³⁹¹ The Commission understands that such arrangements may vary among venues, as well as for each broker-dealer sending orders to those venues, and some venues provide higher rebates for meeting or exceeding order flow quotas or charge financial penalties for failing to meet order flow quotas.³⁹² The Commission believes that such incentives and disincentives influence a broker-dealer’s decision to either meet or route additional order flow to exceed the threshold, and should be disclosed to inform customers of their broker-dealer’s potential conflicts of interest. The broker-dealer must describe any such incentives or disincentives in its report, such as (but not limited to) any payment amounts or rates that are based on target order volume flow thresholds, as these are terms of the broker-dealer’s relationship with the Specified Venue that may influence its routing decision; it is not sufficient for the broker-dealer just to disclose the fact that an incentive or disincentive exists.

Further, the Commission is requiring broker-dealers to disclose any volume-based tiered payment schedules with a Specified Venue.³⁹³ Venues that offer these payment schedules typically offer incrementally higher rebates or lower fees to broker-dealers for additional order flow volume.³⁹⁴ The Commission believes that these payment schedules can encourage a broker-dealer to route additional order flow to such venue in

³⁸³ See Rule 606 Predecessor Adopting Release, *supra* note 7, at 75427.

³⁸⁴ See, e.g., FIF Letter at 3, 5 and 11; FIF Addendum at 5; STA Letter at 3; Markit Letter at 31.

³⁸⁵ See FIF Letter at 3, 5 and 11; FIF Addendum at 5.

³⁸⁶ See STA Letter at 3. This commenter also suggested a twelve month period of time to review the new rule and determine whether or not there are sufficient benefits, as measured by the levels of retail inquiries, compared to costs of maintaining the reporting regime. See *id.* Order flow payment information will be contained in quarterly public reports under Rule 606(a)(1)(iii) and not produced based on customer inquiry.

³⁸⁷ See Markit Letter at 31.

³⁸⁸ See Rule 606(a)(1)(iv).

³⁸⁹ See Proposing Release, *supra* note 1, at 49464.

³⁹⁰ See *id.* at 49463–64.

³⁹¹ See Rule 606(a)(1)(iv)(A) through (B).

³⁹² See Proposing Release, *supra* note 1, at 49463–64.

³⁹³ See Rule 606(a)(1)(iv)(C).

³⁹⁴ See Proposing Release, *supra* note 1, at 49463–64.

an effort to reap a financial benefit and should be disclosed.

Additionally, the Commission is requiring broker-dealers to disclose agreements regarding the minimum amount of order flow that a broker-dealer would be required to send to a Specified Venue.³⁹⁵ These types of agreements typically specify that a broker-dealer must send a minimum number of orders or shares to a venue during a particular time period.³⁹⁶ The Commission believes that such disclosures would help customers evaluate whether their broker-dealers face conflicts of interest when determining where to route their orders.

Finally, the Commission acknowledges that as market structure evolves, new types of arrangements not specifically listed may arise. The four arrangements referenced in Rule 606(a)(1)(iv) are not an exhaustive list of terms of payment for order flow arrangements or profit-sharing relationships that may influence a broker-dealer's order routing decision that are required to be disclosed. Rule 606(a)(1)(iv) requires a discussion of the material aspects of the broker-dealer's relationship with each Specified Venue, including a description of any terms of such payment for order flow or profit-sharing arrangements that may influence a broker-dealer's order routing decision for the orders covered by Rule 606(a)(1),³⁹⁷ which orders, as discussed above, include any non-directed NMS stock order of any size that is submitted on a held basis as well as any non-directed order (whether held or not held) for an NMS security that is an option contract with a market value less than \$50,000.³⁹⁸

As described above, because certain terms of payment for order flow

arrangements or profit-sharing relationships may encourage broker-dealers to direct their orders to a specific venue in order to achieve an economic benefit or avoid an economic loss, potential conflicts of interest may arise. The Commission believes that disclosure of such information will be useful for customers to assess the extent to which a broker-dealer's payment for order flow arrangements and profit-sharing relationships may potentially affect or distort the way in which their orders are routed. The Commission further believes that providing customers a comprehensive description of such quantifiable terms of a broker-dealer's relationship with a Specified Venue will allow them to fully appreciate the nature and extent of potential conflicts of interest facing their broker-dealers and assist them in evaluating the broker-dealers' management of such potential conflicts of interest.

Some commenters supported the disclosure of any agreement that may influence a broker-dealer's routing decisions, including oral agreements or arrangements.³⁹⁹ One commenter explicitly supported the disclosure of payment for order-flow and profit-sharing arrangements between broker-dealers and specified venues, including whether or not the broker-dealer passes on any of the rebates or order-flow payments to the same customers whose orders generated such payments.⁴⁰⁰ One commenter suggested further requiring broker-dealers to describe in more meaningful terms any payment for order flow arrangements and profit-sharing relationships with certain venues that may influence their order routing decisions.⁴⁰¹ This commenter supported the proposed enhanced disclosures but expressed concern that they only require broker-dealers to provide a discussion of the material aspects of their relationship with the top venues to which they route.⁴⁰² One commenter, however, believed that the proposed description of terms for payment for order flow arrangements would result in the disclosure of a large and unnecessary amount of information.⁴⁰³

Another commenter believed that enhanced disclosures may result more in confusion than clarity and that the information contained in the current disclosures is generally adequate.⁴⁰⁴

Rule 606(a)(1) requires a discussion of the material aspects of a broker-dealer's relationship with a Specified Venue regarding payment for order-flow or profit-sharing. The expansion contained in new Rule 606(a)(1)(iv) is intended to capture all such arrangements with Specified Venues as all such arrangements—whether written or oral—may be relevant to the customer. The Commission acknowledges that some commenters supported additional disclosure in Rule 606(a)(1)(iv), while two commenters—representing the brokers who will be providing this information as opposed to retail customers themselves—believed that Rule 606(a)(i)(iv), as proposed, would disclose too much information to retail customers. The Commission believes that Rule 606(a)(1)(iv) strikes an appropriate balance by, on one hand, providing customers with disclosures that will better enable them to assess their broker-dealers' payment for order flow arrangements and profit-sharing relationships, and the potential for resulting conflicts of interest, while on the other hand providing information that will not be overly voluminous or difficult to comprehend. The Commission believes the information contained in the reports should be straightforward to customers familiar with the operation of the markets, and will thus generally conform to EMSAC's recommendations regarding clarity and comprehension of the reports. To the extent a customer does not understand these disclosures, the Commission expects that the customer would ask its broker-dealer for greater explanation of the arrangement.

4. Format of Public Order Routing Report

a. Proposal

The Commission proposed to require that the publicly available quarterly order routing report required by Rule 606(a)(1) be made available using an XML schema and associated PDF renderer published on the Commission's website.⁴⁰⁵ The Commission also proposed to amend Rule 606(a)(1) to require every broker-dealer to keep the Rule 606(a)(1) reports posted on a website that is free and readily accessible to the public for a period of

the discussion of the arrangement of terms with the Specified Venue.

⁴⁰⁴ See FIF Letter at 11.

⁴⁰⁵ See proposed Rule 606(a)(1).

³⁹⁵ See Rule 606(a)(1)(iv)(D).

³⁹⁶ See Proposing Release, *supra* note 1, at 49463–64.

³⁹⁷ For example, if a broker-dealer receives a discount on executions in other securities or some other advantage for directing order flow in a specific security to a Specified Venue, or if a broker-dealer receives equity rights in a Specified Venue in exchange for directing order flow there, then all terms of that arrangement must be disclosed including any securities covered by the arrangement with any and all terms of the arrangement specific to each security. If a broker-dealer receives variable payments or discounts based on order types and the amount of such orders sent to a Specified Venue, *e.g.*, marketable orders, non-marketable orders, or auction orders, then all terms of that arrangement must be disclosed. In addition, because such arrangements would influence a broker-dealer's order routing decision, the amended rule requires disclosure of the details of any arrangement between a broker-dealer and a Specified Venue where the level of execution quality is negotiated for an increase or decrease in payment for order flow.

³⁹⁸ See Rule 606(a)(1); see also *supra* Section III.B.1.b.

³⁹⁹ See, *e.g.*, HMA Letter at 11; Markit Letter at 31.

⁴⁰⁰ See Better Markets Letter at 4–6.

⁴⁰¹ See CFA Letter at 9.

⁴⁰² See CFA Letter at 5.

⁴⁰³ See Fidelity Letter at 9. The commenter requested clarity regarding whether this requirement means that broker-dealers must duplicate exchange's rule filings containing volume tiered pricing. See *id.* The Commission does not believe that such filings must be "duplicated" in an order routing report. However, the terms of payments from an exchange must be included in

three years from the initial date of posting on the website.⁴⁰⁶ These proposed requirements were based on considerations similar to those supporting the parallel format and website retention proposals for order routing reports under proposed Rule 606(c).⁴⁰⁷

b. Final Rule and Response to Comments

i. XML/PDF Format

The Commission is adopting as proposed the requirement that the public order handling reports required under Rule 606(a)(1) be made available using an XML schema and associated PDF renderer published on the Commission's website. Of the comments received on the proposed reporting format, most supported a machine-readable or standardized format⁴⁰⁸ or XML in particular.⁴⁰⁹ The use of XML has been adopted in a number of recent Commission rulemakings⁴¹⁰ and the Proposal to use an XML format here was supported by most commenters.⁴¹¹ The Commission believes that it is appropriate, and would be useful to the broadest segment of market participants, to adopt the requirement that the customer-specific and publicly available quarterly customer order routing reports be made available using an XML schema to be published on the Commission's website.

The Commission continues to believe that providing the Rule 606(a)(1) quarterly public reports in the proposed format will promote consistency and comparability of the reports. In contrast to commenters' views noted above, the Commission believes that providing these reports in the commonly used PDF/XML format will create benefits of consistency and comparability of the reports for customers that justify the costs. Accordingly, the Commission

believes that it is appropriate to adopt the amendment to Rule 606(a)(1) to require that the quarterly public order routing report be made available using an XML schema and associated PDF renderer published on the Commission's website.⁴¹²

ii. Retention of Rule 606(a)(1) Reports

The Commission is adopting as proposed the amendment to Rule 606(a)(1) to require every broker-dealer to keep the reports required by Rule 606(a)(1) posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website.⁴¹³ The Commission received comments addressing the proposed retention period of three years,⁴¹⁴ with one commenter supporting it,⁴¹⁵ and other commenters calling for different retention periods.⁴¹⁶ The Commission believes that it is appropriate to require that the publicly available quarterly order routing reports under Rule 606(a)(1) be maintained for a period of three years from the date of initial posting in light of the consistency of this requirement with the requirement under Rule 17a-4(b) that broker-dealers preserve certain documents for a period of not less than three years.⁴¹⁷ While one commenter noted that Rule 17a-4(b) only requires that the documents be preserved in an "easily accessible place" for the first two years,⁴¹⁸ the Commission believes that due to the public nature of the reports, the utility and purpose of the reports, and the low burden of maintaining data on a website for an additional year, the reports should be retained on a public website for the full three years as proposed. Accordingly, the Commission is adopting as proposed the requirement that the Rule 606(a)(1) publicly available quarterly order handling report be kept posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website.

In a related issue, in question 116 of the Proposing Release, the Commission asked whether it should require broker-dealers to make publicly available the prior three years' worth of quarterly reports from the effective date of the rule.⁴¹⁹ One commenter opposed this suggestion, commenting that it would be an extremely large undertaking, and noting that circumstances may have changed over the last two to three years that would make comparison of the data difficult and possibly misleading.⁴²⁰ The Commission believes that it should not adopt a requirement to make publicly available the prior three years' worth of publicly available quarterly order routing reports from the effective date of the rule, as this requirement may be too burdensome and result in data that is not easily comparable across broker-dealers. Nevertheless, while broker-dealers are not required by rule to post on their website past Rule 606(a)(1) reports that were created prior to the amended rule's effectiveness, the Commission believes that making historical Rule 606(a) data available to customers and the public could be useful to customers or market participants seeking to analyze past routing behavior of broker-dealers. As such, the Commission notes that broker-dealers are neither prevented nor discouraged from voluntarily and publicly disclosing such historical data. The Commission believes that some broker-dealers may engage in such voluntary disclosure in an effort to compete more effectively for order flow by providing even greater transparency than what is required under the rule.

The Commission also received comments addressing whether broker-dealers should be required to make the reports available on their own websites or on a centralized website.⁴²¹ Three commenters supported centralizing reporting, specifically recommending that either FINRA or the Commission host the data.⁴²² One commenter stated that it did not necessarily think that the Commission or FINRA should be forced to cover the expense of maintaining a centralized website as long as the data can be found publicly.⁴²³

One of the chief goals of the rule amendments being adopted today is to enable customers to more readily and meaningfully assess broker-dealers' order handling practices. The

⁴⁰⁶ See *id.*

⁴⁰⁷ See Proposing Release, *supra* note 1, at 49465–66 for additional detail on the Commission's proposal.

⁴⁰⁸ See, e.g., HMA Letter at 12; Markit Letter at 17.

⁴⁰⁹ See, e.g., Capital Group Letter at 4; Better Markets Letter at 2; CFA Letter at 11; FIA Letter at 2.

⁴¹⁰ See, e.g., Securities Exchange Act Release Nos. 79095, 81 FR 81870 (November 18, 2016) (adopting Investment Company Reporting Modernization); 74246, 80 FR 14437 (March 19, 2015) (adopting Security-Based Swap Data Repository Registration, Duties, and Core Principles); 72982 (September 4, 2014), 79 FR 57183 (September 24, 2014) (adopting Asset-Backed Securities Disclosure and Registration).

⁴¹¹ See, e.g., Capital Group Letter at 4; Better Markets Letter at 2; FIF Letter at 17; CFA Letter at 11; FIA Letter at 2. For a detailed discussion of comments relating to the XML format, see *supra* Section III.A.5.c.ii.

⁴¹² As discussed above, several commenters suggested alternatives to the general use of an XML schema and associated PDF renderer for the report, and other commenters called generally for the inclusion of standardized headers for the report. See *supra* Section III.A.5.c. The Commission is adopting the proposed use of the XML schema and associated PDF renderer without header information for the same reasons detailed above.

⁴¹³ See Rule 606(a)(1).

⁴¹⁴ See Citadel Letter at 1; FIF Letter at 13; Markit Letter at 29.

⁴¹⁵ See Citadel Letter at 1.

⁴¹⁶ See FIF Letter at 13; Markit Letter at 29.

⁴¹⁷ See 17 CFR 242.17a-4(b).

⁴¹⁸ See FIF Letter at 13.

⁴¹⁹ See Proposing Release, *supra* note 1, at 49466.

⁴²⁰ See FIF Letter at 13.

⁴²¹ See Proposing Release, *supra* note 1, at 49461, 49466; HMA Letter at 4; FIA Letter at 1; FIF Letter at 13; CFA Letter at 11; HMA II Letter at 4, 7–8.

⁴²² See HMA Letter at 4, 7–8; FIF Letter at 13; CFA Letter at 11.

⁴²³ See Markit Letter at 29.

Commission acknowledges that locating each broker-dealer's Rule 606(a)(1) report in a centralized repository could help facilitate that goal. At the same time, there are potentially significant cost and time delays associated with developing a centralized repository and the related mechanisms for allowing individual broker-dealers to upload and manage their reports in a safe and secure manner. The Commission believes that the obstacles associated with developing a centralized repository pose a greater risk of hindering customers' ability to assess broker-dealer order routing performance than is posed by the necessity of accessing each broker-dealer's Rule 606(a) report on the particular broker-dealer's website in the absence of a centralized repository. Accordingly, the Commission is not adopting an additional requirement that the Rule 606(a) quarterly public order handling reports be maintained in a centralized public repository.

5. Division of Rule 606(a) Report's Section on NMS Stocks by S&P 500 Index and Other NMS Stocks

a. Proposal

The Commission proposed to amend Rule 606(a)(1) to remove the requirement that Rule 606(a)(1) reports be divided into three separate sections for securities listed on the NYSE, securities that are qualified for inclusion in NASDAQ, and securities listed on the American Stock Exchange or any other national securities exchange.⁴²⁴ By proposing to remove this requirement, the Commission intended to require broker-dealers to disclose the required order routing information for NMS stocks as a group rather than divided by listing market.

b. Final Rule and Response to Comments

The Commission is adopting as proposed the amendment to remove the requirement that Rule 606(a)(1) reports be divided into three separate sections for securities listed on the NYSE, securities that are qualified for inclusion in NASDAQ, and securities listed on the American Stock Exchange or any other national securities exchange. The Commission notes that the language is stale, as NASDAQ is now registered as a national securities exchange and the American Stock Exchange is now known as NYSE American LLC.⁴²⁵

⁴²⁴ See proposed Rule 606(a)(1). See Proposing Release, *supra* note 1, at 49465 for additional detail on the Commission's proposal.

⁴²⁵ See Rule 606 Predecessor Adopting Release, *supra* note 7. In October 2008, the American Stock Exchange LLC was renamed "NYSE Alternext US

Further, the Commission continues to believe that separating the Rule 606(a) order routing reports by primary listing market is not particularly useful to customers for the reasons noted in the Proposal.⁴²⁶ When the Commission adopted what became Rule 606 (then Rule 11Ac1-6) in 2000, the primary listing markets looked and operated very differently than they do today. For example, NYSE and the American Stock Exchange were primarily manual markets with limited electronic trading, while NASDAQ was a quote-driven dealer market and not yet a national securities exchange. Today, with the adoption of Regulation NMS and considerable advancements in computerized trading technology, the trading landscape is highly automated, dominated by electronic trading, and more widely dispersed across different trading venues. As a result, the primary listing markets no longer factor as prominently as they once did in the execution of the securities that they list. In addition, the commenters who addressed the issue supported the removal of the division of the Rule 606(a) reports by listing market.⁴²⁷ Accordingly, the Commission believes that the division of the Rule 606(a) reports by listing market is no longer warranted or appropriate, as such division is no longer particularly useful to customers interested in analyzing their broker-dealers' routing practices.⁴²⁸

The Commission requested comment in the Proposing Release regarding whether the Rule 606(a) public order routing reports should instead be categorized according to whether a particular security is included in the Standards & Poor's 500 ("S&P 500") index.⁴²⁹ Multiple commenters believed

LLC." See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62). In March 2009, NYSE Alternext US LLC was renamed "NYSE Amex LLC." See Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR-NYSEALTR-2009-24). In May 2012, NYSE Amex LLC was renamed "NYSE MKT LLC." See Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR-NYSEAmex-2012-32). In March 2017, NYSE MKT LLC was renamed "NYSE American LLC." See Securities Exchange Act Release No. 80283 (March 21, 2017), 82 FR 15244 (March 27, 2017) (SR-NYSEMKT-2017-14).

⁴²⁶ For example, from February 2005 to February 2014, NYSE's market share in its listed securities declined from 78.9% to 20.1%. See Memorandum from the SEC Division of Trading and Markets to the SEC Market Structure Advisory Committee (April 30, 2015), available at <http://www.sec.gov/spotlight/emsac/memo-rule-611-regulation-nms.pdf>.

⁴²⁷ See Markit Letter at 32; Fidelity Letter at 9; FIF Letter at 12.

⁴²⁸ See FIF Letter at 3.

⁴²⁹ See Proposing Release, *supra* note 1, at 49466.

that categorization by S&P 500 index would be useful,⁴³⁰ while one commenter believed that segmenting by S&P 500 stocks and other stocks may be too complex.⁴³¹ One commenter stated that subscription to the S&P 500 index would present a cost to broker-dealers and the commenter would only recommend such S&P 500 index categorization if broker-dealers would not incur an additional cost.⁴³² In addition, the EMSAC recommended, among other things, that Rule 606 reports be divided by securities included in the S&P 500 Index and other NMS stocks.⁴³³

While the Commission believes that the handling of NMS stocks no longer varies materially based on their primary listing market, the Commission believes that the handling of NMS stocks may vary based on their market capitalization value and trading volume. Thus, customers that place held orders in NMS stock could benefit from a delineation based on S&P 500 index in the Rule 606(a)(1) report. Inclusion in the S&P 500 is based on a variety of factors that may be of utility to customers when reviewing their disclosures, including that S&P 500 constituents must be U.S. companies and must meet market capitalization, public float, financial viability, liquidity, and price requirements.⁴³⁴ As a result, the Commission is requiring that the Rule 606(a)(1) report be categorized by whether the security is included S&P 500 index as of the first day of the quarter or is another NMS stock.⁴³⁵ The Commission also notes that the list of securities included in the S&P 500 index is readily available on the internet on many free websites, and thus there should be minimal cost to broker-dealers to remain abreast of the composition of the index.⁴³⁶ The

⁴³⁰ See Markit Letter at 32; Fidelity Letter at 9; Schwab Letter at 3.

⁴³¹ See FIF Letter at 12.

⁴³² See Markit Letter at 32.

⁴³³ See EMSAC Rule 606 Recommendations, *supra* note 16.

⁴³⁴ See S&P 500 Fact Sheet, available at <https://us.spindices.com/indices/equity/sp-500>.

⁴³⁵ See Rule 606(a)(1). The Commission understands that securities may move in and out of the S&P 500 during a quarter, but that such movement is not common. The Commission further believes requiring the reporting based on the composition as of the first day of the quarter will be easily administrable and will allow broker-dealers to know what securities they will need to track throughout the quarter for inclusion in this reporting category.

⁴³⁶ The Commission further notes that changes to the composition of the S&P 500 are publicly announced. See, e.g., Press Release, S&P Dow Jones Indices, Huntington Ingalls Industries Set to Join S&P 500; Scientific Games to Join S&P MidCap 400 and Ultra Clean Holdings to Join S&P SmallCap 600 (December 28, 2017), available at <https://>

Commission further notes that many data dissemination services obtain this information from the S&P and redistribute this information as part of data packages consumed by broker-dealers as a part of the broker-dealers' normal course of business.⁴³⁷ Thus, the Commission believes that there will be few or no additional data costs to broker-dealers resulting from this requirement. The Commission believes that this amendment would help further modernize the Rule 606(a)(1) report and provide customers that place held NMS stock orders—and retail investors in particular—with more relevant information about how their orders are routed.

6. Calendar Month Breakdown

a. Proposal

The Commission proposed to amend Rule 606(a)(1) to require that the public order routing reports required by the rule be broken down by calendar month.⁴³⁸ Rule 606(a)(1) currently requires that broker-dealers make order routing reports publicly available for each calendar quarter, and that such reports contain aggregate quarterly information on order routing.

b. Final Rule and Response to Comments

The Commission is adopting as proposed the amendment to Rule 606(a)(1) to require that the publicly available quarterly order routing reports be broken down by calendar month.⁴³⁹ Several commenters supported the proposed break-down by calendar month or proposed requiring that the reports be made available on a monthly basis.⁴⁴⁰ Another commenter believed that a quarterly breakdown is adequate, and that monthly reports would not add value but rather could confuse investors.⁴⁴¹

The Commission believes that disclosing the information contained in the Rule 606(a)(1) reports by calendar month will allow customers to better

assess whether their broker-dealers' routing decisions are affected by changes in fee structures and the extent such changes affect execution quality. In particular, a calendar-month breakdown will provide customers and market participants generally with greater insight into any month-to-month changes in routing behavior by broker-dealers in response to monthly changes in trading center fee structures.⁴⁴² As indicated by the support expressed by commenters for a calendar-month breakdown, the Commission believes that such insight could be valuable to customers attempting to assess the quality of broker-dealer order routing services and the extent to which broker-dealers engage in rebate-seeking or fee-avoiding behavior when routing customer orders. The Commission does not believe that presenting the information as a monthly breakdown would be more confusing than the current presentation of the information in the aggregate for the entire quarter covered by the report.

7. Execution Metrics

As discussed above, the Commission is adopting targeted, limited enhancements to the public order routing disclosures required under Rules 606(a)(1) that are designed to shed additional light on broker-dealers' routing practices and the extent to which broker-dealers encounter and manage potential conflicts of interest stemming from payment-for-order flow arrangements, profit-sharing relationships, trading venue fees and rebates, or other factors. As the Commission previously noted, commenters were broadly supportive of these enhanced order routing disclosures.⁴⁴³ However, the EMSAC and several commenters suggested further enhancements to these disclosures—many specifically to include more or different execution quality statistics.⁴⁴⁴

As noted above, the Commission purposely did not propose significant enhancements or modifications to the

Rule 606(a) public reports and did not include enhanced requirements regarding execution statistics. Rather, the Commission proposed targeted, limited enhancements in Rule 606(a) that focus on financial inducements connected to broker-dealers' order routing. The Commission believes that these enhancements are appropriately designed to enable customers—and retail customers in particular—to better assess their broker-dealers' order routing performance and, in particular, potential conflicts of interest that their broker-dealers face when routing their orders and how their broker-dealers manage those potential conflicts.

Accordingly, the Commission continues to believe that the limited modifications to Rule 606(a) as proposed are reasonably designed to further the goal of enhancing transparency regarding broker-dealers' order routing practices and customers' ability to assess the quality of those practices. The Commission does not believe that it is necessary for the achievement of this goal to require, at this time, that the Rule 606(a) public order handling reports include the additional, specific execution quality statistics suggested by some commenters. The additional disclosures suggested by the commenters would raise compliance costs and add to the complexity of the report. In adopting the amendments to the report, the Commission is seeking a balance between updating the current reports to provide useful additional information to customers and the cost of compliance by broker-dealers. The Commission believes that the required disclosures, including the new disclosures adopted today, contain sufficient information for customers to make an informed decision to evaluate their broker-dealers' order routing performance. In order to reach this balance between cost and benefit, the Commission is not adopting the additional disclosures recommended by commenters at this time.

The Commission notes, as stated above, that this determination is not an indication that the Commission has formed a decision on the validity or usefulness of the various different execution quality statistics that commenters suggested. Rather, in light of the Commission's belief that Rule 606(a), as proposed, provides an appropriate level of insight into the widespread financial arrangements between broker-dealers and execution venues that may affect broker-dealers' order routing decisions, the Commission believes that it is an appropriate and a balanced approach at this juncture to adopt Rule 606(a) as proposed. The

us.spindices.com/documents/index-news-and-announcements/20171228-spdji-bard-huntington-games-ultra-press-release.pdf.

⁴³⁷ The Commission understands that broker-dealers have access to the constituent list for the S&P 500 through data feeds available from widely used data dissemination services, such as Bloomberg, Thomson Reuters, and Morningstar. The Commission understands that most broker-dealers already pay for data feeds that contain this composition information.

⁴³⁸ See proposed Rule 606(a)(1). See Proposing Release, *supra* note 1, at 49465 for additional detail on the Commission's proposal.

⁴³⁹ See Rule 606(a)(1).

⁴⁴⁰ See, e.g., Markit Letter at 29; Fidelity Letter at 9.

⁴⁴¹ See FIF Letter at 13.

⁴⁴² The Commission understands that trading centers generally bill in monthly increments and modify their fee structures to reflect such monthly billing. See Proposing Release, *supra* note 1 at 49465, and see, e.g., Securities Exchange Act Release No. 83025 (April 10, 2018), 83 FR 16410 (April 16, 2018) (SR-NASDAQ-2018-25).

⁴⁴³ See, e.g., KCG Letter at 1-3; STA Letter I at 2-4; Ameritrade Letter at 3; Better Markets Letter at 1, 8-9; HMA Letter at 2-4; FSR Letter at 1; Citadel Letter at 1; CFA Letter at 1.

⁴⁴⁴ See EMSAC Rule 606 Recommendations, *supra* note 16, at 3Markit Letter at 8-10, 25, 30; Fidelity Letter at 6-; Better Markets Letter at 3-8; Angel Letter at 3-7CFA Letter at 10; Schwab Letter at 2; HMA Letter at 7, 10-12; Ameritrade Letter at 3.

Commission believes that adopting the Rule 606(a) report content as proposed will help minimize the reporting complexity and costs, and help create a report that is more universally useful across the spectrum of customers.

C. Amendment to Disclosure of Order Execution Information

The Commission proposed to amend Rule 605(a)(2) to require market centers to keep reports required pursuant to Rule 605(a)(1) posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website.⁴⁴⁵ One commenter supported the Proposal,⁴⁴⁶ while another commenter suggested a two-year time period and further suggested that comparing what it characterized as “out-of-date” information may lead to misleading analysis due to circumstances changing over time.⁴⁴⁷

The Commission is adopting, without any change, the proposed amendment to Rule 605(a)(2) to require market centers to keep reports required pursuant to Rule 605(a)(1) posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website.⁴⁴⁸ While one commenter suggested a two-year posting period instead of a three-year period, the three-year period is consistent with the identical posting requirement for the Rule 606(a)(1) reports that the Commission is adopting today and, for the same reasons as expressed with regard to the Rule 606(a) report, the Commission believes that the three-year posting requirement is appropriate. In particular, the Commission notes, again, that a three-year retention period is consistent with the requirement under Rule 17a-4(b) that broker-dealers preserve certain documents for a period of not less than three years.⁴⁴⁹ Furthermore, while all historical reports would be “out-of-date” information, the Commission believes that the reports will be useful and not lead to misleading analyses because the Commission expects customers and the public to use the historical information to compare information from the same time period. The public information also will provide a historical record of a market center’s order execution information. As also noted above, even though market centers are not required by rule to post on their website past

Rule 605(a) reports that were created prior to the amended rule’s effectiveness, the Commission believes that making historical data available to customers and the public could be useful to customers or market participants seeking to analyze such data, and market centers are neither prevented nor discouraged from voluntarily and publicly disclosing such historical data.

IV. Paperwork Reduction Act

Certain provisions that the Commission is adopting today contain “collection of information requirements” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).⁴⁵⁰ The Commission published a notice requesting comment on the collection of information requirements in the Proposing Release⁴⁵¹ and submitted relevant information to the Office of Management and Budget for review in accordance with the PRA.⁴⁵² The current collection of information for Rule 606 entitled “Disclosure of order routing information” is being modified in a way that creates new collection of information burden estimates and modifies existing collection of information burden estimates. The existing collection of information for Rule 605 entitled “Disclosure of order execution information” is being modified in a manner that does not alter the collection of information burden estimate. Compliance with these collections of information requirements is mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number.

The hours and costs associated with complying with the rule amendments being adopted today constitute reporting and cost burdens imposed by the collection of information for Rule 606. As described in more detail below, certain estimates have been modified, as necessary, to conform to the adopted amendments and to reflect the most recent data available to the Commission.

The Commission requested comment on the collection of information requirements in the Proposing Release. As noted above, the Commission received comment on the Proposing Release. Views of commenters relevant to the Commission’s analysis of burdens, costs, and benefits of the rule amendments being adopted today are discussed below.

A. Summary of Collection of Information

The amendments to Rule 606, as adopted, contain “collection of information requirements” within the meaning of the PRA for broker-dealers that receive and handle certain orders in NMS stocks. As detailed in Section III, *supra*, in adopting the amendments, the Commission has made certain changes to the amendments as originally proposed.

1. Customer-Specific Disclosures Under Rule 606(b)(3)

Rule 606(b)(3) of Regulation NMS, as adopted, requires a broker-dealer, on request of a customer that places with the broker-dealer, directly or indirectly, NMS stock orders of any size that are submitted on a not held basis (subject to two de minimis exceptions) to electronically disclose to such customer within seven business days of receiving the request, a report on the broker-dealer’s handling of such orders for that customer for the prior six months, broken down by calendar month. The report would contain certain information on the customer’s order flow with the reporting broker-dealer as well as certain columns of information on orders handled by the broker-dealer, as described below, categorized by venue and separated by directed and non-directed orders.⁴⁵³

2. Amendment to Current Public and Customer-Specific Disclosures

Rule 606(a) of Regulation NMS, as amended: (1) Breaks down the existing limit order disclosures into separate categories of marketable limit orders and non-marketable limit orders;⁴⁵⁴ (2) requires certain disclosures for each Specified Venue;⁴⁵⁵ (3) requires certain disclosures by broker-dealers relating to terms of payment for order flow arrangements and profit-sharing relationships;⁴⁵⁶ (4) requires that such reports be broken down by calendar month;⁴⁵⁷ (5) requires that such reports be kept posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website;⁴⁵⁸ and (6) replaces the requirement that the Rule 606(a)(1) report be divided into three separate categories by listing market with a requirement that the report be divided into two categories: Securities included in the S&P 500

⁴⁴⁵ See Proposing Release, *supra* note 1, at 49466.

⁴⁴⁶ See Citadel Letter.

⁴⁴⁷ See FIF Letter.

⁴⁴⁸ See Rule 605(a)(2).

⁴⁴⁹ See 17 CFR 242.17a-4(b).

⁴⁵⁰ 44 U.S.C. 3501 *et seq.*

⁴⁵¹ See Proposing Release, *supra* note 1, at 49477.

⁴⁵² 44 U.S.C. 3507; 5 CFR 1320.11.

⁴⁵³ See *supra* Sections III.A.6.a.ii, III.A.6.b.ii.

⁴⁵⁴ See *supra* Section III.B.2.

⁴⁵⁵ See *supra* Section III.B.3.

⁴⁵⁶ See *id.*

⁴⁵⁷ See *supra* Section III.B.6.

⁴⁵⁸ See *supra* Section III.B.4.

Index as of the first day of the quarter; and other NMS stocks.⁴⁵⁹ These disclosures are available for non-directed orders in NMS stocks submitted on a held basis having any market value. For orders in NMS securities that are option contracts, these disclosures are available whether the order is submitted on a held or not held basis, but only for customer orders, *i.e.*, orders having a market value of less than \$50,000.⁴⁶⁰

Rule 606(b)(1), as amended, does not modify any of the current customer-specific disclosure requirements but only requires those disclosures for certain categories of orders. Broker-dealers must now provide the information only for: (i) Orders in NMS stocks that are submitted on a held basis; (ii) orders in NMS stocks that are submitted on a not held basis and are exempt from the disclosure requirements of Rule 606(b)(3); or (iii) orders in NMS securities that are option contracts.

The amendments would require reports produced pursuant to Rules 606(a) and 606(b)(1) to be formatted in the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website.

3. Amendment to Current Disclosures Under Rule 605

Rule 605(a)(2), as amended, requires market centers to keep reports required pursuant to the Rule 605(a)(1) posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website.

B. Use of Information

The order handling disclosures required under the adopted amendments to Rule 606 will provide more detailed information to customers that will enable them to evaluate how their orders were handled by their broker-dealers, assess potential conflicts of interest facing their broker-dealers in providing order handling services, and have the ability to engage in informed discussions with their broker-dealers about the broker-dealer's order handling practices. The adopted order handling disclosures can inform future decisions on whether to retain a broker-dealer's services or engage the services of a new broker-dealer. In addition, broker-dealers may use the public disclosures to compete on the basis of order routing services, and academics and others may use the public disclosures pursuant to

Rules 605 and 606 to review and analyze broker-dealer routing practices and trading center order executions.

1. Customer-Specific Disclosures Under Rule 606(b)(3)

Rule 606(b)(3), as adopted, provides detailed order routing and execution information to a customer regarding its specific NMS stock orders of any size that are submitted on a not held basis (subject to two de minimis exceptions) during the reporting period. Generally, the five groups of information contained in the order handling report will enable customers to understand where and how their not held NMS stock orders were routed or exposed, as well as where their orders were executed during the reporting period. Customers may use the information contained in the order handling report to assess any considerations a broker-dealer may have faced when routing its not held NMS stock orders to various venues and whether those considerations may have affected how a broker-dealer handled its orders, as well as to assess whether a broker-dealer's order routing practices may have led to risks of information leakage.⁴⁶¹

The requirement that broker-dealers produce one report for directed orders and one report for non-directed orders will provide a customer with a more precise reflection of how and where its broker-dealer is routing the customer's not held NMS stock orders pursuant to the discretion it is afforded.⁴⁶² As noted above, customers may use the order handling disclosures to inform future decisions on whether to retain a broker-dealer's services or engage the services of a new broker-dealer.

2. Amendment to Current Public and Customer-Specific Disclosures

Rule 606(a), as amended, requires broker-dealers to break down the limit order disclosure in the public order routing reports into separate categories of marketable limit orders and non-marketable limit orders.⁴⁶³ The adopted requirement of Rule 606(a) that a broker-dealer disclose the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and on a per share basis, for specified non-directed order types for each Specified Venue, may allow customers to determine how broker-dealers route different types of

orders relative to any economic benefit or consequence to the broker-dealer. The requirement in adopted Rule 606(a)(1) that the quarterly reports be broken down by calendar month may allow customers to determine whether and how their broker-dealers' routing decisions changed in response to changing fee and rebate structures in the marketplace, which often change at the beginning of a calendar month. The adopted requirement that such reports be kept posted on a website for three years may allow customers and others, such as researchers, to analyze historical routing behavior of particular broker-dealers. The adopted requirement that broker-dealers categorize the quarterly public Rule 606(a)(1) disclosure by securities included in the S&P 500 Index and other NMS stocks should provide customers and the public with more detailed information on securities that have more similar liquidity and trading characteristics, and should provide a clearer way for customers to review order routing information for securities included in the S&P 500 Index, which attract significant trading interest.⁴⁶⁴ In addition, the adopted requirement for broker-dealers to describe any terms of payment for order flow arrangements and profit-sharing relationships with a Specified Venue that may influence their order routing decisions, including information relating to specific incentives or volume minimums, may allow customers to understand how their broker-dealers route their orders and whether and how such routing is influenced by payment for order flow and/or a profit-sharing relationship.

As noted above, the amendments to Rule 606(b)(1) do not create new data collection obligations but require the disclosures for certain categories of orders.

3. Amendment to Current Disclosures Under Rule 605

The adopted requirement that reports required under Rule 605 be kept posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website may allow customers and others to analyze historical order execution quality at various market centers, such as researchers that could provide analysis to better inform investors. The three years of data may be useful to those seeking to analyze how execution quality has changed over time, in addition to changes in response to regulatory or other developments.

⁴⁶¹ See Proposing Release, *supra* note 1, at 49468.

⁴⁶² See *supra* Section III.A.5.b.

⁴⁶³ The Commission discussed the general use of this collection in the Proposing Release. See Proposing Release, *supra* note 1, at 49468–69.

⁴⁶⁴ See *supra* Section III.B.5.

⁴⁵⁹ See *supra* Section III.B.5.

⁴⁶⁰ See *supra* Section III.B.1.

C. Respondents

The respondents to the amendments being adopted today are broker-dealers that handle held orders and not held orders received from customers and market centers that create reports pursuant to Rule 605.

1. Initial Estimate

In the proposing release the Commission estimated, as of December 2015, that there were approximately 4,156 total registered broker-dealers. Of these, the Commission estimated that 266 were broker-dealers that route retail orders. The Commission estimated that 200 broker-dealers were involved in the practice of routing institutional orders, all of whom also routed retail orders. The Commission estimated that there were 380 market centers to which Rule 605 applies.⁴⁶⁵

2. Estimate for Adopted Rule [Amendments to 605 and 606]

The Commission estimates that of the approximately 4,024 total registered broker-dealers,⁴⁶⁶ 292 are broker-dealers that handle orders in NMS stocks on a held basis that would be subject to the public disclosure requirements of Rule 606(a) or the current customer-specific disclosure requirements of Rule 606(b)(1).⁴⁶⁷ The Commission estimates that 200 broker-dealers would be subject to the new customer-specific disclosure requirements of Rule 606(b)(3) and not meet the requirements for a firm-level de minimis exception under Rule 606(b)(4), *i.e.*, broker-dealers that are involved in the practice of routing NMS stock orders of any size that are submitted on a not held basis, where such order flow constitutes greater than 5% of their total NMS stock order flow.⁴⁶⁸ The Commission estimates that

there are 381 market centers to which Rule 605 applies.⁴⁶⁹

D. Total Initial and Annual Reporting and Recordkeeping Burdens

1. Customer-Specific Disclosures Under Rule 606(b)(3)

a. Initial Reporting and Recordkeeping Burden

i. Baseline Burden

Of the 200 broker-dealers involved in routing orders subject to the customer-specific disclosures described in Rule 606(b)(3), the Commission initially estimated that 25 broker-dealers that handle orders do not currently have systems that obtain all of the information required by the proposed amendments.⁴⁷⁰ The Commission estimated that these 25 broker-dealers would be able to perform the required enhancements in-house, but could also use a third-party service provider.⁴⁷¹ Based on discussions with industry sources, the Commission preliminarily estimated that the average one-time, initial burden for broker-dealers that handle orders subject to the customer-specific disclosures described in Rule 606(b)(3) that do not currently create and retain the proposed order handling information to program systems in-house to implement the requirements of the proposed Rule would be 200 hours and \$60,420 per broker-dealer.⁴⁷² The Commission preliminarily estimated the average one-time, initial burden for broker-dealers that handle orders subject to the customer-specific disclosures described in Rule 606(b)(3) that do not currently create and retain the proposed order handling information to engage a third-party to program the broker-dealers' systems to implement the requirements of the proposed amendments to be 50 hours⁴⁷³ and \$35,000.⁴⁷⁴ The Commission preliminarily estimated that of the 25 broker-dealers that handle orders subject to the customer-specific

counted among the respondents to the collection of information required by Rule 606(b)(1).

⁴⁶⁹ The Commission derived this estimate based on the following: 214 OTC market makers (not including market makers claiming an exemption from the reporting requirements of the Rule), plus 21 exchanges, 1 securities association, 104 exchange market makers, and 41 ATSs.

⁴⁷⁰ This estimate was based on discussions with various industry participants. See *Proposing Release*, *supra* note 1, at 49470.

⁴⁷¹ See *id.*

⁴⁷² See *id.* The Commission derived its preliminary monetized burden estimates based on per hour labor figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013*.

⁴⁷³ The monetized hourly burden was estimated at \$15,125 per broker-dealer. See *id.*

⁴⁷⁴ See *id.*

disclosures described in Rule 606(b)(3) that do not currently have systems in place to capture the information required by the rule, 10 such broker-dealers would perform the necessary programming upgrades in-house, and 15 would engage a third-party to perform the programming upgrades. Additionally, of the 25 broker-dealers that handle orders subject to the customer-specific disclosures described in Rule 606(b)(3) that do not currently have systems in place to capture the information required by the proposed rule, the Commission estimated that 10 such broker-dealers would need to purchase hardware and software upgrades to fulfill the requirements of the proposed rule at an average cost of \$15,000 per broker-dealer, and that the remaining 15 broker-dealers have adequate hardware and software to capture the information proposed by the rule. Therefore, the total initial burden for broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) that do not currently capture order handling information required by the proposed rule to program their systems to produce a report to comply with the proposed rule change was estimated as 2,750 hours⁴⁷⁵ and \$675,000.⁴⁷⁶

The Commission preliminarily estimated the average burden for a broker-dealer that already captures information required by the proposed rule to format its systems to produce a report to comply with the proposed rule would be 40 hours.⁴⁷⁷ The Commission estimated that 125 broker-dealers would format systems to produce the reports in-house. A broker-dealer that handles such orders that uses a third-party service provider to produce reports using such order handling information would need to need to work with the vendor to ensure the proper data is captured in the reports. The Commission estimated 50 broker-dealers that handle such orders would use a third-party vendor to ensure data required by the rule is captured in the reports. The Commission estimated the average burden for a broker-dealer that uses a third-party service provider to work with such service provider to ensure proper reports are produced

⁴⁷⁵ The total monetized hourly burden was estimated at \$831,075. See *id.*

⁴⁷⁶ (\$35,000 per broker-dealer that will engage a third-party × 15 such broker-dealers) + (\$15,000 per broker-dealer that will need to purchase hardware and software upgrades × 10 such broker-dealers) = \$675,000. See *id.*

⁴⁷⁷ The monetized hourly burden was estimated at \$12,084 per broker-dealer. See *id.*

⁴⁶⁵ See *Proposing Release*, *supra* note 1, at 49469.

⁴⁶⁶ The Commission is basing its estimate on data compiled from responses to Form BD.

⁴⁶⁷ The Commission estimates that both clearing and introducing brokers handle such orders.

⁴⁶⁸ For the purposes of estimating burden under the PRA, the Commission believes that all broker-dealers that handle or route orders in NMS stocks will have a mix of customers that are and are not subject to the customer-level de minimis exception described in Rule 606(b)(5). See *supra* Section III.A.1.b.iv. Accordingly, the Commission estimates that all 200 broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) and all 292 broker-dealers that route orders subject to the public disclosures required by Rule 606(a) and the existing customer-specific disclosures required by Rule 606(b)(1) will have to modify their systems to comply with those respective rules. If a broker-dealer handles orders subject to the new customer-specific disclosure requirements of Rule 606(b)(3) but qualifies for both de minimis exceptions required by Rules 606(b)(4) and (b)(5), then it is not a respondent to the collection of information required by Rule 606(b)(3) but would still be

would be 20 hours⁴⁷⁸ and \$5,000.⁴⁷⁹ The Commission preliminarily believed that broker-dealers whose systems currently capture and retain information required by the rule would not need to purchase hardware or software upgrades. Thus, the total burden for broker-dealers that currently obtain the required data but need to format their systems, or work with their data provider, to prepare a report to comply with the proposed rule was estimated as 6,000 hours⁴⁸⁰ and \$250,000.⁴⁸¹ Therefore, the estimated total initial burden for all broker-dealers to comply with Rule 606(b)(3) was estimated at 8,750 hours⁴⁸² and \$925,000.⁴⁸³

ii. Burden of Adopted Rule

The Commission is revising its initial burden and cost estimates associated with producing the customer-specific reports on order handling required by Rule 606(b)(3)⁴⁸⁴ in response to comments received. One commenter criticizes the Commission's estimate of costs involved in producing the data for the reports, which it characterizes as "8 hours," and provides its own estimate of 240 hours per broker-dealer to produce the data for the reports. The commenter does not make clear whether this comment addresses the new customer-specific order handling disclosures required by Rule 606(b)(3) or the amendments to the public order routing disclosures required by Rule 606(a)(1). The commenter also states that "[i]n order to produce the data for the public reports, brokers will *all* have to modify their OMS system or have their OMS vendor make changes" (emphasis added).⁴⁸⁵

To the extent these comments are addressed to the initial hourly burden for broker-dealers to produce the customer-specific order handling disclosures required by Rule 606(b)(3),⁴⁸⁶ the Commission

understands them to raise two areas of criticism: The hourly burden estimate for producing the data for the reports and the monetized value of that burden. With respect to the hourly burden, the Commission estimated 200 hours—not 8 hours—for a broker-dealer that handles orders subject to the customer-specific disclosures required by Rule 606(b)(3) to update its systems in-house to capture the information and format the reports required by the rule.⁴⁸⁷ However, upon consideration of the comments, and in particular the statements that the implementation would require "at least [] four weeks of developer time,"⁴⁸⁸ and result in a "total cost of 240 hours per broker,"⁴⁸⁹ the Commission is revising its initial hourly burden estimate for a broker-dealer that handles orders subject to the customer-specific disclosures required by Rule 606(b)(3) to both update its data capture systems in-house and format the report required by the rule to 260 hours.⁴⁹⁰ The Commission continues to estimate that the initial burden for broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) to engage a third-party to implement the requirements of the rule to be 50 hours⁴⁹¹ and \$35,000.⁴⁹²

The commenter also implicitly criticizes the Commission's estimate that only 25 of the 200 total broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) would need to update

disclosures described by Rule 606(a)(1), the Commission addresses them below. *See infra* Section IV.D.4.a.ii.

⁴⁸⁷ *See* Proposing Release, *supra* note 1, at 49470.

⁴⁸⁸ *See* Markit Letter at 33. The Commission is revising its initial estimate of 100 Sr. Programmer hours to 160 Sr. Programmer hours = 40-hour work week × 4 ("four weeks of developer time").

⁴⁸⁹ *See id.*

⁴⁹⁰ The Commission estimates the monetized burden for this requirement to be \$84,100. (Sr. Programmer for 160 hours at \$324 per hour) + (Sr. Database Administrator for 40 hours at \$334 per hour) + (Sr. Business Analyst for 40 hours at \$269 per hour) + (Attorney for 20 hours at \$407 per hour) = 260 hours and \$84,100. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* adjusted for inflation based on Bureau of Labor Statistics data on CPI-U between January 2013 and December 2017 (a factor of 1.0705). For example, the 2017 inflation-adjusted effective hourly wage rate for attorneys is estimated at \$407 (\$380 × 1.0705).

⁴⁹¹ *See supra* note 473. The Commission is updating the monetized hourly burden estimate to \$16,200 to reflect the latest available labor earnings data. (Sr. Business Analyst for 15 hours at \$269 per hour) + (Compliance Manager for 20 hours at \$303 per hour) + (Attorney for 15 hours at \$407 per hour) = 50 hours and \$16,200. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* adjusted to December 2017 values. *See supra* note 490.

⁴⁹² *See* Proposing Release, *supra* note 1, at 49470.

their data capture systems by stating that "brokers will *all* have to modify their OMS system or have their OMS vendor make changes" (emphasis added).⁴⁹³ Upon consideration of this comment, the Commission is revising its previous estimate that there are some broker-dealers that already capture order handling information required by the rule⁴⁹⁴ and instead estimating that all 200 broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) will need to update their systems to capture the information required by the rule.

The Commission continues to believe that some broker-dealers will implement the changes in-house, while others will engage a third party vendor, which is supported by the commenter's statement that broker-dealers will have to "modify their OMS system or have their OMS vendor make changes."⁴⁹⁵ The Commission believes that it is reasonable to estimate that one third of the 200 broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3)—67 broker-dealers—will implement the changes in-house, while the remaining number—133 broker-dealers—will engage a third-party vendor to do so.⁴⁹⁶ The Commission continues to estimate that the broker-dealers that will implement the changes in-house will also need to purchase hardware and software upgrades at a cost of \$15,000 to fulfill the requirements of the rule.⁴⁹⁷

The Commission is estimating the total initial burden for broker-dealers that will program their systems in-house to capture the data and produce a report to comply with the rule as 17,420

⁴⁹³ *See* Markit Letter at 33.

⁴⁹⁴ The Commission preliminarily believed that many broker-dealers that handle orders subject to the customer-specific disclosures described in proposed Rule 606(b)(3) already create and retain the order handling information required by Rule 606(b)(3). Accordingly, the Commission provided two burden estimates, one for broker-dealers that handle orders whose systems do not currently support creating and retaining the information required by Rule 606(b)(3) that would upgrade their systems either in-house or via a third-party service provider, and another for broker-dealers that handle orders whose systems currently do create and retain such information, including those that use a third-party service provider whose systems currently obtain such information. *See* Proposing Release, *supra* note 1, at 49469–70.

⁴⁹⁵ *See id.*

⁴⁹⁶ The Commission's initial estimate in the Proposing Release of 65 broker-dealers that would implement these changes in-house and 135 broker that would engage a third-party vendor was intended to reflect a ratio of one-third and two-thirds of the total 200 broker-dealers with reporting obligations under Rule 606(b)(3).

⁴⁹⁷ *See* Proposing Release, *supra* note 1, at 49470.

⁴⁷⁸ The monetized hourly burden was estimated at \$5,726 per broker-dealer. *See id.*

⁴⁷⁹ *See id.*

⁴⁸⁰ The total monetized hourly burden was estimated at \$1,796,800. *See id.*

⁴⁸¹ \$5,000 per broker-dealer that works with a third-party vendor to ensure proper reports are produced × 50 such broker-dealers = \$250,000. *See id.*

⁴⁸² The total initial monetized hourly burden was estimated at \$2,627,875. *See* Proposing Release, *supra* note 1, at 49471.

⁴⁸³ *See id.*

⁴⁸⁴ Rule 606(b)(3), as proposed, applied to broker-dealers that handle "institutional orders," as defined in the Proposing Release. Rule 606(b)(3), as adopted, applies to NMS stock orders of any size that are submitted on a not held basis (subject to the two de minimis exceptions).

⁴⁸⁵ *See* Markit Letter at 33.

⁴⁸⁶ To the extent that these comments are addressed to the burden for the amended

hours⁴⁹⁸ and \$1,005,000.⁴⁹⁹ The Commission is estimating the total initial burden for broker-dealers that will engage a third-party vendor to program their systems to capture the data and produce a report to comply with the rule as 6,650 hours⁵⁰⁰ and \$4,655,000.⁵⁰¹

The commenter states that the Commission did not include an estimate for “monitoring systems for ensuring that strategy definitions are reasonably defined.”⁵⁰² While the Commission estimated an annual, ongoing burden for a broker-dealer to maintain the assignment of its order routing strategies,⁵⁰³ the Commission is not adopting the proposed requirement to segment order handling information by order routing strategy.⁵⁰⁴

The commenter also suggests that the Commission’s estimate for producing the order handling disclosures “does not include the complexities of the IOI reporting.”⁵⁰⁵ The Commission considered all the proposed data elements for the order handling disclosure, including those related to actionable IOIs, in estimating the initial burden of complying with the rule. The Commission also considered that, as discussed in Section III.A.2, an actionable IOI is the functional equivalent of an order or quotation, and that actionable IOIs do not include conditional orders in estimating the burden of complying with the rule. Moreover, as noted above, because actionable IOIs convey similar information as an order, the Commission believed, and continues to believe, that including actionable IOIs in the order routing reports would not add much complexity to the reporting practices. The commenter does not address how the inclusion of actionable IOIs in Rule 606(b)(3) would affect the calculation of the cost. Specifically, as

noted above, the Commission is adopting a modification to Rule 606(b)(3) that requires broker-dealers to disclose the fact that actionable IOIs were sent to customers but not the identity of such customers. Compared to proposed Rule 606(b)(3), Rule 606(b)(3) as adopted could reduce the potential initial paperwork burden for broker-dealers, because they do not have to disclose the identity of customers receiving actionable IOIs. The Commission’s revised estimate includes and fully reflects consideration of all modifications from the proposed rule text to Rule 606(b)(3) as adopted.

The revised initial burden estimate takes into account the requirement that the disclosures apply to NMS stock orders of any size that are submitted on a not held basis (subject to two de minimis exceptions) instead of to “institutional orders” as defined by a dollar-value threshold in the Proposing Release.⁵⁰⁶ A broker-dealer would have to program its systems to filter their order data by a condition—either a dollar-value threshold or a held/not-held indicator (subject to the two de minimis exceptions)—and the work of filtering data by a condition generally is expected to carry the same burden, independent of the filtering condition.

The Commission also believes that this initial hourly burden estimate remains unchanged by the adoption today of a requirement that the customer-specific order handling disclosures described by Rule 606(b)(3) be segmented by directed and non-directed orders.⁵⁰⁷ The Commission believes that the systems of all 200 broker-dealers involved in the practice of routing orders subject to the customer-specific disclosures required by Rule 606(b)(3) already capture data related to whether an order is directed or not directed, so this requirement imposes no additional burden associated with data capture. With respect to formatting the report, the Commission believes that the work of segmenting data by a condition generally carries the same burden, independent of the segmenting condition. Since the burden of segmenting the data by order routing strategy, a requirement which is being eliminated, is similar to the burden of the new requirement to segment the data by directed and non-directed orders, the net burden remains unchanged. Accordingly, the adoption of this requirement does not change the initial hourly burden estimate for

capturing the required data or formatting the reports.

Further, this initial hourly burden estimate is unchanged by the Commission’s decision today not to adopt proposed requirements to categorize order routing information by order routing strategy,⁵⁰⁸ since the burden of categorizing and capturing that information was separately estimated in the Proposing Release.⁵⁰⁹

Therefore, the total initial burden for all 200 broker-dealers that handle orders subject to the customer-specific order handling disclosures required by Rule 606(b)(3) to implement a system that captures the data required by the rule and format that data into a report is estimated to be 24,070 hours and \$5,660,000.⁵¹⁰

b. Annual Reporting and Recordkeeping Burden

i. Baseline Burden

The Commission preliminarily estimated that 135 of the 200 broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) would respond to customer requests in-house.⁵¹¹ The Commission estimated that an average response to a Rule 606(b)(3) request for a broker-dealer that responds to such requests in-house would take approximately 2 hours per response.⁵¹² The Commission estimated that an average broker-dealer will receive approximately 200 requests annually.⁵¹³ Therefore, on average, a broker-dealer that responds to 606(b)(3) requests in-house would incur an estimated annual burden of 400 hours to prepare, disseminate, and retain responses to customers required by Rule 606(b)(3).⁵¹⁴ The Commission preliminarily estimated that 135 broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) that would respond to requests

⁴⁹⁸ 17,420 hours = 260 hours × 67 broker-dealers that handle such orders and would perform the necessary programming upgrades in-house. The monetized hourly burden is \$5,634,700 = \$84,100 × 67 such broker-dealers. See *supra* note 490.

⁴⁹⁹ \$15,000 per broker-dealer that will need to purchase hardware and software upgrades × 67 such broker-dealers = \$1,005,000. See *supra* note 496.

⁵⁰⁰ 6,650 hours = 50 hours × 133 broker-dealers that handle such orders and would engage a third-party vendor to perform the necessary programming upgrades. The monetized hourly burden is \$2,154,600 = \$16,200 × 133 such broker-dealers. See *supra* note 491.

⁵⁰¹ \$35,000 per broker-dealer that will need to engage a third-party vendor × 133 such broker-dealers = \$4,655,000. See *supra* note 492.

⁵⁰² See Markit Letter at 34.

⁵⁰³ See Proposing Release, *supra* note 1, at 49473–74.

⁵⁰⁴ See *supra* Section III.A.5.a.ii.

⁵⁰⁵ See Markit Letter at 34.

⁵⁰⁶ See *supra* Section III.A.1.

⁵⁰⁷ See *supra* Section III.A.5.b.

⁵⁰⁸ See *supra* Section III.A.5.a.ii.

⁵⁰⁹ See Proposing Release, *supra* note 1, at 49467–68.

⁵¹⁰ See *supra* notes 498 and 500 (17,420 hours + 6,650 hours = 24,070 hours). The total estimated initial monetized hourly burden is \$7,789,300 (\$5,634,700 + \$2,154,600). The total cost burden of \$5,660,000 = \$4,655,000 + \$1,005,000. See *supra* notes 499 and 501. The commenter asserts without further elaboration that “the total cost for the industry would be over \$16 million.” See Markit Letter at 34. To the extent that the commenter is referring to Rule 606(b)(3) disclosures, for all the reasons discussed above, the Commission believes that it has reasonably estimated the total industry cost as \$13,449,300 (\$7,789,300 monetized hourly burden + \$5,660,000 cost burden).

⁵¹¹ See Proposing Release, *supra* note 1, at 49471.

⁵¹² See *id.*

⁵¹³ This estimate was based on discussions with various industry participants. See *id.*

⁵¹⁴ See *id.*

in-house, and that the total annual burden for such broker-dealers to comply with the customer response requirement in proposed Rule 606(b)(3) would be 54,000.⁵¹⁵

The Commission preliminarily estimated that 65 broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) would use a third-party service provider to respond to requests. For these broker-dealers, the Commission preliminarily estimated an annual burden of 1 hour and \$100 per response.⁵¹⁶ With an estimated 200 requests pursuant to Rule 606(b)(3) per year, the Commission preliminarily estimated that on average, the annual burden for a broker-dealer that uses a third-party service provider to respond to requests pursuant to Rule 606(b)(3) would be 200 hours and \$20,000.⁵¹⁷ With an estimated 65 broker-dealers that handle such orders that would respond to Rule 606(b)(3) requests using a third-party-service provider, the Commission preliminarily estimated the total annual burden for such 65 broker-dealers would be 13,000 hours⁵¹⁸ and \$1,300,000.⁵¹⁹

Therefore, the Commission preliminarily estimated the total annual burden for all 200 broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) to comply with the customer response requirement in proposed Rule 606(b)(3) would be 67,000 hours⁵²⁰ and \$1,300,000.⁵²¹

⁵¹⁵ 2 hours per response × 200 responses annually per broker-dealer that handles such orders who will respond to requests in-house × 135 such broker-dealers = 54,000 hours. *See id.*

⁵¹⁶ *See id.* This burden estimate relates solely to the work a broker-dealer or its third-party data provider would perform to run an individual report on such orders for a particular customer and is therefore not affected by the following changes from the rule as proposed, which relate to capturing the required data and formatting a report template: (1) The application of Rule 606(b)(3) to NMS stock orders of any size that are submitted on a not held basis, subject to two de minimis exceptions, instead of to “institutional orders” as defined by a dollar-value threshold in the Proposing Release.; (2) the adopted requirement to segment the Rule 606(b)(3) order handling disclosures by directed and non-directed orders; and (3) the elimination of the proposed requirement to segment the Rule 606(b)(3) order handling disclosures by order routing strategy.

⁵¹⁷ *See id.*

⁵¹⁸ 1 hour per response × 200 responses annually per broker-dealer that will use a third-party service provider × 65 such broker-dealers = 13,000 hours. *See id.*

⁵¹⁹ \$100 per request × 200 requests annually × 65 broker-dealers that will use a third-party service provider = \$1,300,000. *See id.*

⁵²⁰ *See supra* notes 515 and 518.

⁵²¹ *See supra* notes 519.

ii. Burden of Adopted Rule

The Commission estimates the total annual burden for the 200 broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) to be 67,000 hours and \$1,300,000, as it did in the Proposing Release, but is updating the monetized hourly burdens to reflect the latest available labor earnings data.

The Commission believes that for the 135 broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) that would respond in-house to customer requests pursuant to Rule 606(b)(3), as adopted, the annual hourly burden to comply would be 54,000 hours.⁵²² The Commission believes that for the 65 broker-dealers that handle such orders and would use a third-party service provider to respond to requests pursuant to Rule 606(b)(3), as adopted, the total annual burden to comply would be 13,000 hours⁵²³ and \$1,300,000.⁵²⁴

Therefore, the Commission estimates the total annual burden for all 200 broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) to comply with the customer response requirement of Rule 606(b)(3), as adopted, to be 67,000 hours⁵²⁵ and \$1,300,000.⁵²⁶

⁵²² *See supra* note 515. The Commission is updating the monetized hourly burden estimate to reflect the latest available labor earnings data. The monetized hourly burden for the 125 broker-dealers that handle such orders and would respond in-house to customer requests under Rule 606(b)(3) is \$10,989,000: (Programmer Analyst for 1 hour at \$236 per hour) + (Jr. Business Analyst for 1 hour at \$171 per hour) = \$407 × 125 such broker-dealers × 200 requests annually. The Commission derived this estimate based on per hour figures from SIFMA’s *Management & Professional Earnings in the Securities Industry 2013* adjusted to December 2017 values. *See supra* note 490.

⁵²³ *See supra* note 518. The Commission is updating the monetized hourly burden estimate to reflect the latest available labor earnings data. The monetized hourly burden for the 65 broker-dealers that handle such orders and would engage a third-party to respond to customer requests under Rule 606(b)(3) is \$3,939,000: (Compliance Manager for 1 hour at \$303 per hour) = \$303 × 65 such broker-dealers × 200 requests annually. The Commission derived this estimate based on per hour figures from SIFMA’s *Management & Professional Earnings in the Securities Industry 2013* adjusted to December 2017 values. *See supra* note 490.

⁵²⁴ *See supra* note 519.

⁵²⁵ *See supra* notes 522 and 523 (54,000 hours + 13,000 hours = 67,000 hours). The total estimated annual monetized hourly burden is \$14,928,000 (\$10,989,000 + \$3,939,000).

⁵²⁶ *See supra* note 521.

2. Proposed Public Aggregated Report on Orders Subject to the Customer-Specific Disclosures Under Rule 606(b) Not Adopted

As discussed above, the Commission is not adopting the proposed requirement that broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) issue a quarterly public aggregated disclosure on order handling.⁵²⁷ The Commission preliminarily estimated an initial and annual burden created by this proposed requirement,⁵²⁸ but as this requirement is not being adopted, there is no longer an associated cost and hourly burden.

3. Proposed Requirement To Document Methodologies for Categorizing Order Routing Strategies Not Adopted

As discussed above, the Commission is not adopting the proposed requirement that broker-dealers break down information in the disclosures required by Rule 606(b) by order routing strategies.⁵²⁹ The Commission preliminarily estimated an initial and annual burden created by this proposed requirement,⁵³⁰ but as this requirement is not being adopted, there is no longer an associated cost and hourly burden.

4. Amendment to Current Public and Customer-Specific Disclosures

a. Initial Reporting and Recordkeeping Burden

i. Baseline Burden

The Commission preliminarily estimated that there are 266 broker-dealers to which the proposed disclosures in Rule 606(a)(1) and (b)(1) would apply.⁵³¹ The Commission estimated that the initial burden for a broker-dealer that routes orders subject to the disclosures required by Rule 606(a)(1) whose systems do not currently capture all of the information required by the rule to update its systems to capture the information required by proposed Rule 606(a) and format that information into a report to comply with the rule would be 76 hours⁵³² and the total initial burden for

⁵²⁷ *See supra* Section III.A.7.b.

⁵²⁸ *See* Proposing Release, *supra* note 1, at 49471–72.

⁵²⁹ *See supra* Section III.A.5.a.ii.

⁵³⁰ *See* Proposing Release, *supra* note 1, at 49472–74.

⁵³¹ *See id.*

⁵³² The monetized hourly burden was estimated at \$22,648 per broker-dealer. *See id.* Due to an arithmetic error, the individual hourly burden for each broker-dealer was originally calculated as 80 hours instead of 76 hours, leading to a total burden calculation of 2,000 hours (80 hours × 25 broker-dealers) instead of 1,900 hours (76 hours × 25

the 25 broker-dealers that the Commission estimated do not currently capture information required by the proposed rule that would perform the necessary system updates in-house would be 1,900 hours.⁵³³

The Commission estimated that the initial burden for a broker-dealer that routes orders subject to the disclosures required by Rule 606(a)(1) to engage a third-party to program the necessary system updates to comply with proposed Rule would be 20 hours and \$10,000⁵³⁴ and estimated the total initial burden for the 25 broker-dealers that the Commission estimated do not currently capture information required by the proposed rule that would engage a third-party service provider to perform the necessary system updates to both capture the required data and create the reports would be 500 hours⁵³⁵ and \$250,000.⁵³⁶ The Commission noted that this estimate contemplated the impact of making the reports available using the most recent versions of the XML schema and the associated PDF renderer, as published on the Commission's website, as required by both proposed Rule 606(a) and 606(b)(1), and that the total initial burden estimate for all 50 broker-dealers that the Commission estimated would need to update their systems and create a new report would be 2,400 hours⁵³⁷ and \$250,000.⁵³⁸

For the remaining 216 broker-dealers that the Commission estimated already capture the data required by the proposed modifications to Rule 606(a)(1), the Commission estimated that 108 of such broker-dealers already engage a third-party service provider to provide reports pursuant to existing Rule 606(a)(1) and such broker-dealers would continue to use third-party service providers to format reports to comply with proposed Rule 606(a)(1).⁵³⁹ The Commission estimated that the remaining 108 broker-dealers that already capture information required by the proposed rule would prepare and format a report to comply with the proposed rule in-house.⁵⁴⁰ The

broker-dealers). The monetized hourly burden was correctly calculated using a 76-hour figure.

⁵³³ The total monetized hourly burden was estimated at \$831,075. See *Proposing Release*, *supra* note 1, at 49474.

⁵³⁴ See *id.*

⁵³⁵ The total monetized hourly burden was estimated at \$149,625. See *Proposing Release*, *supra* note 1, at 49474–75.

⁵³⁶ See *id.*

⁵³⁷ The total monetized hourly burden was estimated at \$715,825. See *Proposing Release*, *supra* note 1, at 49475.

⁵³⁸ See *id.*

⁵³⁹ See *id.*

⁵⁴⁰ See *id.*

Commission estimated that for a broker-dealer that already captures such data, the burden to format that data into its existing reports on its own would be 20 hours.⁵⁴¹ Therefore, the Commission estimated the total initial burden for broker-dealers to format already captured data into a report in-house to comply with proposed Rule 606(a)(1) to be 2,160.⁵⁴²

The Commission estimated that the initial burden for the 108 broker-dealers that engage a third-party service provider to format reports to comply with proposed Rule 606(a)(1) would be 8 hours⁵⁴³ and \$2,000⁵⁴⁴ and that the estimated total initial burden for these broker-dealers to comply with proposed Rule 606(a) would be 864⁵⁴⁵ hours and \$216,000.⁵⁴⁶ Thus, the Commission estimated that the burden for the 216 broker-dealers for whom the Commission estimated already capture the data required by proposed Rule 606(a) to format their reports to incorporate such data would be 3,024 hours⁵⁴⁷ and \$216,000.⁵⁴⁸ These estimates included the impact of making the reports available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website, as required by both proposed Rule 606(a) and 606(b)(1).⁵⁴⁹

Finally, the Commission estimated that the initial burden for a broker-dealer that routes orders subject to the disclosures required by Rule 606(a)(1) to review, assess, and disclose its payment for order flow arrangements and profit-sharing relationships would be 10 hours and that all 266 broker-dealers that route such orders would describe such agreements and arrangements themselves.⁵⁵⁰ Therefore, the Commission estimated the total initial burden for all broker-dealers that route such orders to review, assess, and disclose their payment for order flow arrangements and profit-sharing

⁵⁴¹ The monetized hourly burden was estimated at \$4,975 per broker-dealer. See *id.*

⁵⁴² The total monetized hourly burden was estimated at \$537,300. See *id.*

⁵⁴³ The monetized hourly burden was estimated at \$2,555 per broker-dealer. See *id.*

⁵⁴⁴ See *id.*

⁵⁴⁵ The total monetized hourly burden was estimated at \$275,940. See *id.*

⁵⁴⁶ See *id.*

⁵⁴⁷ The total monetized hourly burden was estimated at \$813,240. See *id.*

⁵⁴⁸ See *id.*

⁵⁴⁹ See *id.*

⁵⁵⁰ See *Proposing Release*, *supra* note 1, at 49475–76.

relationships to be 2,660 hours⁵⁵¹ and \$466,000.⁵⁵²

Therefore, the Commission estimated that the total initial burden to comply with the proposed modifications to Rule 606(a)(1) for all 266 broker-dealers would be 8,084 hours and \$2,408,730.⁵⁵³

ii. Burden of Amended Rule

As discussed above, based on more recent data on respondents,⁵⁵⁴ the Commission now estimates that 292 broker-dealers are engaged in the practice of routing orders subject to the disclosures required by Rule 606(a)(1). Additionally, the Commission is revising its burden and cost estimates associated with the initial burdens of producing the reports on such order routing. As discussed above,⁵⁵⁵ a commenter criticized the Commission's estimate of both the hourly burden and the monetized burden associated with producing the disclosures, but did not explicitly state to which category of disclosures—Rule 606(a)(1) or Rule 606(b)(3)—the comments applied.⁵⁵⁶ The Commission is revising its burden estimates for disclosures required under Rule 606(a)(1) and Rule 606(b)(3) primarily to reflect that all broker-dealers, rather than the fractional number the Commission estimated in the Proposal,⁵⁵⁷ will have to modify their systems to comply with the rule.⁵⁵⁸

The commenter acknowledges that broker-dealers may either update their systems in-house or engage a third-party vendor to make the changes.⁵⁵⁹ The Commission believes that it is reasonable to estimate that one third of the 292 broker-dealers that route orders subject to the disclosures required by Rule 606(a)(1)—97 broker-dealers—will implement the changes in-house, while the remaining number—195 broker-dealers—will engage a third-party vendor to do so.⁵⁶⁰

⁵⁵¹ The total monetized hourly burden was estimated at \$839,230. See *Proposing Release*, *supra* note 1, at 49476.

⁵⁵² See *Proposing Release*, *supra* note 1, at 49475.

⁵⁵³ See *Proposing Release*, *supra* note 1, at 49474–76.

⁵⁵⁴ See *supra* Section IV.C.2.

⁵⁵⁵ See *supra* Section IV.D.1.a.ii.

⁵⁵⁶ See Markit Letter at 33.

⁵⁵⁷ See *Proposing Release*, *supra* note 1, at 49474–75.

⁵⁵⁸ See Markit Letter at 33 (“[i]n order to produce the data for the public reports, brokers will *all* have to modify their OMS system or have their OMS vendor make changes” (emphasis added)).

⁵⁵⁹ See Markit Letter at 33 (broker-dealers will have to “modify their OMS system or have their OMS vendor make changes”).

⁵⁶⁰ As discussed above, the Commission is revising its burden estimates for Rule 606(a)(1) to reflect that all broker-dealers that route orders

The commenter criticizes the Commission's hourly burden estimate for producing the Rule 606(a)(1) disclosures as too low and suggests an estimate of 240 hours to produce the reports.⁵⁶¹ Additionally, the commenter suggests that the Commission's estimate may not have considered the costs associated specifically with implementation of systems to allow marketability of orders to be determined⁵⁶² to comply with the requirement that the Rule 606(a)(1) disclosures segment reporting on limit orders into marketable and non-marketable.⁵⁶³

Upon consideration of the comments, and in particular the statement that the implementation would require "at least [] four weeks of developer time,"⁵⁶⁴ and result in a "total cost of 240 hours per broker,"⁵⁶⁵ the Commission is revising its initial hourly burden estimate for a broker-dealer that routes orders subject to the requirements of Rule 606(a)(1) to both update its data capture systems in-house and format the report required by the rule to 240 hours.⁵⁶⁶ The Commission believes the

subject to the rule, rather than the fractional number the Commission estimated in the proposal, will have to modify their systems to comply with the rule. When the Commission estimated in the proposal this fractional number of broker-dealers, it estimated that half this number would implement the requirements of the rule in-house and the other half would engage a third-party service provider to do so. See Proposing Release, *supra* note 1, at 49474–75. Now that the Commission is estimating all 292 broker-dealers will have to modify their systems to comply with the rule, rather than a fractional amount, it believes that, consistent with the proportions relating to Rule 606(b)(3) system implementation discussed above, one-third of broker-dealers will implement the changes in-house and two-thirds will engage a third-party service provider, because in-house implementation costs are generally higher than outsourcing, and a proportion of broker-dealers greater than one-half will want to realize the cost savings. See *supra* note 496. Accordingly, the Commission is revising the proportion of in-house and third-party system implementation relating to Rule 606(a)(1) to one-third and two-thirds of all 292 broker-dealers, respectively, consistent with its estimates for Rule 606(b)(3) system implementation.

⁵⁶¹ See Markit Letter at 33.

⁵⁶² See Markit Letter at 33–34.

⁵⁶³ See *supra* Section III.B.2.

⁵⁶⁴ See Markit Letter at 33. The Commission is revising its initial estimate of 20 Sr. Programmer hours to 160 Sr. Programmer hours = 40-hour work week × 4 ("four weeks of developer time").

⁵⁶⁵ See *id.*

⁵⁶⁶ The Commission estimates the monetized burden for this requirement to be \$76,800. (Sr. Programmer for 160 hours at \$324 per hour) + (Sr. Database Administrator for 20 hours at \$334 per hour) + (Sr. Business Analyst for 20 hours at \$269 per hour) + (Attorney for 4 hours at \$407 per hour) + (Sr. Operations Manager for 20 hours at \$358 per hour) + (Systems Analyst for 16 hours at \$257 per hour) = 240 hours and \$76,800. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* adjusted to December 2017 values. See *supra* note 490.

initial hourly burden for broker-dealers that route such orders to engage a third-party to implement the requirements of the rule to be 20 hours⁵⁶⁷ but is revising the associated costs to \$32,000 to reflect the complexities associated with implementing the marketability requirement raised by the commenter.

The Commission is estimating the total initial burden for broker-dealers that will program their systems in-house to capture the data and produce a report to comply with the rule as 23,280 hours.⁵⁶⁸ The Commission is estimating the total initial burden for broker-dealers that will engage a third-party vendor to program their systems to capture the data and produce a report to comply with the rule as 3,900 hours⁵⁶⁹ and \$6,240,000.⁵⁷⁰

Therefore, the Commission estimates that the total initial burden for all 292 broker-dealers to comply with Rule 606(a)(1), as amended, and format their reports to incorporate such data⁵⁷¹ is 27,180 hours and \$6,240,000.⁵⁷²

⁵⁶⁷ See *supra* note 534. The Commission is updating the monetized hourly burden estimate to \$6,410 to reflect the latest available labor earnings data. (Sr. Business Analyst for 5 hours at \$269 per hour) + (Compliance Manager for 10 hours at \$303 per hour) + (Attorney for 5 hours at \$407 per hour) = 20 hours and \$6,410. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* adjusted to December 2017 values. See *supra* note 490.

⁵⁶⁸ 23,280 hours = 240 hours × 97 broker-dealers that route such orders and would perform the necessary programming upgrades in-house. The monetized hourly burden is \$7,449,600 = \$76,800 × 97 such broker-dealers. See *supra* note 566.

⁵⁶⁹ 3,900 hours = 20 hours × 195 broker-dealers that route such orders and would engage a third-party vendor to perform the necessary programming upgrades. The monetized hourly burden is \$1,249,950 = \$6,410 × 195 such broker-dealers. See *supra* note 567.

⁵⁷⁰ \$32,000 per broker-dealer that will need to engage a third-party vendor × 195 such broker-dealers = \$6,240,000.

⁵⁷¹ As discussed above, the Commission is adopting a new requirement to divide the reports required by Rule 606(a) by two categories: "S&P 500 Index" and "Other NMS Stocks." See *supra* Section III.B.5. The Commission believes that broker-dealer systems already capture information on the securities listed in the S&P 500 Index, so this requirement imposes no additional burden associated with data capture. With respect to formatting the report, the Commission believes that the work of segmenting data by a condition or removing such segmentation generally carries the same burden, independent of the segmenting condition. Since the Commission believes that the burden of removing segmentation by listing market, a requirement which is being eliminated, is similar to the burden of the new requirement to segment the data by S&P 500 membership, the net burden remains unchanged. Therefore, this requirement does not change the initial or ongoing hourly burden as estimated in the proposing release.

⁵⁷² See *supra* notes 568, 569, and 570 (23,280 hours + 3,900 hours = 27,180 hours). The total estimated initial monetized hourly burden is \$8,699,550 (\$7,449,600 + \$1,249,950). The commenter asserts without further elaboration that

The Commission includes in this estimate the initial burden of making the reports available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website, as required by Rule 606(a) and (b)(1), as amended.

Finally, the Commission estimates that the initial burden for a broker-dealer that routes orders subject to the disclosures described by Rule 606(a)(1) to review, assess, and disclose its payment for order flow arrangements and profit-sharing relationships to be 10 hours⁵⁷³ and is updating the monetized burden estimate to \$3,380 to reflect the latest available labor earnings data.⁵⁷⁴ The Commission believes that all broker-dealers that route such orders would describe such agreements and arrangements themselves.⁵⁷⁵ To reflect the latest available respondent numbers, the Commission estimates the total initial burden for all 292 broker-dealers that route such orders to review, assess, and disclose its payment for order flow arrangements and profit-sharing relationships to be 2,920 hours.⁵⁷⁶

As discussed above, Rule 606(b)(1), as amended, does not modify any of the current customer-specific disclosure requirements but modifies the categories of orders to which the disclosure applies. Prior to these amendments, Rule 606(b)(1) applied to all customer orders, *i.e.*, orders not from the account of a broker-dealer that are NMS stock orders having a market value of less than \$200,000 and orders having a market value of at least \$50,000 for an NMS security that is an option contract. However, broker-dealers must now modify their systems to provide the disclosures for the following types of orders not from a broker-dealer,

"the total cost for the industry would be over \$16 million." See Markit Letter at 34. To the extent that the commenter is referring to Rule 606(a) and 606(b)(1) disclosures, for all the reasons discussed above, the Commission believes that it has reasonably estimated the total industry cost as \$14,939,550 (\$8,699,550 monetized hourly burden + \$6,240,000 cost burden).

⁵⁷³ See *supra* note 550.

⁵⁷⁴ The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013*: (Sr. Business Analyst at \$269 per hour for 5 hours) + (Attorney at \$407 per hour for 5 hours) = 10 hours and \$3,380. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* adjusted to December 2017 values. See *supra* note 490.

⁵⁷⁵ See Proposing Release, *supra* note 1, at 49475–76.

⁵⁷⁶ 10 hours per broker-dealer that routes such orders × 292 such broker-dealers = 2,920 hours. The Commission estimates the monetized burden for this requirement to be \$986,960 (\$3,380 per broker-dealer that routes such orders × 292 such broker-dealers). See *id.*

regardless of market value: (i) Orders in NMS stocks that are submitted on a held basis; (ii) orders in NMS stocks that are submitted on a not held basis and are exempt from the disclosure requirements of Rule 606(b)(3); or (iii) orders in NMS securities that are option contracts.

The Commission believes that it is reasonable to estimate that one third of the 292 broker-dealers that route orders subject to the disclosures required by Rule 606(b)(1)—97 broker-dealers—will implement these changes in-house, while the remaining number—195 broker-dealers—will engage a third-party vendor to do so.⁵⁷⁷ The Commission estimates the initial burden for a broker-dealer that will program its systems in-house to comply with Rule 606(b)(1) as 24 hours.⁵⁷⁸ The Commission estimates the initial burden for a broker-dealer that will engage a third-party vendor to program its systems to comply with the rule as 3 hours⁵⁷⁹ and \$5,000.⁵⁸⁰

Therefore Commission estimates the total initial burden for all 292 broker-dealers to program their systems to comply with Rule 606(b)(1) as 2,913 hours⁵⁸¹ and \$975,000.⁵⁸²

b. Annual Reporting and Recordkeeping Burden

i. Baseline Burden

The Commission preliminarily believed that broker-dealers would need to monitor payment for order flow and profit-sharing relationships and potential SRO rule changes that could impact their order routing decisions and incorporate any new information into their reports. Thus, the Commission estimated the average annual burden for a broker-dealer to comply with the proposed amendments to Rule 606(a)(1)(i) through (iii) would be 10 hours and the total annual burden for all broker-dealers to comply with the proposed amendments would be 2,660 hours.⁵⁸³

Finally, the Commission estimated that the average annual burden for a broker-dealer that handles retail orders to describe and update any terms of payment for order flow arrangements and profit-sharing relationships with a Specified Venue that may influence their order routing decisions, as required by proposed Rule 606(a)(1)(iv), would be 15 hours.⁵⁸⁴ With 266 broker-dealers involved in retail order routing practices that would be required to comply with the rule, the Commission estimated the total annual burden for complying with proposed Rule 606(a)(1)(iv) would be 3,990 hours.⁵⁸⁵

ii. Burden of Amended Rule

The Commission continues to believe that the annual burden to produce a quarterly report will remain the same under Rule 606(a), as amended, as under the previous rule but that all broker-dealers that route retail orders will need to monitor payment for order flow and profit-sharing relationships and potential SRO rule changes that could impact their order routing decisions and incorporate any new information into their reports. The Commission continues to estimate the average annual burden for a broker-dealer to comply with the amendments to Rule 606(a)(1)(i) through (iii), as amended, to be 10 hours⁵⁸⁶ and is updating the monetized burden estimate to \$3,380 to reflect the latest available labor earnings data.⁵⁸⁷ To reflect the latest available respondent numbers, the

Commission estimates the total annual burden for all 292 broker-dealers required to perform this monitoring to be 2,920 hours.⁵⁸⁸

The Commission continues to estimate the average annual burden for a broker-dealer required to describe and update any terms of payment for order flow arrangements and profit-sharing relationships with a Specified Venue that may influence their order routing decisions, as required by Rule 606(a)(1)(iv), as amended to be 15 hours⁵⁸⁹ and is updating the monetized burden estimate to \$3,745 to reflect the latest available labor earnings data.⁵⁹⁰ To reflect the latest available respondent numbers, the Commission estimates the total annual burden for all 292 broker-dealers required to comply with Rule 606(a)(1)(iv), as amended, to be 4,380 hours.⁵⁹¹

5. Revisions to Compliance Manuals

As discussed above, the amendments being adopted today add several defined terms to Rule 600 of Regulation NMS which will impose an initial burden on market centers and the broker-dealers to review and update compliance manuals and written supervisory procedures and update citation references to any such defined term. Although the Commission did not include an initial estimate for this burden in the Proposing Release, the Commission is now revising its PRA estimate to include this burden. Based on its familiarity with these types of materials and the likelihood that these materials are maintained in an electronic form that facilitates search and replace, the Commission estimates that each of the 381 market centers and 4,024 broker-dealers would make these updates in house at a one-time burden of 2 hours for each respondent.⁵⁹²

⁵⁸⁸ 10 hours per broker-dealer that routes such orders × 292 such broker-dealers = 2,920 hours. The Commission estimates the monetized burden for this requirement to be \$986,960 (\$3,380 per broker-dealer that routes such orders × 292 such broker-dealers). See *id.*

⁵⁸⁹ See Proposing Release, *supra* note 1, at 49476.

⁵⁹⁰ The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013*, see *supra* note 490: (Jr. Business Analyst at \$171 per hour for 10 hours) + (Attorney at \$407 per hour for 5 hours) = 15 hours and \$3,745.

⁵⁹¹ 15 hours annually per broker-dealer that routes such orders × 292 such broker-dealers = 4,380 hours. The Commission estimates the total monetized burden for this requirement to be \$1,093,540. (\$3,745 annually per broker-dealer that routes such orders × 292 such broker-dealers). See *id.*

⁵⁹² The Commission estimates the monetized burden for this requirement to be \$426. (Paralegal for 2 hours at \$213 per hour) = 2 hours and \$426. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry*

⁵⁷⁷ See *supra* note 560.

⁵⁷⁸ The Commission estimates the monetized burden for this requirement to be \$6,826. (Programmer for 16 hours at \$265 per hour) + (Sr. Database Administrator for 2 hours at \$334 per hour) + (Sr. Business Analyst for 2 hours at \$269 per hour) + (Attorney for 1 hour at \$407 per hour) + (Sr. Operations Manager for 2 hours at \$358 per hour) + (Systems Analyst for 1 hour at \$257 per hour) = 24 hours and \$6,826. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* adjusted to December 2017 values. See *supra* note 490.

⁵⁷⁹ The Commission estimates the monetized burden for this requirement to be \$979. (Sr. Business Analyst for 1 hour at \$269 per hour) + (Compliance Manager for 1 hour at \$303 per hour) + (Attorney for 1 hour at \$407 per hour) = 3 hours and \$979. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* adjusted to December 2017 values. See *supra* note 490.

⁵⁸⁰ The Commission estimates that a third-party service provider would charge an average of \$5,000 to upgrade a broker-dealer's systems to comply with proposed Rule 606(b)(1).

⁵⁸¹ 2,913 hours = (24 hours × 97 broker-dealers that route such orders and would perform the necessary programming upgrades in-house) + (3 hours × 195 broker-dealers that would engage a third-party to perform the upgrades). The monetized hourly burden is \$853,027 = (\$6,826 × 97 broker-dealers that would perform the upgrades in-house) + (\$979 × 195 broker-dealers that would engage a third-party to perform the upgrades). See *supra* notes 578 and 579.

⁵⁸² \$5,000 per broker-dealer that will need to engage a third-party vendor × 195 such broker-dealers = \$975,000. See *supra* note 580.

⁵⁸³ See Proposing Release, *supra* note 1, at 49476.

⁵⁸⁴ See *id.*

⁵⁸⁵ See *id.*

⁵⁸⁶ See *supra* note 583.

⁵⁸⁷ The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* adjusted to December 2017 values, see *supra* note 490: (Sr. Business Analyst at \$269 per hour for 5 hours) + (Attorney at \$407 per hour for 5 hours) = 10 hours and \$3,380.

Therefore the Commission estimates the total initial cost to be 8,810 hours.⁵⁹³ There is no annual burden associated with this requirement.

6. Amendment to Disclosures Under Rule 605

The amendment to Rule 605 being adopted today requires that such reports be kept posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website. Because reports were already required to be posted to a website pursuant to Rule 605 prior to today's amendments, and the proposed amendment merely prescribes a minimum period of time for which such reports shall remain posted, the Commission preliminarily estimated the proposed amendment to Rule 605 would not impose an additional burden.⁵⁹⁴ The Commission continues to believe that this amendment will not impose an additional collection burden.

E. Collection of Information Is Mandatory

All of the collections of information are mandatory.

F. Confidentiality of Responses to Collection of Information

To the extent that the Commission receives confidential information pursuant to the collection of information, such information will be kept confidential, subject to the provisions of applicable law.⁵⁹⁵ Any information required to be disclosed publicly by the amended Rules would not be confidential.

The quarterly order routing reports prepared and disseminated by broker-dealers pursuant to Rules 606(a), as amended, would be available to the public. The individual responses by broker-dealers to customer requests for order routing information required by Rules 606(b)(1) and (b)(3), as amended, would be made available to the customer. The Commission, SROs, and other regulatory authorities could obtain copies of these reports as appropriate.

G. Retention Period for Recordkeeping Requirements

Pursuant to Rule 606(a), as amended, broker-dealers shall be required to keep quarterly order routing reports posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website.

For Rule 606(b), as adopted, broker-dealers shall be required to preserve all communications required under these proposed amendments pursuant to Rule 17a-4, as applicable.⁵⁹⁶

Pursuant to the proposed amendments to Rule 605, as amended, market centers shall be required to keep order execution reports posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website.

V. Economic Analysis

The Commission is sensitive to the economic consequences and effects, including costs and benefits, of its rules. The following economic analysis identifies and considers the costs and benefits—including the effects on efficiency, competition, and capital formation—that may result from the amendments to Rules 600, 605, and 606.⁵⁹⁷ These costs and benefits are discussed below and have informed the policy choices described throughout this release.

A. Introduction

Among the primary economic considerations for the adopted amendments to Rule 600, Rule 605, and Rule 606 are transparency for customers placing not held NMS stock orders, transparency for customers placing held NMS stock orders, and enhanced access to order handling reports.⁵⁹⁸

The Commission believes that requiring customer-specific order handling disclosures for orders submitted on a not held basis, as will be required by adopted Rule 606(b)(3), will provide information to customers to enable them to assess broker-dealers' order handling decisions and to incentivize broker-dealers to better manage any potential conflicts of

interest the broker-dealers may face, provide customers with higher-quality routing services, and promote competition.

The Commission is also amending Rule 606(b)(1) to require a broker-dealer, upon customer request, to provide disclosures for orders in NMS stock that are submitted on a held basis, and for orders in NMS stock that are submitted on a not held basis and for which the broker-dealer is not required to provide the customer a report under Rule 606(b)(3). The Commission believes that amended Rule 606(b)(1) disclosures will help ensure customers can assess the order routing and execution quality provided by their broker-dealers, which, in turn, enables the customers to evaluate and select broker-dealers, promote competition among broker-dealers, and support overall market efficiency.

The Commission also is amending Rule 606(a) such that the public reports include additional information that will enhance transparency on the routing of customer orders and enhance competition among broker-dealers that route such orders, to the benefit of investors.

The Commission believes that the requirement that the order routing reports required by Rule 606(b) be provided in a consistent, structured format will be useful to customers as such format will allow customers to more easily analyze and compare data across broker-dealers.

Finally, the Commission believes that the amendments to Rules 605 and 606 of Regulation NMS to require that the public order execution and order routing reports be kept publicly available for a period of 3 years will allow the public to more efficiently evaluate the services of broker-dealers because it will be easier for the public to access historic reports and analyze the data over an extended time period.

The Commission believes that these adopted amendments as a whole will allow customers to better assess the held NMS stock order routing and execution quality offered by their broker-dealers. As a result, the Commission believes that these additional disclosures may provide broker-dealers further incentives to improve execution quality for their customers and better manage any potential for conflicts of interest the broker-dealers may face. In addition, the ability of customers to better assess routing and execution quality could also lead to increased competition among broker-dealers with respect to execution quality, which could, in turn, result in broker-dealers providing even higher-

2013 adjusted to December 2017 values. See *supra* note 490.

⁵⁹³ 2 hours × (381 market centers + 4,024 broker-dealers) = 8,810 hours. The Commission estimates the total monetized burden for this requirement to be \$1,876,530. (\$426 per market center or broker-dealer that routes such orders × (381 market centers + 4,024 broker-dealers)). See *id.*

⁵⁹⁴ See *Proposing Release*, *supra* note 1, at 49476.

⁵⁹⁵ See, e.g., 5 U.S.C. 552 *et seq.*; 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

⁵⁹⁶ 17 CFR 240.17a-4. Registered brokers and dealers are already subject to existing recordkeeping and retention requirements under Rule 17a-4.

⁵⁹⁷ The Commission also is adopting amendments to Rule 3a51-1(a) under the Exchange Act; Rule 13h-1(a)(5) of Regulation 13D-G; Rule 105(b)(1) of Regulation M; Rules 201(a) and 204(g) of Regulation SHO; Rules 600(b), 602(a)(5), and 611(c) of Regulation NMS; and Rule 1000 of Regulation SCI, to update cross-references as a result of the amendments being adopted today, which would not result in costs or benefits.

⁵⁹⁸ See *supra* Section II.

quality order routing and execution services.

The discussion below presents a baseline of the current practices, a consideration of the costs and benefits of the adopted new requirements, alternatives considered, and a discussion of the potential effects of the adopted amendments.

B. Baseline

The baseline for considering the economic impact of amending Rule 606 to require reporting for not held NMS stock orders consists of: (1) Information that customers currently receive from their broker-dealers regarding how their not held NMS stock orders are handled; (2) the format in which such information is currently provided to customers; (3) conflicts of interest broker-dealers currently face; (4) the current use of actionable IOIs; and (5) the ability to assess order routing and execution quality currently provided by different broker-dealers and execution quality currently provided by different trading centers.

The baseline for considering the economic impact of amending Rule 606 for held NMS stock orders and of amending Rule 605 consists of: (1) Information that customers currently receive under Rules 605 and 606 or information that customers currently receive from their broker-dealers that is not required by Rules 605 and 606; (2) the format in which information required by Rule 606 for such orders is provided to customers; (3) conflicts of interest that broker-dealers currently face; (4) how long reports required by Rules 605 and 606 are available to the public; and (5) the ability to assess order routing and execution quality currently provided by different broker-dealers and execution quality currently provided by different trading centers.

Finally, the baseline for considering the economic impact of amending Rules 605 and 606 includes the current competitive landscape in the markets for brokerage services and for execution services and any current limitations on efficiency or capital formation relevant to the adopted amendments. These various baseline factors are discussed in further detail below.

1. Current \$200,000 Threshold

Currently, Rule 606 of Regulation NMS requires public disclosure of a broker-dealer's order routing information for non-directed orders in NMS securities that are in amounts less than (i) \$200,000 for NMS stocks, and

(ii) \$50,000 for option contracts.⁵⁹⁹ While market participants have access to publicly available order execution quality statistics and order routing information for these smaller orders,⁶⁰⁰ there is no public disclosure requirement for larger orders.

In the Proposing Release, the Commission analyzed how the \$200,000 relates to orders from institutional customers.⁶⁰¹ With respect to orders from institutions, Commission staff reviewed a set of orders from institutions and found that 83.2% of orders studied were smaller than \$200,000 as discussed in the Proposing Release.⁶⁰² However, 92% of total dollar volume from orders of institutions in the data has a market value of at least \$200,000. As also discussed in the Proposing Release, the percentage of orders from institutions that have a market value of \$200,000 varies by activity level of the stock, with a higher proportion having a market value of \$200,000 in more active stocks.⁶⁰³ While approximately 20% of orders from institutions in the group of most active stocks have a market value of \$200,000, less than 3% of orders from institutions in the group of least active stocks have a market value of \$200,000.

Several commenters also discussed the relationship between the \$200,000 threshold and institutional orders and also found that most institutional orders are for trade sizes smaller than \$200,000. One commenter stated that its

⁵⁹⁹ See 17 CFR 242.606. See also *supra* note 4 and accompanying text.

⁶⁰⁰ Rule 605 requires a market center that trades NMS stocks to make available to the public monthly electronic execution reports that include uniform statistical measures of execution quality. The Commission staff exempted from the rule any order with a size of 10,000 shares or greater. See Letter to Darla C. Stuckey, Assistant Secretary, New York Stock Exchange, Inc., from Annette L. Nazareth, Director, Division, dated June 22, 2001.

⁶⁰¹ See Proposing Release *supra* note 1, at 49483.

⁶⁰² See *id.* Information on institutional equity trading for the sample period of 2013–2014 is obtained from Abel Noser Solutions, Ltd. According to an academic study by Puckett and Yan (2011), the dataset contains detailed equity trading information for each Abel Noser client and includes a representative set of institutional investors including pension plan sponsors (e.g., CalPERS, the Commonwealth of Virginia, and YMCA retirement fund) and money managers (e.g., Massachusetts Financial Services (MFS), Putnam Investments, and Lazard Asset Management). The authors also reported that the database contains a total of 840 different institutions during their sample period. These clients accounted for at least 10% of the total trading volume from 1999–2005, according to Puckett and Yan (2011). The Commission assumes for purposes of this analysis that these clients have continued to account for at least this volume during its sample period. See, e.g., Andy Puckett and Xuemin (Sterling) Yan, *The Interim Trading Skills of Institutional Investors*, 66 *Journal of Finance* 601 (April 2011).

⁶⁰³ See *id.*

internal analysis of institutional trading volume indicated that 14% of institutional shares and 65% of institutional orders in the month of April 2016 were for less than \$200,000, and from a sampling of large retail broker customer orders for 10 trading days in April 2016, over 10% of shares traded and over 20% of the value traded were from orders larger than \$200,000.⁶⁰⁴ Another commenter stated that approximately 35% of orders it sends to broker-dealers are less than \$200,000.⁶⁰⁵ Another commenter stated that for January through August 2016 96% of its orders were below the \$200,000 threshold.⁶⁰⁶

2. Current Reporting for NMS Stock Orders of \$200,000 and Above

Currently, as discussed in the Proposing Release, broker-dealers may voluntarily provide some information on routing and execution quality of NMS stock orders of \$200,000 and above to individual customers in response to requests by these customers.⁶⁰⁷ Customers may also use third-party vendors for Transaction Cost Analysis (“TCA”) to analyze the execution prices of orders compared to various benchmarks; however, TCA as provided by third-party vendors may not encompass an analysis of routing decisions as third-party vendors, similar to customers, do not have access to order handling information necessary to do so.

The Commission further understands that reports that customers sending orders of at least \$200,000 in market value currently receive upon request from their broker-dealers may not provide the consistent and standardized information needed to fully assess or compare the performance of their broker-dealers.⁶⁰⁸ Moreover, customer orders having a market value of at least \$200,000 are not subject to public reporting, which creates more difficulty to customers in comparing broker-dealers and assessing broker-dealers' order routing practices.⁶⁰⁹

Even if a broker-dealer voluntarily provides information about NMS stock orders of \$200,000 and above upon request, it may not do so with respect to all customers. Whether a given customer receives a report and how responsive the report is to the request likely depends on the customer's

⁶⁰⁴ See Markit Letter at 6–7.

⁶⁰⁵ See Capital Group Letter at 2.

⁶⁰⁶ See Bloomberg Letter at 11–12.

⁶⁰⁷ See Proposing Release, *supra* note 1, at 49478–79.

⁶⁰⁸ See Proposing Release, *supra* note 1, at 49479 for explanation.

⁶⁰⁹ See *id.*

current or potential business relationship with the broker-dealer. A broker-dealer may be more accommodating towards customers that send, or may send in the near future, substantial order flow. This difference in access to reports from broker-dealers, and variations in the quality of reports received, may result in a non-level playing field with respect to order handling information.

3. Publication Period for Reports Required by Rules 605 and 606

While Rules 605 and 606 have not specified the minimum length of time that order execution reports and order routing reports are publicly posted, generally, when new reports are available, some market centers and broker-dealers will remove the previous report from their website and replace it with their most recent report,⁶¹⁰ and others may make reports available for a longer period of time that varies.⁶¹¹ The Commission understands that this may make it difficult for the public to compare the order routing decisions of a broker-dealer or the execution quality of market centers through time. Alternatively, the public may rely on third-party vendors who retrieve and aggregate Rule 605 and 606 reports from market centers and broker-dealers, respectively, to get access to historical data.

4. Available Information on Conflicts of Interest

As discussed in the Proposing Release, Rule 606(a) requires that broker-dealers provide for covered orders, among other things, a description of any arrangement for

payment for order flow⁶¹² and any profit-sharing relationships.⁶¹³

Many commenters agreed with the baseline that payment for order flow, fees, and rebates could result in conflicts of interest in institutional order routing.⁶¹⁴ One commenter mentioned that investors cannot properly assess the full extent of a broker-dealer's conflicts of interest and the effect that conflicts have on routing decisions absent more detailed explanations of the conflict.⁶¹⁵ For the reasons discussed throughout this release and in the Proposing Release, the Commission believes that financial incentives, such as rebates, have the potential to affect how broker-dealers route retail stock orders.⁶¹⁶ Further, as noted above, conflicts of interest may affect institutional orders in ways similar to effects on retail orders. However, for the reasons discussed in the Proposing Release, the ad hoc nature of the order handling disclosures of institutional orders may not be as effective in providing institutions with information they can use efficiently to assess conflicts of interest, because the ad hoc nature of the reports limits the ability of institutions to make comparisons about broker-dealers' conflicts of interest.

5. Available Information on Execution Quality

As described above and in the Proposing Release, under the rules prior to these amendments, broker-dealers have not been required by regulation or incentivized by marketplace practices to provide customers standardized, comparable reports about the handling of their NMS stock orders of at least \$200,000 in market value and instead customers may receive ad hoc reports from broker-dealers upon request.⁶¹⁷ As a result, the Commission believes that

customers may not be able to compare reliably the order handling performance of their broker-dealers and to evaluate the execution quality of their orders among broker-dealers.

In contrast to the ad hoc nature of reporting for NMS stock orders of at least \$200,000 in market value, Rule 606 has required quarterly public reports on customer order routing and disclosure of customer order routing information upon request. However, the previously existing public reports have not required specific information on payment for order flow received, payment from any profit-sharing relationship received, or transaction rebates and access fees, and they have not been required to separate limit orders into marketable and non-marketable limit orders. Moreover, because Rule 605 reports only cover held orders and previously existing public reports do not distinguish held orders from customer orders, the scope of Rule 605 reports do not directly align with the scope of Rule 606 reports, which limits the ability of customers to assess execution quality of their broker-dealers.

6. Format of Current Reports

As discussed above and in the Proposing Release, broker-dealers provide some information on routing and execution quality of institutional orders in response to requests from institutional customers in a variety of formats. The reports typically are not in a structured format.⁶¹⁸

7. Quality of Broker-Dealer Routing Practices for Not Held NMS Stock Orders

The Commission does not have data to gauge the current level of quality of broker-dealer routing practices for not held NMS stock orders, as Rule 606 requires public disclosure of a broker-dealer's order routing information for non-directed orders in NMS securities that are in amounts less than \$200,000 for NMS stocks, and does not require broker-dealers to separately report routing of not held orders.⁶¹⁹

8. Use of Actionable IOIs

To encourage additional order flow, some broker-dealers use actionable IOIs to communicate to external liquidity providers that they have unexecuted liquidity. As noted above and in the Proposing Release, because actionable

⁶¹⁰ See, e.g., Morgan Stanley Rules 605 and 606 Disclosures, available at http://www.morganstanley.com/institutional-sales/sec_rules_605_606; Wells Fargo Legal Disclosures, available at <https://www.wellsfargoadvisors.com/disclosures/legal-disclosures.htm>; Charles Schwab Order Routing, available at http://www.schwab.com/public/schwab/nn/legal_compliance/important_notices/order_routing.html; TD Ameritrade Disclosures, available at <https://www.tdameritrade.com/disclosure.page>; Fidelity Quarterly Reports, available at https://capitalmarkets.fidelity.com/app/item/RD_13569_21696.html.

⁶¹¹ See, e.g., UBS Order Routing Disclosure, available at <https://www.ubs.com/us/en/wealth/misc/orderroutingdisclosure.html>.

⁶¹² In addition, Rule 10b-10 under the Exchange Act requires broker-dealers, when acting as agent for the customer, to disclose on the confirmation of a transaction whether payment for order flow was received and, upon written request of the customer, to furnish the source and nature of the compensation received. See 17 CFR 240.10b-10(a)(2)(i)(C). Accordingly, Rule 10b-10 provides disclosure to a specific customer of whether payment for order flow was received on a particular transaction, while Rule 606 provides public disclosure of any arrangement for payment for order flow and any profit-sharing relationship by requiring a description of such arrangements.

⁶¹³ See Proposing Release, *supra* note 1, at 49479-80.

⁶¹⁴ See, e.g., Ameritrade Letter at 1; Fidelity Letter at 1; FSR Letter at 1; and MFA Letter at 1-2.

⁶¹⁵ See CFA Letter at 5.

⁶¹⁶ For a discussion of studies regarding potential negative and positive effects of rebates, see Transaction Fee Pilot Proposing Release, *supra* note 2.

⁶¹⁷ See Proposing Release, *supra* note 1, at 49480.

⁶¹⁸ See Proposing Release, *supra* note 1, at 49480-81.

⁶¹⁹ As noted above, including in Section V.B.4, Rule 606 provides information on the quality of broker-dealer routing practices for customer orders; see also Proposing Release, *supra* note 1, at 49481.

IOIs convey information similar to that of an order, a response to an actionable IOI may result in an execution at the venue of the IOI sender.⁶²⁰ Accordingly, a broker-dealer's use of actionable IOIs creates potential information leakage similar to that of the routing of orders. The Commission does not have data to gauge the current level of use of actionable IOIs by broker-dealers to attract orders to execute against not held NMS stock orders represented by such actionable IOIs. In addition, Rule 606 for customer orders has not required the inclusion of actionable IOIs in the reports.

The Commission recognizes that, although actionable IOIs and conditional orders are similar, many market participants distinguish conditional orders from actionable IOIs because conditional orders require additional negotiation before a trade can be executed.⁶²¹ Further, according to comments, conditional orders typically are messages submitted by participants in an anonymous, dark matching platform to confidentially seek a potential counterparty involving a one-to-one interaction, rather than a one-to-many interaction typical of an actionable IOI.

9. Competition, Efficiency, and Capital Formation

The adopted amendments are likely to affect competition among broker-dealers that route both not held and held NMS stock orders. These broker-dealers compete in a segment of the market for broker-dealer services. The Commission discussed market conditions for broker-dealer services in the Proposing Release, including that the market is highly competitive, with most business concentrated among a small set of large broker-dealers and thousands of small broker-dealers competing.⁶²²

As of December 2016, there were approximately 4,024 registered broker-dealers.⁶²³ Of these, the Commission estimates that 292 broker-dealers route orders in NMS stocks on a held basis that would be subject to the public disclosure requirements of Rule 606(a) or the current customer-specific disclosure requirements of Rule 606(b)(1).⁶²⁴ The Commission estimates

that 200 broker-dealers route institutional orders, all of whom also route retail orders, and that each broker-dealer that routes institutional orders will receive an average of 200 requests for reports pursuant to adopted Rule 606(b)(3) annually.⁶²⁵ All of these broker-dealers compete for business from retail and institutional customers. The Commission also estimates that for calendar year 2017, 6,111 unique filers filed Form 13F on behalf of 6,580 institutional investment managers. The Commission estimates the number of customers to be approximately this number of institutional investment managers.⁶²⁶

Among other factors, broker-dealers may compete for retail and institutional customers by trying to offer them better terms for trading, such as better execution quality. The emergence of discount brokerages has encouraged full-service brokers to compete on price and led to the unbundling of research from execution services.⁶²⁷ In addition, the fragmentation of NMS stock trading into 13 registered exchanges, more than 40 ATSs, and over 200 OTC market makers⁶²⁸ has contributed to the need for broker-dealers to focus on venue selection in executing orders. Broker-dealers may also innovate to attract new customers by, for example, offering access to algorithms designed to match trading or investment objectives. However, as noted above, the information on which broker-dealers offer better terms of trade may be non-standardized, may be presented inconsistently over time, or may employ complex calculations using undisclosed methods.⁶²⁹ Further, the format of the reports may limit the comparison of reports across broker-dealers.⁶³⁰ As a

result, customers may not be able to efficiently identify which broker-dealers provide better execution quality. This may reduce the incentives for broker-dealers to compete by offering better execution quality or to innovate on execution quality. Without the incentive to compete by offering better execution quality, broker-dealers may route customer orders in ways that do not necessarily promote better execution quality.⁶³¹ Such inefficient routing could have effects on the market for trading services.

The market for trading services, which is served by trading centers, relies on competition among these market centers to supply investors with execution services at efficient prices. These market centers, which compete to, among other things, match traders with counterparties, provide a framework for price negotiation and provide liquidity to those seeking to trade. As discussed in Section IV.C., the Commission estimates that there are 381 market centers to which Rule 605 applies.⁶³²

These market centers compete with each other for order flow on a number of dimensions, including execution quality. Their primary customers are the broker-dealers that route their own orders or their customers' orders for execution at the trading center. One way to attract order flow is to offer payment for order flow. The Commission understands that a large portion of retail order flow is sent to internalizers who pay for retail order flow. Trading centers also may innovate to differentiate themselves from other trading centers to attract more order flow. For example, several exchanges recently started pilots in an attempt to attract more retail order flow.⁶³³ Trading centers also may adjust fees and rebates to incentivize broker-dealers to route more order flow to them. To the extent that broker-dealers route orders for reasons other than execution quality, trading centers may

⁶²⁵ See *supra* Section IV.C.2 and note 513.

⁶²⁶ The Commission estimates the number of customers that may place institutional orders as the number of entire 13F filings submitted during the calendar year 2017. In calendar year 2017, 6,580 unique managers filed 13F reports. The Commission recognizes that not all of these institutions necessarily trade NMS stocks. Further, some customers that submit institutional orders may not be 13F institutions. While this estimate may not be precise, the Commission believes that it approximates the number of customers that may be affected by the adopted amendments.

⁶²⁷ See Proposing Release, *supra* note 1, at 49436.

⁶²⁸ See *supra* Section I; see also Proposing Release, *supra* note 1, at 49481.

⁶²⁹ See generally *supra* Sections V.B.2, V.B.5, and V.B.6.

⁶³⁰ See *supra* Section V.B.6. for a discussion of current formats. Broker-dealers provide reports in a variety of formats and a given broker-dealer may use different structures and formats for different customers. This makes it difficult to electronically read reports into a system to compare multiple broker-dealers and conduct statistical analysis across broker-dealers. Differing formats also make it difficult to electronically search across broker-dealers for various data points in the reports.

⁶³¹ See *supra* Section V.B.4, regarding the conflicts of interest broker-dealers have when routing customer orders.

⁶³² The 381 market centers estimated for purposes of the PRA include approximately 214 OTC market makers (not including market makers claiming an exemption from the reporting requirements of the Rule), plus 21 exchanges, 1 securities association, 104 exchange market makers, and 41 ATSs. See *supra* note 469 and accompanying text.

⁶³³ See, e.g., Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) for the NYSE and NYSEAMER pilots; Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) for the CboeBZX pilot; Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (July 30, 2013) for the NYSE Arca pilot; and Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) for the BX pilot.

⁶²⁰ See Proposing Release, *supra* note 1, at 49481.

⁶²¹ See, e.g., BIDS Letter at 4–5; Bloomberg Letter at 3–4; Capital Group Letter at 3; FIF Letter at 7; FSR Letter at 7; Markit Letter at 11–12; SIFMA Letter at 6.

⁶²² See Proposing Release, *supra* note 1, at 49481–82; see also Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69791, 69822 (November 15, 2010) (Risk Management Controls for Brokers or Dealers with Market Access).

⁶²³ See *supra* note 467.

⁶²⁴ See *supra* Section IV.D.4.a.ii.

have less of an incentive to compete and innovate on execution quality. This may limit overall execution quality and result in higher transaction costs for customers than will exist with greater competition on execution quality.

Transaction costs reflect the level of efficiency in the trading process, with higher transaction costs reflecting less efficiency.⁶³⁴ Inefficiency in the trading process creates friction, which limits the ability for prices to fully reflect a stock's underlying value.⁶³⁵ Stoll (2000) defines friction as follows: "[f]riction in financial markets measures the difficulty with which an asset is traded."⁶³⁶ Stoll follows Demsetz (1968)⁶³⁷ to "view friction as the price paid for immediacy." Thus, higher transaction costs imply higher friction in the market. Friction makes it more costly to trade and makes investing less efficient. Further, friction limits the ability of arbitrageurs or informed customers to push prices to their underlying values, and thus friction makes prices less efficient.

These frictions may have an adverse impact on capital formation. In particular, an increase in transaction costs may hinder customers' trading activity that would support efficient adjustment of security prices and as a result may limit prices' ability to reflect fundamental values. The resulting less efficient prices result in some issuers experiencing a cost of capital that is higher than if their prices fully reflected underlying values while some other issuers might experience the opposite. This, in turn, may limit efficient allocation and capital formation. If an issuer's cost of capital is higher than in perfectly efficient markets, its projects would appear less profitable than they otherwise would be. The opposite would be true for an issuer with a cost of capital lower than in perfectly efficient markets. Thus, on average, inefficiencies can result in funding projects that generate less capital than some unfunded projects would have.

C. Costs and Benefits

The Commission identified costs and benefits associated with the amendments to Rules 600, 605, and 606, which are discussed below. The Commission quantifies the costs where possible and provides qualitative discussion when quantifying costs and benefits is infeasible. Many, but not all, of the costs of the adopted amendments

to Rules 600, 605, and 606 involve a collection of information, and these costs and burdens are discussed in the Paperwork Reduction Act Section above, with those estimates being used in the economic analysis below.⁶³⁸

1. Customer-Specific Order Handling Disclosures

a. Scope of Customer-Specific Order Handling Disclosure in Rule 606(b)(1) and 606(b)(3), and the De Minimis Exceptions in Rules 606(b)(4) and (b)(5)

i. Benefits

1. Not Held Orders/Rule 606(b)(3)

The Commission believes that the adopted approach to Rule 606(b)(3),⁶³⁹ based on the distinction between not held and held orders, targets the Rule 606(b)(3) reports to the investors most likely to benefit from them and to the orders in which the reports would be most meaningful. Because of the discretion afforded in the handling of not held orders, the complexity in which not held orders are handled, and the customer-specific nature of instructions for handling not held orders,⁶⁴⁰ the granular level of information the Rule 606(b)(3) reports provide for not held orders will be beneficial. Commenters further indicated that retail investor orders are generally held and institutional investor orders are generally not held.⁶⁴¹ The Commission also recognizes that broker-dealers have routing discretion on held orders. However, not held orders allow discretion on additional dimensions such as timing and execution strategy.

In light of the comments received suggesting the order type approach, the Commission staff performed a supplemental analysis of that approach. To examine the usage of not held orders by institutional customers, the staff analyzed the percentage of not held orders received from institutional and individual accounts from the FINRA's OATS data.⁶⁴² The staff studied orders

submitted from customer accounts of 120 randomly selected NMS stocks listed on NYSE during the sample period of December 5, 2016, to December 9, 2016, consisting of 40 large-cap stocks, 40 mid-cap stocks, and 40 small-cap stocks.⁶⁴³ Consistent with the comments, the staff analysis confirms that orders received from institutional accounts are more likely to be not held orders than orders received from individual accounts. Specifically, the staff analysis found that among the orders received from the institutional accounts, about 69% of total shares and close to 39% of total number of orders in the sample are not held orders, whereas among the orders received from the individual accounts, about 19% of total shares and about 12% of total number of orders in the sample are not held orders. To the extent that institutional investors are generally more sophisticated and in a better position to understand and, therefore, benefit from the Rule 606(b)(3) reports, this result suggests that targeting the not held orders for these customer-specific reports results in the reports being available to those most likely to benefit from them. Additionally, because placing not held orders requires an understanding of the price, time, and other discretion embedded in not held orders, those placing not held orders are likely to be relatively sophisticated, even if they are not institutions. Because Rule 606(b)(3) reports will be very detailed, these customers are likely to be among those sophisticated enough to value the information in Rule 606(b)(3) reports and interpret the content of the reports in ways unique to them.⁶⁴⁴

Consistent with commenters, the Commission believes that the adopted approach will facilitate identification of orders by broker-dealers that is consistent with many of the broker-dealers' current practices, which in turn could promote the accuracy of order handling information of not held orders and help ensure the benefits to customers that receive the reports. As

indicators for order origination from the OATS data. By FINRA definition, order origination identifies whether the order was received from a customer of the firm, originated by the firm, or whether the order was received from another Broker/Dealer. By FINRA definition, F—Order was received from a customer or originated with the Firm; W—Received from another Broker/Dealer. The analysis used orders with the indicator F only.

⁶⁴³ For more details, see OATS Reporting Technical Specifications, available at http://www.finra.org/sites/default/files/TechSpec_062718.pdf.

⁶⁴⁴ Some customers give complete discretion to a broker-dealer in handling their orders while other customers may place limits on or provide instructions regarding how a broker-dealer can handle their orders.

⁶³⁴ See Hans R. Stoll, *Friction*, 55 *Journal of Finance* 1479 (2000).

⁶³⁵ See *id.*

⁶³⁶ See *id.*

⁶³⁷ See Harold Demsetz, *The Cost of Transacting*, 82 *Quarterly Journal of Economics* 33 (1968).

⁶³⁸ See *supra* Section IV.

⁶³⁹ See Section III.A.1.b.iii.

⁶⁴⁰ Not held NMS stock orders from customers frequently limit broker-dealer discretion in some manner.

⁶⁴¹ See *supra* note 58.

⁶⁴² The OATS data classifies institutional accounts as defined in FINRA Rule 4512(c) and individual accounts as an account that does not meet the definition of FINRA Rule 4512(c) and is not a proprietary account. In OATS data, "Account Type" identifies the type of beneficial owner of the account for which the order was received or originated. From OATS data, the analysis used orders originated from the following account types only: Individual Customer (I)—An account that does not meet the definition of FINRA Rule 4512(c) and is also not a proprietary account; Institutional Customer (A)—An institutional account as defined in FINRA Rule 4512(c). The analysis also used

noted by multiple commenters, broker-dealers and other market participants are familiar with the held and not held order type classifications, classifying orders as held or not held would be consistent with current industry practice, and the terms held and not held are common terms of usage in the securities markets.⁶⁴⁵ Indeed, as pointed out by commenters, broker-dealers already must mark orders that they execute as held or not held, these order classifications are commonly recognized in the FIX Protocol and utilized in OATS technical specifications, the Commission's definition of "covered order" in Rule 600(b)(15) already relies on these order classifications, and broker-dealers already characterize orders on a held or not held basis to comply with Rule 605's covered order requirement and other rules such as FINRA's Manning rule (FINRA Rule 5320).

2. De Minimis Exceptions and Rule 606(b)(1)

The Commission is adopting Rules 606(b)(4) and Rule 606(b)(5) de minimis exceptions from Rule 606(b)(3)'s requirements, which except a broker-dealer from the Rule 606(b)(3)

requirements at the firm level or the customer level.⁶⁴⁶

With respect to the Rule 606(b)(4) de minimis, commenters suggested that firms that receive less than 5% of orders from institutions should be exempt from requirements to provide disclosures for institutional orders, both at the individual investor level and in the aggregate,⁶⁴⁷ and that the de minimis threshold should closely match a broker-dealer's core business and targeted customer profile.⁶⁴⁸

Commenters that supported a de minimis exception from Rule 606(b)(3) also supported disclosure based on whether an order is held or not held and generally discussed the reasoning for a de minimis exception in that context.⁶⁴⁹

To assess commenters' suggestions of a 5% de minimis threshold for Rule 606(b)(3) requirements, the staff conducted a supplemental analysis,

⁶⁴⁶ See *supra* Section II.A.1.b.iv and note 135.

⁶⁴⁷ See STA Letter II at 2; Ameritrade Letter at 2; Wells Fargo Letter at 5.

⁶⁴⁸ See, e.g., Wells Fargo Letter at 5; Citadel Letter at 3; Citadel Letter II at 1–2 (noting that the 5% threshold suggested by other commenters should ensure that smaller broker dealers are not adversely affected by the new disclosure requirement, and noting that a threshold based on a percentage of orders or shares received could potentially be set lower than a threshold based on a percentage of executed shares).

⁶⁴⁹ See, e.g., FIF Letter at 5, 10; STA Letter II at 2; Citadel Letter at 3; Thomson Reuters Letter at 1; Ameritrade Letter at 2.

which found that among 342 broker-dealers that receive not held orders from customers in the sample data, 28 broker-dealers would receive de minimis exceptions from Rule 606(b)(3)'s requirements.⁶⁵⁰ In addition, the analysis found that among all 746 broker-dealers in the sample another 404 broker-dealers did not receive any not held orders from customers and would not be subject to Rule 606(b)(3). Therefore, to the extent that each of these broker-dealers avails itself of the firm-level de minimis exception under Rule 606(b)(4), customers sending not held orders to these broker-dealers may not receive Rule 606(b)(3) reports, and also therefore, the benefits of increased transparency of the customer-specific order handling disclosure required by Rule 606(b)(3).⁶⁵¹ However, the Commission believes that the amount of not held orders that will be excluded under the de minimis exception would be minimal. Specifically, the staff analyzed the broker-dealers that are likely to receive the firm-level exception and the amount of not held orders of these broker-dealers.

⁶⁵⁰ See *supra* notes 642 and 643. In addition, 164 broker-dealers receive only not held orders.

⁶⁵¹ One commenter stated that a de minimis exception would be inconsistent with the objective of providing a standardized report for all customers, which was one of the Commission's motivations for Rule 606(b)(3). See Bloomberg Letter at 15–16.

⁶⁴⁵ See Citadel Letter at 3; Markit Letter at 3, 7–8; KCG Letter at 4; Capital Group Letter at 2–3; SIFMA Letter at 3.

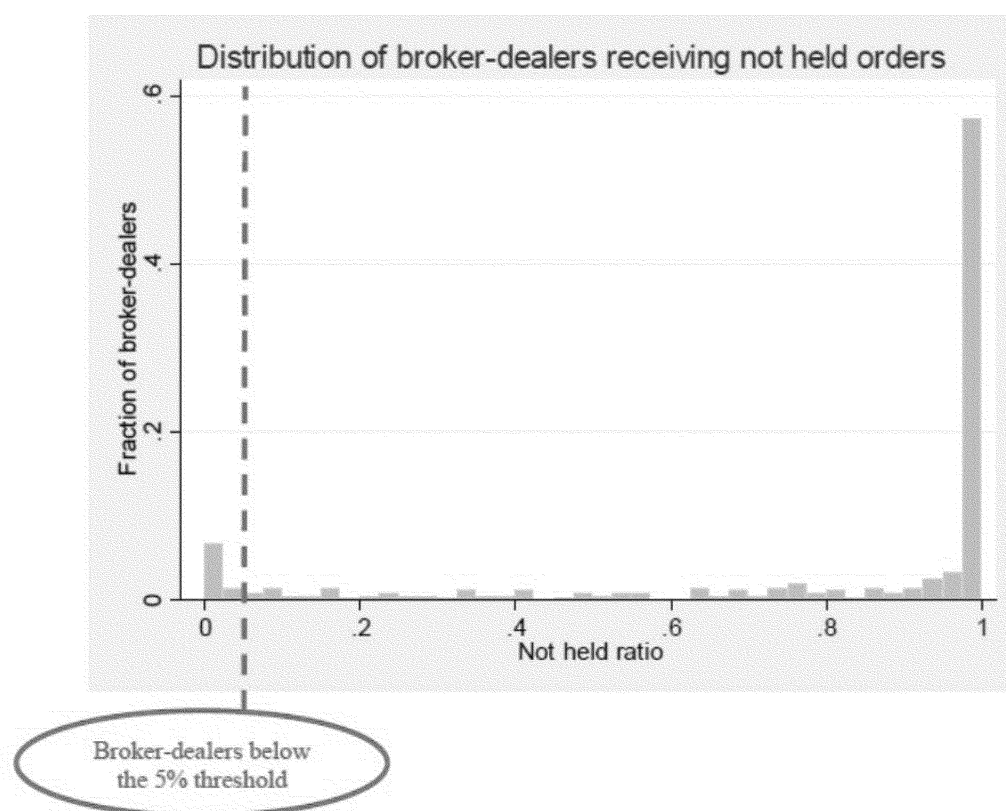
Figure 1. The distribution of broker-dealers that receive not held orders⁶⁵²

Figure 1 displays the distribution of broker-dealers that receive not held orders by the ratio of not held shares as a fraction of total shares for each broker-dealer. As Figure 1 indicates, broker-dealers that would meet the firm-level exception because they rarely receive not held orders in relation to held

orders are concentrated below the 5% threshold. Specifically, for 23 of the 28 broker-dealers that would meet the firm-level exception, not held orders account for less than 2.5% of each broker's total order receipts.⁶⁵³ Moreover, as shown in Table 1 below, the supplemental staff analysis found that less than 0.05% of

total shares and less than 0.1% of total not held shares in the sample would be excluded from the Rule 606(b)(3) reports by the firm-level de minimis exception, indicating that the amount of not held orders that will be excluded under that exception would be minimal.

TABLE 1—NUMBER OF BROKER-DEALERS AND VOLUME BY NOT HELD RATIO

| Not held ratio | # of broker-dealers | # of broker-dealers | % of total not held shares (0%) | Cum. % of total not held shares (0%) | % of total shares (0%) | Cum. % of total shares (0%) |
|------------------------------|---------------------|---------------------|---------------------------------|--------------------------------------|------------------------|-----------------------------|
| 0% (only held orders) | 404 | 404 | ..... | ..... | ..... | ..... |
| 0% < nh ratio < 5% | 28 | 432 | 0.08 | 0.08 | 0.05 | 0.05 |
| 5% < = nh ratio < 10% | 8 | 440 | 0.10 | 0.18 | 0.06 | 0.11 |
| 10% < = nh ratio < 15% | 4 | 444 | 0.29 | 0.47 | 0.17 | 0.28 |
| 15% < = nh ratio < 20% | 6 | 450 | 3.68 | 4.16 | 2.19 | 2.47 |
| 20% < = nh ratio < 25% | 5 | 455 | 0.38 | 4.54 | 0.23 | 2.70 |

Further, some firms, for business reasons, may choose to provide the Rule 606(b)(3) order handling disclosures to

their customers, regardless of the de minimis exceptions. Further, as discussed in Section III.A.1.vi, broker-

dealers that qualify for the firm-level de minimis exception still must provide, if requested, the Rule 606(b)(1) reports for

⁶⁵² "Not held ratio (nh ratio)" stands for the ratio of not-held shares to the total shares for each broker-dealer.

Note: The data is from FINRA's OATS data, consisting of 120 randomly selected NMS stocks

listed on NYSE during the sample period of December 5, 2016 to December 9, 2016, consisting of 40 large-cap stocks, 40 mid-cap stocks, and 40 small-cap stocks. Not held ratio is calculated by the ratio of not held shares as a fraction of total shares for each broker-dealer that receives non-zero not

held orders in the sample. The horizontal axis is divided by increments of 0.25% of not held ratio.

⁶⁵³ See Section III.A.1.b.iv supra for a discussion of why a 5% threshold is reasonable in light of the cluster of firms below 2.5%.

not held NMS stock orders that they receive from customers, and therefore customers will still receive the benefits of the customer-specific reports required by the adopted amendment to Rule 606(b)(1) discussed below.

The Commission also acknowledges that adopted Rule 606(b)(5)'s customer-level de minimis exception may limit the benefits of Rule 606(b)(3) for some types of customers because some orders that would have been included in the Rule 606(b)(3) reports would be excluded under this de minimis exception.⁶⁵⁴ Because, under the customer-level de minimis exception, a broker-dealer will not be obligated to provide the new Rule 606(b)(3) order handling disclosures to any customer that trades on average each month for the prior six months less than \$1,000,000 of notional value of not held orders through the broker-dealer, customers sending not held orders less than this threshold will not receive the benefit of Rule 606(b)(3) reports. The Commission also considered that the average and rolling nature of the customer-level de minimis exception may not capture certain customers that exceed the threshold during certain months and not others. As a result, broker-dealers would be required to provide such customers with the Rule 606(b)(3) reports for only some months. However, the months for which the customer might not receive the detailed order handling information in the Rule 606(b)(3) reports are the ones in which the customer was less active. For example, customers could conceivably receive reports eleven months out of the year if they have one month of significant trading volume during a trading year. In this example, the one month excluded from the report would not be a significant part of their overall activity. Moreover, some firms, for business reasons, may choose to provide the Rule 606(b)(3) order handling disclosures to their customers, regardless of the customer-level de minimis exception. Additionally, as discussed above, broker-dealers still must provide, if requested, the Rule 606(b)(1) disclosures for not held NMS stock orders subject to the customer-level de minimis exception that they receive from customers, and therefore customers could still receive the benefits from the customer-specific reports required by the adopted amendment to Rule 606(b)(1). Further, to the extent that customers receive

additional information on broker-dealers' order handling practices and as a result could assess and compare their broker-dealers better, customers may choose to send more not held orders in order to receive Rule 606(b)(3) reports.

The Commission also analyzed how the benefits of Rule 606(b)(1) compare to the scope of rules prior to today's amendments. The Commission believes that amended Rule 606(b)(1) reports are targeting the appropriate orders resulting in the reports being available to those mostly likely to benefit from them. Under the scope of public order handling reports prior to the amendments, customer orders with a market value of less than \$200,000 were included in the public order routing reports and broker-dealers would need to prepare Rule 606(b)(1) reports of such orders upon request. In addition, broker-dealers would need to prepare 606(b)(1) reports for orders having a market value of at least \$200,000 upon requests under the scope of previously existing reporting requirements. The amended Rule 606(b)(1) requires a broker-dealer, upon customer request, to provide the disclosures set forth in Rule 606(b)(1) for orders in NMS stock that are submitted on a held basis, and for orders in NMS stock that are submitted on a not held basis and for which the broker-dealer is not required to provide the customer a report under Rule 606(b)(3) pursuant to the de minimis exceptions. As discussed in Section III.A.1.b.vi., whereas the Rule 606(b)(3) disclosures are designed primarily for institutional customers, the Rule 606(b)(1) disclosures that cover held NMS stock orders are more retail customer-focused and thus better aligned with the type of customer most likely to submit held NMS stock orders. The staff's supplemental analysis found that about 25% of shares and about 33% of not held orders in the sample would have received 606(b)(1) reports under the requirements prior to today's amendments but will receive Rule 606(b)(3) reports. As discussed in Section V.C.1.a.i.1., Rule 606(b)(3) reports are more likely to benefit these customers submitting not held orders than Rule 606(b)(1) reports are. A staff's supplemental analysis also showed that about close to 41% of total shares and about 66% of total numbers of orders in the sample would be eligible for the disclosures required by Rule 606(b)(1). As discussed above, because customers sending held orders may have a different level of sophistication to understand the benefits of the 606(b)(1) reports and may have less of a need for the detail and granularity in customer-

specific reports, these customers may not frequently request the Rule 606(b)(1) reports. However, as broker-dealers are required to provide Rule 606(b)(1) reports on customers' requests, Rule 606(b)(1) could provide an option to these customers to request additional information if they believe that they would benefit from doing so. As a result, the amended Rule 606(b)(1) could keep the same benefits for such customers by providing them the opportunity to better compare and monitor broker-dealers' order routing practices, which could promote better execution quality of held orders and competition among broker-dealers.

3. Comparison to the Proposal

The Commission also believes that the benefits of the amended scope are greater than the potential benefits of the Proposal, which would have required standardized customer-specific reports on orders of at least \$200,000.⁶⁵⁵ As discussed below, the Commission believes that the proposed scope, reflected by the proposed definition of institutional order, excluded many institutional orders whereas the adopted scope better targets those likely to benefit from the standardized Rule 606(b)(3) customer-specific reports, provides for more accurate identification of the orders to be included and includes a more comprehensive set of orders in the Rule 606(b)(3) reports.

Relative to the proposed \$200,000 threshold, the Commission believes that using not held orders to trigger the Rule 606(b)(3) reports better targets the standardized customer-specific reports to the investors most likely to benefit from them and to the orders in which the reports would be more meaningful. Further, the Commission believes that some investors who are not institutions could benefit from Rule 606(b)(3) reports with respect to orders for which they provide more discretion to their broker-dealers and in which they may provide some unique instructions. The not held order type classification better captures this kind of discretion than does the \$200,000 threshold.

While the proposed rule intended to target institutional orders for inclusion in the standardized customer-specific reports required by Rule 606(b)(3), the \$200,000 threshold would have excluded most institutional trading. As discussed in the Proposing Release, in a Commission staff analysis, approximately 83.2% of the total number of orders from institutions to buy or sell a quantity of an NMS stock

⁶⁵⁴ Because of the lack of data that would quantify the costs that would result from the customer-level de minimis exception, the Commission provides a qualitative discussion.

⁶⁵⁵ See Proposing Release, *supra* note 1, at 49444.

during the calendar year 2013 and 2014 had a market value less than \$200,000, and in the least active stocks, less than 3% of orders from institutions would exceed the threshold.⁶⁵⁶ Consistent with this staff analysis, multiple commenters indicated that distinguishing retail orders from institutional orders on the basis of the dollar-value threshold would exclude the majority of orders from institutions from the institutional order handling disclosure requirements and include retail orders that fall over the \$200,000 threshold within the definition of institutional order.⁶⁵⁷ Commenters also stated that because institutional customers break up their orders into smaller child orders, a distinction based on dollar-value threshold would result in inaccurate order identification or duplicate reporting of institutional customer orders as both institutional and retail orders.⁶⁵⁸

The Commission believes that the adopted approach will create greater benefits than the proposed \$200,000 threshold because it provides more accurate identification of the orders to be included in the reports for customers. In particular, to the extent that some orders are unpriced and broker-dealers would need to estimate the dollar price of such orders to determine whether they meet the \$200,000 threshold, the proposed rule could create misspecification of orders because of estimation error. If broker-dealers incorrectly assign prices to unpriced orders, orders that should have been included in the Rule 606(b)(3) reports would be excluded from those reports, which could create inaccuracies as to which orders would be covered by the Rule 606(b)(3) reports. As a contrast, the distinction based on not held and held order identification will reduce the inaccuracies of the order handling disclosure because all orders, as discussed above, are already marked as not held or held and thus the identification would require no additional processing, which can introduce errors. Moreover, as discussed above, broker-dealers are already familiar with the identification of orders using the not held and held basis, further facilitating the accuracy as to which the intended orders will be covered by the Rule 606(b)(3) reports.

The Commission also believes that the adopted approach will provide more comprehensive 606(b)(3) reports for customers than the proposed \$200,000 threshold, thus providing greater benefits to those customers and potentially benefiting more customers. A staff's supplemental analysis found that close to 60% of all shares and close to 34% of the total number of orders in the sample are not held orders and therefore will receive Rule 606(b)(3) reports under the adopted approach, whereas about 45% of all shares and just above 1% of total number of orders in the sample data have a market value of at least \$200,000 and therefore would have received Rule 606(b)(3) reports under the proposed rule.⁶⁵⁹ The staff analysis suggests that the adopted approach will cover a greater universe of orders in the Rule 606(b)(3) reports relative to the proposed \$200,000 threshold.

The Commission believes that the adopted approach will provide benefits to customers placing not held orders having a market value of less than \$200,000 whereas the proposed rule would not. The staff's supplemental analysis found that, among the sample orders of less than \$200,000, about 45% of the total shares and about 33% of the total number of orders in the analysis were not held orders. These orders were considered as "retail-sized orders" and not entitled to the Rule 606(b)(3) disclosures under the proposed rule. Thus customers sending these orders would not have been entitled the benefit of receiving the Rule 606(b)(3) disclosures. Under the adopted approach, these orders will receive the Rule 606(b)(3) reports. As a result, customers sending not held orders of less than \$200,000 in market value will receive the benefits of enhanced transparency in their broker-dealers' order handling disclosure required by Rule 606(b)(3). The Commission therefore believes that customers placing not held orders of less than \$200,000 in market value will receive greater benefits as a whole from the Commission's adopted approach as compared to the proposed rule because the adopted rule will require broker-dealers to provide detailed and uniform information pursuant to Rule 606(b)(3) for all not held orders regardless of order dollar value.

The Commission acknowledges that the benefits to customers that place held orders with at least \$200,000 in market value could be lower under the adopted rule than under the proposed rule. Specifically, held orders having a

market value of at least \$200,000 will not be included in the standardized customer-specific reports under adopted Rule 606(b)(3), whereas they would have been included under the Proposal. The staff's supplemental analysis found that among orders having a market value of at least \$200,000, close to 23% of total shares and about 36% of the total number of orders in the sample will not receive Rule 606(b)(3) reports under the adopted rule, whereas these orders would have been included in the customer-specific reports under the proposed \$200,000 threshold. Thus, some customers that send held orders of a market value of at least \$200,000 will not benefit from the order handling transparency under Rule 606(b)(3). However, a customer could request the disclosures set forth in Rule 606(b)(1) for these orders, which would maintain the status quo. Also, customers could switch to sending not held orders from held orders in order to receive the benefits of the Rule 606(b)(3) reports, which could result in a worse execution quality for these orders, assuming customers currently optimize their decision on when to request that an order be handled as not held. However, the Commission recognizes that if the benefits of including large held orders in the standardized customer-specific report under adopted Rule 606(b)(3) outweigh the execution quality cost of requesting not held handling of such orders, the customer could submit such orders as not held.

ii. Costs

As discussed in detail below, the Commission recognizes that the scope of orders eligible for the Rule 606(b)(3) reports influences the compliance and other costs of the adopted amendments. First, broker-dealers will incur costs to ensure the Rule 606(b)(3) reports cover the required orders and to implement the de minimis exceptions set forth in Rule 606(b)(4) and Rule 606(b)(5). The Commission believes the compliance costs associated with identifying not held orders are lower than the compliance costs associated with the proposed \$200,000 threshold. In addition, the Commission believes that the two de minimis exceptions will reduce the costs to broker-dealer of producing the customer-specific reports of Rule 606(b)(3), but acknowledges that broker-dealers might incur costs in producing the customer-specific reports in Rule 606(b)(1) for the orders that, due to the de minimis exceptions, are not eligible for the customer-specific reports of Rule 606(b)(3). Further, the Commission acknowledges additional costs that will originate from the

⁶⁵⁶ See *Proposing Release*, *supra* note 1, at 49483.

⁶⁵⁷ See, e.g., Capital Group Letter at 2; FIF Letter at 3; FIF Addendum at 2; FSR Letter at 3; HMA Letter at 5–6; ICI Letter at 3–7; KCG Letter at 5; Markit Letter at 6–7.

⁶⁵⁸ See Bloomberg Letter at 11; Citadel Letter at 2; Dash Letter at 3; FIF Addendum at 2; FSR Letter at 4; HMA Letter at 5–6; MFA Letter at 3; SIFMA Letter at 2.

⁶⁵⁹ See *supra* notes 642 and 643.

uncertainty created by the de minimis exceptions and from potential behavior changes of broker-dealers and customers. The Commission quantifies the costs where possible and provides qualitative discussion when quantifying costs and benefits is not feasible. Many, but not all, of the costs of the adopted amendments to Rules 600, 605, and 606 involve a collection of information, and these costs and burdens are discussed in the Paperwork Reduction Act Section above, with those estimates being used in the economic analysis below.⁶⁶⁰

1. Compliance Costs

The requirement for customer-specific order handling disclosure under Rule 606(b)(3) based on not held or held orders will create compliance costs, as broker-dealers will need to prepare the customer-specific reports for not held orders required by Rule 606(b)(3).⁶⁶¹ The estimates of the related compliance costs are encompassed in the cost estimates discussed in Section V.C.1.b.ii.3. The adopted approach will create compliance costs for broker-dealers to implement a process to identify not held orders for inclusion in Rule 606(b)(3) reports and for the processing time to screen order data for not held orders when generating the reports.⁶⁶² However, the Commission believes that the adopted approach is targeted to moderate compliance burdens. In particular, as discussed in Section V.C.1.a.i., multiple commenters stated that broker-dealers are already familiar with the held and not held order type classifications and orders are already marked as held or not held.⁶⁶³ Therefore, classifying orders as held or not held would not create other additional implementation or ongoing costs for broker-dealers.

The Commission also acknowledges that the de minimis thresholds in

adopted Rules 606(b)(4) and (b)(5) will also create compliance costs to the extent a broker-dealer avails itself of one or both of the exceptions. Specifically, to apply the de minimis thresholds, broker-dealers will need to create systems to identify whether the amount of not held orders broker-dealers receive from customers would meet the threshold of either the firm-level or the customer-level de minimis exception. Broker-dealers will also need to conduct extra data processing to determine whether they or any customers are excepted and to screen out any excepted orders when creating the Rule 606(b)(3) reports.

The amended rule would also impose additional compliance costs on broker-dealers from the requirement set forth in Rule 606(b)(1) prior to today's amendments. As discussed above, Rule 606(b)(1), as amended, requires a broker-dealer, upon customer request, to provide the disclosures set forth in Rule 606(b)(1) for orders in NMS stock that are submitted on a held basis, and for orders in NMS stock that are submitted on a not held basis and for which, under the de minimis exceptions, the broker-dealer is not required to provide the customer a report under Rule 606(b)(3). As discussed above, Rule 606(b)(1), as amended, does not modify any of the customer-specific disclosure requirements prior to today's amendments but rather modifies the categories of orders to which the disclosure applies. Under this modification, Rule 606(b)(1) includes held orders and not held orders subject to the de minimis exceptions. Therefore, broker-dealers that receive such orders could incur costs to respond to customer requests as required by Rule 606(b)(1). However, to the extent that broker-dealers already have systems in place to prepare the reports required by the rule prior to these amendments, the amended rule should not create substantial new costs to these broker-dealers to create a new system to prepare Rule 606(b)(1) reports. Additionally, because broker-dealers would need to prepare Rule 606(b)(1) reports only when customers request such reports, and, as discussed above, to the extent that customers typically placing held orders may not value customer-specific reports required by Rule 606(b)(1) and therefore would not frequently request such reports, Rule 606(b)(1) would not impose significant ongoing compliance costs to broker-dealers.

The Commission also analyzed how the compliance costs of the adopted rule compare to the anticipated compliance costs of the proposed rule. Under the

adopted approach, broker-dealers will need to prepare Rule 606(b)(3) reports for not held orders of any dollar value, including not held orders with a market value less than \$200,000, and will need to, upon request, prepare Rule 606(b)(1) reports for held orders of any dollar value and for not held orders covered by the de minimis exceptions under Rule 606(b)(4) or 606(b)(5). As discussed in Section V.C.1.a.i., the adopted rule will include more orders in the Rule 606(b)(3) reports than under the proposed rule. The staff's supplemental analysis also found that among the orders of less than \$200,000 in the sample data, about 45% of the total shares and about 33% of the total number of orders are not-held.⁶⁶⁴ These orders were considered "retail-sized orders" under the proposed rule. Thus, broker-dealers would have not been required to prepare Rule 606(b)(3) reports for these orders, but would have been required to prepare public order routing reports and Rule 606(b)(1) reports upon request. The Commission believes that the adopted approach should moderate processing costs for broker-dealers compared to the proposed rule. To the extent that broker-dealers already have a system to generate Rule 606(b)(1) reports pursuant to the previously existing rule, broker-dealers would need to modify existing systems to prepare Rule 606(b)(3) reports without the need to create entirely new systems to process customer orders. Additionally, as discussed above, broker-dealers that receive an insignificant amount of not held order flows will receive exceptions in preparing for Rule 606(b)(3) reports under Rule 606(b)(4) and 606(b)(5), which could limit the scale of order processing costs on certain broker-dealers to provide Rule 606(b)(3) reports. The Commission also believes that the adopted rule would impose lower implementation and processing costs on broker-dealers relative to the Proposal. To the extent that some orders are unpriced, under the proposed rule broker-dealers would have needed to estimate the current market price of NMS stocks when the orders were received to identify the value of the orders for comparison to the \$200,000 threshold in the Proposal. This would require broker-dealers to create systems to estimate the value of unpriced orders. Under the adopted rule, however, consistent with the Commission's analysis immediately above, broker-dealers would not incur such

⁶⁶⁰ See *supra* Section IV.

⁶⁶¹ The staff's supplemental analysis found that when all of the orders broker-dealers receive are on a not held basis, about 46% of total shares are less than \$200,000. In addition, when the ratio of not held orders that broker-dealers receive from customers is 50% or less excluding broker-dealers receiving a firm-level de minimis exception, about 14% of total shares of orders included in the analysis have a market value of at least \$200,000 and are not held orders. As a result, the analysis suggests that the reporting costs could vary depending on the amount of not held orders that the broker-dealers receive.

⁶⁶² The adopted approach will also create initial compliance costs for market centers and the broker-dealers that will have to review and update compliance manuals and written supervisory procedures and update citation references to any such defined term. The estimates of the related compliance costs are encompassed in the cost estimates discussed in Section IV.D.5.

⁶⁶³ See Citadel Letter at 3; Markit Letter at 3, 7–8; KCG Letter at 4; Capital Group Letter at 2–3; SIFMA Letter at 3.

⁶⁶⁴ See *supra* notes 642 and 643.

compliance costs because orders are currently identified as held or not held.

2. Influence of De Minimis Exceptions on Compliance Costs

The Commission believes that the two de minimis exceptions to the adopted rule will further limit the scale of compliance costs on certain broker-dealers to provide Rule 606(b)(3) reports. Specifically, the Commission believes that adopted Rule 606(b)(4), which provides for a firm-level de minimis exception for broker-dealers, will limit the costs to broker-dealers that rarely handle not held NMS stock order flow. Absent a firm-level de minimis threshold, every broker-dealer that handles not held orders, regardless of its customer base and core business, would be subjected to compliance costs to create the systems and processes to generate and deliver the Rule 606(b)(3) reports. The supplemental staff analysis found that among the 342 broker-dealers that receive not held orders from customers in the sample data, about 8% (28 broker-dealers) would qualify for the firm-level de minimis exception from Rule 606(b)(3)'s requirements. Accordingly, the firm-level de minimis exception in Rule 606(b)(4) would result in approximately 8% of broker-dealers not incurring the compliance costs associated with the standardized customer-specific order handling reports required by Rule 606(b)(3). As discussed in Section V.C.1.a.i.2., the number of orders that will be excluded under the de minimis exception would be minimal compared to the current reporting requirement and to the proposal. The minimal amount of not held orders excluded under the firm-level de minimis exception suggests that there would be only limited benefits of Rule 606(b)(3) in circumstances where broker-dealers handle a minimal amount of not held orders, and that the resulting benefits of customer-specific order handling disclosures required by Rule 606(b)(3) may not be as great as intended.

The Commission also believes that the adopted approach of including a de minimis exception at the customer-level under the adopted Rule 606(b)(5) will also limit the compliance costs of broker-dealers associated with the new customer-specific order handling disclosures under Rule 606(b)(3). This exception, therefore, could reduce compliance costs for broker-dealers of processing orders to produce and to deliver Rule 606(b)(3) reports for numerous customers that do not actively place not held orders.

The Commission also believes that the three-month grace period included in

the firm-level de minimis exception could further limit the scale of compliance costs of broker-dealers. As discussed in Section III.A.1.b.iv., Rule 606(b)(4) allows broker-dealers to have a grace period of up to three calendar months to provide the new customer-specific disclosures the first time a broker-dealer meets or exceeds the 5% de minimis threshold. The adoption of the grace period will provide time for broker-dealers to create the systems necessary to prepare the 606(b)(3) reports, which could allow the broker-dealers to manage their implementation and ongoing compliance costs. In addition, once the broker-dealers set up the system to comply with the rule during the grace period, the broker-dealers could use the system in the future, which could help reduce the ongoing reporting costs in preparing additional Rule 606(b)(3) reports.

The Commission acknowledges that the two de minimis exceptions may create uncertainty as to whether a customer would have access to the Rule 606(b)(3) report and as to whether a broker-dealer would be required to produce Rule 606(b)(3) reports on request. The staff's supplemental analysis found that a small number of broker-dealers fell slightly outside the 5% de minimis threshold during a recent sample period.⁶⁶⁵ Specifically, eight broker-dealers receive not held orders greater or equal to 5% and less than 10% of the total shares of their orders in the sample. These broker-dealers would not qualify for the firm-level de minimis exception despite not predominantly receiving not held orders, and thus would not be excepted from preparing Rule 606(b)(3) reports for not held orders under the adopted rule. Additionally, the staff analysis found that five broker-dealers that meet the de minimis exception receive not held orders greater or equal to 2.5% and less than 5% of the total shares of their orders in the sample. These results indicate that the threshold for the firm-level de minimis exception could create uncertainty for broker-dealers as to whether they might receive enough not held orders to qualify for the de minimis exception and for how long they would qualify for the de minimis exception. However, the Commission believes that the firm-level de minimis exception under Rule 606(b)(4) could mitigate the uncertainty that is discussed above. As discussed in Section V.C.1.a.i.2., a supplemental staff analysis found that 23 broker-dealers that meet the de minimis exception receive not held orders less than 2.5% of the total shares

of their orders in the sample, and among these broker-dealers the largest ratio of not held orders as percentage of total shares is less than 2.2%, which indicates that there is less concern of uncertainty regarding whether they meet the firm-level de minimis exception. Moreover, as discussed in Section III.A.1.b.iv., Rule 606(b)(4) requires that once a broker-dealer has equaled or exceeded the firm-level threshold based on its not held NMS stock order flow during a given six calendar month period, it must provide reports pursuant to Rule 606(b)(3) for at least the next six calendar months regardless of the nature of its order flow during the Compliance Period. Additionally, as discussed in Section III.A.1.b.iv., if, at any time after the end of a Compliance Period, the broker-dealer's not held NMS stock order flow falls below the 5% threshold for the prior six calendar months, the broker-dealer is not required to provide reports pursuant to Rule 606(b)(3), except with respect to orders received during the Compliance Period. These features of the firm-level de minimis exception under Rule 606(b)(4) could mitigate the uncertainty as to whether a broker-dealer would be required to produce Rule 606(b)(3) reports on request for the next six calendar months after the calendar month the broker-dealer exceeded this 5% threshold.

Further, as discussed above, the Commission acknowledges that the customer-level de minimis exception under Rule 606(b)(5) may result in certain customers with seasonality in their trading volume exceeding the threshold during certain months and not during others. As discussed above, to the extent that such customers receive net benefits from receiving new customer-specific reports under the requirement of Rule 606(b)(3) and that such customers have flexibility in their trading activities,⁶⁶⁶ customers could be willing to incur the costs to alter trading behavior to receive the Rule 606(b)(3) reports more frequently during the year. Because customers' trading activity can be affected by future market conditions or unexpected events in the financial markets, it could be difficult for customers to predict at the time they are placing an order, whether that order could be in the standardized customer-specific reports.

⁶⁶⁶ The Commission believes index funds time their trades to minimize tracking error. These institutions are concerned even about how when they trade within a trading day affects their tracking error. These institutions are unlikely to delay trading by a month just to qualify to receive a report for one additional inactive month.

⁶⁶⁵ See *supra* notes 642 and 643.

3. Other Costs

The Commission also acknowledges that the firm-level *de minimis* exception in adopted Rule 606(b)(4) could incentivize broker-dealers to keep their not held trading volume below the 5% threshold. As discussed above, there are a small number of broker-dealers with not held orders slightly below or above the 5% *de minimis* threshold. Specifically, according to Table 1, for 8 broker-dealers, not held orders account for between 5% and 10% of orders received by that broker-dealer. To avoid the compliance costs, broker-dealers could discourage customers from using not held orders so as not to exceed the 5% threshold and therefore not to be subject to the obligations of providing the new disclosures upon request. Under this scenario, customers sending not held orders to these broker-dealers may not receive the benefit of the disclosure of customer-specific order handling practices required by Rule 606(b)(3) and could face additional execution costs if they suboptimally submit held orders relative to today. However, the Commission notes that for business reasons, some firms might choose to provide the new customer-specific order handling disclosures to its customers, regardless of the *de minimis* exception, limiting the costs of such incentives on investors. Further, customers that value the Rule 606(b)(3) reports could be willing to incur the cost of switching to the broker-dealers that do not receive or use the firm-level exception in order to ensure receipt of the customer-specific reports. As a result, the threat of losing customers could dampen the broker-dealers' incentives to encourage their customers to use held orders.

The Commission also acknowledges that the customer-level *de minimis* threshold under Rule 606(b)(5) could result in changes in customers' behavior, including an increase in not held orders over held orders or a consolidation of the customer's not held order flow with one broker-dealer in order to exceed the customer-level threshold to be entitled to receive such reports, which could be less optimal for customers relative to today. As discussed above, a broker-dealer will not be obligated to provide the new Rule 606(b)(3) order handling disclosures to any customer that trades on average each month for the prior six months less than \$1,000,000 of notional value of not held orders through the broker-dealer. Therefore, a customer that submits more than \$1,000,000 of notional value each month, but not in not held orders or at a single broker-dealer, could qualify for

the Rule 606(b)(3) reports by instructing brokers to handle more orders as not held and/or by consolidating its order submission with fewer broker-dealers. However, some firms may choose to provide the new customer-specific order handling disclosures to its customers, regardless of the *de minimis* exceptions for business reasons, and the expectation of these reports could mitigate customers' incentives.

b. Customer Requests for Information on Customer-Specific Handling Under Adopting Rule 606(b)(3)

i. Benefits

The required customer-specific order handling disclosures being adopted under Rule 606(b)(3) will provide transparency about order routing and execution quality for not held orders placed by customers.⁶⁶⁷

1. Execution Quality Benefits

The Commission believes that Rule 606(b)(3) will benefit customers, because broker-dealers will have an additional incentive to improve their order routing decisions for customers submitting orders on a not held basis, who could also use the reports required by the amendments to Rule 606 to compare routing and execution quality among broker-dealers, which could lead to better execution quality for not held orders. As a result, Rule 606(b)(3), as adopted, could lead to more transparent order routing practices and execution quality disclosures, which could enhance competition in the market for brokerage services. The disclosures in Rule 606(b)(3) will provide customers that submit not held orders, including investment fund managers, standardized information regarding their broker-dealers' order routing practices and execution quality. To the extent that the reports required by Rule 606(b)(3) increase the transparency of order routing and execution quality for customers' not held orders, broker-dealers will be better able to compete along the execution quality dimensions provided in the reports, such as the fill rate, percentage of shares executed at the midpoint and priced at the near or far side of the quote, and average time between order entry and execution or cancellation for orders posted to the limit order book, in addition to commissions and other considerations on which they currently compete.

The Commission believes that amended Rule 606(b)(3) could affect competition between trading centers. Broker-dealers routing more orders to the trading centers that are more

beneficial for their customers could further promote competition between trading centers and promote innovation on execution quality. To illustrate, if broker-dealers change their order routing decisions to focus more on execution quality and route fewer orders to a given trading center, that trading center will have an incentive to take measures to attract and gain back order flow by innovating on execution quality. In addition to comparing broker-dealers on the basis of the reports, the amended Rule 606(b)(3) could facilitate and inform customer dialogues with their broker-dealers about the broker-dealers' order routing practices to better match the needs of the customers with the order routing practices of the broker-dealers to whom they send orders. As a result, as several commenters stated, the information on execution quality could better enable customers placing orders on a not held basis to evaluate the impact that routing decisions have on the quality of their order executions and could provide information regarding broker-dealers' potential conflicts of interest.⁶⁶⁸ The Commission believes that the amended Rule 606(b)(3) will promote better order handling practices among broker-dealers, therefore potentially promoting competition between trading centers and ultimately incentivizing broker-dealers to improve execution quality of not held orders.

2. Benefits of Enhanced, Standardized Report

As adopted, Rule 606(b)(3) will address the concerns that current customer reports are not standardized. As discussed in the Proposing Release,⁶⁶⁹ some customers currently request and receive reports about order routing and execution quality of their orders from their broker-dealers. However, these reports are not standardized and, as a result, it may be difficult to compare broker-dealers on the basis of those reports. In addition, the availability, detail, and quality of such reports likely differ across customers, *e.g.*, it might be the case that customers placing a greater volume of not held orders have easier access to such reports compared to customers with a smaller volume of not held orders. Moreover, the information provided by a broker-dealer may vary over time without any standardized or required content for the reports. As adopted, Rule 606(b)(3) could address

⁶⁶⁸ See, *e.g.*, Capital Group Letter at 3 and 6; STA Letter at 4; FSR Letter at 4–5; HMA Letter at 10; ICI Letter at 9; Schwab Letter at 2; Markit Letter at 9–10; Better Markets Letter at 5–8.

⁶⁶⁹ See Proposing Release, *supra* note 1, at 49437.

⁶⁶⁷ See *supra* at Section III.A.1.b.iii.

both of these concerns as the reports will be standardized for all broker-dealers and all customers placing not held orders (subject to two de minimis exceptions) making comparisons easier and analysis more useful. Furthermore, every customer placing orders on a not held basis will be able to receive reports upon request from their broker-dealer.

The Commission believes that the benefits of the reports required by Rule 606(b)(3) may be modest for some customers that already receive reports from their broker-dealers on the handling of their not held orders, depending on the information such customers currently receive and how standardized that information is across broker-dealers. For example, the reports that a particular customer already receives may be more detailed and tailored to that customer. The Commission recognizes that some current ad hoc reports also may provide additional, more detailed, and/or more tailored information than what Rule 606(b)(3) requires. Customers receiving such enhanced reports may not benefit significantly from the information specified in Rule 606(b)(3). Nevertheless, the Rule 606(b)(3) requirement that the disclosures be standardized may allow these customers to more readily compare their broker-dealers, particularly if their broker-dealers currently provide disparate responses to similar requests.

The Commission believes that Rule 606(b)(3) will enable customers to better compare broker-dealers' order handling practices, which will allow customers to more efficiently monitor, evaluate, and select broker-dealers. Under Rule 606(b)(3), customers can obtain detailed information on the broker-dealer internalization rate and payment for order flow received. Currently, broker-dealers may prefer to internalize uninformed order flow.⁶⁷⁰ Under Rule 606(b)(3) a customer will have information on whether its order flow is being internalized and could use this information in its relationships with its broker-dealers. Similarly, a customer will be able to monitor whether broker-dealers route orders to the trading center offering highest rebate or lowest fees.⁶⁷¹ Customers might be concerned if orders routed to a high-rebate destination do not execute or do so with a delay, as

information about the order may leak into the market, thereby inducing price impact. Rule 606(b)(3) could mitigate such concerns.

As adopted, Rule 606(b)(3) requires the inclusion of actionable IOIs in customer-specific order handling disclosures. As adopted, Rule 606(b)(1) defines an actionable IOI as "any indication of interest that explicitly or implicitly conveys all of the following information with respect to any order available at the venue sending the indication of interest: (1) Symbol; (2) side (buy or sell); (3) a price that is equal to or better than the national best bid for buy orders and the national best offer for sell orders; and (4) a size that is at least equal to one round lot." The Commission believes that the inclusion of actionable IOIs in the adopted reporting requirements of broker-dealers should provide customers a more complete picture of how their not held orders are handled. Since actionable IOIs can convey information similar to that of an order, a response to an actionable IOI may result in an execution at the venue of the IOI sender and thus can represent a portion of the liquidity available at a given price and time. The Commission therefore believes that actionable IOIs should be included in the required disclosure of how not held orders are handled. In addition, because an actionable IOI can convey information similar to that of an order, the use of actionable IOIs may contribute to information leakage in a way similar to that of the use of orders.⁶⁷² Specifically, the Commission believes that such information will enable customers in assessing whether their broker-dealers are exposing their not held orders to the select market participants with which the broker-dealer has affiliations or business relationships or from which the broker-dealer receives other incentives. In addition, the Commission believes that disclosure of this information will provide the customer with a more complete understanding of the broker-dealer's order handling activities for purposes of assessing the broker-dealer's execution quality generally. Excluding actionable IOIs, therefore, will not provide a complete picture of order routing and executions of a customer's not held orders and could provide broker-dealers with an incentive to use actionable IOIs instead of orders to circumvent the adopted disclosure requirements in Rule 606.

The Commission considered whether adopting a definition of actionable IOI in Rule 606(b)(1) may limit its potential

benefits. Specifically, the adopted definition is substantively similar to the description of actionable IOI in the Regulation of Non-Public Trading Interest Proposing Release. Comments received on the Regulation of Non-Public Trading Interest Proposing Release indicated that some commenters were concerned that the discussion of actionable IOIs in that release was too stringent.⁶⁷³ If the definition of actionable IOI is, in fact, too narrow, then some IOIs will not be included in the definition of actionable IOI and will not be captured by the required reports on handling of not held orders. Consequently, it is possible that customers placing orders on a not held basis might find the reports to be less informative on order handling than if the definition of actionable IOIs was broader. This suggests that defining actionable IOIs too narrowly may limit the benefits of the adopted amendments. However, as discussed in Section III.A.2., the Commission's purpose here is improving the usefulness of the order handling and routing information conveyed by broker-dealers to their customers placing orders on a not held basis, and thus the definition of actionable IOI being adopted is appropriately tailored to serve the purpose of this rulemaking, minimizing the concern of limiting the benefits of the amendments.

Several commenters stated that the proposed definition for actionable IOIs is unclear, specifically as to whether the definition of actionable IOI excludes conditional orders.⁶⁷⁴ The inclusion of conditional orders in the Rule 606(b)(3) report could have benefits because broker-dealers would include additional information in the Rule 606(b)(3) reports, which therefore could increase the benefits resulting from increased transparency. However, as discussed in Section III.A.2., many market participants distinguish conditional orders from actionable IOIs, because conditional orders are not firm representations of trading interest and may require additional negotiation before a trade can be executed. Therefore, the Commission acknowledges that the inclusion of conditional orders in the definition of actionable IOI may cause confusion in

⁶⁷⁰ See Hitesh Mittal, *Are You Playing in a Toxic Dark Pool? A Guide to Preventing Information Leakage*, 3 Journal of Trading 20 (Summer 2008).

⁶⁷¹ A broker-dealer may take into account rebates when setting its flat-rate commission by asking for a lower commission. As long as the rebates are not passed through to the customer, however, the broker-dealer still has the incentive to maximize rebate capture.

⁶⁷² See Proposing Release, *supra* note 1, at 49486.

⁶⁷³ Comments on the Regulation of Non-Public Trading Interest Proposing Release are available at <http://www.sec.gov/comments/s7-27-09/s72709.shtml>. Comments on actionable IOIs can be found in the following letters: <http://www.sec.gov/comments/s7-27-09/s72709-46.pdf> and <http://www.sec.gov/comments/s7-27-09/s72709-48.pdf>.

⁶⁷⁴ See BIDS Letter at 4–5; Bloomberg Letter at 3–4; Capital Group Letter at 3; FIF Letter at 7; Markit Letter at 11–12; NYSE Letter at 2; SIFMA Letter at 6.

producing and consuming order handling reports, which could limit the benefits of Rule 606(b)(3) reports.

The Commission is adopting a modification to Rule 606(b)(3) that requires broker-dealers to disclose the fact that actionable IOIs were sent to customers placing not held orders but not the identity of such customers. The Commission believes that such modification should help ensure that customers receive detailed information in their report, while protecting the identity of institutions providing liquidity. The Commission believes that disclosing the specific venue or venues to which a broker-dealer exposed a not held order by an actionable IOI will be useful for the customer to further assess the extent of information leakage of their orders and potential conflicts of interest facing their broker-dealers. Specifically, the Commission believes that such information will enable customers to assess whether their broker-dealers are exposing their not held orders to the select market participants with which the broker-dealer has affiliations or business relationships or from which the broker-dealer receives other incentives. In addition, the Commission believes that disclosure of this information will provide the customer with a more complete understanding of the broker-dealer's order handling activities for purposes of assessing the broker-dealer's execution quality generally. Under the proposed Rule 606(b)(3), the Commission believed that requiring broker-dealers to identify the institutions to which they routed actionable IOIs would allow customers to receive additional details in their reports so that customers could better compare their broker-dealers. Regarding the requirement that broker-dealers identify the institutions to which they routed actionable IOIs, commenters expressed concerns that such identification may discourage institutions from providing liquidity if they do not wish their names to be disclosed to protect their proprietary information.⁶⁷⁵ The Commission acknowledges that such identification may discourage such institutions from providing liquidity or induce broker-dealers to compromise the identity of their customers placing not held orders, which could reduce the benefits of disclosing actionable IOIs in the customer-specific reports. Thus, the modification to Rule 606(b)(3), as adopted, should help reduce the potential for information leakage and

conflicts of interest between broker-dealers and their customers placing not held orders without discouraging institutions to provide liquidity.

The Commission also recognizes that, relative to proposed Rule 606(b)(3), this modification could result in customers receiving fewer details in their reports. While customers could have used such details to better compare their broker-dealers, the Commission does not believe that the identities of particular customers placing not held orders would significantly influence customers' decisions. Therefore, this modification does not significantly reduce benefits compared to the Proposal.

3. Additional Benefits

An additional benefit of Rule 606(b)(3), and specifically the benefit of having the standardized customer-specific order handling information available upon request, is that customers placing orders on a not held basis could combine the order handling information with existing TCA or enhance their TCA. As noted above, customers sending not held orders often work with independent third-party vendors to perform TCA as a means of evaluating the cost and quality of brokerage services. Customers sending not held orders can also conduct their own TCA in-house. TCA, whether conducted in-house or by a third-party, generally analyzes data on the parent orders, but typically cannot analyze data on the child orders because of the lack of standardization of the current ad hoc order handling information. As a consequence, existing TCA typically does not incorporate information on how many child orders exist, a broker-dealer's order routing strategy of not held orders, or cost, routing, and execution quality for individual child orders. The disclosures required by adopted Rule 606(b)(3) will close this informational gap, so that customers will have more information on how broker-dealers handle and execute parent and child not held orders.

With this additional information, customers placing orders on a not held basis or their third-party vendors could combine the routing information with execution information to conduct a more thorough TCA than they can currently. In particular, the information in adopted Rule 606(b)(3) may be a factor that can explain transaction cost variations, and thus the reports from the adopted amendments could be combined with TCA to help explain differences in transaction costs and in performance as measured by TCA across broker-dealers. For example, TCA often

includes transaction cost measures such as implementation shortfall, but adopted Rule 606(b)(3) will not.⁶⁷⁶ With TCA alone, a customer may observe different implementation shortfalls across broker-dealers. The adopted amendments could allow the customers or their third-party vendors to correlate implementation shortfall with the routing decisions of the broker-dealers. This could assist the customers in assessing the execution quality provided by their broker-dealers. In summary, the Commission believes that Rule 606(b)(3) may complement and enhance all customers' evaluations of order handling quality of not held orders, including those of customers that use TCA.

Rule 606(b)(3) also requires the customer-specific order handling report to be divided into separate sections for the customer's directed not held orders and non-directed not held orders, with each section containing the disclosures regarding the customer's order flow with the broker-dealer specified in Rule 606(b)(3), as well as the disclosures for each venue to which the broker-dealer routed not held orders specified in Rules 606(b)(3)(i) through (iv). Commenters suggested that directed not held orders be clearly segregated in the reports because this distinction could provide a more qualitative level of transparency and provide a more accurate description of broker-dealer's order routing practices, which could enable customers to better compare and monitor broker-dealers' order routing practices.⁶⁷⁷ Specifically, commenters stated that to the extent that broker-dealers have more discretion on routing non-directed orders, dividing reports into directed and non-directed orders could bring greater transparency to customers placing not held orders. The Commission believes that reporting separate order handling statistics for the directed and non-directed not held orders will provide more valuable information to customers than if the statistics combined these orders. In particular, this will allow customers to specifically observe how the broker-dealers exercise routing discretion, which should increase the benefits of

⁶⁷⁶ For example, Rule 606(b)(3) will not require reports to contain any information on implementation shortfall costs of parent orders, which are a key focus for investors placing not held orders. In general, the amendments, as adopted, are not intended to replace TCA and, therefore, do not include many metrics common to TCA. However, the Commission recognizes that the ability to use the adopting amendments to enhance TCA may make TCA more valuable and increase the incentives for customers to use TCA, either in-house or through a third-party vendor.

⁶⁷⁷ See *supra* note 245.

⁶⁷⁵ See STA Letter II at 3; FIF Letter at 7; Fidelity Letter at 4; Markit Letter at 11.

order disclosure by better informing customers of potential leakage and conflicts of interest. By providing the order handling information separately for non-directed not held orders, the Rule 606(b)(3) report will provide a customer with a more precise reflection of how and where its broker-dealer is routing the customer's not held orders pursuant to the discretion it is afforded. Otherwise, with directed not held orders and non-directed not held orders commingled in the report, it would be more difficult for a customer to differentiate routing behavior for which its broker-dealer exercised discretion from routing behavior that the customer itself directed. Therefore, the Commission believes that customers also will benefit from being able to analyze Rule 606(b)(3) order handling disclosures that are specific to their directed orders.

The Rule 606(b)(3) reports also require the broker-dealer to disclose, among other things, information on not held order execution.⁶⁷⁸ This information will be relevant to a customer assessing its broker-dealer's execution of its directed orders, including a customer interested in validating that its broker-dealer is routing its directed not held orders consistent with the customer's instructions. These enhanced disclosures will better enable customers to analyze not held order routing and execution quality provided by broker-dealers, which will allow customers to more efficiently monitor, evaluate, and select broker-dealers. In addition, customers and broker-dealers will be able to evaluate execution quality of not held orders on different trading centers more efficiently. Therefore, the Commission believes that customers will benefit from the enhanced transparency in Rule 606(b)(3) reports.

Finally, Rule 606(b)(1) and Rule 606(b)(3) will require reports to be made available using an XML schema and associated PDF renderer published on the Commission's website.⁶⁷⁹ The benefits, as well as the costs associated with this requirement, are discussed in Section V.C.4.

ii. Costs

The required customer-specific order handling disclosures being adopted under Rule 606(b)(3) will require broker-dealers to provide, upon request, standardized reports on not held order handling, which include more detailed information on broker-dealers' order routing practices. These requirements

will result in initial and ongoing compliance and reporting costs to broker-dealers. These costs are quantified in Section V.C.1.b.ii.3. Additionally, the customer-specific order handling disclosure requirement under Rule 606(b)(3) could alter the information content of the report if broker-dealers already provide more information than is required by the adopted amendment or broker-dealers try to disguise order routing behavior to avoid customers' monitoring.

1. The Potential for Less Information

As discussed above, some customers currently request reports about the handling of their not held orders from their broker-dealers and those reports may be less or more detailed and provide different, and potentially less or potentially more, information than Rule 606(b)(3) will require. If broker-dealers currently provide more detailed or additional information to customers, reporting requirements under Rule 606(b)(3) could impose a cost on such customers if the broker-dealers stop providing the more detailed or additional information and instead provide only the data required for customer-specific order handling by Rule 606(b)(3). The Commission believes that this scenario is not very likely because, following Rule 606(b)(3)'s implementation, customers could still request additional information or customized reports from their broker-dealers and broker-dealers are likely to satisfy such requests, to the extent they currently do, to retain their customers. As discussed above, the willingness of broker-dealers to provide such customized reports to customers and the level of detail in such a report might depend on the business relationship between the broker-dealer and the customer. Customers that send or may send a large number of orders to broker-dealers might be able to get customized reports that they can more easily compare than customers that send fewer orders; and those reports might be more detailed, compared to reports that customers that send fewer orders receive. While Rule 606(b)(3) reduces this discrepancy, in that all customers will be able to request the standardized reports required by Rule 606(b)(3), the Commission recognizes that, to the extent large customers placing orders on a not held basis are able to receive customized reports that provide information not contained in the required reports, those large customers placing not held orders will continue to have an advantage over smaller customers placing not held orders who are not able to receive the same reports.

2. Skewed Routing Practices

In addition, the greater transparency provided as a result of Rule 606(b)(3) might lead broker-dealers to change how they handle not held orders. Given that broker-dealers will be aware of the metrics to be used a priori, they might route not held orders in a manner that promotes a positive reflection on their respective services but that may be suboptimal for their customers. Any changes to broker-dealers' order routing decisions resulting from the Commission's adoption of Rule 606(b)(3) may be intended to benefit customers placing not held orders, but if broker-dealers and customers focus exclusively on the metrics in the reports required by Rule 606(b)(3), the order routing decisions could also be viewed as suboptimal for some customers.

For example, if a broker-dealer routes not held orders so that the orders execute at lower cost with a higher fill rate, shorter duration, and more price improvement than the broker-dealer's competitors, in order to achieve these objectives she might route the majority of non-marketable limit order shares to the trading center offering the highest rebate. A customer placing not held orders that reviews the order handling report might suspect that the broker-dealer acted in its self-interest by selecting the highest rebate venue in order to maximize rebates when, in fact, the broker-dealer made the decision on the basis of other variables, which might not be completely reflected in the amended reports. Under the amendments to Rule 606, the broker-dealer may be concerned about the perception of acting on a conflict of interest, when the broker-dealer is in fact acting in the customers' interests. As a result, a broker-dealer may be incentivized to route fewer non-marketable limit order shares to the trading center offering the highest rebate, even if this imposes additional costs on the broker-dealer's customers, in an effort to ensure that a customer does not misconstrue the intent behind the broker-dealer's routing decisions. Such a potential outcome could reduce the intensity of competition between broker-dealers on the dimension of execution quality.

3. Compliance Costs

The disclosure requirements of Rule 606(b)(3) will also impose compliance costs, as the required disclosures could entail some reprogramming by broker-dealers that execute or route orders subject to the customer-specific disclosures required by Rule 606(b)(3). A broker-dealer would have to program

⁶⁷⁸ See *supra* Section III.A.6.

⁶⁷⁹ See *supra* Section III.A.5.c.

its systems to filter their order data by a condition using a held or a not held indicator, subject to two de minimis exceptions. In addition to reprogramming, receiving and processing customer requests, as well as preparing and transmitting the data to customers on request, will impose costs.

The Commission estimates and discusses compliance burdens and costs for broker-dealers that routes orders subject to the customer-specific disclosures required by Rule 606(b)(3) in Section IV.D.1.ii. The Commission estimates total initial implementation costs for all broker-dealers that route orders subject to the customer-specific order handling disclosures required by Rule 606(b)(3) and that do not currently retain order handling information required by the adopted rule to program systems to comply with the adopted rule change is 24,070 hours, resulting in a monetized total cost burden of \$7,789,300.⁶⁸⁰ In addition these broker-dealers would incur an additional cost of \$5,660,000⁶⁸¹ to engage the third-party service providers and to purchase hardware and software upgrades.

The Commission estimates and discusses compliance burdens and costs for broker-dealers responding to a Rule 606(b)(3) request (for broker-dealers that handle their own responses) in Section IV.D.1.b. The total annual cost for all 200 broker-dealers that route orders subject to the customer-specific order handling disclosures required by Rule 606(b)(3) to comply with the customer response requirement in Rule 606(b)(3) is estimated to be 67,000 hours, resulting in a cost of \$14,928,000, plus an additional fee of \$1,300,000 to compensate third-party service providers for producing the reports.⁶⁸² The Commission recognizes that the hours and costs that it has estimated could be lower if this report function is outsourced to a third-party to the extent that a third-party is specialized in preparing the order handling reports and has a system in place. In particular, economies of scale could help lower the costs incurred by third-parties relative to the broker-dealers themselves, and, therefore, the third parties could charge some broker-dealers less to produce the reports than the broker-dealers would incur to produce the reports themselves.

As discussed in Section III.A.6, Rule 606(b)(3) requires the inclusion of actionable IOIs in the reports on order handling that broker-dealers will provide to their customers. The Commission expects that broker-dealers

will incur costs from the inclusion of actionable IOIs in the reports as a result of having to process data and run calculations related to actionable IOIs. The estimated cost of including actionable IOIs in the customer-specific order handling reports required by Rule 606(b)(3) is included in the aggregate costs described in the discussion above and in greater detail in Section IV.D.1.

Additionally, as noted above, adopted Rule 606(b)(3) requires segregated reporting of directed not held orders and non-directed not held orders. The Commission expects that broker-dealers will incur costs from separately reporting directed and non-directed not held orders as a result of having to process additional data and run additional calculations. The estimated cost of separate reporting is included in the aggregate costs described in the discussion below and in greater detail in Section IV.D.1.

As discussed above, Rule 606(b)(1), as amended, does not modify any of the current customer-specific disclosure requirements but modifies the categories of orders to which the disclosure applies. Current Rule 606(b)(1) applies to all customer orders, *i.e.*, orders having a market value of less than \$200,000. However, broker-dealers must now modify their systems to provide the disclosures for the following types of orders, regardless of market value: (i) Orders in NMS stocks that are submitted on a held basis; (ii) orders in NMS stocks that are submitted on a not held basis and are excepted from the disclosure requirements of Rule 606(b)(3); or (iii) orders in NMS securities that are option contracts.

The Commission believes that it is reasonable to estimate that one third of the 292 broker-dealers that route orders subject to the disclosures required by Rule 606(b)(1)—97 broker-dealers—will implement these changes in-house, while the remaining number—195 broker-dealers—will engage a third-party vendor to do so.⁶⁸³ The Commission estimates the initial burden for a broker-dealer that will program its systems in-house to comply with Rule 606(b)(1) as 24 hours.⁶⁸⁴ The Commission estimates the initial burden for a broker-dealer that will engage a third-party vendor to program its systems to comply with the rule as 3 hours and \$979.⁶⁸⁵

Therefore Commission estimates the total initial burden for all 292 broker-dealers to program their systems to

comply with Rule 606(b)(1) as 2,913 hours⁶⁸⁶ and \$975,000.⁶⁸⁷

4. Other Potential Costs

Further, as a result of adopting Rule 606(b)(3), broker-dealers that route not held NMS stock orders will likely reevaluate their best execution methodologies to take into account the availability of new statistics and other information that may be relevant to their decision making. This may impose a cost only to the extent that broker-dealers choose to build the required statistics into their best execution methodologies. In addition, they may choose to do so only if the benefits justify the costs.

Another potential cost of adopted Rule 606(b)(3) is that the reports could be viewed as a replacement of TCA and therefore have a negative impact on the market for TCA. Specifying a minimum length of time for making the Rule 606 reports publicly available may further impose a cost on third-party vendors that plan to aggregate the time series of the reports. For example, suppose that a customer chooses to no longer purchase TCA once Rule 606(b)(3) reports become available, because the customer decides that the information contained in the Rule 606(b)(3) reports is sufficient. If fewer customers purchase TCA, it will have a negative impact on third-party providers of TCA as well as third-party data vendors, because of a reduction in the demand for their services, for example. Further, the quality of TCA provided by third-parties may decrease because third-party providers of TCA might have fewer resources for the development and maintenance of their product offerings and because fewer customers would reduce the amount of data that the third-party providers would use to build their models.⁶⁸⁸ However, as discussed in Section V.C.1.b.i, the reports required by adopting Rule 606(b)(3) will provide information that could be complementary to TCA. As discussed above, in fact, adopted Rule 606(b)(3) could make TCA more useful and provide incentives for customers to use TCA. As a result, the Commission believes that adopted Rule 606(b)(3) will not replace TCA.

The Commission considered whether the customer-specific order handling

⁶⁸⁶ See *supra* note 581.

⁶⁸⁷ See *supra* note 582.

⁶⁸⁸ As stated in the proposing release, the Commission understands that customers of third-party TCA providers typically transmit their execution data to their TCA providers. The third-party TCA providers in turn base their models on the data they receive from all their customers. Having more data to base models on is generally beneficial and may result in better models.

⁶⁸⁰ See *supra* note 510.

⁶⁸¹ See *id.*

⁶⁸² See *supra* notes 525.

⁶⁸³ See *supra* note 560.

⁶⁸⁴ See *supra* note 578.

⁶⁸⁵ See *supra* note 579.

reports of adopted Rule 606(b)(3) could impose costs on broker-dealers by revealing sensitive, proprietary information about broker-dealers' order handling techniques. Rule 606(b)(3) does not require public disclosure, so the Commission believes that there would be minimal risk of information leakage to the public. Moreover, as some commenters stated, to the extent that the customer-specific order handling disclosures will aggregate information to be disclosed across all of the customer's not held NMS stock orders, the information leakage risk is low because reverse engineering specific order routing strategies from such aggregated data would be extremely difficult.⁶⁸⁹

To the extent it is likely for customers choose to make the disclosure public, order routing practices of not held NMS stock orders of the customers' broker-dealers could become available publicly, which other customers placing not held NMS stock orders could use in comparing their broker-dealers' order routing. To the extent that the order routing reports could reveal sensitive, proprietary information about broker-dealers' order handling techniques, the broker-dealers' trading strategies could be used by their competitors, specifically, putting smaller broker-dealers at a competitive disadvantage relative to larger broker-dealers, as the majority of their trading strategies could more easily be revealed to other market participants. However, because the customer-specific order handling disclosure required by Rule 606(b)(3) could reveal highly sensitive proprietary information about the revealing customers' trading strategy, it is unlikely that customers would make their own reports public. In addition, even if the customer did share its report, the fact that the information in it is aggregated obscures the broker-dealer's order handling decision for any particular order. Therefore, the Commission believes the risk that the customer-specific order handling disclosure required by Rule 606(b)(3) would reveal sensitive, proprietary information about broker-dealers' order handling techniques would be minimal.

2. Public Order Handling Report

Rule 606(a) requires each broker-dealer to make publicly available quarterly reports on its routing of non-directed orders in NMS securities.⁶⁹⁰

The Commission believes that the amendments to Rule 606(a), as adopted, will increase the level of transparency about order routing and execution quality for non-directed orders in NMS stocks that are submitted on a held basis through the enhanced disclosure of data regarding order routing and execution.⁶⁹¹

The benefits and costs of each of these amendments are discussed below.

Wherever possible, we quantify cost estimates for a given amendment. For the remaining amendments concerning non-directed orders in NMS stocks that are submitted on a held basis, we provide total quantitative cost estimates for these amendments in Section V.C.2.f.

a. Orders Subject to Rule 606(a) Public Disclosures

i. Benefits

As adopted, Rule 606(a) applies to NMS stock orders of any size that are submitted on a held basis. Rule 606(a) also continues to apply to any order (whether held or not held) for an NMS security that is an option contract with a market value less than \$50,000, as the Commission did not propose, and is not adopting, any modifications to Rule 606's coverage of option orders.⁶⁹² Specifically, Rule 606(a)(1), as amended, states that every broker-dealer must make publicly available for each calendar quarter a report on its routing of non-directed orders in NMS stocks that are submitted on a held basis and in non-directed orders that are customer orders in NMS securities that are option contracts during that quarter broker down by calendar month. As noted above,⁶⁹³ the Commission is adopting a modified definition of the term "non-directed order" that no longer includes a dollar-value limitation on NMS stock orders,⁶⁹⁴ but continues to exclude orders from a broker-dealer.⁶⁹⁵

Under the scope of public order handling reports prior to these amendments, held orders with market value of at least \$200,000 were not included in public order routing reports and broker-dealers may voluntarily provide some information on routing and execution quality in response to requests by these customers that submit

such orders. Because the amended rule requires public order routing reports for held orders of all sizes, these orders will be included in the public order routing reports. In addition, pursuant to Rule 606(b)(1), customers sending held orders of at least \$200,000 in market value will continue to receive the same information from the pre-existing customer-specific order routing disclosure rule.

The staff's supplemental analysis found that more than 80% of shares and more than 88% of orders received from individual accounts⁶⁹⁶ are held orders, suggesting that the amended Rule 606(a) would provide public order routing disclosure for the types of orders that retail investors are more likely to use, which would make the public reports more relevant to these investors. The staff analysis also found that among the orders of less than \$200,000, about 55% of total shares and about 67% of number of the orders in the sample are held orders. The analysis indicates that the public order routing reports prior to these amendments are likely to reflect not held orders in addition to held orders, and therefore, the amendments would result in public order routing reports better reflecting held orders but lessen the relevance of the reports for not held orders. The staff analysis also showed that about 10% of total shares and about 0.4% of total numbers of orders in the sample are held orders with a market value of at least \$200,000. These orders will receive public order routing reports under the amendment in addition to the disclosures required by Rule 606(b)(1).

The Commission believes that, compared to the scope of public order handling reports prior to the amendments, Rule 606(a)(1), as amended, could make the public order routing reports more informative and therefore could improve the value of the public order routing reports. To the extent that broker-dealers generally handle not held orders differently from held orders, and to the extent that typically institutional customers use not held orders,⁶⁹⁷ the information pertinent to understanding broker-dealers' order handling practices for not held orders is not the same as for held orders. Moreover, as discussed above, the staff analysis showed that orders received from institutional accounts are more likely to be not held orders than orders received from individual accounts, suggesting that the amended public reports would target customers distinct from institutional investors. As

⁶⁸⁹ See Capital Group Letter at 5; Markit Letter at 19.

⁶⁹⁰ The Commission had proposed, but is not adopting, a similar requirement for broker-dealers to provide public quarterly reports broken down by calendar month on the order routing and execution quality of institutional orders by each broker-dealer.

See *infra* Section V.D.3 for an analysis of the proposed amendments for institutional orders that the Commission is not adopting.

⁶⁹¹ See *supra* Section III.C. and Adopted Rule 606(a)(1)(iv).

⁶⁹² See *supra* notes 37 and 38.

⁶⁹³ See *supra* Section III.A.1.b.vii.

⁶⁹⁴ See Rule 600(b)(49). Consistent with this modification, Rule 606(a)(1)(i) also is revised to no longer refer to the defined term "customer order."

⁶⁹⁵ See *supra* Section III.A.1.b.

⁶⁹⁶ See *supra* notes 642 and 643.

⁶⁹⁷ See *supra* Section III.A.1.b.ii.

discussed in Section V.C.1.a.i, commenters suggested that the held and not held order type classifications would be effective proxies for distinguishing institutional investor orders and retail investor orders because retail investor orders are generally held to the market and institutional investor orders are generally not held to the market.⁶⁹⁸ Moreover, as discussed in Section V.C.1.a.i, because broker-dealers have discretion on time and price for not held orders and do not on held orders, customers placing held orders would have a different level of sophistication than customers that typically place not held orders. In addition, to the extent that the previously existing public order routing reports were in aggregate forms and therefore the customer could not distinguish the order routing practices of held orders from not held orders, replacing public order routing reports with customer-specific reports for not held orders could provide different scopes of benefits of order routing disclosure to the customers. As previously discussed, customers sending not held orders may have a different preference on order routing and a different level of sophistication in understanding the price, time, and other discretion embedded in not held orders. As a result, the amended rule may better serve customers that do not require an understanding of the price, time, and other discretion embedded in not held orders and therefore would allow these customers to better understand the reports and more efficiently monitor, evaluate, and select broker-dealers. Additionally, the amended 606(a) could provide more effective order routing reports for customers and inform customers of different scopes of disclosure that could address the extent of discretion that the broker-dealers exercise in order handling. Therefore, the Commission believes that relative to the baseline and the proposed definition of retail orders, the amendment to Rule 606(a) could make the public order routing reports more informative, and may better target the information needed by investors that typically use held orders, thus making available more useful public order routing reports to customers and increasing the benefits

from improved public order routing reports. With more targeted information, the Commission believes that customers will be able to better compare and monitor broker-dealers' order routing practices, which will promote competition among broker-dealers and improve the benefits of public information on order routing of held orders.

The Commission believes that the amended rule will enhance benefits for customers sending held orders having a market value of at least \$200,000 relative to the baseline and the proposed definition of retail orders. As discussed above, to the extent that the majority of orders from individual accounts are held orders, customers sending held orders of at least \$200,000 will receive information from public order routing reports that better reflect held orders under the amended rule. Because the amended rule includes held orders of all sizes, the public order routing reports will include all relevant orders and therefore customers could use the reports to compare and monitor broker-dealers order routing practices. As a result, customers sending held orders of at least \$200,000 could use the information from the public order routing reports in assessing broker-dealers' order routing practices, which could promote better execution quality and competition among broker-dealers. In addition, from the disclosures set forth in Rule 606(b)(1), customers sending held orders of at least \$200,000 in market value will continue to receive the same information from the pre-existing customer-specific order routing disclosure rule, in addition to the information from the public order routing reports.

ii. Costs

Amended Rule 606(a) will create compliance costs, as broker-dealers will need to distinguish held orders from all customer orders they receive and prepare public order routing reports regarding these held orders and prepare reports, subject to the de minimis exceptions in Rules 606(b)(4) and (b)(5). The related compliance costs are discussed in Section V.C.2.f. The costs related to Rules 606(b)(4) and (b)(5) are discussed in Section V.C.1.a.ii.

The Commission believes that the amended Rule 606(a) will result in implementation costs but might not create substantial ongoing costs for broker-dealers. As discussed in detail in Section V.C.1.a.i., broker-dealers' familiarity with held and not held orders would facilitate compliance with and may contain potential compliance costs imposed on broker-dealers because

broker-dealer could use less processing time to identify held orders as compared to the proposed \$200,000 threshold. The staff's supplemental analysis⁶⁹⁹ found that among the sample orders of less than \$200,000, about 55% of shares and 67% of number of orders are held orders, suggesting that these broker-dealers would be already engaged in public reporting of orders less than \$200,000 and therefore would not need to develop entirely new systems for the public reports for held orders. The staff analysis also found that the total held orders that are newly included in the public order routing reports are about 10% of total shares and less than 0.5% of total number of orders in the sample of NMS stocks in the analysis, suggesting that the implementation costs would not be significant for broker-dealers as a whole that newly need to prepare public order routing reports. Additionally, to the extent that broker-dealers would have a system in place to prepare the customer-specific reports under the scope of public order handling reports prior to these amendments, broker-dealers would need to modify their existing systems rather than build an entirely new system. Further, to the extent that broker-dealers would not need to identify the market value of orders, the amended rule could require fewer processing time for broker-dealers as compared to the proposed \$200,000 threshold. Therefore, the Commission believes that the amended rule would not impose significant compliance costs to the broker-dealers as a whole to prepare the public order routing reports for held orders of all sizes.

The Commission also acknowledges that the amended rule will create additional compliance costs for broker-dealers that receive held orders of at least \$200,000. As discussed above, under the amended rule, broker-dealers would need to prepare for the reports, subject to the de minimis exceptions in Rules 606(b)(4) and (b)(5), for all held orders, in addition to the public order routing reports. As previously discussed, the staff analysis showed that close to 23% of total shares and about 36% of total numbers of orders that are not included in the scope of public order handling reports prior to these amendments will be included under the amended rule subject to the de minimis exceptions set forth in Rules 606(b)(4) and (b)(5). The staff analysis also suggests that depending on the amount of held orders relative to total orders that broker-dealers receive, the compliance costs would vary across

⁶⁹⁸ See Ameritrade Letter at 2; BlackRock Letter at 2; Citadel Letter at 2–3; Markit Letter at 4; Schwab Letter at 3; Capital Group Letter at 2–3; KCG Letter at 4; FIF Letter at 2–3; FIF Addendum at 2; STA Letter II at 2. One commenter noted its belief that the vast majority of orders entered by institutional customers are with not-held instructions and the vast majority of orders entered by retail investors have held instructions. See STA Letter at 4.

⁶⁹⁹ See *supra* notes 642 and 643.

broker-dealers.⁷⁰⁰ Although broker-dealers will incur cost in switching between pre-existing customer-specific order routing reports and public order routing reports, the Commission believes that the amended rule may limit certain costs. For example, as the staff analysis found, when all of the orders broker-dealers receive are on a held basis, about 19% of total shares have a market value of at least \$200,000 and the rest of 81% of total shares of orders in the sample data have a market value less than \$200,000.

The Commission believes that the broker-dealers already have a system to produce public order routing reports and therefore may simply send the received orders of at least \$200,000 to the system they use to generate public order routing reports without a creating a completely creating a new system to capture held order with a market value of at least \$200,000. Furthermore, as discussed in Section V.C.1.a.i., because broker-dealers are already familiar with held and not held distinction, and broker-dealers already characterize on a held or not held basis to comply with Rule 605's covered order requirement and other rules such as FINRA Rule 5320, broker-dealers would not incur additional costs in distinguishing held orders from not held orders. Additionally, as the staff analysis indicates, to the extent that broker-dealers receiving orders of both at least \$200,000 and less than \$200,000 value would already have systems in place to prepare for the reports required by the previously existing, the amended rule would not create substantial costs to these broker-dealers that are subject to reporting requirement of both amended Rule 606(a) and 606(b)(1). Therefore, the Commission believes that the amended rule would not impose significant compliance costs to the broker-dealers that need to include held orders having a market value at least \$200,000 to the public order routing reports.

The Commission also believes amended Rule 606(a) would not impose substantial costs on the customers whose orders would have been included in public order routing reports under the baseline and the proposed definition of retail orders but will not be included in the reports under the amendment. The staff's supplemental analysis found

that among the orders of less than \$200,000 in market value, about 45% of total shares and about 33% of the total number of orders in the sample of 120 NMS stocks will not be included in aggregated public order routing reports under the adoption, whereas these orders would have been included in the public routing reports under the baseline and the proposed definition of retail orders. Thus, customers that send not held orders of less than \$200,000 in market value would not receive the benefit from the enhanced order handling transparency provided in the public order routing reports under the amended Rule 606(a). Instead, the orders that were included in the public routing reports under the baseline and the proposed definition of retail orders and are not included under the amended rule are subject to Rule 606(b)(3) and therefore would be included in the customer-specific reports required by Rule 606(b)(3). As discussed above, customers placing not held orders likely have a different level of sophistication in understanding the price and time discretion embedded in not held orders. Moreover, the enhanced Rule 606(b)(3) reports will be very detailed and of more value to those likely to make special requests of their broker-dealers, such as those who use not held orders. As a result, under the amendment, customers placing not held orders of less than \$200,000 in market value would receive reports that target their needs and sophistication. Moreover, as discussed above, to the extent that the amendment to Rule 606(a) could better target the public order routing to the needs of investors that typically use held orders, the amended would not affect customers typically placing not held orders. Therefore, even though a customer's not held orders are not included in the public routing reports, the customer would receive Rule 606(b)(3) reports and therefore would receive the benefit of increased transparency from the customer-specific order handling disclosure required by Rule 606(b)(3).

b. Marketable Limit Orders and Non-Marketable Limit Order

i. Benefits

The Commission believes that the amendments to Rule 606(a) that require broker-dealers to differentiate marketable and non-marketable limit orders will create an opportunity for more detailed analysis.

In particular, the amendments could allow the public, including customers placing orders subject to Rule 606(a)(1), to better understand the potential

conflicts of interest broker-dealers face when routing such orders,⁷⁰¹ which could incentivize broker-dealers to better manage these and other potential conflicts of interest, which may result in improved order routing decisions and execution quality for orders.⁷⁰² In addition, if the amended disclosure results in broker-dealers improving their order routing for orders subject to Rule 606(a)(1), which, in turn, may change which trading centers the broker-dealers route such orders to, the amended disclosure could further promote competition among trading centers.⁷⁰³ In addition, adopting this new disclosure may lead to innovation by existing trading centers and may attract new entrants and the formation of new trading centers.⁷⁰⁴

ii. Costs

As adopted, the amendments to Rule 606(a) requiring broker-dealers to differentiate between marketable and non-marketable limit orders will impose costs on broker-dealers. Specifically, broker-dealers will incur new compliance and reporting costs if they do not currently break down marketable and non-marketable limit orders and will need to break out this information in their internal systems. The estimates for compliance costs are contained in the estimates for the costs of producing the reports discussed in Section V.C.2.f. One commenter indicated that the amendment will require broker-dealers to obtain a searchable, historical store of all NMS quotes to be integrated into the reporting system, so that marketability

⁷⁰¹ Academic research has identified indications of such routing behavior for orders that retail investors typically use. On examining the order routing of 10 broker-dealers, the researchers find that 4 of the broker-dealers sell market orders to market makers and route limit orders to market makers or exchanges offering the largest liquidity rebates. In addition, their study indicates that a negative relation exists between take fees and the likelihood that a limit order fills and the speed and realized spread of the associated fill. For more details, see Battalio, Corwin, and Jennings Paper, *supra* note 368. See also Proposing Release, *supra* note 1, at 49492.

⁷⁰² See Proposing Release, *supra* note 1, at 49492 and Transaction Fee Pilot Proposing Release, *supra* note 2, at 13310. Several commenters agreed that the separation of marketable and non-marketable limit orders in the Rule 606(a) disclosures could provide customers with more useful information they can use when assessing if and how well broker-dealers manage the potential conflicts of interest. See, e.g., CFA Letter at 4–5, 9; Fidelity Letter at 8–9; Ameritrade Letter at 3.

⁷⁰³ See Proposing Release, *supra* note 1, at 49492.

⁷⁰⁴ In particular, a trading center that loses order flow to venues that offer better execution quality will have the incentive to innovate to improve its execution quality. Therefore, because the amended disclosures may encourage broker-dealers to route for better execution quality, they may lead to innovation on trading centers.

⁷⁰⁰ For example, based on the staff's supplemental analysis, when all of the orders broker-dealers receive are on a held basis, about 19% of total shares have a market value of at least \$200,000. In addition, when the ratio of not held orders that broker-dealers receive from customers is greater than 50% and less than 100%, less than 4% of total shares of orders in the analysis are on a held basis and have a market value of at least \$200,000.

of orders can be determined.⁷⁰⁵ The Commission believes that whether to use a historical store of quotes depends on how broker-dealers capture marketable and non-marketable limit orders as required by the public order handling reports prior to today's amendments. Some broker-dealers already have to break down marketable and non-marketable for Rule 605 reports. To do so, some of these broker-dealers capture quotes in real-time and some broker-dealers match orders up with quotes later. Only the latter approach requires setting up an historical store of quotes for broker-dealers and broker-dealers likely will select the system with lesser costs to them. The Commission expects that any broker-dealers that are not already separating marketable and non-marketable orders for Rule 605 reports, will also likely manage costs by selecting the system with lesser costs to them and, therefore, would not necessarily need to set up an historical store of quotes. The Commission estimated the costs associated specifically with implementation of systems to allow the marketability of orders to be determined to comply with the requirement that the Rule 606(a)(1). The estimates for the costs of producing the reports discussed in Section IV.D.4.a.ii. contain the estimates for the compliance costs that consider the two most likely approaches discussed above.

c. Net Payment for Order Flow and Transaction Fees and Rebates by Specific Venue

i. Benefits

As discussed above in Section V.C.2.b.i., the information required by Rule 606(a)(1)(iii) could also allow the public, including customers placing orders covered by Rule 606(a)(1), to better understand the potential conflicts of interest broker-dealers face when routing such orders which could incentivize broker-dealers to better manage these and other potential conflicts of interest, which may result in improved order routing decisions and execution quality for orders.⁷⁰⁶

Under Rule 606(a)(1)(iii), customers and the public could use information on net payment for order flow, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received per share and in total to gauge whether payments for order flow or maker-taker fees affect the order routing decisions of broker-

dealers.⁷⁰⁷ Brokerage commissions, which are known to the customer, may depend on the rebates and take fees collected or paid by broker-dealers.⁷⁰⁸ For example, broker-dealers that collect more in rebates may pass this income on to customers by charging lower commissions. However, routing solely to maximize rebates or minimize take fees may result in lower execution quality than other routing strategies. Without the new disclosure requirements, customers might take only brokerage commissions into account and might, therefore, sub-optimally choose the lowest commission broker-dealer, without considering other relevant costs. Such customers could, in fact, end up paying higher net costs if the lower commission broker-dealers do not obtain good execution quality for the orders. The information required by adopted Rule 606(a)(1)(iii), together with the other adopted amendments to Rule 606(a), will give customers additional information to make decisions on the basis of more than the brokerage commissions.

In addition, as discussed in Section V.C.2.b.i., if broker-dealers improve their order routing for orders covered by Rule 606(a)(1), which may result in changes to which trading centers they route such orders to, it could promote competition between trading centers, leading to innovation or new entrants to the market. The trading centers may change their fees or attempt otherwise to attract such order flow, and the quarterly public reports that are broken down by calendar month will allow them to see effects of any changes they implement.

Commenters in general indicated that information on any payment for order flow, payment from any profit-sharing relationship received, the transaction fees paid, and transaction rebates in the report as required by Rule 606(a)(1) could allow customers to better assess their broker-dealers' order routing practices and provide additional incentives to broker-dealers to monitor the potential conflicts of interest.⁷⁰⁹ As discussed above and in the Proposing Release, the Commission believes requiring broker-dealers to modify or provide additional information in the

order routing reports will enhance the benefits of improved transparency.⁷¹⁰

Some commenters raised concerns that enhanced reporting requirements under Rule 606(a)(1)(iii) will generate extensive information and may undermine the Commission's transparency goals. Specifically, some commenters stated that the Commission's transparency goals may be limited because the disclosure presents too much information and could create more confusion than provide clarity to retail investors.⁷¹¹ In addition, one commenter stated that the additional information may not help customers better evaluate broker-dealers and may not promote competition among broker-dealers unless investors are educated on the interpretation of the information on the reports.⁷¹² The Commission continues to believe that retail customers will benefit from the increased transparency and information being made available under the new Rule 606(a)(1)(iii). The Commission believes that to the extent a customer does not understand these disclosures, the customer could ask their broker-dealer for a better explanation of the arrangement, which may help mitigate some commenters' concerns that transparency goals may be limited because of too much information. Additionally, to the extent retail investors would like more information regarding these disclosures, they could seek such information from all available resources.

ii. Costs

Adopted Rule 606(a)(1)(iii) will impose initial compliance costs on broker-dealers in creating a new process to complete the reports and increase ongoing costs related to incorporating additional information into the reports. The estimates for the compliance costs are contained in the estimates for the costs of producing the reports discussed in Section V.C.2.f.

In addition to compliance costs, amended Rule 606(a)(1)(iii) could result in costs to broker-dealers or investors, depending on how broker-dealers and investors adjust their behavior in response to the increased transparency. Increased transparency from adopted Rule 606(a)(1)(iii) about the net aggregate amount of any payment for order flow, payment from any profit-sharing relationship, transaction fees paid, and transaction rebates received, and subsequent scrutiny by customers—

⁷⁰⁵ See Markit Letter at 33.

⁷⁰⁶ See Proposing Release, *supra* note 1, at 49438–40, for an example of routing decisions being affected by conflicts of interest.

⁷⁰⁷ See, e.g., Battalio, Corwin, and Jennings Paper, *supra* note 368.

⁷⁰⁸ The Commission does not believe that fees and rebates are the only determinants of brokerage commissions.

⁷⁰⁹ See, e.g., Better Markets at 3–5, 7; FSR Letter at 7; HMA Letter at 11; Schwab Letter at 2.

⁷¹⁰ See Proposing Release, *supra* note 1, at 49442–43.

⁷¹¹ See Fidelity Letter at 5; STA Letter at 3.

⁷¹² See Harvan Letter.

in particular retail customers, the public, academics, regulators, and the financial media, might lead broker-dealers to decrease the degree to which they internalize orders and route orders to high-rebate or low-fee exchanges to avoid the perception of conflicts of interest. Broker-dealers might do this if they perceive that the potential costs from increased public scrutiny resulting from the enhanced disclosures to be relatively high, compared to the benefit from sending such orders to internalizers or routing orders to high-rebate and low-fee trading centers. If this were to occur then these orders might be more likely to be routed to trading centers other than internalizers, such as exchanges or alternative trading systems,⁷¹³ regardless of potential execution quality differences such as relatively less price improvement, or they might be more likely to be routed to other lower rebate or higher fee venues, regardless of the potential execution quality differences. In addition, if broker-dealers were to reduce the order flow sent to internalizers who pay for it, the broker-dealers would receive less payment for such order flow and might pass the lost payments on to their customers by raising brokerage commissions or other fees. Similarly, if broker-dealers were to route such orders to trading centers with lower rebates and higher fees, they might pass the reduction in rebate revenue and increase in fee costs on to their customers by raising brokerage commissions or other fees.

Increased transparency Rule 606(a)(1)(iii) about net payment for order flow and payments from profit-sharing relationships, and subsequent scrutiny by customers, the public, academics, regulators, and the financial media, might also lead broker-dealers to alter their payment for order flow or profit-sharing relationships or not enter into such relationships. Broker-dealers might do this if they perceive the potential costs from increased public scrutiny to be relatively high compared to a broker-dealer's benefit from such relationships. This could lead to lower payments received from such relationships. The affected broker-dealers might offset these lower revenues or higher costs by increasing brokerage commissions or other fees for customers.

d. Discussion of Arrangement Terms With a Specified Venue

i. Benefits

The Commission believes that the additional information provided by Rule 606(a)(1)(iv) will help ensure consistent, accurate, and comprehensive disclosure of terms of payment for order flow and profit-sharing relationships that influence broker-dealer order routing decisions. This will make the public reports required by amended Rule 606(a) more useful to customers and the public, and the benefits of the description required by Rule 606(a)(1)(iv) are similar to the benefits of the disclosures of the net payment for order flow and transaction fees and rebates by Specified Venue required by Rule 606(a)(1)(iii) and discussed in Section V.C.2.c.i.

Consistent with the limit order disclosure discussion above,⁷¹⁴ the disclosures required by Rule 606(a)(1)(iv) could allow the public, including retail customers placing held NMS stock orders, to better understand the potential conflicts of interest broker-dealers face when routing such orders, incentivize broker-dealers to improve order routing, and promote competition in the market.⁷¹⁵

The Commission agrees with comments that stated that the disclosure of any agreement that may influence a broker-dealer's routing decisions could be useful for customers to assess the potential conflicts of interest facing broker-dealers when implementing their order routing decisions and the enhanced disclosures provide more complete information for customers to better understand and evaluate a broker-dealer's order routing decision.⁷¹⁶ Therefore, the Commission believes that the disclosure requirements in Rule 606(a)(1)(iv) could motivate broker-dealers to improve execution quality of orders.

Some commenters indicated that voluminous information may limit the transparency benefits for customers because it may not be easy to find or use the information to assess and compare broker-dealers.⁷¹⁷ As discussed in Section V.C.2.c.i., the Commission believes that the requirements would provide information that would not be overly voluminous or difficult to comprehend for customers, in particular

retail customers. Additionally, the requirements in Rule 606(a)(1)(iv) are already substantially improving transparency compared to the reporting practices prior to these amendments. Therefore, the Commission believes that the reporting requirement under the adopted Rule 606(a)(1)(iv), as adopted, will make the public reports required by amended Rule 606(a) more useful to customers and the public, and the benefits of the description required by Rule 606(a)(1)(iv) are similar to the benefits of the disclosures by Rule 606(a)(1)(iii) that are discussed in Section V.C.2.c.i.

ii. Costs

The Commission recognizes that the amendments to Rule 606(a)(1)(iv) will impose initial and ongoing compliance costs on broker-dealers. As discussed in Section IV.D.4.b.ii., the Commission estimates the total initial paperwork cost for complying with Rule 606(a)(1)(iv), as adopted, to be 2,920 hours, resulting in a cost of \$986,960.⁷¹⁸ In addition, as discussed in Section IV.D.4.b.ii, the Commission estimates the total annual paperwork cost for complying with Rule 606(a)(1)(iv), as adopted, to be 4,380 hours, resulting in a cost of \$1,093,540.⁷¹⁹

More detailed disclosure about payment for order flow arrangements and profit-sharing relationships might impose other costs to customers that submit orders covered by Rule 606(a)(1) if it leads broker-dealers to decrease the amount of internalization used in the execution of market and marketable limit orders and to alter such arrangements and relationships. Broker-dealers have a variety of choices for order routing and execution, and the venue that a broker-dealer chooses may have a tangible effect on the execution quality of an order. Broker-dealers face conflicts of interest when routing orders, such as affiliations with trading centers, receipt of payment for order flow or receipt of payment from any profit-sharing relationship, and liquidity rebates. Similar to the discussion in Section V.C.2.c.ii., increased transparency from adopted Rule 606(a)(1)(iv) about payment for order flow arrangements and profit-sharing relationships could lead to subsequent scrutiny by customers and the public might lead broker-dealers to decrease the degree to which they internalize orders and route orders to high-rebate or low-fee exchanges to avoid the perception of conflicts of interest. If broker-dealers were to perceive the

⁷¹³ A "trading center" is defined in Rule 600 of Regulation NMS. See 17 CFR 242.600(b)(78).

⁷¹⁴ See *supra* Section V.C.2.b.i.

⁷¹⁵ See Proposing Release, *supra* note 1, at 49438–40, for an example of routing decisions being affected by conflicts of interest.

⁷¹⁶ See, e.g., Better Markets Letter at 4–6; CFA Letter at 9; Fidelity Letter at 7; HMA Letter at 11; Markit Letter at 31.

⁷¹⁷ See, e.g., Fidelity Letter at 9; STA Letter at 3.

⁷¹⁸ See *supra* note 576.

⁷¹⁹ See *supra* note 591.

potential costs from increased transparency resulting from the enhanced disclosures to be relatively high compared to the benefit from sending orders to internalizers, then these orders might be more likely to be routed to trading centers other than internalizers, such as exchanges or alternative trading systems, regardless of potential execution quality differences such as relatively less price improvement, or they might be more likely to be routed to other lower rebate or higher fee venues, regardless of the potential execution quality differences. In addition, if broker-dealers were to reduce the order flow sent to internalizers who pay for it, the broker-dealers would receive less payment for such order flow and might pass the lost payments on to their customers by raising brokerage commissions or other fees. Similarly, if broker-dealers were to route such orders to trading centers with lower rebates and higher fees, they might pass the reduction in rebate revenue and increase in fee costs on to their customers by raising brokerage commissions or other fees.

e. Additional Amendments to Rule 606(a)(1) Disclosures

In addition to the amendments discussed above, the Commission is adopting other amendments to Rule 606(a)(1) reports.⁷²⁰ The benefits and costs of these additional amendments are discussed below.

i. Replacement of Division of Rule 606(a)(1) Reports by Listing Market Division by S&P 500 Index and Other NMS Stocks

1. Benefits

The Commission believes that S&P 500 inclusion is an important determinant of execution quality and, therefore, is important for order routing strategies. In particular, a Commission staff analysis finds that the amendment to divide the Rule 606(a)(1) order routing reports required by securities included in the S&P 500 Index and other NMS stocks could provide customers with relevant information on how their orders are routed. Because the S&P 500 index is correlated with certain liquidity and trading characteristics (which are a determinant of execution quality),⁷²¹ the reports under the amendment could more meaningfully reflect how broker-dealer routing varies with trading characteristics than do the public order handling reports prior to today's amendments.⁷²²

Specifically, the Commission staff analyzed execution quality as measured by effective spreads from Rule 605 reports ("Rule 605 data") for common stocks with S&P 500 index inclusion and on different market centers⁷²³ to determine whether the execution quality of executing a market or a marketable limit order for common stock varies across market centers and S&P 500 index inclusion.⁷²⁴ The staff's

analysis controls for stock and order characteristics.⁷²⁵ Accordingly, the staff's analysis considers whether execution quality depends on S&P 500 index inclusion, and specifically which market centers provide better execution, as a means to assess the degree to which the amendment provides useful information.

While the staff's analysis is not a direct test of whether order routing differs for stocks included in S&P 500 versus those not included in the S&P 500,⁷²⁶ it does directly measure one important factor in whether such routing information will be useful—differences in execution quality. Information on both execution quality and routing allows customers (or someone acting on behalf of customers) to assess the extent to which their broker-dealer routes customer orders to the market centers that provide better execution quality. If execution quality, as measured by effective spreads, shows that S&P 500 index inclusion matters for which market centers offer better execution quality, then including the index information could enhance the ability of customers to assess one of the components of best execution. Hence, the staff's analysis provides some indication of whether dividing the reports by S&P 500 inclusion, as required by the adopted amendment, would provide customers and the public with useful information regarding the impact of routing decisions.⁷²⁷

TABLE 2—REGRESSION RESULTS FOR THE ASSOCIATION BETWEEN EXECUTION VENUE AND MEAN EFFECTIVE SPREAD FOR COMMON STOCKS

| Dependent variable | Mean effective spread (bp) | |
|--------------------|----------------------------|----------------------|
| | (1) | (2) |
| | Jan. 2012–Aug. 2016 | Oct. 2016–Sept. 2017 |
| Intercept | *** 21.55 | *** 20.28 |
| Market Center | | |
| A | *** 20.34 | *** 17.84 |

⁷²⁰ See *supra* Sections III.B.4, 5 and 6.

⁷²¹ S&P 500 stocks are in general larger and have more trading volume than non-S&P 500 stocks. Academic literature has shown that stocks with larger size and greater trading volume have smaller transaction costs than smaller stocks with lower trading volume. For example, see Tarun Chordia, Richard Roll, and Avanidhar Subrahmanyam, *Commonality in liquidity*, 56 *Journal of Financial Economics* 3–28 (2000); David Easley, Soeren Hvidkjaer, and Maureen O'Hara, *Is Information Risk a Determinant of Asset Returns?*, 57 *Journal of Finance*, 2185–2221 (2002).

⁷²² The Commission recognizes that dividing such reports by three separate sections based on listing markets would still produce information that is useful to investors and, therefore, replacing the division of Rule 606(a)(1) reports by listing venues with a division by securities included in the S&P 500 Index and other NMS stocks could result in costs. These costs are discussed in Section V.C.2.e.i.2.

⁷²³ The analysis uses historical data from market centers as they existed during the indicated time period. The Commission notes that the names of some of the market centers have since changed.

⁷²⁴ The Commission purchased the Rule 605 data from CoreOne Technologies, a provider of financial data. The data used in this analysis spans from January 1, 2012, through September 30, 2017. The CRSP U.S. Stock Database from Wharton Research Data Services contains daily and monthly market and corporate action data for securities and is used to estimate control variables.

⁷²⁵ Specifically, to capture the effect of stock and order characteristics on execution quality, the analysis uses a regression analysis that controls for stock characteristics, such as dollar volume, market capitalization, and mean variance of daily returns, and order characteristics such as order type and order size. The regression analysis also controls for years to mitigate the effect of time variation on execution quality. In addition, the Rule 605 data weight the effective spread statistics equally by

stock. Therefore, these effective spreads appear larger than if they were weighted by dollar volume or by share volume. The purpose of the analysis is to estimate the relative rankings of transaction costs across exchanges; therefore, the use of equally weighted effective spread has no impact on the economic analysis in a qualitative manner.

⁷²⁶ The direct test would be whether order routing differs for stocks included in S&P 500 versus those not included in the S&P 500, which would require quarterly reports for orders required by Rule 606(a). However, the quarterly reports are not filed with the Commission, and the staff was unable to obtain aggregated 606 reports from a vendor. Therefore, the Commission staff did not analyze 606 reports prior to today's amendments to see if routing differs by listing exchange of the stock.

⁷²⁷ The staff used Alphabets in Table 2 and Table 3 for each market center so that the identity of exchange is not revealed.

TABLE 2—REGRESSION RESULTS FOR THE ASSOCIATION BETWEEN EXECUTION VENUE AND MEAN EFFECTIVE SPREAD FOR COMMON STOCKS—Continued

| Dependent variable | Mean effective spread (bp) | |
|------------------------|----------------------------|----------------------|
| | (1) | (2) |
| | Jan. 2012–Aug. 2016 | Oct. 2016–Sept. 2017 |
| B | *** 17.02 | *** 18.45 |
| C | *** 24.34 | *** 12.28 |
| D | *** 33.93 | |
| E | *** 15.43 | *** 8.69 |
| F | *** 20.40 | *** 17.58 |
| G | *** 26.28 | *** 22.79 |
| H | *** 43.36 | *** 10.35 |
| I | *** 19.38 | |
| J | *** 18.47 | *** – 16.07 |
| K | *** 86.64 | *** 104.04 |
| L | *** 21.55 | *** 13.78 |
| M | *** 5.89 | ** 0.89 |
| N | | *** 19.70 |
| S&P500 Index | *** – 12.40 | *** – 18.96 |
| Interaction Terms | | |
| S&P500 Index * A | *** – 20.95 | *** – 18.44 |
| S&P500 Index * B | *** – 18.44 | *** – 17.72 |
| S&P500 Index * C | *** – 25.47 | *** – 14.34 |
| S&P500 Index * D | *** – 34.23 | |
| S&P500 Index * E | *** – 10.50 | *** – 4.32 |
| S&P500 Index * F | *** – 21.22 | *** – 17.93 |
| S&P500 Index * G | *** – 27.18 | *** – 23.26 |
| S&P500 Index * H | *** – 44.40 | *** – 13.43 |
| S&P500 Index * I | *** – 20.90 | |
| S&P500 Index * J | *** – 19.75 | *** 17.74 |
| S&P500 Index * K | *** – 84.79 | *** – 100.83 |
| S&P500 Index * L | *** – 21.55 | *** – 13.34 |
| S&P500 Index * M | *** – 6.95 | * – 2.14 |
| S&P500 Index * N | | *** – 18.54 |
| Observations | 29,141,050 | 3,963,474 |
| Adjusted R^2 | 5.06% | 6.29% |

Note: Data is from the Rule 605 reports and CRSP and includes years from 2012 to 2017. The variable categories that are dropped are: Market orders, one trading venue, order size from 100–499 shares, and the 2012 calendar year (for the regression using data from January 2012 through August 2016). Note that the regression using data from October 2016 through September 2017 included quarter-fixed effects instead of year-fixed effects. Also, note that for the regression from October 2016 through September 2017, the analysis did not include CBSX and NSX data because these two exchanges stopped operating. The control variables are indicators for marketable limit order; order size for 500–1,999 shares, 2,000–4,999 shares, and ≥5,000 shares; and security specific variables including dollar volume, market capitalization, and daily return variance. T -statistics are estimated from White standard errors. *** indicates significance of a 2-tailed test at the 1% level, ** at the 5% level, and * at the 10% level. The Chi-square tests are used to test the null hypothesis that all of the exchange coefficients, with the exception of the intercept coefficient, are jointly zero. The pairwise F tests are used to test the null hypothesis that pairs of the exchange coefficients, with the exception of the intercept coefficient, are zero.

Table 2 presents the results of the staff's analysis of effective spreads for common stocks traded on all existing exchanges and off exchange, after controlling for differences due to stock and order characteristics. The methodology in the staff analysis does not allow the analysis to treat IEX as a separate market center for the entire period because IEX data became available from September 2016, so the analysis divides the analysis into two subperiods.⁷²⁸ Column 1 reports the

result for the first sub-sample period, and column 2 reports the result for the second sub-sample periods. The market center rows in the table report the basis point difference between the average effective spreads on that market center and the average effective spreads on the NYSE. The S&P 500 index rows in the table report the basis point difference between the average effective spreads on S&P 500 stocks and the average effective spreads on non-S&P 500 stocks. The rows for interaction terms of each market center and the S&P 500 index in the table report the basis point difference between the average effective spreads of S&P 500 stocks on that

market center and the average effective spreads on the NYSE.

For illustration, the intercept in Column 1 indicates that the average effective spread for market order NMS stocks that are executed on the NYSE is 21.55 basis points. The 20.34 estimate for Exchange A indicates that the effective spreads on Exchange A are 20.34 basis points greater than those on the NYSE. The estimate –12.04 for S&P 500 index indicates that the effective spreads for S&P 500 stocks are 12.04 basis points less than non-S&P 500 stocks. And, the estimate for the interaction between Exchange A and the S&P 500 index indicates that the effective spreads for S&P 500 stocks traded on Exchange A are 20.95 basis

⁷²⁸ The staff did several analyses because CBSX data is available until January 2014 and NSX data is available until May 2014. Staff conducted similar analysis without these two exchanges and during the time period that all the exchanges in the sample were operating. These regression analyses change the estimated coefficients in the regression analysis; however it does not change the conclusion that reporting divided by S&P 500 index and other NMS securities, as in the adopted amendment, could

provide relevant information on execution quality to customers and the public. The additional analyses provide more robust analysis to support the staff's conclusion.

points lower than NYSE stocks on average.⁷²⁹

The analysis of Table 2 suggests that partitioning the Rule 606 reports by S&P 500 index inclusion will be useful. Specifically, the structure of the regressions in Table 2 allows for a ranking of the exchanges by effective spread to gauge whether the exchanges that provide the better execution quality in S&P 500 stocks are different than those that provide the better execution quality in other NMS stocks. If the relative ranking of exchanges in S&P 500 stocks is similar to the relative ranking in other NMS stocks, then partitioning the order routing reports by S&P 500 inclusion would not provide information useful for considering the impact of broker-dealer routing on execution quality.

Upon examination, Table 2 shows that the ranking of the market centers by effective spreads is different depending on stocks in that market center being included in the S&P 500 index. For example, the five market centers with the best execution quality relative to the NYSE traded stocks are Exchange M, E, B, J, and I, in descending order. However, in comparing S&P 500 stocks that are traded in these five trading centers, the ranking of the market centers for S&P 500 stocks by effective spreads changes. For S&P 500 stocks, the five market centers that have the best execution quality relative to the

NYSE traded stocks are stocks traded on Exchange I, A, J, C, and M, in descending order.⁷³⁰ This indicates that there seem to be differences between market centers in terms of effective spreads for stocks, depending on whether they are included in the S&P 500 index, which may inform customers in assessing the execution quality their broker-dealers provide.

Commenters suggested removing the requirement that the report be divided by listing market and separating reports by S&P 500 and non-S&P 500 stocks because the division based on the S&P 500 index could give retail customers more meaningful data, as S&P 500 stocks have the largest market capitalization and have significant retail customer interest. Commenters mentioned that S&P 500 stocks, therefore, could have a different correlated execution quality level than lower volume issuances, providing useful information to retail customers.⁷³¹ Therefore, the staff's analysis indicates that reporting divided by the S&P 500 index and other NMS securities, as in the adopted amendment, could provide relevant information about execution quality to customers and the public.

2. Costs

The amendment to Rule 606(a)(1), as adopted, will result in initial compliance costs to prepare separate

disclosures and ongoing costs to adjust reporting when the constituents of the S&P 500 change. The Commission acknowledges that the S&P 500 index is a proprietary index, which is accessible via a fee-based subscription. The Commission also notes that the list of S&P 500 index stocks is readily available on the internet on many free websites and thus obtaining the constituents of the index should be at a minimal cost to broker-dealers. Moreover, as discussed in Section III.B.5.b., many data dissemination services obtain this information from the S&P and redistribute this information as part of data packages consumed by broker-dealers as a part of the broker-dealers normal course of business. Thus, the Commission believes that there will be few or no additional data costs to broker-dealers resulting from this requirement.

Additionally, on the basis of staff analysis, not separating order routing reports by primary listing market could also reduce some informational value relative to the public order handling reports prior to today's amendments. In particular, the staff analysis indicates that removal of primary listing exchanges could reduce the value of the 606(a)(1) reports for monitoring execution quality from broker-dealers, because reporting by listing exchange still provides information distinct from the S&P 500 index.

TABLE 3—REGRESSION RESULTS FOR ASSOCIATION BETWEEN EXECUTION VENUE AND MEAN EFFECTIVE SPREAD FOR COMMON STOCKS BY LISTING EXCHANGE

| Dependent variable | Mean effective spread (bp) | | | | | |
|------------------------|-----------------------------|---------------|-------------|------------------------------|---------------|-------------|
| | Jan. 2012 through Aug. 2016 | | | Oct. 2016 through Sept. 2017 | | |
| Time Period | | | | | | |
| Listing Exchange | (1) NYSE | (2) NASDAQ | (3) AMEX | (4) NYSE | (5) NASDAQ | (6) AMEX |
| Intercept | *** 18.60 | *** 84.35 | *** 161.47 | *** 21.56 | *** 37.48 | *** 122.29 |
| Market Center: | | | | | | |
| A | *** -3.47 | *** -28.39 | *** -35.13 | *** -8.26 | *** 9.29 | *** -21.38 |
| B | *** -5.94 | *** -31.49 | *** -39.39 | *** -5.93 | *** 9.40 | *** -20.29 |
| C | *** -1.21 | *** -22.82 | *** -29.22 | *** -8.80 | *** 3.51 | *** -18.16 |
| D | *** 1.91 | *** -11.55 | *** 17.93 | | | |
| E | -0.33 | *** 33.79 | * -12.66 | *** -6.66 | -0.56 | ** -13.72 |
| F | *** -4.14 | *** -28.61 | *** -34.00 | *** -6.77 | *** 8.83 | *** -20.01 |
| G | *** -3.84 | *** -21.70 | *** -28.93 | *** -6.38 | *** 14.40 | *** -18.29 |
| H | *** 1.31 | | -0.76 | *** -11.02 | | *** -24.29 |
| I | *** -2.60 | *** -31.09 | *** -38.77 | | | |
| J | *** -5.85 | *** -30.22 | *** -41.11 | *** -3.40 | *** -18.52 | *** -19.06 |
| K | | *** -41.56 | | | ** -7.89 | |
| L | *** -2.93 | *** -27.01 | *** -33.85 | *** -9.86 | *** 5.08 | *** -28.33 |
| M | *** -2.56 | *** -48.71 | *** -69.04 | *** -11.74 | *** -11.35 | *** -39.14 |
| N | | | | *** -4.73 | *** 11.52 | *** -16.31 |
| S&P500 Index | *** -12.86 | *** -72.80 | | *** -18.44 | *** -42.56 | |

⁷²⁹ For perspective, a one-penny effective spread on a \$40 stock is 2.5 basis points. A 2.5 basis point cost on a 100-share trade in a \$40 stock would be \$1.00.

⁷³⁰ The analysis in Table 2 uses an indicator for each market center, an indicator for being included in the S&P 500 index, and an interaction term between each market center and the S&P 500 index. To obtain the rankings for execution quality for S&P

500 stocks, Commission staff summed the three estimates and compared the relative magnitudes of the summed estimates across market centers.

⁷³¹ See, e.g., Schwab Letter at 3 and Fidelity Letter at 9.

TABLE 3—REGRESSION RESULTS FOR ASSOCIATION BETWEEN EXECUTION VENUE AND MEAN EFFECTIVE SPREAD FOR COMMON STOCKS BY LISTING EXCHANGE—Continued

| Dependent variable | | | | | | |
|------------------------|------------|------------|---------|-----------|------------|---------|
| Interaction Terms: | | | | | | |
| S&P500 Index * A | *** 2.73 | *** 29.10 | | *** 6.95 | *** -4.94 | |
| S&P500 Index * B | *** 4.33 | *** 31.40 | | *** 6.21 | *** -4.14 | |
| S&P500 Index * C | *** 0.50 | *** 22.69 | | *** 7.23 | ** -1.43 | |
| S&P500 Index * D | *** -0.67 | *** 11.56 | | | | |
| S&P500 Index * E | *** 4.34 | *** 44.30 | | *** 10.26 | *** 11.49 | |
| S&P500 Index * F | *** 3.40 | *** 28.77 | | *** 6.02 | *** -4.43 | |
| S&P500 Index * G | *** 2.99 | *** 21.97 | | *** 5.57 | *** -10.07 | |
| S&P500 Index * H | *** -2.27 | | | *** 9.09 | | |
| S&P500 Index * I | *** 2.27 | *** 30.15 | | | | |
| S&P500 Index * J | *** 4.16 | *** 30.29 | | *** 5.06 | *** 20.47 | |
| S&P500 Index * K | | *** 43.18 | | | *** 12.26 | |
| S&P500 Index * L | *** 2.22 | *** 28.53 | | *** 9.07 | 0.59 | |
| S&P500 Index * M | *** 2.15 | *** 48.26 | | *** 10.94 | *** 14.03 | |
| S&P500 Index * N | | | | *** 5.58 | *** -5.78 | |
| Observations | 13,258,370 | 15,015,886 | 864,846 | 1,776,195 | 2,085,181 | 102,046 |
| Adjusted R^2 | 7.55% | 3.35% | 4.11% | 11.43% | 4.26% | 5.84% |

Note: Data is from the Rule 605 reports and CRSP, and includes years from 2012 to 2017. The variable categories that are dropped are: Market orders, one trading venue, order size from 100–499 shares, and the 2012 calendar year (for the regression using data from January 2012 through August 2016). Note that the regression using data from October 2016 through September 2017 included quarter-fixed effects instead of year-fixed effects. Also, note that for the regression using data from October 2016 through September 2017, the analysis did not include CBSX and NSX because these two exchanges stopped operating. The control variables are indicators for marketable limit order; order size for 500–1,999 shares, 2,000–4,999 shares, and $\geq 5,000$ shares; and security specific variables including dollar volume, market capitalization, and daily return variance. T -statistics are estimated from White standard errors. *** indicates significance of a 2-tailed test at the 1% level, ** at the 5% level, and * at the 10% level. The Chi-square tests are used to test the null hypothesis that all of the exchange coefficients, with the exception of the intercept coefficient, are jointly zero. The pairwise F tests are used to test the null hypothesis that pairs of the exchange coefficients, with the exception of the intercept coefficient, are zero.

Similar to Table 2 in Section V.C.2.d.i.1., the staff's analysis focuses on whether customers or others can use the market-specific routing information to assess the execution quality they get from their broker-dealers. Specifically, if the order routing decisions by broker-dealers differ by the exchanges where stocks are listed, *e.g.*, if broker-dealers route orders differently for NYSE-listed stocks compared to NASDAQ-listed stocks, the removal of listing exchanges from the reports will not provide this information to customers and the public.⁷³² Such information can be useful for customers and the public, as long as order routing decisions determine execution quality. Specifically, Commission staff analyzed execution quality as measured by effective spreads from Rule 605 reports for common stocks with different primary listing exchanges, with different market centers, and with S&P 500 index information to determine whether the cost of executing a market or a marketable limit order for common

stock varies across market centers and primary listing exchanges, while also accounting for the effects of the S&P 500 index inclusion.

In the Proposing release, the Commission reported the results of a staff analysis that found that reporting order routing information by listing exchange would provide useful information and, therefore, removing this partition would impose a cost on investors. Because the Commission is adopting a different partition than proposed, specifically replacing a listing-exchange partition with a partition based on S&P 500 inclusion, the Commission staff has revised its analysis to examine whether a listing-exchange partition would provide useful information beyond that information investors could learn from S&P 500 inclusion. Specifically, the analysis examines whether, after accounting for S&P 500 inclusion, listing exchange still affects the relative rank of costs to trade on the various market centers. Such a result would indicate that an S&P 500 partition is not a direct substitute for all of the information captured by a listing-exchange partition. The staff's analysis controls for stock and order characteristics.⁷³³ Accordingly, the staff's analysis considers whether execution quality depends on primary listing exchanges in addition to S&P 500

index inclusion as a means to assess whether the amendment might reduce some of the usefulness of the reports.⁷³⁴

Table 3 presents the results of the staff's analysis of effective spreads for common stocks listed on the NYSE, NASDAQ, and AMEX. Columns 1 through 3 report the results for each of these primary listing exchanges. The market center rows in the table report the basis point difference between the average effective spreads on that market center and the average effective spreads on the primary listing exchange. The S&P 500 index rows in the table report the basis point difference between the average effective spreads on stocks that are included in the S&P 500 index and the average effective spreads on each listing exchange. The rows for interaction terms of each market center and S&P 500 index in the table report the basis point difference between the average effective spreads of S&P 500 stocks on that market center and the average effective spreads on each listing exchange.

As an illustrative example, the intercept in Column 1 indicates that the average effective spread for market orders for NYSE-listed stocks that are executed on the NYSE is 18.60 basis points and the -3.47 estimate for Exchange A indicates that the effective

⁷³² The Commission notes that there are differences in order routing decisions depending on the primary listing exchange because of existing rules, regulations, and practices. For example, the NYSE does not trade NASDAQ- or NYSEAMER-listed stocks. As a result, orders for a NYSE-listed stock can be routed to the NYSE, NASDAQ, and other market centers, whereas orders for NASDAQ-listed stocks can be routed to NASDAQ and other market centers, but not to the NYSE. This level of information will be lost when reporting by primary listing exchanges is removed.

⁷³³ See *supra* note 725.

⁷³⁴ See Section V.C.2.e.i.1, which discusses the usefulness of using execution quality measures in the analysis.

spreads for NYSE-listed stocks traded on Exchange A are 3.47 basis points lower after controlling for differences due to stock and order characteristics. The -12.86 estimate for the S&P 500 index indicates that the effective spreads for S&P 500 stocks are 12.86 basis points less than non-S&P 500 index stocks, and the 2.73 estimate for the interaction between Exchange A and the S&P 500 index indicate that the effective spreads for S&P 500 stocks that are traded on Exchange A are 2.73 basis points higher.

Table 3 indicates that the average effective spreads vary significantly by the market center where the orders were executed. Table 3 shows that most market center effective spreads are significantly different than those of the listing exchange. For example, after controlling for the effect of stock and order characteristics and the effect of the S&P 500 index inclusion, Column 1 shows that, for NYSE-listed stocks, the average effective spread on Exchange A is 3.47 basis points less than on the NYSE itself, and the average effective spread on NASDAQ is 1.31 basis points higher than on the NYSE. Table 3 also indicates that the average effective spreads vary significantly by listing exchange. For example, the staff's analysis suggests that NASDAQ-listed stocks tend to have higher average effective spreads than NYSE-listed stocks because the intercept estimates are much larger in Column 2 compared to Column 1.⁷³⁵ Table 3 also shows that AMEX-listed stocks tend to have even higher average effective spreads than NASDAQ-listed stocks by comparing the results in Column 3 with those in Column 2.

The results in the table suggest that because the relative ranking of each market center changes depending on the listing exchange, the adopted amendment to remove listing exchanges from the report could reduce the usefulness of Rule 606 reports. If the ranking of the effective spreads on each market center were the same across the three primary listing exchanges, where a stock is listed will have little or no relationship to whether order routing information informs on execution quality. Such a result implies that

removing listing exchanges from order routing reports would not reduce the amount of information in the reports. However, upon examination, Table 3 shows that the ranking of the market centers by effective spreads is different depending on the primary listing exchange even after considering the effect of the S&P 500 index.

For example, the five market centers that have the best execution quality relative to the NYSE-listed stocks are Exchange B, J, F, G, and A, in descending order. However, for the same NYSE-listed stocks, the ranking of the market centers for S&P 500 stocks by effective spreads changes. For S&P 500 stocks, the five market centers that have the best execution quality relative to the NYSE-listed stocks are Exchange J, B, H, G, and L, in descending order.⁷³⁶ Similarly, the five market centers that have the best execution quality relative to the NASDAQ-listed stocks are Exchange M, K, E, B, and I, in descending order. However, for the same NASDAQ-listed S&P 500 stocks, the five market centers that have the best execution quality relative to the NASDAQ-listed stocks are Exchange B, C, F, A, and L, in descending order. The analysis indicates that there seem to be differences among market centers in terms of effective spreads for stocks with different primary listings. The Commission acknowledges that the staff's analysis presented in Table 3 may not be a perfect test of assessing whether the partition based on S&P 500 index inclusion relative to the omission of information of listing venues would have more useful information in the report. Instead, the staff analysis assesses whether S&P 500 inclusion encompasses all of the information in the listing exchanges. Specifically, the staff's analysis shows that listing venues contain information relevant to execution quality, and therefore, broker-dealers' order routing, after accounting for the effects of S&P 500 index inclusion.

On the basis of the staff's analysis, the Commission recognizes that replacing the listing exchange partition with an S&P 500 index partition, as in the adopted amendment, could provide additional information to customers and the public, as discussed in Section V.C.2.e.i.1. At the same time, the

Commission also acknowledges that eliminating the listing information from the report required by Rule 606(a)(1), as in the adopted amendment, could reduce the information content of the reports.

The Commission recognizes that because the amendments change which orders are covered by Rule 606(a)(1), the analysis does not directly provide evidence of the costs of eliminating the listing information from the report, but rather provides an indication of potential costs. The public order handling reports will cover a different set of orders than are covered in the Rule 605 data, and the Rule 605 data do not have information to distinguish orders covered by Rule 606(a)(1) from orders covered by Rule 606(b)(3). Therefore, Commission staff cannot conduct a separate analysis for orders covered by Rule 606(a)(1). The Commission believes, however, that it can reasonably assume that execution quality for orders covered by Rule 606(a)(1) is sufficiently correlated with the execution quality for orders covered by Rule 606(b)(3) for the analysis to provide informative results because exchanges have few mechanisms that would treat the orders differently.

ii. Other Amendments to Reporting

The Commission believes that the amendments to Rule 606(a)(1) to require quarterly public order routing reports to be broken down by calendar month will allow customers to better assess whether their broker-dealers' routing decisions are affected by changes in fee structures and the extent to which such changes affect execution quality. Multiple commenters stated that disclosing the information contained in the public routing reports by calendar month could enable customers to better assess and monitor broker-dealers' routing decisions.⁷³⁷ This adopted amendment will, however, require an initial cost to change the process for completing the reports. The Commission believes this cost to be small because broker-dealers typically process data daily and reporting the data broken down by month will be a change only in the aggregation of the data, from quarterly to monthly.

In addition, the Commission is adopting the requirement that the public order routing report required by Rule 606(a)(1) and the customer-specific order routing report required by Rule 606(b)(1) be made available using an XML schema and associated PDF renderer published on the Commission's

⁷³⁵ The Commission recognizes that the staff analysis did not control for stock and order characteristic differences across the columns, and the staff did not estimate a matched-sample comparison. These other analysis types would facilitate a more fulsome comparison of effective spreads in similar stocks by listing exchange than the staff's analysis in Table 3. However, because the 606 reports do not distinguish individual stocks, the Commission believes that the staff analysis is appropriate for assessing the costs of the adopting amendments.

⁷³⁶ The analysis in Table 3 includes an indicator for each market center, an indicator for being included in the S&P 500 index, and an interaction term between each market center and S&P 500 index for each listing exchange. Therefore, in order to obtain the rankings for execution quality for S&P 500 stocks, Commission staff calculated the sum of the three estimates and compared the relative magnitudes of the summed estimate across market centers for each listing exchange.

⁷³⁷ See, e.g., Markit Letter at 29; Fidelity Letter at 9.

website. The benefits and costs associated with this requirement are discussed in Section V.C.4. The Commission believes that requiring both the public and the customer-specific order routing reports to be provided in this format should be useful to customers, as it will allow them to more easily analyze and compare the data provided in both types of reports across broker-dealers, for the reasons discussed above.⁷³⁸ The amendments to Rule 606(a)(1) and Rule 606(b)(1), as adopted, will require an initial cost to change the process for completing the reports.⁷³⁹

Finally, the Commission is amending Rules 605(a)(2) and 606(a)(1), as adopted, to require market centers and broker-dealers to keep the reports posted on a website that is free and readily accessible to the public for a period of three years from the initial posting on the website. As commenters stated,⁷⁴⁰ such analysis may lead to increased transparency with regard to execution quality and may lead broker-dealers to compete along this dimension through routing decisions, resulting in a higher probability of execution and improved execution in terms of costs. Under the adopted amendments to Rule 605(a)(2) and 606(a)(1), customers and the public could examine the order execution of a market center and broker-dealers' order routing through time.

Regarding the requirement to make the reports available for three years, the Commission believes that, once the report is posted, maintaining the reports on the website will not pose any additional burden on broker-dealers, and thus any additional costs to maintain the report on the website will be negligible.⁷⁴¹ In addition, the adopted amendment could impede third-party vendors that aggregate the time series of 605 and 606 reports because customers may find third-party services less useful, particularly for the three years that the reports are publicly available. As a contrast, the customers of third-party vendors could avoid costs associated with third-party sources because under the adopted amendment, customers could directly access the information for the three-year period.

f. Compliance Costs for Rule 606(a)(1) Order Routing Reports

As discussed in more detail in Section IV.D.4., the Commission estimates the costs to comply with the amendments to

Rule 606(a) that require broker-dealers to distinguish between marketable and non-marketable limit orders and with adopted Rule 606(a)(1)(iii) that requires disclosure of net payment for order flow and transaction fees and rebates by Specified Venue are as follows.

As discussed in Section IV.D.4.ii., the Commission estimates that the initial hourly burden will be 240 hours⁷⁴² for a broker-dealer that routes orders subject to the disclosures required by Rule 606(a)(1) to both update its data capture systems and format the report required by the rule, resulting in a monetized cost burden of \$76,800 per broker-dealer.⁷⁴³ The Commission estimates that the one-time, initial burden for a broker-dealer that routes orders subject to the disclosures required by Rule 606(a)(1) and that does not currently create the required order handling information to engage a third-party to program its systems to implement the requirements of the amendments to Rule 606(a) will be 20 hours, resulting in an estimated monetized cost burden of \$6,410 per broker-dealer.⁷⁴⁴ Also, as discussed in Section IV.D.4.ii, the Commission further estimates a fee of \$32,000 per broker-dealer to reflect the complexities associated with requiring broker-dealers to distinguish between marketable and non-marketable limit orders.

The Commission estimates that all 292 broker-dealers that route orders covered by Rule 606(a)(1) will need to update their systems to capture the information required by the rule. The Commission believes that some broker-dealers will implement the changes in-house, while others will engage a third party vendor. Accordingly, the Commission believes that it is reasonable to estimate that one third of the 292 broker-dealers that route such orders—97 broker-dealers—will implement the changes in-house, while the remaining number—195 broker-dealers will engage a third-party vendor to do so.⁷⁴⁵

The Commission estimates the initial burden for broker-dealers that will program their systems in-house to capture the data and produce a report to comply with the rule as 23,280 hours.⁷⁴⁶ The Commission estimates that the total initial cost for broker-dealers that will engage a third-party vendor to program their systems to capture the data and

produce a report to comply with the rule as 3,900 hours and \$6,240,000.⁷⁴⁷

Therefore, the Commission estimates that the total initial burden to comply with Rule 606(a) for all 292 broker-dealers that the Commission estimates route retail orders is 27,180 hours, resulting in a monetized cost burden of \$8,699,550,⁷⁴⁸ plus an additional cost of \$6,240,000⁷⁴⁹ to third-party service providers.

The Commission believes that once the initial costs described above have been incurred to allow a broker-dealer to obtain the required information, the cost to produce a quarterly report will remain the same compared to a quarterly report previously required under Rule 606(a).⁷⁵⁰ However, broker-dealers will need to monitor payment for order flow or profit-sharing relationships and potential SRO rule changes that could impact their order routing decisions and incorporate any new information into their reports. Thus, the Commission estimates the annual burden for a broker-dealer to comply with the adopting amendments to Rule 606(a)(1)(i) through (iii) to be 10 hours, resulting in a monetized cost burden of \$3,380.⁷⁵¹ With 292 broker-dealers that route retail orders required to comply with the adopting amendments, the Commission estimates the total annual burden to be 2,920 hours, resulting in a monetized cost burden of \$986,960.⁷⁵²

As discussed in Section IV.D.4.a.ii., because Rule 606(b)(1) prior to today's amendments applies to all customer orders, broker-dealers must now modify their systems to provide the disclosures for the following types of orders, regardless of market value: (i) Orders in NMS stocks that are submitted on a held basis; (ii) orders in NMS stocks that are submitted on a not held basis and are exempt from the disclosure requirements of Rule 606(b)(3); or (iii) orders in NMS securities that are option contracts.

The Commission believes that it is reasonable to estimate that one third of the 292 broker-dealers that route orders subject to the disclosures required by Rule 606(b)(1)—97 broker-dealers—will implement these changes in-house, while the remaining number—195 broker-dealers—will engage a third-party vendor to do so.⁷⁵³ The Commission estimates the initial burden

⁷³⁸ See *supra* Section III.A.3.

⁷³⁹ The benefits and costs associated with this requirement more generally are discussed in Section V.C.4.

⁷⁴⁰ See, e.g., Citadel Letter at 1; Markit Letter at 29.

⁷⁴¹ See *infra* Section V.C.2.f.

⁷⁴² See *supra* note 566.

⁷⁴³ See *id.*

⁷⁴⁴ See *supra* note 567.

⁷⁴⁵ See *supra* note 560.

⁷⁴⁶ See *supra* note 568.

⁷⁴⁷ See *supra* note 570.

⁷⁴⁸ See *supra* notes 572.

⁷⁴⁹ See *supra* note 570.

⁷⁵⁰ See *supra* Section IV.D.4.b.

⁷⁵¹ See *supra* note 574.

⁷⁵² See *supra* note 576.

⁷⁵³ See *supra* note 560.

for a broker-dealer that will program its systems in-house to comply with Rule 606(b)(1) as 24 hours.⁷⁵⁴ The Commission estimates the initial burden for a broker-dealer that will engage a third-party vendor to program its systems to comply with the rule as 3 hours and \$979.⁷⁵⁵

Therefore Commission estimates the total initial burden for all 292 broker-dealers to program their systems to comply with Rule 606(b)(1) as 2,913 hours⁷⁵⁶ and \$975,000.⁷⁵⁷

As discussed in Section IV.5., the amendments being adopted today add several defined terms to Rule 600 of Regulation NMS which will impose an initial burden on market centers and the broker-dealers that will have to review and update compliance manuals and written supervisory procedures and update citation references to any such defined term. The Commission estimates that it will take each of 381 market centers and 4,024 broker-dealers two hours to make these updates in house at a one-time burden of two hours for each respondent.⁷⁵⁸ Therefore the Commission estimates the total initial cost to be 8,810 hours.⁷⁵⁹ As discussed in Section IV.5, there is no annual burden associated with this requirement.

3. Disclosure of Order Execution Information

The adopted amendment to Rule 605(a)(2) requires market centers to keep reports required pursuant to Rule 605(a)(1) posted on a website that is free and readily accessible to the public for a period of three years from the initial date of posting on the Website.

a. Benefits

Similar to the analogous requirements in Rules 606(a), as adopted, described above, the Commission believes that requiring the previous three years of past order execution information to be available to customers and the public generally should be useful to those seeking to analyze historical order execution information at various market centers. This will allow broker-dealers to compare different market centers more easily, market centers to compare themselves to other market centers more easily, and third-party vendors to provide their services on the basis of the data more easily. Several commenters stated that the adopted amendment to

Rule 605(a)(2) could better enable investors to evaluate the impact that routing decisions have on the quality of their order executions and provide information regarding broker-dealers' potential conflicts of interest.⁷⁶⁰

b. Costs

As discussed in Section V.C.2.e. above, the Commission believes that the costs to market centers for making the order execution reports readily accessible to the public for a period of three years from the date of initial publication are negligible. In addition, specifying a minimum length of time for making the Rule 605 reports available may make the data owned by third-party vendors aggregating the time series of 605 reports less useful because, for three years, the data will be publicly available and more easily accessible.

4. Structured Format of Reports

The Commission is adopting the requirement that the Rule 606(b)(1) order routing and Rule 606(b)(3) order handling reports be made available using the Commission's XML schema and associated PDF renderer. The Commission is also adopting the requirement that the public order handling reports required under Rule 606(a)(1) be made available using an XML schema and associated PDF renderer published on the Commission's website. As discussed earlier, the Commission believes that requiring the reports to be made available in an XML format will facilitate enhanced search capabilities and statistical and comparative analyses across broker-dealers and date ranges.⁷⁶¹ In addition, the associated PDF renderer will provide users with an instantly human-readable format for those who prefer to review manually individual reports, while still providing a uniform presentation. Multiple commenters stated that presenting the data in a consistent, machine readable format such as XML could make data analysis easier and could enable customers to make more informed decisions in selecting broker-dealers.⁷⁶²

The Commission understands that varying degrees of structuring have varying costs. Most, if not all, broker-dealers already have experience applying the XML format to their data. For example, all FINRA members must use FINRA's Web EFT system, which requires that all data be submitted in

XML.⁷⁶³ For the end users, with the data in the reports structured in XML, they could immediately download the information directly into databases and analyze it using various software. This will enhance their ability to conduct large-scale analysis and immediate comparison of broker-dealers across date ranges. Moreover, as an open standard, XML is widely available to the public at no cost.

The Commission also believes that if the reports are provided in a structured format, users could avoid costs associated with third-party sources that might otherwise extract and structure the data and then charge for access to that structured data. Users could also avoid the additional time it would take for them to manually review and individually structure the data if they wanted to conduct large-scale analysis, comparison, or aggregation. The Commission also acknowledges that the required reporting in structured format could hurt certain third-party vendors that charge for access to structured data of data reported in an unstructured format, because customers may find that third-party service is less useful for them. However, without the need to spend time in manually reviewing and rekeying the unstructured information for analysis, some third-party vendors may be able to conduct more comprehensive analysis in a more timely fashion than they could have offered previously.

The XML schema will also incorporate certain validations to help ensure consistent formatting among all reports help to ensure data quality. However, these validations will not be designed to ensure the underlying accuracy of the data.

The Commission considered alternative formats to XML, such as CSV and XBRL. The Commission does not believe the CSV format is suitable, because it does not lend itself to validations. As a result, the data quality of the reports will likely be diminished as compared to XML, impairing comparability, aggregation, and large-scale analysis. While the XBRL format enables users to capture the rich complexity of financial information presented in accordance with U.S. Generally Accepted Accounting Principles, XBRL is not necessary to accurately capture the information for the required reports. The Commission believes the simpler characteristics of the information in the required reports are better suited for XML.

⁷⁵⁴ See *supra* note 578.

⁷⁵⁵ See *supra* note 579.

⁷⁵⁶ See *supra* note 581.

⁷⁵⁷ See *supra* note 582.

⁷⁵⁸ See *supra* note 592.

⁷⁵⁹ See *supra* note 593.

⁷⁶⁰ See, e.g., Angel Letter at 3–5; Dash Letter at 2–3; FSR Letter at 1.

⁷⁶¹ See *supra* Section III.A.5.

⁷⁶² See FIF Letter at 17; CFA Letter at 11; FIA Letter at 1; HMA Letter at 12; Markit Letter at 17, 28; and Better Markets Letter at 2.

⁷⁶³ See <http://www.finra.org/industry/web-crd/web-eft-schema-documentation-and-schema-files>.

Two commenters raised concerns regarding the need for providing such reports in the XML/PDF format specifically of the Rule 606(b)(1) reports, stating that customers rarely request these reports, and stating their view that the cost of implementing the proposed format would outweigh the benefits.⁷⁶⁴ However, for the reasons stated above, the Commission believes providing these reports in XML has benefits and would not impose substantial costs to broker-dealers to produce the XML/PDF format of the reports. To the extent that broker-dealers would need to abide by the requirement of Rule 606(b)(1) only when customers request such reports, and, as discussed in Section V.C.1.a.ii., to the extent that customers typically placing held orders may not have a need for additional customer-specific reports required by Rule 606(b)(1) and therefore would not frequently request such reports, Rule 606(b)(1) would not impose significant ongoing compliance costs to broker-dealers to create the XML/PDF format of the reports. Moreover, as discussed in Section V.C.1.a.i., although customers placing held orders would rarely request reports set forth in 606(b)(1), customers will have an option to request additional information if they choose to do so. As a result, customers that request 606(b)(1) reports would be able to better compare and monitor broker-dealers' order handling practices, which could promote better execution quality of held orders and competition among broker-dealers. Therefore, the Commission believes that the use of the XML/PDF format will enable customers to more easily analyze and compare the individualized data provided.

5. Other Definitions in Adopted Amendments to Rule 600

a. Definition of Non-Marketable Limit Order in Adopted Rule 600(b)(54)

The Commission believes that the amendments to Rule 600(b)(54) will help ensure consistent and correct interpretation and application of the adopting amendments to Rule 606(a)(1) for retail orders. The Commission also believes that there are no costs associated with adopting Rule 600(b)(54), because it is a definition that is widely used by market participants.

b. Definitions of "Orders Providing Liquidity" and "Orders Removing Liquidity" in Adopted Rule 600(b)(58) and (59)

The Commission believes that Rules 600(b)(58) and (59), as adopted, will help ensure consistent and correct interpretation and application of Rule 606(b)(3), as adopted, for institutional orders. The Commission also believes that there are no costs associated with adopted Rules 600(b)(58) and (59) because the Commission understands that the two definitions are widely used by market participants.

D. Alternatives Considered

1. Alternative Scope for the Customer-Specific Reports

In addition to the alternative of adopting the proposed \$200,000 threshold in the definition of "institutional order," as discussed above, the Commission also considered an alternative in which the Commission would adopt a new entity-centric definition of "institutional order" and require order handling disclosure in Rule 606(b)(3) for such "institutional" orders. Several commenters suggested that the applicability of the customer-specific disclosures be based on the entity placing the order.⁷⁶⁵ The entity-centric approach could be based on the definition of "institutional order," that draws from FINRA Rules 2210(a)(4) and 4512(c) in defining an institutional order.⁷⁶⁶

The definition of "institutional investor" in FINRA Rule 2210(a)(4) and the definition of "institutional account" in FINRA Rule 4512(c) are well-established existing definitions that are familiar to most market participants and apply to entities that the Commission believes are broadly considered to be institutional by market participants. Therefore, broker-dealers' familiarities with FINRA definitions would facilitate compliance with and might reduce potential compliance costs for such a definition for participants already familiar with the FINRA rules. In addition, commenters suggested that funds are considered to be institutional market participants and that their orders should qualify as institutional orders,⁷⁶⁷ and one commenter specifically characterized private funds as traditional institutional investors.⁷⁶⁸ This is consistent with the

Commission's understanding, as reflected by its statement in the Proposing Release that a hedge fund—a type of private fund—is an example of a type of institutional customer,⁷⁶⁹ that market participants are accustomed to considering private funds to be institutional investors.

The Commission recognizes that the alternative definition, which is an entity-based definition of an institutional order, would capture most orders submitted by institutional market participants and is likely to reduce the potential misclassification of institutional orders as non-institutional orders and vice versa. The Commission also recognizes that the scope of FINRA Rules 2210(a)(4) and 4512(c), as incorporated into the definition of institutional order in the alternative, is generally tailored to cover the broad range of institutions that would likely benefit from the order handling disclosures required by Rule 606(b)(3), while minimizing the potential misclassification of institutional orders. However, as explained below, the Commission did not adopt this alternative.

As discussed in Section III.A.1.b.ii., the entity-centric approach suggested by commenters would require the Commission to set forth the types of customers that may request the Rule 606(b)(3) disclosures for their NMS stock orders, but would not entail any differentiation in the types of orders covered by Rule 606(b)(3). As result, NMS stock orders from qualifying customers that are submitted on a held basis would be covered by the Rule 606(b)(3) disclosures. This is a suboptimal outcome that is avoided by the adopted order type-based approach to Rule 606(b)(3)'s applicability. Including held orders within the Rule 606(b)(3) disclosures would be inconsistent with the purpose of the disclosures to provide insight into how a broker-dealer exercises order handling and routing discretion because broker-dealers must attempt to execute held orders immediately and are provided no discretion in handling them. Moreover, including a customer's held orders in the Rule 606(b)(3) report could obfuscate the reports' depiction of the discretion actually exercised by the broker-dealer. Order handling and routing behavior dictated by the fact that the customer submitted a held order could be misunderstood in the report as the product of broker-dealer discretion.

⁷⁶⁵ See ICI Letter at 6–7; MFA Letter at 3; Fidelity Letter at 3; STA Letter at 4; CFA Letter at 8; SSGA Letter at 1; CFA Letter at 8; Bloomberg Letter at 13.

⁷⁶⁶ See *supra* Section III.A.1.b.ii.

⁷⁶⁷ See ICI Letter at 6; IDC Letter at 1–2; Capital Group Letter at 3; Ameritrade Letter at 1–2.

⁷⁶⁸ See Dash Letter at 3.

⁷⁶⁹ See Proposing Release, *supra* note 1, at 49433 n.1.

⁷⁶⁴ See Thomson Reuters Letter at 2; FIF Letter at 9, 12.

The alternative approach also would require the Commission to prescribe institutional status criteria that customers must fit in order to be entitled to receive the disclosures. A risk with such an approach is that the criteria could be over-inclusive or under-inclusive. The Commission is particularly concerned about potential under-inclusiveness because customers that do not fit the criteria would not be entitled to receive the disclosures. Under FINRA Rule 4512, a broker-dealer is not required to obtain for “institutional accounts” certain additional information that it is required to obtain for accounts that are not “institutional accounts.”⁷⁷⁰ Likewise, under FINRA Rule 2210(a)(4), a broker-dealer is subject to less prescriptive review requirements for “institutional communications” that are solely to “institutional investors” than it is subject to for other, “retail communications.”⁷⁷¹ Under both of these FINRA rules, exclusion from the defined “institutional” criteria triggers a more stringent due diligence or review obligation for the broker-dealer. The opposite would be true under an entity-centric approach to Rule 606(b)—if the institutional status criteria adopted by the Commission were not met, the market participant would be excluded from the more detailed disclosure regime.⁷⁷²

The alternative could create costs to customers because of misclassification of orders if broker-dealers are not able to easily discern whether an order meets the definition to be included in the customer-specific reports. Specifically, orders for NMS stock from persons that have total assets under \$50 million and that are not a type of market participant expressly covered by the adopted definition would not be included in the reports under the alternative. Broker-dealers would not be obligated to provide these persons with the order handling disclosures in the adopted Rule 606(b)(3), because these persons do not fall within the definition under this alternative. Therefore, these persons would not benefit from the increased order handling transparency provided for in new Rule 606(b)(3). These persons instead would receive the order handling disclosures made available by amended Rule 606(b)(1).⁷⁷³

Furthermore, the alternative could create costs to retail investors due to misclassification of orders if broker-dealers cannot easily discern whether an order meets the definition of a retail order. Such a misclassification would exclude retail market participants that should be included, or include an institutional market participant that should be excluded. Under this scenario, the 606(a)(1) report could contain less accurate information regarding retail order routing, reducing the benefit of increased transparency of the public retail order report. Also, because misclassified retail orders would be subject to the requirements of 606(b)(3) reports under the adopted rule, retail investors would not receive the benefit of 606(a)(1) reports. As discussed in Section V.C.1.a.i.1., information pertinent to understanding broker-dealers’ order handling practices for customers’ orders that retail investors typically place is not the same as for institutional market participants. In addition, as discussed in Section V.C.2.a.i., because the information contained in 606(a)(1) reports could be more relevant to retail orders than 606(b)(3) reports, misclassification of orders would limit the benefits that retail customers could receive from the enhanced transparency of the retail order routing reports.

2. Scope of Broker-Dealer’s Obligation Under Rule 606(b)(3)

The Commission is adopting the Rule 606(b)(3) requirement that every broker-dealer must, on request of a customer that places, directly or indirectly, one or more orders in NMS stocks that are submitted on a not held basis with the broker-dealer, disclose to such customer a report on its handling of institutional orders for that customer, unless a de minimis exception in Rules 606(b)(4) or (b)(5) applies. In addition, the Commission is maintaining the exclusion of broker-dealers from the current definition of “customer” and that exclusion is maintained for purposes of Rule 606(b)(3), which cross-references the term “customer.”

The Commission considered an alternative that would apply the disclosure requirements to broker-dealers that receive not held NMS stock orders from other broker-dealers. Compared to the adopted Rule 606(b)(3), this alternative could enable customers to receive more comprehensive order handling data, which could improve customers’ understanding of execution details of their orders, such as payment

for order flow, rebates, and access fees. As some commenters stated, this alternative could help customers make more informed investment decisions.⁷⁷⁴ Thus, this alternative could benefit customers by providing them with additional information on their order handling by broker-dealers, so that customers could assess and monitor their broker-dealers’ order routing practices, which could promote competition among broker-dealers.

However, this alternative could also increase compliance and reporting costs to broker-dealers. As one commenter stated,⁷⁷⁵ to the extent that broker-dealers may outsource order routing technology to other broker-dealers, executing broker-dealers may be required to create individual order handling reports and make their execution data available to customers with whom they have no prior relationship.

Additionally, the competition among broker-dealers could provide incentives for broker-dealers to provide order-handling information to customers regardless of the scope of the reporting requirements. For instance, customers could choose not to send orders on a not held basis to introducing broker-dealers that are unable to provide the information, which could incentivize introducing broker-dealers to request the information from their executing broker-dealers that, in turn, may risk losing introducing broker-dealers as customers unless they provide the information. As one commenter stated, such competitive market forces could motivate broker-dealers to provide additional information that could address customers’ expectations.⁷⁷⁶ Moreover, customers could choose to negotiate with broker-dealers for additional disclosures, such as introducing broker-dealers requesting the information from their executing broker-dealers. With the information, customers could assess whether their broker-dealer is adequately serving its investing and trading expectations, as well as whether they would be better served by utilizing the services of a broker-dealer that is able to provide the full suite of detailed order handling information set forth in Rule 606(b)(3).

3. Public Availability of Aggregated Rule 606(b)(3) Order Handling Information

Proposed Rule 606(c) required public quarterly reports broken down by

⁷⁷⁴ See Dash Letter at 4–5; FIF Letter at 3, 7–8; and SIFMA Letter at 3–4.

⁷⁷⁵ See Bloomberg Letter at 16.

⁷⁷⁶ See *id.*

⁷⁷⁰ See FINRA Rule 4512(a)(2).

⁷⁷¹ See FINRA Rule 2210.

⁷⁷² See *supra* Section III.A.1.b.

⁷⁷³ Additionally, if an institutional order were misclassified as a retail order, the order would be subject to the Rule 606(a)(1) and Rule 606(b)(1) order routing disclosure requirements, therefore reducing the accuracy of public retail order routing reports and reducing the benefits of increased

transparency of retail order routing disclosure that are discussed in Section V.C.2.a.ii.

calendar month on the order routing and execution quality of aggregated institutional orders by each broker-dealer. Under the rule amendments for not held NMS stock orders as adopted, but not as proposed, broker-dealers are required only to provide customer-specific order handling reports required by Rule 606(b)(3), and none of the information set forth in Rule 606(b)(3) is required to be made public.

Prior to and after today's amendments, Rule 606 does not require a broker-dealer to provide public reports for not held NMS stock orders.⁷⁷⁷ While an institutional customer or a customer that submits NMS stock orders on a not held basis can request individualized reports from broker-dealers about the handling of its orders, the lack of public reports relating to such orders makes it difficult for a customer to compare handling of such orders by broker-dealers that the customer does not have a business relationship with. Further, for the broker-dealers that the customer does send orders to, the customer is not able to compare these broker-dealers more generally based on all orders those broker-dealers handle rather than only the orders the customer sends to the broker-dealers.⁷⁷⁸

The Commission considered the proposed Rule 606(c) as an alternative to this adopted rule. Specifically, this alternative would require broker-dealers to publicly report, on a quarterly basis, aggregated Rule 606(b)(3) order handling information. As discussed in Section III.B., several commenters provided critiques of or suggested revisions to the proposed rule regarding the proposed public aggregated order handling reports.⁷⁷⁹ The Commission has considered these comments and has revised its analysis of the economic effects of such public aggregated reports since the Proposal.

⁷⁷⁷ Separately, there are no publicly available reports about the handling of institutional or not held NMS stock orders published by independent researchers and analysts, academic researchers, the public at large, or third-party vendors.

⁷⁷⁸ Prior to today's amendments, a customer placing not held NMS stock orders could only compare broker-dealers on the basis of the orders it had sent to the broker-dealers because only those are contained in the ad hoc reports the broker-dealers provide upon request, and the customer cannot compare how its broker-dealers handle the orders it had sent compared to all of the not held NMS stock orders the broker-dealers had received. In addition, the ad hoc reports provided by the broker-dealers upon request by a customer placing not held NMS stock orders may be provided in different formats and contain different and potentially inconsistent information, which makes the comparison of the order routing decisions and execution quality of broker-dealers more difficult and less useful.

⁷⁷⁹ See Fidelity at 6; Market Letter at 6.

As discussed in the Proposing Release, proposed Rule 606(c) would provide the benefits of increasing the transparency of order handling and providing additional information to customers beyond that provided by customer-specific reports required by amended Rule 606(b)(3). Customers would be able to compare their broker-dealers not just based on the orders they send to the broker-dealers, but also based on all Rule 606(b)(3) orders handled by the broker-dealers.⁷⁸⁰ The aggregated reports would assist customers in facilitating discussions with their broker-dealers about the broker-dealers' handling of their orders. The reports would also allow current and prospective customers to compare broker-dealers' order handling and, ultimately, to inform their choice of broker-dealers. For example, the reports could allow customers to compare the execution services of their current broker-dealers with other competitors, who might route orders more often to the venues offering better average execution quality. Moreover, this alternative could promote competition as broker-dealers may seek to differentiate their services and expertise in an effort to retain current customers and attract the business of prospective customers. Further, the public aggregated order handling reports could improve the extent and quality of information available for independent research and analysis by academic researchers, the public at large, or third-party vendors, thereby furthering the public monitoring of broker-dealers conflicts of interest and enhancing the benefits of increased transparency.

In light of the comments received and after further consideration, the Commission now believes that the aggregated information in the proposed public report would provide more limited benefits than those described in the Proposal. In particular, the reports might not allow for meaningful insight into the quality of broker-dealers' order routing performance or comparisons of order handling performance across broker-dealers. Moreover, the aggregation required for the reports would dilute the information necessary to compare one customer to a broker-dealer's customers more generally or to compare across broker-dealers.⁷⁸¹

Further, the Commission does not believe that it could easily design the aggregated reports to limit such dilution without raising the risk of revealing sensitive information of customers that

submit not held NMS stock orders, in particular the institutional customers that typically submit such orders. Each customer has a unique set of circumstances, goals, and order flow that dictates how a broker-dealer handles that customer's orders. For example, if a broker-dealer were to aggregate together the orders of both its quantitative trading firm and mutual fund clients in a single, aggregated public report, the dilutive effect would result in a washing out of the routing nuances that are relevant to each type of customer and that are important to understanding a broker-dealer's routing decisions when granted full discretion.⁷⁸²

In addition, not held NMS stock orders from customers frequently limit broker-dealer discretion in some manner, which would reduce the value of the reports in providing information about the broker-dealer's own decisions in order handling. For broker-dealers that do not typically have full discretion on the handling of a not held NMS stock order, an aggregated order handling report could be more of an indication of its client mix and the preferences of its clients than about the broker-dealer's performance.

Even a customer comparing its own individual report to the aggregate report of its own broker-dealer might not be able to realize the potential benefit of making meaningful comparisons without knowing the specific nature, practices, and requests of the broker-dealer's other customers. In theory, a customer could ask its broker-dealers to explain how the customer's report fits into the aggregate report, which could allow the customer to make meaningful comparisons and receive the benefits of additional transparency. However, this would result in additional costs to broker-dealers and customers because the broker-dealers would need to spend their time and resources to provide explanations to their customers regarding how individual reports fit into aggregated information. The greater these costs to the customers, the less likely they would be to use the reports.

Further, a broker-dealer may not be willing to provide a lengthy explanation of its public aggregated report to an institutional or retail investor that is not its customer, significantly limiting the potential benefit to customers of comparing their broker-dealers to broker-dealers the customer does not have a business relationship with. This may also lead to public analyses and

⁷⁸⁰ See Fidelity at 6.

⁷⁸¹ See *supra* notes 337–339 and accompanying text.

⁷⁸² If a broker-dealer were not required to aggregate the orders, however, the report might reveal the strategies of each type of customer.

commentary regarding order routing practices that are not informed by any meaningful understanding of the customer types and routing preferences included in aggregate reports.

Even in the absence of public aggregated reports, consultants and providers of TCA for customers—particularly institutional customers—could perform aggregate analysis, but in a much more meaningful and productive way by aggregating the data of customers that submit NMS stock orders on a not held basis with like trading characteristics. Consultants could collect information with the permission of such customers, aggregate the data of customers with like trading characteristics, and provide reports that would be more readily and meaningfully comparable across broker-dealers. Although using consultants might provide comparable reports to customers, it would result in monetary costs to customers in paying for the service of consultants.

In addition to viewing the benefits to public aggregated reports in proposed Rule 606(c) to be somewhat more limited than those in the discussion in the Proposing Release, the Commission believes the aggregated reports would have the potential to result in additional costs for broker-dealers and their customers. In particular, customers could be confused to the extent that an aggregated public report suggests substandard order handling practices even if a broker-dealer is performing very competently. Broker-dealers would be at a disadvantage if the reports did not adequately summarize relevant information about the quality of customer service. Such a misinterpretation of the aggregate report could result in the customer sub-optimally switching broker-dealers. For example, a customer could use the aggregated public reports to compare its broker-dealer to other broker-dealers and could switch to another broker-dealer. If the new broker-dealer is performing worse than the previous broker-dealer, the customer could get worse order handling treatment. This would also result in costs to the original broker-dealer because of the loss of customers.

Given the Commission's understanding of the limitations of the benefits and the addition of costs per the discussion of the public aggregated reports in the Proposing Release, the Commission believes that customers could alter their behavior in recognition of the limitations of the public report in the long-run if not in the short-run. For example, communications with broker-dealers in explaining how the

customer's data fits into the aggregate report could facilitate the customer's learning process, which could help customers potentially achieve some positive benefits from the reports and avoid responding in a manner that results in worse order handling for them. On the other hand, the customers could also manage this cost by deciding not to use the reports at all. Such a response would also result in no benefits from the report. In addition, under this alternative, broker-dealers would incur additional reporting costs because they would need to prepare public reports and disseminate the order routing information to the public regularly. As stated in the Proposing Release,⁷⁸³ the Commission estimated that the estimated total burden per year for all broker-dealers that route institutional orders to comply with the reporting requirement under the alternative would have been approximately 5,920 hours, resulting in a monetized cost burden of \$1,046,640, plus an additional third-party service provider fee of \$130,000.⁷⁸⁴

4. Automatic Provision of Customer-Specific Not Held Order Handling Report (Adopted Rule 606(b)(3))

The Commission considered an alternative to adopted Rule 606(b)(3) that would not require that customers request customer-specific standardized reports on not held NMS stock order handling, but would instead require broker-dealers to provide them to customers automatically, either by sending the reports out or by providing a portal where customers can view or download the reports. This alternative could reduce the cost to customers, compared to both the baseline and the amendment, of acquiring such order handling reports, because customers would not need to request the reports. At the same time, this alternative may not benefit customers compared to the adopted amendment, as discussed in the Proposing Release.⁷⁸⁵ In addition, as

⁷⁸³ See Proposing Release, *supra* note 1, at 49491.

⁷⁸⁴ 40 hours per broker-dealer that routes institutional orders who will create the required reports \times 135 such broker-dealers + 8 hours per broker-dealer that routes institutional orders who will use a third-party service provider to create the required reports itself \times 65 such broker-dealers = 5,920 hours. The Commission estimates the total monetized burden for this requirement to be \$1,046,640 (\$6,840 per broker-dealer that will create the reports itself \times 135 such broker-dealers + \$1,896 per broker-dealer that uses a third-party service provider to create the required reports \times 65 such broker-dealers = \$1,046,640). Also, \$2,000 per broker-dealer that will use a third-party service provider to prepare its reports \times 65 such broker-dealers = \$130,000.

⁷⁸⁵ See Proposing Release, *supra* note 1, at 49501–02.

one commenter stated,⁷⁸⁶ to the extent that some institutional customers may request firm-specific customized reports and may not need the additional information in the order handling report, this alternative may not provide additional benefits compared to the rule as adopted.

With respect to the costs to broker-dealers, the alternative would impose additional initial costs compared to the baseline, as broker-dealers would be required to automatically provide reports to all customers, not just those that request reports, and would have to build infrastructure to generate these reports. The Commission believes, however, that these initial costs likely would be minimal, because the alternative would involve slight modifications to the systems that produce the required order handling reports. Moreover, as discussed in the Proposing Release, the effect of this alternative on the costs to broker-dealers, compared to the cost of the rule as adopted, is unclear.⁷⁸⁷

5. Submission to the Commission of Not Held NMS Stock Order Handling Reports (Adopted Rule 606(b)(3))

The Commission considered an alternative to adopted Rule 606(b)(3) that would require these customer-specific order handling reports to be submitted to the Commission. With direct access to the reports under this alternative, the Commission could potentially use the reports, to investigate best execution concerns, assist in risk-based examination decisions, and/or conduct market analyses on order handling to promote data-driven rulemaking, which could benefit investors and the market in the form of enhanced investor protection and better informed rulemaking.⁷⁸⁸

While providing some benefits, this alternative would also impose additional costs to broker-dealers to submit their reports to the Commission. Further, the Commission believes that acquiring the reports from each broker-dealer could impose burdens on Commission resources, though the magnitude of those burdens is unknown. Receiving customer-specific order handling reports could impose further costs on the Commission, as the Commission would need to take steps to safeguard personally sensitive information, though it might be able to leverage its experience dealing with the receipt of sensitive information in other contexts to minimize those costs.

⁷⁸⁶ See Fidelity Letter at 4–5.

⁷⁸⁷ See *id.*

⁷⁸⁸ See Proposing Release *supra* note 1, at 49502.

6. Categories of NMS Stocks for Rule 606(a)

The Commission considered an alternative that would partition the report required by Rule 606(a)(1) by both listing markets and S&P 500 index inclusion instead of by S&P 500 index inclusion alone. As discussed in Section V.C.2.e.i., the Commission staff's analysis indicates that partitioning by listing exchange could provide additional information to customers beyond the information contained in reporting by S&P 500 index inclusion. Therefore, this additional partition could allow customers to combine the Rule 606(a)(1) reports with the Rule 605 reports to help investors better judge the effect of broker-dealers' routing decisions on execution quality.

This alternative could result in broker-dealers incurring additional reporting and compliance costs relative to the adopted rule, because broker-dealers would need to change the reporting format to include both S&P 500 index inclusion and listing markets information. Compared to the adopted rule, the benefits of such order reports could be limited to the extent that the Rule 606(a)(1) order reports divided by both listing markets and S&P 500 index are less clear for customers and the public to understand. As discussed in Section V.C.2.e.i., staff analysis showed that S&P 500 index and listing markets have distinct information that is correlated with execution quality. To the extent that customers may not understand the information content of the order reports divided by both listing markets and S&P 500 index, customers would not be able to better assess the order routing and execution quality under this alternative, which, in turn, could make it less efficient for the customers to evaluate and select broker-dealers.

7. Disclosure of Additional Information About Not Held NMS Stock Order Routing and Execution

The Commission considered requiring additional measures to be included in adopted Rule 606(b)(3) reports for orders submitted on a not held basis. In particular, the Commission considered an alternative that would categorize orders by routing strategy in the reports and an alternative to report additional execution quality statistics.

Currently, as such order handling reports are not standardized and vary by broker-dealer or by customer, the Commission understands that some of these reports group order routing strategies by their aggressiveness, while other reports do not. Rule 606(b)(3) does

not require the order handling report to be categorized by order routing strategy for each venue to which the broker-dealer routed the customer's orders submitted on a not held basis.

The Commission considered the proposed categorization as an alternative to the adopted rule. Under the alternative, order routing strategies for such orders would be categorized into three general strategy categories: (1) A "passive order routing strategy," which emphasizes the minimization of price impact over the speed of execution of the entire order; (2) a "neutral order routing strategy," which is relatively neutral between the minimization of price impact and speed of execution of the entire order; and (3) an "aggressive order routing strategy," which emphasizes speed of execution of the entire order over the minimization of price impact.

This alternative could facilitate comparisons among broker-dealers by customers placing not held NMS stock orders because it would allow customers to control for the fact that broker-dealers may get different types of order flow. For example, to satisfy customer order instructions one broker-dealer may tend to use an aggressive order routing strategy and another broker-dealer may tend to use a passive order routing strategy, and simply comparing these two broker-dealers without considering the order routing strategy category may lead to incorrect or misleading conclusions.

Customers preferring passive order routing strategies may be willing to wait longer for an execution but may want to limit price impact. Customers preferring aggressive order routing strategies, however, may endure some price impact to trade quickly. Therefore, a broker-dealer implementing a passive order routing strategy may, compared to an aggressive order routing strategy, tend to route to a dark pool where execution may be less certain, but likely at a better price.⁷⁸⁹ Similarly, a broker-dealer implementing passive order routing strategies may be able to place orders providing liquidity more often, thereby capturing more rebates.⁷⁹⁰ As a result,

⁷⁸⁹ See, e.g., Albert J. Menkveld, Bart Zhou Yueshen, and Haoxiang Zhu, *Shades of Darkness: A Pecking Order of Trading Venues*, 124 *Journal of Financial Economics*, (2017). The authors find that there exists a pecking order of trading venues that puts low-cost-low-immediacy venues on top and high-cost-high-immediacy venues at the bottom. This suggests that if an order is a passive order and executed with passive order routing strategy, the broker-dealer would prefer low-cost-low-immediacy venues, which the paper identifies as dark pools that execute at the midpoint.

⁷⁹⁰ Compared to an aggressive order routing strategy, a passive order routing strategy may

the routing statistics of a broker-dealer that implements predominantly passive order routing strategies should differ from those of a broker-dealer that implements predominantly aggressive order routing strategies. Therefore, including the categories of order routing strategies in the order handling report can facilitate an assessment of how well a broker-dealer manages its conflicts of interest and provides execution quality that matches customer preferences because it provides information on the preferences communicated by that broker-dealers' customers.

The alternative to differentiate the adopted disclosures into the three order routing strategy categories could help mitigate the possibility that the reports could be interpreted incorrectly. However, there could still be differences among broker-dealers in how they classify orders into the three strategy categories, which could make straight comparisons between broker-dealers difficult.

This alternative could also create unnecessary subjectivity, as broker-dealers may categorize similar routing strategies differently, which could limit the utility and comparability of the reports. Moreover, as several commenters stated,⁷⁹¹ trading algorithms these days may use multi-layered methodologies that would fit into more than one of the adopted categories, which makes categorizing orders into three types too simplistic to adjust to changing market conditions or to reflect complex routing strategies. For these reasons, the Commission believes dividing order routing strategies into a fixed number of order routing categories would not provide a useful basis for comparison.

Moreover, this alternative could result in higher implementation costs relative to adopted Rule 606(b)(3), by requiring differentiating order routing strategies for not held NMS stock orders into three types. The Commission believes that broker-dealers would incur costs associated with creating their methodologies, assigning each order routing strategy for such orders into one of these three categories according to the methodologies, and promptly updating the assignments any time an existing strategy is amended or a new strategy is created.

reduce transaction costs and allow the capture of rebates, but immediate execution is not certain. See Lawrence Harris and Joel Hasbrouck, *Market vs. Limit Orders: The SuperDOT Evidence on Order Submission Strategy*, 31 *Journal of Financial and Quantitative Analysis* 213, 230 (1996).

⁷⁹¹ See, e.g., Better Markets Letter at 5; Capital Group Letter at 5; Fidelity Letter at 5; FIF Letter at 4; ICI Letter at 8; Markit Letter at 2, 20–21; MFA Letter at 4; KCG Letter at 6–7; SIFMA Letter at 4.

Furthermore, as adopted, customers remain able to negotiate with their broker-dealers for additional disclosures or categorizations that could address their interests better, such as categorizations by routing strategy. With this information, institutional customers could obtain information to evaluate and monitor their broker-dealers performance in order routing.

The Commission considered another alternative that would require Rule 606(b)(3) reports to contain additional execution quality measures, such as realized spread and effective spread, price improvement statistics, the percentages of effective spreads and quoted spread percentages, time to execution, or implementation shortfall, which represent varying dimensions of execution quality. As several commenters stated, adding these statistics would increase the information content and the usefulness of the reports relative to Rule 606(b)(3), and would provide execution quality statistics that would reflect changes in market structure.⁷⁹² Additionally, relative to the execution quality measures under adopted Rule 606(b)(3), this alternative would enable customers to use different execution quality statistics that are more informative for their needs.

This alternative could result in higher implementation costs relative to adopted Rule 606(b)(3) by requiring additional execution quality statistics in the report. In addition, for some execution quality metrics, the computation costs would be larger than for others. Furthermore, as raised by a number of commenters,⁷⁹³ the volume disclosures could overwhelm retail and some institutional customers that would therefore not benefit from additional information on execution quality statistics. To the extent that customers are not familiar with certain execution quality metrics, additional execution quality measures more than required by the adopted rule may not be useful to investors to better compare broker-dealers and may not promote competition among broker-dealers along the execution quality dimensions provided in the reports.

Furthermore, if customers wish to obtain additional information on execution quality, customers could negotiate for additional execution quality statistics with their broker-dealers that could address customers'

interests better. By doing so, customers could obtain relevant information to evaluate their broker-dealers performance in order routing.

8. Order Handling Reports at the Stock Level (Adopted Rule 606(b)(3))

The Commission considered requiring the order handling information required by Rule 606(b)(3) to be reported at the individual stock level rather than aggregated across stocks. This alternative would enhance transparency to customers relative to Rule 606(b)(3) because the reports would be more detailed as discussed in the Proposing Release.⁷⁹⁴ Specifically, as one commenter stated, reporting at the individual stock level could provide additional information that reflects stock liquidity or market conditions that may affect broker-dealers' order routing decisions, which could enable customers to better assess their broker-dealers.⁷⁹⁵

Because the reports would be more detailed, however, this alternative would increase the costs of producing the reports, as well as the costs of using the reports relative to Rule 606(b)(3). However, as discussed in the Proposing Release, the Commission believes that any potential increase in costs of producing the reports would be negligible.⁷⁹⁶

9. Alternative to Three-Year Posting Period (Adopted Amendments to Rules 605(a)(2) and 606(a)(1))

The Commission considered requiring broker-dealers and market centers to make the reports required by Rule 605(a) and 606(a)(1) available for a minimum length of time of less than three years or more than three years. If public reports are available for less than three years, then historical data might not be as readily available to customers and the public who are seeking to analyze past routing behavior of broker-dealers or past execution quality of market centers, as it would be under the adoption of a three-year posting period. Customers and the public would either have to download the data more often or have to rely on third-party vendors who download and aggregate the data. Compared to the adopted three-year posting period, this alternative would reduce the execution quality of market centers and the transparency of broker-dealer routing decisions for customers placing orders covered by the reports required by Rule 605(a) and 606(a)(1). A

shorter minimum length of time would reduce the costs broker-dealers incur associated with posting reports relative to a three-year posting period. However, as discussed above, the Commission believes these incremental costs to be small and that the cost savings associated with a shorter minimum length of time would not justify the costs of historical data potentially being less readily available to customers and the public.

If public reports are available for more than three years, the historical data would be even more readily available to customers and the public who are seeking to analyze past routing behavior of broker-dealers or past execution quality of market centers than it would be under a three-year posting period. Customers and the public would have to download the data less frequently to have access to historical data that is older than three years. However, the Commission believes that the additional benefit of a minimum length of time of more than three years would be small because three years is a meaningful time period considering the rapid changes in financial markets and customers, and the public would only need to download data every three years to be able to access historical data older than three years. While some commenters stated similar benefits of keeping public reports for more than three years as discussed above, commenters also stated the out-of-date information may lead to misleading analysis of past routing behavior of broker-dealers or past execution quality of market centers.⁷⁹⁷ As a result, keeping public records for an extended period compared to the adopted rule would not provide additional benefits to customers. The Commission also understands that maintaining public reports for more than three years may represent a burden and result in an additional cost to broker-dealers. However, as discussed above, the Commission believes the additional cost to be small.

E. Economic Effects and Effects on Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the anti-competitive effects of any rules it adopts.⁷⁹⁸ Specifically, Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that will impose a burden on

⁷⁹² See, e.g., Angel Letter at 5; Better Markets Letter at 5–8; Capital Group Letter at 6; FSR Letter at 5–6; HMA Letter at 10; ICI Letter at 7; Markit Letter at 9–10; and Schwab Letter at 2.

⁷⁹³ See, e.g., STA Letter at 3.

⁷⁹⁴ See Proposing Release *supra* note 1, at 49503–04.

⁷⁹⁵ See Capital Group Letter at 5.

⁷⁹⁶ See Proposing Release *supra* note 1, at 49504.

⁷⁹⁷ See Citadel Letter at 1; FIF Letter at 13; Markit Letter at 29.

⁷⁹⁸ 15 U.S.C. 78c(f).

competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.⁷⁹⁹ Furthermore, Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.⁸⁰⁰ We consider these effects below.

1. Effects of Adopting Amendments on Efficiency and Competition

a. Amendments to Public Disclosures for Orders Covered by Rule 606(a) and 606(b)(1)

The adopted amendments to Rule 606(a)(1) require broker-dealers that route non-directed orders in NMS stocks submitted on a held basis and non-directed orders that are customer orders in NMS securities that are options contracts to make public enhanced aggregated reports regarding such orders detailing order routing practices and information regarding marketable and non-marketable limit orders in addition to information on payment for order flow arrangements, payment from any profit-sharing relationship received, and transaction fees paid and rebates received per share and in aggregate for such orders. In addition, the adopted amendments to Rules 606(a)(1) require those reports to be made available using an XML schema and associated PDF renderer on the Commission's website. Finally, the adopted amendment to Rule 606(a)(1) requires the public reports to be maintained on a website that is free and readily accessible to the public for a period of 3 years.⁸⁰¹

As explained in detail below, the Commission believes that the enhanced disclosures for orders covered by Rule

606(a)(1), which require broker-dealers to describe any terms of payment for order flow arrangements and profit-sharing relationships with Specified Venues that may influence their order routing decisions for such orders, should promote competition and enhance efficiency.

First, per the discussion above, the additional information required by the amendments relative to the information required by Rule 606(a)(1) will allow customers to better assess the order routing and execution quality provided by their broker-dealers,⁸⁰² which, in turn, will enable the customers to more efficiently evaluate and select broker-dealers.⁸⁰³ The adopted amendments to Rule 606(a) will require broker-dealers, for orders covered by Rule 606(a)(1), to differentiate between marketable and non-marketable limit orders and to publicly report the net aggregate amount of any payment for order flow, payment from any profit-sharing relationship received, the transaction fees paid, and transaction rebates received, both as a total dollar amount and on a per share basis, for each of the following order types: Market orders, marketable limit orders, non-marketable limit orders, and other orders. As discussed in Sections V.C.2.b. through d., the Commission believes that this will allow customers and the public to better understand the potential conflicts of interest broker-dealers may face when routing such orders and to assess if and how well broker-dealers manage these potential conflicts of interest. This will enable customers to make a more informed decision as to which broker-dealers to use for such orders. The Commission believes that this will enhance the competition for such order flow between broker-dealers, which could improve order routing services and execution quality. Customers could use additional information to evaluate and retain the services of a broker-dealer or to discontinue the use of such services, and broker-dealers may use the information required by the adopted amendments to Rule 606(a) as a means to evaluate and enhance their order

routing and execution services, to compare their order routing and execution services to those of other firms, and to use such comparison in selling their services to customers. As a result, the Commission believes that competition between broker-dealers could provide better execution quality for such orders.

In addition, if broker-dealers change their routing behavior in response to the public reports required by adopted amendments to Rule 606(a)(1), the Commission believes that competition between trading centers might be enhanced as trading centers could better compete for such order flow, which might result in better execution quality for such orders and innovation by existing or new trading centers. As discussed in Section V.C.1.b.i.1., one way a trading center can attract order flow is through innovation, thereby differentiating itself from other trading centers.

Further, to the extent that the adopted amendments to Rule 606(a) lead to better execution quality provided by broker-dealers and trading centers, the Commission believes that the adopted amendments will lead to lower transaction costs for customers. Because transaction costs can be viewed as a measure for efficiency in the trading process, lower transaction costs would indicate enhanced efficiency in the trading process. In addition, to the extent that the adopted amendments to Rule 606(a) make the trading process more efficient by lowering trading costs, the Commission believes the adopted amendments will reduce market friction and therefore have a positive effect on the efficiency of prices.

As discussed above, however, the adopted amendments to Rule 606(a)(1) could result in costs that may have an effect on efficiency and competition. For example, the adopted amendments will impose certain costs on broker-dealers that currently route orders covered by Rule 606(a)(1) as well as on broker-dealers that would like to start routing such orders and will also have to comply with the adopted amendments to Rule 606(a)(1). To the extent that the costs for a broker-dealer entering the market for such orders are higher following the amendments to Rule 606(a)(1), these higher costs could lead to a higher barrier to entry and thereby reduce competition. However, the Commission believes that any difference in costs under amended Rule 606(a)(1) would be relatively small and, alone, would not deter broker-dealers from entering the market for routing such orders.

⁷⁹⁹ See *id.*

⁸⁰⁰ 15 U.S.C. 78w(a)(2).

⁸⁰¹ Consistent with the adopted amendments to Rule 606, the Commission is adopting amendments to Rule 605(a)(2) to require market centers to keep public execution reports required by the rule posted on an website that is free and readily accessible to the public for a period of three years from the initial date of posting on the website. The Commission believes that making past order execution information available to customers and the public generally will be useful to those seeking to analyze historical order execution information from different market centers. The adopted requirement to keep public execution reports required by Rule 605 for a period of three years is expected to make it easier, and thus more efficient, for the public to collect historical data for analysis. The Commission believes the adopted requirement could enhance efficiency in the data collection process of those seeking to retrieve and analyze historical order execution information from different market centers.

⁸⁰² See *supra* Section V.C.2.

⁸⁰³ The adopted amendments to Rule 606(a)(1), which will no longer require reports to be divided into separate sections for stocks listed on different exchanges, may be an exception to this. As discussed below, to the extent that order routing decisions may differ for stocks that are listed on different exchanges, the reports that aggregate the data as required by the adopted amendments to Rule 606(a)(1) may provide less information to retail customers and the public and therefore may reduce the efficiency with which customers and the public are able to evaluate and select broker-dealers on the basis of the order routing and execution quality they provide.

Under the adopted amendments to Rule 606(a)(1), the broker-dealer may be concerned about the perception of acting on a conflict of interest. As a result, a broker-dealer may be incentivized to route fewer non-marketable limit orders to the trading center offering the highest rebate, even if this negatively affects execution quality, in an effort to ensure that a customer does not misconstrue the intent behind the broker-dealer's routing decisions. Such a potential outcome could reduce to some degree the intensity of competition between broker-dealers on the dimension of execution quality. However, the Commission believes that such a scenario is not likely as customers are likely to review the 606(a)(1) reports in conjunction with execution quality statistics currently required pursuant to Rule 605 and can discuss with their broker-dealers the order routing and execution quality the broker-dealer provides.

b. Amendments to Disclosures for Orders Covered by 606(b)(1)

The adopted amendments to Rule 606(b)(1) require a broker-dealer, upon customer request, to provide the disclosures set forth in Rule 606(b)(1) for orders in NMS stock that are submitted on a held basis, and for orders in NMS stock that are submitted on a not held basis and for which the broker-dealer is not required to provide the customer a report under Rule 606(b)(3). In addition, the adopted amendments to 606(b)(1) require those reports to be made available using an XML schema and associated PDF renderer on the Commission's website.

The Commission believes that the adopted amendments to Rule 606(b)(1), which require broker-dealers to provide, upon customer request, information relating to orders not covered by Rule 606(b)(3), should promote competition and enhance efficiency. As discussed in Section III.A.1.b.vi., Rule 606(b)(1) disclosures will allow customers to better assess the order routing and execution quality provided by their broker-dealers, which, in turn, will enable the customers to more efficiently evaluate and select broker-dealers. If requested, these disclosures provide the customer with information as to the venues to which its orders were routed, whether the orders were directed or non-directed, and the time of any transactions that resulted from the orders. Rule 606(b)(1) cover held NMS stock orders and should provide customers that submit NMS stock orders on a held basis with disclosures designed to provide more transparency

into potential financial inducements and potential conflicts of interest faced by broker-dealers. The Commission believes that these disclosures provide information that is sufficient to provide a basis for the customer to engage in further discussions with its broker-dealer regarding the broker-dealer's order handling practices, should the customer so choose. As a result, the Commission believes that competition between broker-dealers could provide better execution quality for orders covered by Rule 606(b)(1).

In addition, if broker-dealers change their routing behavior in response the customer-specific reports required by the adopted amendment to Rule 606(b)(1), the Commission believes that competition between trading centers might be enhanced as trading centers could better compete for such order flow, which might result in better execution quality for such orders and innovation by existing or new trading centers. As discussed in Section V.C.1.b.i.1., one way a trading center can attract order flow is through innovation, thereby differentiating itself from other trading centers.

The Commission also believes that the adopted amendment to Rule 606(b)(1) will provide additional benefits of better execution quality and reduced transaction costs, but acknowledges that these benefits are attainable only when customers request 606(b)(1) reports. To the extent that customers actually request Rule 606(b)(1) reports and the adopted amendments to Rule 606(b)(1) lead to better execution quality provided by broker-dealers and trading centers, the Commission believes that the adopted amendments will lead to lower transaction costs for customers. Because transaction costs can be viewed as a measure for efficiency in the trading process, lower transaction costs would indicate enhanced efficiency in the trading process. In addition, to the extent that the adopted amendments to Rule 606(b)(1) make the trading process more efficient by lowering trading costs, the Commission believes the adopted amendments will reduce market friction and therefore have a positive effect on the efficiency of prices.

As discussed above, however, the adopted amendments to Rule 606(b)(1) could result in costs that may have an effect on efficiency and competition. For example, the adopted amendments will impose certain costs on broker-dealers that currently route orders covered by Rule 606(b)(1), as well as on broker-dealers that would like to start routing such orders and will also have to comply with the adopted amendments to Rule 606(b)(1). To the extent that the

costs for a broker-dealer entering the market for such orders are higher following the amendments to Rule 606(b)(1), these higher costs could lead to a higher barrier to entry and thereby reduce competition. However, the Commission believes that any difference in costs under amended Rule 606(b)(1) would be relatively small and, alone, would not deter broker-dealers from entering the market for routing such orders.

c. Adopted Rules for Disclosures for Not Held NMS Stock Orders

For NMS stock orders submitted on a not held basis, Rule 606(b)(3), as adopted, will require broker-dealers that route such orders to provide detailed reports to customers that submit such orders upon the request of the customer, unless such broker-dealer is excepted from this requirement as provided in new Rules 606(b)(4) and (b)(5). In addition, these rules will require reports on such orders to be provided using an XML schema and associated PDF renderer published on the Commission's website. As discussed below, the Commission believes that these disclosures of order routing decisions by broker-dealers for such orders could promote competition and enhance efficiency.

First, the disclosures required by Rule 606(b)(3) will inform customers as to the order routing practices of and the execution quality provided by a particular broker-dealer, as described in further detail above. As a result, customers will be able to use that information to compare the order routing and execution quality of their broker-dealers, on the basis of the orders submitted to those broker-dealers as reported in the customer-specific reports required by Rule 606(b)(3).

These enhanced disclosures will better enable customers to analyze order routing and execution quality provided by broker-dealers, which will allow customers to more efficiently monitor, evaluate, and select broker-dealers. In addition, customers and broker-dealers will be able to evaluate execution quality of orders covered by Rule 606(b)(3) on different trading centers more efficiently.⁸⁰⁴ Customers also will be better informed as to the order routing and execution quality they received from a particular broker-dealer. If a customer feels it received poor order routing and execution quality from a particular broker-dealer, the customer could initiate a dialogue with the broker-dealer for an explanation, which may lead to better order routing

⁸⁰⁴ See *supra* Section V.C.1.

decisions and execution quality by the broker-dealer. The customer may also decide to use different broker-dealers in order to seek better order routing and execution quality. This could enhance competition between broker-dealers.

Further, the Commission believes that Rule 606(b)(3), as adopted, might enhance competition between trading centers. First, if broker-dealers change their routing decisions in response to the reports required by Rule 606(b)(3), trading centers will have an additional incentive to compete for order flow covered by Rule 606(b)(3). Second, the reports required by Rule 606(b)(3) are structured by trading center, so that the execution quality at each trading center would be clearly visible. This may lead broker-dealers to change their routing behavior, but also, more directly, customers could compare the execution quality of all trading centers, which may again lead to enhanced competition among trading centers. The Commission believes that the enhanced competition between trading centers could lead to innovation by existing and new trading centers, resulting in better execution quality for customers placing orders covered by Rule 606(b)(3). As discussed in Sections V.C.2.b.i., V.C.2.c.i., and V.C.2.d.i., if a trading center were to lose order flow to other trading centers because of lower execution quality, it would have the incentive to innovate to improve its execution quality.

To the extent that Rule 606(b)(3) leads to broker-dealers and trading centers providing better execution quality, the Commission believes that the rule might lead to lower transaction costs for orders covered by Rule 606(b)(3). As discussed above, lower transaction costs indicate enhanced efficiency in the trading process, and the Commission believes that, as a result, the adopting rules will reduce market friction and therefore have a positive effect on the efficiency of prices.

In addition, the Commission believes that the requirement of standardized customer-specific order handling reports in Rule 606(b)(3) will enhance efficiency for customers in processing the information contained in the reports, as compared to the ad hoc reports customers may currently receive from their broker-dealers.⁸⁰⁵ Because the data will be presented in a standardized format, customers will be able to more efficiently aggregate,

compare, and analyze the data than they could before adoption of this rule.

In addition, as discussed above, the Commission understands that not held NMS stock orders are typically submitted by institutional customers and many broker-dealers that handle institutional orders currently voluntarily provide reports to institutional customers upon request. However, the Commission understands that how willing a broker-dealer is to provide such reports and the level of detail in the reports might depend on the size of an institutional customer. To that extent, larger institutional customers have an advantage over smaller institutional customers. Rule 606(b)(3), as adopted, will provide access to reports on order handling to all customers, regardless of their size, unless an exception in Rules 606(b)(4) or (b)(5) applies.

The Commission notes that, even without the adoption of Rule 606(b)(3), institutional and other customers could still request customized reports from their broker-dealers and broker-dealers would have an incentive to provide such reports in order to attract order flow. As is currently the case, broker-dealers might be more willing to provide such customized reports to larger institutional customers and the customized reports might provide more detailed information for larger institutional customers. While the Commission believes that Rule 606(b)(3), as adopted, mitigates the advantage of larger institutional customers in that respect, the Commission believes that larger institutional customers are likely to continue to have an advantage over smaller institutional customers to the extent that they are able to obtain customized reports more easily and that those customized reports contain information not contained in the reports required by Rule 606(b)(3). The Commission believes that by reducing the informational advantage of larger institutional customers over smaller institutional customers, Rule 606(b)(3), as adopted, will improve information asymmetries between larger institutional customers and smaller investors will have more information than before regarding broker-dealers' routing behavior. Smaller institutional customers will be able to evaluate and select their broker-dealers with more efficiency, thereby increasing the efficiency of their investment process. The Commission believes that this will provide smaller institutional customers with information to select the broker-dealers that promote better execution quality, to the benefit of their investors.

As discussed above, however, Rule 606(b)(3) could result in certain costs to broker-dealers that currently route orders covered by Rule 606(b)(3), as well as those who would like to start routing such orders and thus will have to comply with Rule 606(b)(3). These costs could lead to a higher barrier to entry and thereby reduce competition.

However, the Commission believes that the costs associated with Rule 606(b)(3) are not large enough to meaningfully affect the barriers to entry and the level of competition due to potential new entrants into the market for such orders. In addition, the Commission believes that any negative effect on competition due to heightened barriers to entry are justified by the expected positive effect on competition of the disclosures required by Rule 606(b)(3).

In addition, the adoption of Rule 606(b)(3) may cause broker-dealers to change how they handle orders covered by Rule 606(b)(3) because customers' preferences could be skewed toward the metrics as opposed to their true objectives, which could skew broker-dealer incentives, potentially limiting the efficiency and competition benefits of the adopted amendments. First, given that broker-dealers will be aware of the metrics to be used a priori, they may handle such orders in a manner that promotes a positive reflection on their respective services but that may be suboptimal for customers.⁸⁰⁶ Second, the order routing decisions that are indeed optimal for customers could also be viewed as suboptimal for the customers as reflected in the reports required by Rule 606(b)(3).

For example, suppose a broker-dealer routes orders covered by Rule 606(b)(3) so that the orders execute at lower cost with a higher fill rate, shorter duration, and more price improvement than the broker-dealer's competitors. However, it could be the case that, in order to achieve these objectives, the broker-dealer routes the majority of non-marketable limit order shares to the trading center offering the highest rebate. A customer that reviews the adopted order handling reports might suspect that the broker-dealer acted in its self-interest by selecting the highest rebate venue in order to maximize rebates when, in fact, the broker-dealer made the decision on the basis of factors

⁸⁰⁵ See *supra* Section V.B.1. for a discussion of the ad hoc reports and Section V.C.4. for a discussion of the standardization and format for the reports required by adopted Rules 606(b)(3).

⁸⁰⁶ The Commission believes that the set of metrics provide customers with a more cost effective view of broker-dealer order handling practices, but recognizes a risk that the information from the disclosures may not perfectly align routing practices and execution quality.

that might not be completely reflected in the adopted reports.⁸⁰⁷

2. Effects of Adopting Amendments on Capital Formation

The Commission believes that the amendments to Rules 600, 605, and 606, as adopted, might have positive effects on capital formation, but predicting the magnitude of such effects is difficult, as the effects likely will be indirect rather than a direct result of the adopted amendments.

As discussed, the Commission believes the adopted amendments to Rules 600, 605, and 606 will enhance competition among broker-dealers and trading centers resulting in better execution quality for customers that place both held or not held NMS stock orders and, to the extent that better execution quality will lead to lower friction in the trading process, the adopted amendments will increase market efficiency in both the trading process and asset pricing. This could lead to more efficient asset allocation because better execution quality and greater market efficiency lead to more efficient investment decisions by customers that place orders with broker-dealers.⁸⁰⁸ For example, lower transaction costs could allow investors to rebalance their portfolios more frequently and more efficiently and at more efficient prices that better reflect the true underlying value. More efficient asset allocation could have a positive impact on capital formation as capital is allocated to firms with the most profitable projects, which ultimately will allow these firms to raise capital more easily.⁸⁰⁹

Another potential effect on capital formation could derive from the relation between and liquidity and cost of capital. In particular, the less liquid an asset is, *e.g.*, the higher transaction costs are to buy or sell it, the higher the rate of return customers could demand as compensation.⁸¹⁰ For example, lower transaction costs for stocks could result in lower required rates of return for stocks. This in turn could lead to lower cost of capital for the firms, which could have a positive impact on capital formation because it will allow firms to raise capital at more favorable

conditions. As noted above, the amendments might improve execution quality for some investors, which is akin to an improvement in liquidity and lower transaction costs. If these improvements are significant enough, issuers could experience a lower cost of capital, resulting in a positive impact on capital formation.

VI. Regulatory Flexibility Certification

The Regulatory Flexibility Act ("RFA")⁸¹¹ requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)⁸¹² of the Administrative Procedure Act,⁸¹³ as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities."⁸¹⁴ Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not have significant economic impact on a substantial number of small entities.

For purposes of Commission rulemaking in connection with the RFA⁸¹⁵ as it relates to broker-dealers, a small entity includes a broker-dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) under the Exchange Act,⁸¹⁶ or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.⁸¹⁷

The amendments to Rule 606 are discussed in detail in Sections II and III above. We discuss the economic impact, including the estimated compliance

costs and burdens, of the amendments in Section IV (Paperwork Reduction Act) and Section V (Economic Analysis) and above. Based on the Commission's analysis of existing information relating to broker-dealers that would be subject to the amendments to Rule 606, the Commission believes that such broker-dealers do not fall within the definition of "small entity," as defined above.⁸¹⁸ Further, the amendments to Rule 605 to require reports to remain posted on a website for a specified period of time will not have a significant impact on any small entities affected by the Rule because the market centers to which Rule 605 applies do not fall within the definition of "small entity," as defined above.⁸¹⁹ The Commission received no comments regarding its initial Regulatory Flexibility Analysis.⁸²⁰ For the foregoing reasons, the Commission certifies that the amendments to Rules 600, 605, and 606 will not have a significant economic impact on a substantial number of small entities for the purposes of the RFA.

VII. Statutory Authority and Text of the Proposed Rule Amendments

Pursuant to the Exchange Act, and particularly Sections 3(b), 5, 6, 11A, 15, 17, and 23(a) thereof, 15 U.S.C. 78c, 78e, 78f, 78k-1, 78o, 78q, and 78w(a), the Commission is amending Sections 240.3a51-1, 240.13h-1, 242.105, 242.201, 242.204, 242.600, 242.602, 242.605, 242.606, 242.611, and 242.1000 of chapter II of title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects

17 CFR Part 240

Brokers, Dealers, Registration, Securities.

17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons stated in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The 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,

⁸¹⁸ The Commission considered FOCUS Report data in making this determination.

⁸¹⁹ See *supra* Section IV.D.5.

⁸²⁰ See Proposing Release, *supra* note 1, at 59508.

⁸¹¹ 5 U.S.C. 601 *et seq.*

⁸¹² 5 U.S.C. 603(a).

⁸¹³ 5 U.S.C. 551 *et seq.*

⁸¹⁴ Although Section 601(b) of the RFA defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term "small entity" for purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10, 17 CFR 240.0-10. See Securities Exchange Act Release No. 18452 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. S7-879).

⁸¹⁵ See *id.*

⁸¹⁶ 17 CFR 240.17a-5(d).

⁸¹⁷ See 17 CFR 240.0-10(c).

⁸⁰⁷ See *id.*

⁸⁰⁸ Efficient investment allows capital to be allocated to firms with the most profitable projects, which ultimately will allow these firms to raise capital more easily. On the other hand, less efficient investment could result in funding being available for unprofitable projects, which erode capital.

⁸⁰⁹ See *supra* Section V.B.9. for a discussion of how asset allocation can relate to capital formation.

⁸¹⁰ See Yakov Amihud and Haim Mendelson, *Asset Pricing and the Bid-Ask Spread*, 17 Journal of Financial Economics 223 (1986).

78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78l, 78mm, 80a-20, 80a-23, 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; 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.

* * * * *

§ 240.3a51-1 [Amended]

■ 2. In § 240.3a51-1, paragraph (a) introductory text is amended by removing the text “§ 242.600(b)(47)” and adding in its place “§ 242.600(b)(48)”.

§ 240.13h-1 [Amended]

■ 3. In § 240.13h-1, paragraph (a)(5) is amended by removing the text “Section 242.600(b)(46)” and adding in its place “§ 242.600(b)(47)”.

PART 242—REGULATIONS M, SHO, ATS, AC, NMS AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 4. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, and 80a-37.

§ 242.105 [Amended]

■ 5. Section 242.105 is amended:

■ a. In paragraph (b)(1)(i)(C) by removing the text “§ 242.600(b)(22)” and adding in its place “§ 242.600(b)(23)”.

■ b. In paragraph (b)(1)(ii) by removing the text “§ 242.600(b)(64)” and adding in its place “§ 242.600(b)(68)”.

§ 242.201 [Amended]

■ 6. Section 242.201 is amended:

■ a. In paragraph (a)(1) by removing the text “§ 242.600(b)(47)” and adding in its place “§ 242.600(b)(48)”.

■ b. In paragraph (a)(2) by removing the text “§ 242.600(b)(22)” and adding in its place “§ 242.600(b)(23)”.

■ c. In paragraph (a)(4) by removing the text “§ 242.600(b)(42)” and adding in its place “§ 242.600(b)(43)”.

■ d. In paragraph (a)(5) by removing the text “§ 242.600(b)(49)” and adding in its place “§ 242.600(b)(51)”.

■ e. In paragraph (a)(6) by removing the text “§ 242.600(b)(55)” and adding in its place “§ 242.600(b)(59)”.

■ f. In paragraph (a)(7) by removing the text “§ 242.600(b)(64)” and adding in its place “§ 242.600(b)(68)”.

■ g. In paragraph (a)(9) by removing the text “§ 242.600(b)(78)” and adding in its place “§ 242.600(b)(82)”.

§ 242.204 [Amended]

■ 7. In § 242.204, paragraph (g)(2) is amended by removing the text “Rule 600(b)(64) of Regulation NMS (17 CFR 242.600(b)(64))” and adding in its place “§ 600(b)(68) of Regulation NMS (17 CFR 242.600(b)(68))”.

■ 8. Section 242.600 is amended by:

■ a. Redesignating paragraphs (b)(52) through (83) as paragraphs (b)(56) through (87);

■ b. Redesignating paragraphs (b)(49) through (51) as paragraphs (b)(51) through (53);

■ c. Adding new paragraphs (b)(50), (54), and (55);

■ d. Redesignating paragraphs (b)(1) through (48) as paragraphs (b)(2) through (b)(49);

■ e. Adding new paragraph (b)(1).
■ f. Amending newly redesignated paragraph (b)(5)(i) by removing the text “paragraph (b)(3)” and adding in its place “paragraph (b)(4)”;

■ g. Revising newly redesignated paragraphs (b)(20) and (49).

The additions and revisions read as follows:

§ 242.600 NMS security designation and definitions.

* * * * *

(b) * * *

(1) *Actionable indication of interest* means any indication of interest that explicitly or implicitly conveys all of the following information with respect to any order available at the venue sending the indication of interest:

(i) Symbol;

(ii) Side (buy or sell);

(iii) A price that is equal to or better than the national best bid for buy orders and the national best offer for sell orders; and

(iv) A size that is at least equal to one round lot.

* * * * *

(20) *Directed order* means an order from a customer that the customer specifically instructed the broker or dealer to route to a particular venue for execution.

* * * * *

(49) *Non-directed order* means any order from a customer other than a directed order.

* * * * *

(50) *Non-marketable limit order* means any limit order other than a marketable limit order.

* * * * *

(54) *Orders providing liquidity* means orders that were executed against after resting at a trading center.

(55) *Orders removing liquidity* means orders that executed against resting trading interest at a trading center.

* * * * *

§ 242.602 [Amended]

■ 9. Section 242.602 is amended:

■ a. In paragraph (a)(5)(i) by removing the text “§ 242.600(b)(73)” and adding in its place “§ 242.600(b)(77)”;

■ b. In paragraph (a)(5)(ii) by removing the text “§ 242.600(b)(73)” and adding in its place “§ 242.600(b)(77)”.

■ 10. Section 242.605 is amended by removing the preliminary note, adding introductory text, and adding a sentence at the end of paragraph (a)(2).

The additions read as follows:

§ 242.605 Disclosure of order execution information.

This section requires market centers to make available standardized, monthly reports of statistical information concerning their order executions. This information is presented in accordance with uniform standards that are based on broad assumptions about order execution and routing practices. The information will provide a starting point to promote visibility and competition on the part of market centers and broker-dealers, particularly on the factors of execution price and speed. The disclosures required by this section do not encompass all of the factors that may be important to investors in evaluating the order routing services of a broker-dealer. In addition, any particular market center's statistics will encompass varying types of orders routed by different broker-dealers on behalf of customers with a wide range of objectives. Accordingly, the statistical information required by this section alone does not create a reliable basis to address whether any particular broker-dealer failed to obtain the most favorable terms reasonably available under the circumstances for customer orders.

(a) * * *

(2) * * * Every market center shall keep such reports posted on an internet website that is free and readily accessible to the public for a period of three years from the initial date of posting on the internet website.

* * * * *

■ 11. Section 242.606 is amended by revising paragraphs (a) and (b) to read as follows:

§ 242.606 Disclosure of order routing information.

(a) *Quarterly report on order routing.*

(1) Every broker or dealer shall make publicly available for each calendar quarter a report on its routing of non-directed orders in NMS stocks that are submitted on a held basis and of non-directed orders that are customer orders in NMS securities that are option

contracts during that quarter broken down by calendar month and keep such report posted on an internet website that is free and readily accessible to the public for a period of three years from the initial date of posting on the internet website. Such report shall include a section for NMS stocks—separated by securities that are included in the S&P 500 Index as of the first day of that quarter and other NMS stocks—and a separate section for NMS securities that are option contracts. Such report shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website for all reports required by this section. Each section in a report shall include the following information:

(i) The percentage of total orders for the section that were non-directed orders, and the percentages of total non-directed orders for the section that were market orders, marketable limit orders, non-marketable limit orders, and other orders;

(ii) The identity of the ten venues to which the largest number of total non-directed orders for the section were routed for execution and of any venue to which five percent or more of non-directed orders were routed for execution, the percentage of total non-directed orders for the section routed to the venue, and the percentages of total non-directed market orders, total non-directed marketable limit orders, total non-directed non-marketable limit orders, and total non-directed other orders for the section that were routed to the venue;

(iii) For each venue identified pursuant to paragraph (a)(1)(ii) of this section, the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and per share, for each of the following non-directed order types:

- (A) Market orders;
- (B) Marketable limit orders;
- (C) Non-marketable limit orders; and
- (D) Other orders.

(iv) A discussion of the material aspects of the broker's or dealer's relationship with each venue identified pursuant to paragraph (a)(1)(ii) of this section, including a description of any arrangement for payment for order flow and any profit-sharing relationship and a description of any terms of such arrangements, written or oral, that may influence a broker's or dealer's order routing decision including, among other things:

(A) Incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment;

(B) Disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee;

(C) Volume-based tiered payment schedules; and

(D) Agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue.

(2) A broker or dealer shall make the report required by paragraph (a)(1) of this section publicly available within one month after the end of the quarter addressed in the report.

(b) *Customer requests for information on order routing.* (1) Every broker or dealer shall, on request of a customer, disclose to its customer, for:

(i) Orders in NMS stocks that are submitted on a held basis;

(ii) Orders in NMS stocks that are submitted on a not held basis and the broker or dealer is not required to provide the customer a report under paragraph (b)(3) of this section; and

(iii) Orders in NMS securities that are option contracts, the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders. Such disclosure shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website for all reports required by this section.

(2) A broker or dealer shall notify customers in writing at least annually of the availability on request of the information specified in paragraph (b)(1) of this section.

(3) Except as provided for in paragraphs (b)(4) and (5) of this section, every broker or dealer shall, on request of a customer that places, directly or indirectly, one or more orders in NMS stocks that are submitted on a not held basis with the broker or dealer, disclose to such customer within seven business days of receiving the request, a report on its handling of such orders for that customer for the prior six months by calendar month. Such report shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website for all reports required by this section. For purposes of such report, the handling of a NMS stock order submitted by a customer to a broker-dealer on a not held basis includes the handling of all child orders

derived from that order. Such report shall be divided into two sections: One for directed orders and one for non-directed orders. Each section of such report shall include, with respect to such order flow sent by the customer to the broker or dealer, the total number of shares sent to the broker or dealer by the customer during the relevant period; the total number of shares executed by the broker or dealer as principal for its own account; the total number of orders exposed by the broker or dealer through an actionable indication of interest; and the venue or venues to which orders were exposed by the broker or dealer through an actionable indication of interest, provided that, where applicable, a broker or dealer must disclose that it exposed a customer's order through an actionable indication of interest to other customers but need not disclose the identity of such customers. Each section of such report also shall include the following columns of information for each venue to which the broker or dealer routed such orders for the customer, in the aggregate:

(i) *Information on Order Routing.*

(A) Total shares routed;

(B) Total shares routed marked immediate or cancel;

(C) Total shares routed that were further routable; and

(D) Average order size routed.

(ii) *Information on Order Execution.*

(A) Total shares executed;

(B) Fill rate (shares executed divided by the shares routed);

(C) Average fill size;

(D) Average net execution fee or rebate (cents per 100 shares, specified to four decimal places);

(E) Total number of shares executed at the midpoint;

(F) Percentage of shares executed at the midpoint;

(G) Total number of shares executed that were priced on the side of the spread more favorable to the order;

(H) Percentage of total shares executed that were priced at the side of the spread more favorable to the order;

(I) Total number of shares executed that were priced on the side of the spread less favorable to the order; and

(J) Percentage of total shares executed that were priced on the side of the spread less favorable to the order.

(iii) *Information on Orders that Provided Liquidity.* (A) Total number of shares executed of orders providing liquidity;

(B) Percentage of shares executed of orders providing liquidity;

(C) Average time between order entry and execution or cancellation, for orders providing liquidity (in milliseconds); and

(D) Average net execution rebate or fee for shares of orders providing liquidity (cents per 100 shares, specified to four decimal places).

(iv) *Information on Orders that Removed Liquidity.* (A) Total number of shares executed of orders removing liquidity;

(B) Percentage of shares executed of orders removing liquidity; and

(C) Average net execution fee or rebate for shares of orders removing liquidity (cents per 100 shares, specified to four decimal places).

(4) Except as provided below, no broker or dealer shall be required to provide reports pursuant to paragraph (b)(3) of this section if the percentage of shares of not held orders in NMS stocks the broker or dealer received from its customers over the prior six calendar months was less than five percent of the total shares in NMS stocks the broker or dealer received from its customers during that time (the “five percent threshold” for purposes of this paragraph). A broker or dealer that equals or exceeds this five percent threshold shall be required (subject to paragraph (b)(5) of this section) to provide reports pursuant to paragraph (b)(3) of this section for at least six

calendar months (“Compliance Period”) regardless of the percentage of shares of not held orders in NMS stocks the broker or dealer receives from its customers during the Compliance Period. The Compliance Period shall begin the first calendar day of the next calendar month after the broker or dealer equaled or exceeded the five percent threshold, unless it is the first time the broker or dealer has equaled or exceeded the five percent threshold, in which case the Compliance Period shall begin the first calendar day four calendar months later. A broker or dealer shall not be required to provide reports pursuant to paragraph (b)(3) of this section for orders that the broker or dealer did not receive during a Compliance Period. If, at any time after the end of a Compliance Period, the percentage of shares of not held orders in NMS stocks the broker or dealer received from its customers was less than five percent of the total shares in NMS stocks the broker or dealer received from its customers over the prior six calendar months, the broker or dealer shall not be required to provide reports pursuant to paragraph (b)(3) of this section, except for orders that the broker or dealer received during the

portion of a Compliance Period that remains covered by paragraph (b)(3) of this section.

(5) No broker or dealer shall be subject to the requirements of paragraph (b)(3) of this section with respect to a customer that traded on average each month for the prior six months less than \$1,000,000 of notional value of not held orders in NMS stocks through the broker or dealer.

* * * * *

§ 242.611 [Amended]

■ 12. In § 242.611, paragraph (c) is amended by removing the text “§ 242.600(b)(30)” and adding in its place “§ 242.600(b)(31)”.

§ 242.1000 [Amended]

■ 13. In § 242.1000 the definition of *Plan processor* is amended by removing the text “§ 242.600(b)(55)” and adding in its place “§ 242.600(b)(59)”.

By the Commission.

Dated: November 2, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–24423 Filed 11–16–18; 8:45 am]

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Part III

Department of Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 52, 208, and 304

Reduced Reporting for Covered Depository Institutions; Proposed Rule

DEPARTMENT OF TREASURY**Office of the Comptroller of the Currency****12 CFR Part 52**

[Docket ID OCC–2018–0032]

RIN 1557–AE39

FEDERAL RESERVE SYSTEM**12 CFR Part 208**

[Docket ID R–1618]

RIN 7100–AF12

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 304**

RIN 3065–AE82

Reduced Reporting for Covered Depository Institutions

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

ACTION: Notice of proposed rulemaking with request for public comment.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the agencies) are inviting comment on a proposed rule that would implement section 205 of the Economic Growth, Regulatory Relief, and Consumer Protection Act by: Expanding the eligibility to file the agencies' most streamlined report of condition, the FFIEC 051 Call Report, to include certain insured depository institutions with less than \$5 billion in total consolidated assets that meet other criteria; and, establishing reduced reporting on the FFIEC 051 Call Report for the first and third reports of condition for a year. The OCC and Board also are proposing similar reduced reporting for certain uninsured institutions that they supervise with less than \$5 billion in total consolidated assets that otherwise meet the same criteria. This **Federal Register** notice also includes a Paperwork Reduction Act notice to reduce the amount of data required to be reported on the FFIEC 051 Call Report for the first and third calendar quarters, and other related changes.

DATES: Comments must be received by January 18, 2019.

ADDRESSES: Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title “Reduced Reporting for Covered Depository Institutions” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“Regulations.gov”:** Go to www.regulations.gov. Enter “Docket ID OCC–2018–0032” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments.
- Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

- **Email:** regs.comments@occ.treas.gov.

- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC–2018–0032” in your comment.

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

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

- **Viewing Comments Electronically:** Go to www.regulations.gov. Enter “Docket ID OCC–2018–0032” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen.

- Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*.

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

- **Viewing Comments Personally:** You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay.

You may submit comments, identified by Docket No. R–1618 and RIN 7100–AF12, by any of the following methods:

- **Agency Website:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

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

- **FAX:** (202) 452–3819 or (202) 452–3102.

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

All public comments will be made available on the Board's website at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by FDIC RIN 3064–AE82, by any of the following methods:

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

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery/Courier:** Comments may be hand-delivered to the guard

station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Email: comments@FDIC.gov.*

Comments submitted must include “FDIC” and “RIN 3064–AE82” on the subject line of the message.

• *Public Inspection:* All comments received must include “FDIC” and “RIN 3064–AE82” for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/>, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, or by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

OCC: Cady Coddington, Senior Policy Accountant, Office of the Chief Accountant, (202) 649–5764; Kevin Korzeniewski, Counsel, Office of the Chief Counsel, (202) 649–5490; or for persons who are deaf or hearing impaired, TTY, (202) 649–5597.

Board: Douglas Carpenter, Senior Supervisory Financial Analyst, Division of Supervision and Regulation, (202) 452–2205; Claudia Von Pervieux, Senior Counsel, (202) 452–2552, or Laura Bain, Senior Attorney, (202) 736–5546, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

FDIC: Robert Storch, Chief Accountant, Division of Risk Management Supervision, (202) 898–8906, rstorch@fdic.gov; or Nefretete Smith, Counsel, Legal Division, (202) 898–6851, nfsmith@fdic.gov; or Kathryn Marks, Counsel, Legal Division, (202) 898–3896, kmars@fdic.gov.

SUPPLEMENTARY INFORMATION:

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Appendix A: Proposed Changes in Frequency of Collection for the FFIEC 051

Appendix B: Data Items To Be Collected From Institutions With Total Assets Greater Than \$1 Billion on the FFIEC 051

I. Introduction

A. Summary of Proposed Rule

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are inviting comment on this notice of proposed rulemaking (proposed rule) that would implement reduced reporting on the Consolidated Reports of Condition and Income (Call Report)¹ for eligible small insured depository institutions, consistent with section 205 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA).² The OCC and Board also are proposing to implement reduced reporting for eligible uninsured institutions. The proposed rule would expand the number of institutions that may file the FFIEC 051 Call Report, the most streamlined version of the Call Report, and would provide for reduced reporting in the FFIEC 051 Call Report. Through the included Paperwork Reduction Act (PRA) notice, the agencies are proposing to reduce the amount of data required to be reported on the FFIEC 051 Call Report for the first and third calendar quarters.

The proposed reduced reporting would be available to smaller, non-complex institutions, with domestic offices only, that meet the definition of “covered depository institution.” That term generally is defined in the proposed rule to mean an institution that has less than \$5 billion in total consolidated assets, has no foreign offices, is not required to or has not elected to use Subpart E (Internal Ratings-Based and Advanced Measurement Approaches) of the agencies’ regulatory capital rules to calculate its risk-based capital requirements, and is not a large or highly complex institution for purposes of the FDIC’s assessment regulations.

¹ The “Call Report” is the report of condition and income for most insured depository institutions. There currently are three versions of the Call Reports: The Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), the Consolidated Report of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041), and the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than \$1 Billion (FFIEC 051).

² Public Law 115–174, 132 Stat. 1296 (2018).

The proposed rule would provide for reduced reporting by allowing covered depository institutions to file the FFIEC 051 Call Report, with fewer data items required in the reports for the first and third calendar quarters. For covered depository institutions, the principal areas of reduced reporting in the first and third calendar quarters generally would include data items related to categories of risk-weighting of various types of assets and other exposures under the agencies’ regulatory capital rules, fiduciary and related services assets and income, and troubled debt restructurings by loan category. In addition, covered depository institutions that previously were ineligible to file the FFIEC 051 Call Report (*i.e.*, those with total assets of \$1 billion or more) would benefit from the FFIEC 051 Call Report’s less detailed quarterly reporting as compared to other versions of the Call Report.³

B. Background

In their statutory roles of chartering, licensing, supervising, or insuring institutions,⁴ the agencies principally rely on information obtained through on-site examinations of institutions, off-site supervisory activities between examinations, and information reported on an institution’s report of condition. The report of condition is the Call Report for most insured depository institutions.⁵ Call Reports provide the most current financial and statistical data available for identifying areas of focus for supervision and for on-site and off-site examinations. The agencies use Call Report data in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data assist the agencies in their collective missions of promoting the safety and soundness of institutions and the financial system and the protection of consumer financial rights, as well as fulfilling agency-specific missions, such as conducting monetary policy, promoting financial stability, and

³ As compared with other versions of the Call Report, the FFIEC 051 Call Report requires less detailed reporting for data items related to trading, mortgage banking, and securitization activities, as well as less detail for other lending and derivatives activities.

⁴ The OCC charters and supervises national banks and Federal savings associations, and licenses and supervises Federal branches and agencies of foreign banks; the Board supervises state member banks; the FDIC supervises state nonmember banks, state savings associations and state-licensed insured branches, and insures the deposits of all insured depository institutions.

⁵ In addition, U.S. branches and agencies of foreign banks file the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002).

administering federal deposit insurance. The agencies also use Call Report data in evaluating institutions' applications, including interstate merger and acquisition applications. In addition, Call Report data are used by the appropriate agencies to calculate institutions' deposit insurance assessments as well as national banks' and federal savings associations' semiannual assessment fees.

The agencies recognize that institutions devote staffing and resources in order to complete and file Call Reports. In December 2014, the Federal Financial Institutions Examination Council (FFIEC), which is responsible for developing uniform reporting systems (including the Call Reports) for federally supervised financial institutions,⁶ started an initiative to reduce the reporting burden on small institutions. The FFIEC members developed the following guiding principles to evaluate potential additions and deletions of Call Report data items and other revisions to the Call Reports: (1) Data items serve a long-term regulatory or public policy purpose by assisting the FFIEC members in fulfilling their missions; (2) data items to be collected maximize practical utility and minimize, to the extent practicable and appropriate, burden on financial institutions; and (3) equivalent data items are not readily available through other means.

As part of the FFIEC's Call Report burden-reduction initiative, FFIEC members conducted outreach with community banks and industry representatives to better understand what aspects of the Call Report process are significant sources of reporting burden for financial institutions; accelerated the statutorily mandated review of the Call Report;⁷ and evaluated the feasibility and merits of creating a more streamlined Call Report for eligible small institutions.⁸ Based on

the response from community banks, trade associations, and public comments, as well as survey results of FFIEC member Call Report data users, in August 2016, the agencies invited public comment on a proposed streamlined version of the Call Report, the FFIEC 051 Call Report.⁹

The FFIEC 051 Call Report first took effect as of March 31, 2017, and contained approximately 40 percent fewer data items than were included in the FFIEC 041 Call Report, which is the Call Report filed by institutions that have \$1 billion or more in total assets, only have domestic offices, and are not branches of foreign banks. In addition, the initial FFIEC 051 Call Report collected approximately 4 percent of data items less frequently than the FFIEC 041 Call Report in effect at that time.

In June and November 2017, the agencies proposed further reductions to the FFIEC 051 Call Report based on public comments and additional feedback from Call Report data users from the FFIEC members.¹⁰ The agencies also reviewed suggestions for streamlining the Call Reports provided in comment letters submitted during the public notice and comment period for the agencies' review of regulations required by the Economic Growth and Regulatory Paperwork Reduction Act.¹¹ As a result of the further reductions that took effect as of the June 30, 2018, report date, the FFIEC 051 Call Report represents a reduction of approximately 43 percent of the data items and provides for reduced reporting frequency of approximately 6 percent of the data items, as compared to the FFIEC 041 Call Report in use immediately before the implementation of the FFIEC 051 Call Report. Currently, only institutions that have less than \$1 billion in total assets, have only domestic offices, are not branches of foreign banks, and are not required or have not elected to use Subpart E of the agencies' regulatory capital rules (applicable to advanced approaches institutions) to calculate their risk-based capital requirements¹² may use the FFIEC 051 Call Report.

051); 83 FR 939 (January 8, 2018) (burden reduction); 83 FR 15678 (April 11, 2018) (burden reduction).

⁹ 81 FR 54190 (August 15, 2016).

¹⁰ See 82 FR 29147 (June 27, 2017), 82 FR 51908 (November 8, 2017). These *Federal Register* notices also contained proposals to reduce data items in the FFIEC 031 and FFIEC 041 Call Reports.

¹¹ See 12 U.S.C. 3311.

¹² See 12 CFR part 3, subpart E (OCC); 12 CFR part 217, subpart E (Board); 12 CFR part 324, subpart E (FDIC). Generally, an institution is an advanced approaches institution if it has consolidated assets of at least \$250 billion or if it

II. Description of the Proposed Rule

Section 205 of EGRRCPA amended section 7(a) of the Federal Deposit Insurance Act (FDI Act) and requires the agencies to issue regulations that allow for a reduced reporting requirement for a covered depository institution when the institution makes the first and third report of condition for a calendar year. Section 205 of EGRRCPA defines "covered depository institution" as an insured depository institution "that— (i) has less than \$5 billion in total consolidated assets; and (ii) satisfies such other criteria as the [agencies] determine appropriate."¹³

The proposed rule would implement section 205 of EGRRCPA by expanding the number of insured depository institutions eligible to file the FFIEC 051 Call Report and establishing the reduced reporting in the FFIEC 051 Call Report permissible for such institutions for the first and third reports of condition for a year.¹⁴ The OCC and Board also are proposing to establish reduced reporting for certain uninsured institutions under their supervision that meet the proposed criteria.

As discussed below, the agencies propose to implement reduced reporting by expanding the scope of institutions permitted to file the FFIEC 051 Call Report every quarter through the definition of "covered depository institution." As noted, the FFIEC 051 Call Report is the most streamlined version of the Call Report and is familiar to institutions and their Call Report service providers and, therefore could be readily used by covered depository institutions for reduced reporting in the first and third calendar quarters.¹⁵ In particular, because the FFIEC 051 Call

has consolidated on-balance sheet foreign exposures of at least \$10 billion, or if it is a subsidiary of a depository institution, bank holding company, savings and loan holding company, or intermediate holding company that is an advanced approaches banking organization.

¹³ 12 U.S.C. 1817(a)(12)(B).

¹⁴ Under the proposed rule, "report of condition" means the FFIEC 031, FFIEC 041, or FFIEC 051 versions of the Consolidated Reports of Condition and Income (Call Report) or the FFIEC 002 report (Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks), as applicable, and as they may be amended or superseded from time to time in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

¹⁵ Based on June 30, 2018, Call Report data, of the 5,357 institutions with reported total assets below the statutory \$5 billion asset threshold, 4,810 or almost 90 percent of those institutions reported less than \$1 billion in total assets and are currently eligible to file the FFIEC 051 Call Report based on asset size. Approximately 77 percent of the 4,810 institutions with total assets below \$1 billion already file the FFIEC 051 Call Report, and thus would face little to no administrative costs to obtain reduced reporting for the first and third calendar quarters of a year.

⁶ See 12 U.S.C. 3305(c). The agencies are members of the FFIEC. The term "financial institution" in this context means a commercial bank, savings bank, trust company, savings association, building and loan association, homestead association, cooperative bank, or credit union. 12 U.S.C. 3302(3).

⁷ See 12 U.S.C. 1817(a)(11). The agencies are statutorily mandated to conduct a review of the information and schedules in the Call Reports every five years, and reduce or eliminate any information or schedules for which the agencies determine continued collection is not required by law and no longer necessary or appropriate. https://www.ffiec.gov/pdf/2017_Interagency_Review_Consolidated_Reports_Condition_Income.pdf.

⁸ The FFIEC published a series of *Federal Register* notices pursuant to the Paperwork Reduction Act of 1995. See 80 FR 56539 (September 18, 2015) (principles); 81 FR 45357 (July 13, 2016) (burden reduction); 82 FR 2444 (January 9, 2017) (burden reduction and implementation of FFIEC

Report uses the same definitions for data items as other Call Report versions, as well as the same data item identifiers used by the Call Report preparation software products, the agencies anticipate that newly eligible covered depository institutions would be able to file the FFIEC 051 Call Report without the need to make significant changes to their Call Report preparation processes or incur significant cost.¹⁶ Finally, as discussed below in the PRA section, to implement section 205 of EGRRCPA the agencies are proposing to reduce the number of existing FFIEC 051 Call Report data items required to be reported in the first and third calendar quarters by approximately 37 percent. Accordingly, for all covered depository institutions, filing the FFIEC 051 Call Report would provide an immediate reduction in required reporting without substantial administrative costs.

The agencies expect to propose additional reductions to the FFIEC 051 Call Report in connection with the implementation of section 201 of EGRRCPA. Section 201 of EGRRCPA requires the agencies to adopt a community bank leverage ratio in place of the existing regulatory capital rules for qualifying community banks,¹⁷ which the agencies expect would lead to a reduction in the number of regulatory capital data items that would need to be reported by such institutions. The agencies also will continue to review the data collected on the FFIEC 051 Call Report and seek to reduce the reporting frequency of data items from quarterly to semi-annual where practicable.

A. Covered Depository Institution

Section 205 of EGRRCPA defines “covered depository institution” as an insured depository institution “that— (i) has less than \$5 billion in total consolidated assets; and (ii) satisfies such other criteria as the [agencies] determine appropriate.”¹⁸ The proposed rule would define “covered depository institution” as an institution that meets all the following criteria: Has less than \$5 billion in total consolidated assets as reported in its report of condition for the second calendar quarter of the preceding calendar year;

has no foreign offices; is not required to or has not elected to use Subpart E of the agencies’ regulatory capital rules to calculate its risk-based capital requirements; and is not a large or highly complex institution for purposes of the FDIC’s assessment regulations. The OCC’s definition would also scope out institutions that file the FFIEC 002 report of condition. In addition, the FDIC’s definition would exclude state-licensed insured branches of foreign banks. These other non-asset-size criteria are identical to the current eligibility criteria for institutions with less than \$1 billion in total assets to file the FFIEC 051 Call Report except for the criterion related to whether the institution is large or highly complex under the FDIC’s assessment regulations.

The agencies would allow reduced reporting for “insured depository institutions”, as such term is defined in section 3 of the FDI Act, 12 U.S.C. 1813, and as required by section 205 of EGRRCPA. The OCC and Board also would extend reduced reporting to certain uninsured institutions that they supervise and that would otherwise meet the same criteria.¹⁹ Greater parity in the reporting of insured and uninsured national banks and state member banks would be appropriate in light of the similarities between the information used to review the activities of such insured and uninsured institutions. In addition, some uninsured institutions with total assets of less than \$1 billion currently file the FFIEC 051 Call Report and, therefore, may continue to use this version of the Call Report under the proposed rule.

Asset Threshold

The proposed rule would define “total consolidated assets” as total assets as reported in an institution’s report of condition. An institution would determine whether it meets the asset-size criterion and is eligible to file the FFIEC 051 Call Report based on the total assets it reported in its report of condition (Schedule RC, Item 12 in the Call Reports), which is calculated on a consolidated basis, in the institution’s report of condition for the second calendar quarter of the previous

calendar year. This approach is consistent with the current FFIEC 051 Call Report instructions for determining eligibility to file the FFIEC 051 Call Report based on asset size.²⁰

This approach should allow an institution sufficient time to address any accounting or reporting systems changes or other preparation process changes that may be needed if the institution wants to take advantage of, or is no longer eligible for, filing the FFIEC 051 Call Report with its reduced reporting in the following calendar year. For example, an institution that meets the asset-size criterion based on its report of condition as of June 30, 2018, may be eligible to file the FFIEC 051 Call Report for the entire 2019 calendar year, even if its assets increase to \$5 billion or more later in 2018 or 2019, provided it also continues to meet the non-asset-size criteria discussed below. If the same institution reports \$5 billion or more in total assets on its Call Report as of June 30, 2019, the institution could continue to file the FFIEC 051 Call Report for report dates through December 31, 2019 (based on its total assets as of June 30, 2018), including reduced reporting in the third calendar quarter of 2019 as long as it continued to meet the non-asset-size criteria. However, because the institution exceeded the asset-size criterion as of June 30, 2019, the institution would be ineligible to file the FFIEC 051 Call Report in the 2020 calendar year.

Question 1: What are the advantages and disadvantages of institutions measuring total assets using the approach discussed above? Should the agencies use average total assets over a specified period rather than total assets on a single reporting date? Is another methodology more appropriate to measure total assets for purposes of the asset-size criterion? If so, what methodology is more appropriate and why?

Question 2: The agencies are not proposing to immediately disqualify an institution from using reduced reporting if it exceeds \$5 billion in total assets, regardless of how the institution crossed the asset threshold, including through a merger or acquisition. Is this appropriate and why?

Other Eligibility Criteria

The agencies are also proposing that an institution satisfy other criteria to be eligible for reduced reporting, consistent with section 205. These other criteria are based on an institution’s

¹⁶ Based on June 30, 2018 Call Report data, 547 institutions that reported total assets of \$1 billion or more, but less than \$5 billion, could be eligible to file the FFIEC 051 Call Report in 2019 under the proposed rule.

¹⁷ A qualifying community bank is defined as a depository institution or depository holding company with total consolidated assets of less than \$10 billion and a risk profile deemed appropriate by the agencies. Under section 201, the agencies may determine whether a community bank qualifies based on consideration of certain risk factors.

¹⁸ 12 U.S.C. 1817(a)(12)(B).

¹⁹ The FDIC only supervises insured state nonmember banks, insured state savings associations, and insured state-licensed branches. Currently, no uninsured Board-regulated institution is eligible to file the FFIEC 051 Call Report, but under the proposal one uninsured Board-regulated institution would meet the proposed criteria for eligibility to file the FFIEC 051 Call Report. The OCC supervises 49 uninsured institutions that currently are eligible to file the FFIEC 051 Call Report, which would increase to 50 under the proposed rule.

²⁰ See FFIEC 051 instructions, available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC051_201806_i.pdf.

international activities, its treatment under the agencies' regulatory capital rules, and its treatment under the FDIC's deposit insurance assessment regulations. These non-asset-size criteria are identical to the current eligibility criteria for institutions with less than \$1 billion in total assets to file the FFIEC 051 Call Report with the exception of the criterion related to treatment under the FDIC's assessment regulations. Unlike the asset-size criterion, which is determined as of the report of condition filed for the second calendar quarter (as of June 30) of the prior calendar year, an institution would determine in each calendar quarter whether it meets all of these non-asset-size criteria. If in any calendar quarter an institution no longer meets all of these other criteria, then the institution would become ineligible to file the FFIEC 051 Call Report beginning the quarter in which the institution failed to meet one of the non-asset-size criteria. In contrast to failing the asset-size criterion, failing to meet the non-asset-size criteria often reflects a significant change in the operations of an institution as a result of deliberate planning, such as opening a foreign branch or becoming subject to a different approach under the agencies' regulatory capital rules. Therefore, in contrast to the asset-size criterion, the proposed rule does not include a grace period for non-asset-size criteria.

International Activities. The proposal would exclude from the definition of "covered depository institution" an institution that has foreign offices or that is an insured branch of a foreign bank. These criteria are identical to the current eligibility criteria that exclude these institutions from being eligible to file the FFIEC 051 Call Report. Foreign offices would be defined as: Branches or consolidated subsidiaries in foreign countries²¹ unless located on a U.S. military facility; international banking facilities as defined under 12 CFR 204.8; majority-owned Edge Act and Agreement²² subsidiaries; and branches or consolidated subsidiaries in U.S. territories if the bank is chartered or headquartered in a U.S. state or the District of Columbia. Insured branches of foreign banks would be those branches defined in section 3(s) of the FDI Act, 12 U.S.C. 1813(s), which file the FFIEC 002 version of the report of condition. The agencies believe it is appropriate to exclude these institutions

from the proposal because the nature of these international activities requires more comprehensive and detailed financial information to effectively supervise and monitor them.²³ This comprehensive information related to foreign activities is required to be reported in the FFIEC 002 report of condition. For example, institutions that have foreign offices may present risks, such as currency risk and country-specific risks, for which supervisors require additional financial information to ensure appropriate monitoring and supervision. Permitting these institutions to receive reduced reporting on the FFIEC 051 Call Report would impair the agencies' existing supervision of these institutions.

Advanced Approaches Institutions. The proposal would exclude from the definition of "covered depository institution" an institution that is required to, or has elected to, use Subpart E of the agencies' regulatory capital rules to calculate its risk-based capital requirements (advanced approaches institution). In general, an advanced approaches institution is an institution that has consolidated total assets equal to \$250 billion or more, has consolidated total on-balance sheet foreign exposure equal to \$10 billion or more, or is a subsidiary of a depository institution or holding company that uses the advanced approaches to calculate its total-risk weighted assets.²⁴ Advanced approaches institutions currently are precluded from filing the FFIEC 051 Call Report. Advanced approaches institutions generally must calculate their regulatory capital requirements under the advanced approaches, which relies in part on internal models and complex formulas, and are subject to additional requirements such as the supplementary leverage ratio.²⁵ While advanced approaches holding companies typically have total assets of more than \$250 billion, their depository institution subsidiaries also generally are subject to the advanced approaches, some of which may have total assets of less than \$5 billion. Some of these subsidiaries often engage in specialized or highly complex activities that require more comprehensive and detailed financial

information to ensure effective supervision and monitoring.

Institutions Assessed as Large or Highly Complex by the FDIC. Finally, the agencies propose to exclude from the definition of "covered depository institution" an insured depository institution that is assessed as a "large institution" or "highly complex institution," as defined in the FDIC's deposit insurance assessment regulations.²⁶

Under the FDIC's assessment regulations, large and highly complex institutions are assessed using combined CAMELS²⁷ ratings and certain forward-looking financial measures to assess the risks such institutions pose to the Deposit Insurance Fund.²⁸ The FDIC uses the data reported by a large or highly complex institution on either the FFIEC 031 or FFIEC 041 Call Report, as appropriate, to calculate the institution's assessment rate. For example, the FDIC uses data on Schedule RC-O regarding higher-risk assets, which are not reported on the FFIEC 051 Call Report, to calculate financial ratios used to determine a large or highly complex institution's assessment rate.

Under the FDIC's assessments regulations, an institution that increases or decreases in asset size is reclassified as a small institution, large institution, or highly complex institution generally after such institution reports assets of less than \$10 billion, \$10 billion or more, or more than \$50 billion,

²⁶ See 12 CFR 327.8(e), (f), (g) and (s). For the purposes of the FDIC's assessment regulations, a "small institution" generally is an insured depository institution with less than \$10 billion in total assets. Generally, a "large institution" is an insured depository institution with more than \$10 billion in total assets or that is treated as a large institution for assessment purposes under section 327.16(f). Generally, a "highly complex institution" is: (i) An insured depository institution (excluding a credit card bank) that has had \$50 billion or more in total assets for at least four consecutive quarters, is controlled by a U.S. parent holding company that has had \$500 billion or more in total assets for four consecutive quarters, or is controlled by one or more intermediate U.S. parent holding companies that are controlled by a U.S. holding company that has had \$500 billion or more in assets for four consecutive quarters; or (ii) a processing bank or trust company. However, an institution with assets between \$5 billion and \$10 billion may request treatment for deposit insurance assessments as a large institution, and few institutions have made this request to date. See 12 CFR 327.16(f).

²⁷ A financial institution is assigned a "CAMELS" composite rating based on an evaluation and rating of six essential components of an institution's financial condition and operations. These component factors address the: Adequacy of capital (C); quality of assets (A); capability of management (M); quality and level of earnings (E); adequacy of liquidity (L); and sensitivity to market risk (S).

²⁸ See 12 CFR 327.16(b) and (c); 76 FR 10672, 10688–10698 (February 25, 2011).

²¹ The proposed rule would define "foreign country" to refer to one or more foreign nations, and include the overseas territories, dependencies, and insular possessions of those nations and of the United States. This definition also is used in the Board's Regulation K, 12 CFR part 211.

²² 12 CFR 211.1(c)(2) and (3).

²³ Depository institutions with foreign offices are currently required to file the FFIEC 031 Call Report and thus are not currently eligible to file the FFIEC 051. Branches of foreign banks (both Federally and State-licensed), are required to file the FFIEC 002 version of the report of condition.

²⁴ See 12 CFR 3.100(b) (OCC); 217.100(b) (Board); 324.100(b) (FDIC).

²⁵ See 12 CFR part 3, subpart E and 12 CFR 3.10(c)(4) (OCC); 12 CFR part 217, subpart E and 12 CFR 217.10(c)(4) (Board); 12 CFR part 324, subpart E and 12 CFR 324.10(c)(4) (FDIC).

respectively, for four consecutive quarters.²⁹ Because reclassification requires that the institution report above or below a certain asset-based threshold for four consecutive quarters, there may be a period of time in which an institution would otherwise be eligible for reduced reporting by filing the FFIEC 051 Call Report because it met the asset-size criterion, but is assessed as a large or highly complex institution. Although this situation is likely to be rare, without this criterion such institution would be eligible to file the FFIEC 051 Call Report with its reduced reporting under the proposed rule. For example, an institution that had been reporting more than \$10 billion in assets and was assessed as a “large institution” as of March 31, 2018, could decrease in size such that its total assets, as of June 30, 2018, were below \$5 billion. If that institution met the other non-asset-size criteria discussed above, then that institution could be eligible to file the FFIEC 051 Call Report in the 2019 calendar year, including reduced reporting in the first and third calendar quarters of 2019. However, such an institution would continue to be assessed as a large institution and would not be reclassified as a “small institution” for deposit insurance assessments until it reported total assets below \$10 billion for four consecutive quarters. Therefore, as long as the institution continues to be assessed as a “large institution,” it would be ineligible to file the FFIEC 051 Call Report, including its reduced reporting, until it was reclassified for deposit insurance assessments and assessed as a “small institution” (*i.e.*, beginning with the third calendar quarter in 2019).

This proposed eligibility criterion ensures that an institution that meets the asset-size criterion based on its report of condition for the second calendar quarter of a previous year, but is treated as a large or highly complex institution for assessment purposes, will continue to file the FFIEC 031 or FFIEC 041 Call Report, as appropriate, which contain the data items required by the FDIC to calculate the institution’s assessment rate.

Question 3: Do the other criteria proposed by the agencies set an appropriate scope for institutions eligible for reduced reporting? Are there additional institutions or classes of

institutions meeting the asset-size criterion that the agencies should consider making eligible to use reduced reporting and, if so, why? Are there additional institutions or classes of institutions that the agencies should consider making ineligible for reduced reporting and, if so, why?

B. Reduced Reporting

The agencies propose to implement the reduced reporting required by section 205 of EGRRCPA by first allowing the broader group of covered depository institutions to file the FFIEC 051 Call Report each calendar quarter. The proposed rule would extend eligibility to file the FFIEC 051 Call Report to all covered depository institutions with \$1 billion or more, but less than \$5 billion, in total assets and that meet the non-asset-size criteria. As discussed in the PRA section below, the agencies propose revising the eligibility criteria for filing the FFIEC 051 Call Report to match the criteria to qualify as a covered depository institution under the proposal. As a result, this approach would provide significant relief through reduced reporting to covered depository institutions that currently are required to file the FFIEC 041 Call Report. For example, the current version of the FFIEC 051 Call Report includes 1,147 reportable data items in each of the first and third calendar quarters, compared with 2,029 reportable data items required on the FFIEC 041 Call Report in those calendar quarters, which is the version of the Call Report currently completed by most institutions with total assets of \$1 billion or more, but less than \$5 billion. Under the proposal, covered depository institutions with total assets between \$1 billion and less than \$5 billion would be eligible to file the FFIEC 051 Call Report in each calendar quarter of a calendar year (provided that they continue to meet the non-asset-size eligibility criteria), which would provide substantial reporting relief for these institutions compared to the FFIEC 041 Call Report currently used by most of those institutions.

In addition to expanding the number of institutions eligible to file the FFIEC 051 Call Report, the agencies propose to implement the reduced reporting required by section 205 of EGRRCPA by further reducing the reporting required on the FFIEC 051 Call Report for all covered depository institutions in the first and third calendar quarters. The agencies propose to achieve this by reducing the frequency of reporting in the FFIEC 051 Call Report for approximately 37 percent of the existing data items in this report—from quarterly to semiannual—as described in the PRA

section below. The principal areas of reduced reporting in the first and third quarters include data items related to categories of risk-weighting of various types of assets and other exposures under the agencies’ regulatory capital rules, fiduciary and related services assets and income, and troubled debt restructurings by loan category. This reduction in frequency for certain data items would provide all covered depository institutions, including those with less than \$1 billion in total assets that currently file the FFIEC 051 Call Report, with further reduced reporting in the first and third calendar quarters.

Question 4: Is the agencies’ proposal to implement reduced reporting by expanding eligibility to file the FFIEC 051 Call Report appropriate? If not, what would be a more appropriate way to implement Section 205’s reduced reporting requirement, and why?

C. Reservation of Authority

The proposed rule includes a reservation of authority that would allow the appropriate Federal banking agency, in consultation with the applicable state chartering authority, and on an institution-specific basis, to require a covered depository institution to file the FFIEC 041 Call Report, or any successor thereto, in any calendar quarter or quarters in which the covered depository institution would otherwise be eligible to file the FFIEC 051 Call Report, based on the appropriate Federal banking agency’s determination that such filing is necessary for supervisory purposes. In making such a determination, the appropriate Federal banking agency may consider criteria including whether the institution is significantly engaged in one or more complex, specialized, or other higher-risk activities, such as those for which limited information is reported in the FFIEC 051 Call Report compared to the FFIEC 041 Call Report. For example, if a covered depository institution has a considerable concentration of either trading assets or mortgage banking activities, the appropriate Federal banking agency may seek additional information from that institution by requiring the institution to file the FFIEC 041 Call Report. Generally, a covered depository institution’s safety and soundness, size, complexity, activities, risk profile, and other factors, such as an increase in a covered depository institution’s asset size resulting from a merger or acquisition, also may be taken into consideration.

If, after considering such factors, the appropriate Federal banking agency determines that the covered depository institution should be required to file the

²⁹ Under the FDIC’s assessment regulations, an insured depository institution can be reclassified as a highly complex institution because they meet the definition of a “processing bank or trust company.” Under that definition, an insured depository institution would need to, among other things, have total assets of \$10 billion or more for at least four consecutive quarters. See 12 CFR 327.8(s).

FFIEC 041 Call Report, the appropriate Federal banking agency would provide written notice to the covered depository institution prior to the filing requirement's becoming effective. Any covered depository institution eligible to file the FFIEC 051 Call Report, but that is required by its appropriate Federal banking agency to file the FFIEC 041 Call Report under the reservation of authority, would be required to continue to file the FFIEC 041 Call Report until the appropriate Federal banking agency provides written notice to the covered depository institution that it is no longer required to file the FFIEC 041 Call Report. The justification for use of the reservation and its terms will also be provided in the notice.

This authority would provide the agencies with the flexibility to require an institution to report and disclose additional Call Report data if warranted by an institution's individual circumstances and risk profile. Consistent with current supervisory practices and experience, the exercise of the reservation of authority generally would be a decision made by a member of the appropriate agency's senior management and would not be at the discretion of examination staff.

III. Expected Impact of the Proposed Rule

The proposed rule is expected to broaden the number of institutions that may file the FFIEC 051 Call Report and be eligible for reduced reporting in the first and third calendar quarters.³⁰ Based on June 30, 2018, Call Report data, 5,357 institutions reported total assets of less than \$5 billion. Of these, 547 institutions reported total assets of \$1 billion or more, but less than \$5 billion, and are currently ineligible to file the FFIEC 051 Call Report in 2019, but would meet the definition of "covered depository institution" under the proposed rule. For 533 of these 547 institutions, this would mark the first time such institution is eligible to file the FFIEC 051 Call Report.³¹ Overall,

each of the 5,357 institutions that reported less than \$5 billion in total assets in their Call Report as of June 30, 2018, and that would qualify as a "covered depository institution" under the proposed rule, could file the FFIEC 051 Call Report and report approximately 37 percent fewer data items in the first and third calendar quarters than in the current FFIEC 051 Call Report.

The agencies estimate the average quarterly reporting burden hours per institution for the current FFIEC 041 and FFIEC 051 Call Reports are 64.49 hours and 52.31 hours, respectively, for institutions that would become eligible to file the FFIEC 051 Call Report in 2019. Thus, each covered depository institution that switches from filing the current FFIEC 041 Call Report to the FFIEC 051 Call Report (amended as proposed in the PRA section) is expected to save, on average, 12.18 hours per quarter. Assuming that newly eligible covered depository institutions would file the FFIEC 051 Call Report at the same rate as currently eligible institutions file the FFIEC 051 Call Report (77 percent), the agencies estimate a total reporting burden reduction of 5,130 hours per quarter for these institutions.³²

The proposed rule also provides for reduced reporting in the first and third calendar quarters for covered depository institutions. As discussed below in the PRA section, the agencies are proposing to remove approximately 37 percent of data items from being reported in the FFIEC 051 Call Report for covered depository institutions in the first and third calendar quarters. The principal areas of reduced reporting in the first and third calendar quarters include data items related to categories of risk-weighting of various types of assets and other exposures under the agencies' regulatory capital rules, fiduciary and related service assets and income, and troubled debt restructurings by loan category. These data items are currently collected every calendar quarter on the FFIEC 051 Call Report. Every covered depository institution that files the FFIEC 051 Call Report would experience a reduction in reporting for the first and third calendar quarters as a result of this aspect of the proposed rule. The agencies estimate that the

proposed removal of approximately 37 percent of data items from the reporting requirements of covered depository institutions in the first and third calendar quarters would reduce the average quarterly reporting burden by 1.18 hours for the 3,714 institutions that filed the FFIEC 051 Call Report for the June 30, 2018, report date. This represents a total estimated burden reduction of 4,383 hours per quarter for these institutions.³³

As also discussed below in the PRA section, the agencies are proposing to add certain data items to the FFIEC 051 Call Report for covered depository institutions with \$1 billion or more, but less than \$5 billion, in total assets. Based on Call Report data as of June 30, 2018, 533 institutions with \$1 billion or more, but less than \$5 billion, currently file the FFIEC 041 Call Report, but would meet the definition of "covered depository institution" under the proposed rule. Because these 533 institutions already report these data items on the FFIEC 041 Call Report, the proposed addition of these data items to the FFIEC 051 Call Report for these institutions would not represent an increase in reporting burden as these institutions would experience an overall net decrease in reporting burden by switching to the FFIEC 051 Call Report. Furthermore, only one of these items would be collected quarterly; the other items would be collected semiannually or annually. In addition, these data items would not be required to be completed by institutions with less than \$1 billion in total assets that file the FFIEC 041 or FFIEC 051 Call Reports, so institutions that are currently eligible to file the FFIEC 051 Call Report would not be affected by the addition of these items.

Based on the agencies' total hourly wage rate for Call Report preparation of \$117 and the reduction in reporting hours resulting from the proposed reduced reporting discussed in the PRA section, it is estimated that reporting costs could be \$600,210 less each quarter, on average, for the 547 eligible institutions that reported \$1 billion or more, but less than \$5 billion, in total assets on their June 30, 2018, Call Report.³⁴ Also, the agencies estimate that reporting costs could be \$512,811 less each quarter, on average, for the 3,714 institutions that filed the FFIEC 051 Call Report for June 30, 2018.³⁵ In sum, the proposed changes to the FFIEC 051 Call Report that are discussed below

³⁰ The proposed rule allows reduced reporting for covered depository institutions, but does not mandate that any institution file the FFIEC 051 Call Report. Based on June 30, 2018, Call Report data, approximately 77 percent of currently eligible institutions that reported total assets of less than \$1 billion elected to file the FFIEC 051 Call Report.

³¹ Fourteen institutions currently file the FFIEC 051 Call Report, but reported assets of \$1 billion or more, but less than \$5 billion on their Call Report as of June 30, 2018. Under the current Call Report instructions, these institutions would not be eligible to file the FFIEC 051 Call Report in 2019. However, under the proposed rule, these institutions would meet the definition of "covered depository institution" and, therefore, could continue to file the FFIEC 051 Call Report in 2019 (assuming they continue to meet the non-asset-size criteria).

³² Calculated as 12.18 burden hours multiplied by 77 percent of 547 institutions that would be eligible under the proposed rule. Covered depository institutions could file the FFIEC 051 Call Report at a higher rate than the current 77 percent participation level, particularly due to the opportunity under the proposed rule to obtain additional reporting relief in the first and third calendar quarters.

³³ 1.18 hours * 3,714 FFIEC 051 Call Report filers for the report dated June 30, 2018.

³⁴ \$117 per hour * 5,130 hours per quarter.

³⁵ \$117 per hour * 4,383 hours per quarter.

in the PRA section could reduce annual reporting costs by an estimated \$4,452,084, or 0.008 percent of total annualized non-interest expenses, for institutions that reported total assets of less than \$5 billion on the Call Report as of the June 30, 2018, and either filed the FFIEC 051 Call Report, or filed the FFIEC 041 Call Report but are expected to file the FFIEC 051 Call Report, under the proposed rule beginning in 2019.³⁶

Finally, the proposed rule could impose some minor additional regulatory costs, in the first year of implementation, that are associated with changes to internal systems or processes for affected institutions that are not currently eligible for, or do not currently file, the FFIEC 051 Call Report. The agencies expect that these additional costs should be relatively low as the FFIEC 051 Call Report shares defined terms and data item identifiers with the other Call Reports, so institutions that switch to the FFIEC 051 Call Report should not necessitate significant reporting system changes. However, these costs are also difficult to estimate accurately with available information because they depend upon the individual characteristics of each institution, its recordkeeping and reporting systems, and the decisions of its senior management.

Question 5: The agencies invite comments on all aspects of the information provided in this Expected Impact section. In particular, would this proposal have any significant effects on institutions that the agencies have not identified?

Question 6: Are there other factors or aspects of regulatory reporting that the agencies should consider in assessing the impact of the proposed rule?

IV. Alternatives Considered

The agencies recognize that while the statutory mandate is to allow for reduced reporting in the first and third calendar quarters for covered depository institutions, the implementation of section 205 of EGRRCPA presents an additional opportunity to provide broader regulatory relief to smaller, less complex institutions that are currently required to file the FFIEC 041 Call Report because they have \$1 billion or more in total assets. In developing the proposal, the agencies sought to reduce the reporting burden on institutions with total consolidated assets of less than \$5 billion, consistent with the mandate in section 205, while also ensuring that the agencies' data needs

for institutions in the size range would continue to be met.

The agencies considered two alternative approaches to implementing section 205 as part of the development of the proposed rule. In considering these alternatives, the agencies reviewed prior PRA notices in which Call Report changes were discussed and comments were addressed. Additionally, the agencies considered comments received on the Call Report burden reduction initiative announced in December 2014 that resulted in the creation of the FFIEC 051 Call Report. The agencies note that the FFIEC Call Report burden-reduction initiative involved significant outreach to community banks and to users of Call Report data and that the guiding principles developed as part of the initiative informed the development of the approach taken in this proposal.

Alternative 1: Identify data items for reduced reporting on the FFIEC 041 and FFIEC 051 Call Reports. The agencies considered reviewing the FFIEC 041 and FFIEC 051 Call Reports to identify data items that could be reported on a less frequent basis by institutions with less than \$5 billion in total assets. A possible advantage to this approach is that it might have been easier to present the various items proposed for reduced reporting. However, the agencies also recognized that the existing FFIEC 051 Call Report in its entirety already requires the reporting of significantly fewer data items than the FFIEC 041 Call Report. Therefore, expanding institutions' eligibility to file the FFIEC 051 Call Report was determined to be the more beneficial approach with respect to institutions with total assets of \$1 billion or more, but less than \$5 billion, because it would provide those institutions with immediate and significant reductions in the overall number of data items reported. In addition, re-reviewing every data item on the FFIEC 041 Call Report would require significantly more time and would delay the implementation of reduced reporting in comparison to proposing to use the existing FFIEC 051 Call Report.

Alternative 2: Create a new, separate Call Report form for "covered depository institutions." The agencies also considered creating a new, separate Call Report for covered depository institutions that would provide for reduced reporting in the first and third calendar quarters. The agencies believed that, while such an approach may appear simple to do, creating an entirely separate form only two years after the implementation of the new FFIEC 051 Call Report could lead to confusion about which form to file, especially

because the criteria for filing the form likely would have been very similar to the current eligibility criteria for filing the FFIEC 051 Call Report. Also, this approach could result in institutions having to reorganize their reporting systems and processes to accommodate their use of a new form and incur costs and administrative burden in doing so. Because the proposed rule is intended to reduce burden on smaller, less complex institutions, the agencies determined that producing a new Call Report would not be the most efficient option. Additionally, the agencies recognized that they would require significant time to develop and publish an entirely new Call Report form, which would delay the regulatory reporting relief proposed in the rule.

V. Related Agency-Specific Revisions

A. Board

The Board does not currently have a rule that sets forth the report of condition filing requirements of state-chartered banks that are members of the Federal Reserve System (state member banks), and instead relies on its statutory authority under section 9 of the Federal Reserve Act (FRA) and section 7(a)(3) of the FDI Act to require state member banks to provide reports of condition. In light of section 205 of EGRRCPA's requirement that the Board issue a rule that allows for reduced reporting by certain eligible Board-supervised insured depository institutions, the Board proposes to add a new subpart to Regulation H, which governs the membership of state banking institutions in the Federal Reserve System. The Board proposes to add new subpart K to Regulation H, which will incorporate the rule text implementing section 205. In addition to insured state member banks, the Board also supervises uninsured state member banks, such as nondepository trust companies. The Board requires such institutions to use the Call Report to submit financial data. The Board's proposed rule also would extend the use of the reduced reporting requirement to uninsured state member banks if they meet the criteria for covered depository institutions identified in the rule.

The Board also proposes to include in new subpart K, pursuant to its statutory authority under section 9 of the FRA and section 7(a)(3) of the FDI Act, subsection 208.122 that will set forth the general requirement that all state member banks file consolidated reports of condition and income in accordance with the instructions for these reports.

Question 7: Is the proposed extension of the reduced reporting requirement to

³⁶ \$117 per hour * [5,130 hours per quarter + 4,383 hours per quarter] * 4 quarters per year.

include uninsured state member banks that meet the same eligibility criteria appropriate? Would any of the proposed exclusionary criteria for covered depository institutions be problematic for uninsured state member banks?

B. FDIC

The FDIC proposes to amend Part 304 of its Rules and Regulations, by restructuring the regulation and creating a “Subpart A” and “Subpart B.” In Subpart A, the FDIC would put the current text of Part 304, with limited technical, non-substantive changes. The technical, non-substantive changes include: (1) Updating the address and contact information in section 304.2; (2) clarifying that sections 304.3(a) and (b) apply to insured depository institutions; (3) updating references in section 304.3(a) to the various Call Reports to include the recently implemented FFIEC 051 Call Report; and (4) updating the references to FDIC divisions to reflect changes in nomenclature. In Subpart B, the FDIC proposes to include the regulatory text implementing Section 205.

The FDIC believes that the proposed approach to restructuring Part 304 will incorporate the entirety of the new, substantive text of the proposed rule that implements Section 205 of the EGRCPA with minimal effect to the current text. Thus, a state nonmember bank or state savings association that believes it qualifies as a covered depository institution would be able to make that determination based on the regulatory text contained in Subpart B.

Question 8: Is the proposed restructuring of Part 304 helpful and clear for users to understand? Why or why not?

C. OCC

Insured depository institutions identified in section 205 include insured Federal branches of foreign banks, as defined under section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)). While these insured Federal branches are included in the statute, they currently file the FFIEC 002 report of condition. The FFIEC 002 is used by insured and uninsured state and Federal branches and agencies of foreign banks and contains a significant amount of information relating to the operations and foreign connections of these entities. As described above in the *International Activities* section, this additional information is necessary for the OCC to supervise insured Federal branches, and a reduced reporting option would not be appropriate given the nature of their activities. Therefore, the OCC’s proposed rule would include

a criterion excluding institutions that file the FFIEC 002 report of condition from being eligible for reduced reporting.

In addition to insured depository institutions, which are specifically identified in section 205, the OCC also supervises a number of uninsured national banks, such as trust banks. The OCC has permitted some of these institutions to use the Call Report to submit financial data and to use the existing FFIEC 051 if they meet the current eligibility requirements for filing that Call Report. Therefore, the OCC’s proposed rule would also extend the use of the reduced reporting requirement to uninsured national banks if they meet the criteria for covered depository institutions identified in the rule.

Question 9: Is the proposed extension of the reduced reporting requirement to include uninsured national banks supervised by the OCC appropriate? Would any of the proposed exclusionary criteria for covered depository institutions be problematic for uninsured national banks supervised by the OCC?

VI. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the proposed rule affect “collections of information” within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The agencies reviewed the proposed rule, including the changes to the FFIEC 051 Call Report that are discussed in this PRA section, and determined that it would result in changes to certain reporting requirements that have been previously cleared by the OMB under various control numbers. The proposed rule would expand the eligibility to file the FFIEC 051 Call Report to certain institutions with \$1 billion or more, but less than \$5 billion, in total assets that meet other eligibility criteria. In addition to the expanded eligibility to file this report, the agencies also are proposing other revisions to the FFIEC 051 Call Report, as discussed under Current Actions below. These revisions to the FFIEC 051 Call Report are proposed to take effect as of the March 31, 2019, report date. The agencies are proposing to extend for three years, with revision, these information collections.

Current Actions

Overview

First, as described above, the agencies are proposing to revise the criteria for determining whether an institution is eligible to file the FFIEC 051 Call Report to match the criteria in the proposed rule. While the proposed rule provides for reduced reporting on reports filed for the first and third calendar quarters, the agencies also propose to revise the eligibility criteria to extend to all eligible institutions with less than \$5 billion in total assets that meet other criteria in the rule the option to file the FFIEC 051 Call Report for all four calendar quarters. Therefore, if an institution is eligible to file the FFIEC 051 Call Report for the first and third calendar quarters pursuant to the rule, the institution also could file the FFIEC 051 Call Report for the second and fourth calendar quarters provided the institution continues to meet the non-asset-size criteria. The revisions to the filing eligibility would be made in the General Instructions section of the Call Report instructions and would include the increase in the asset-size threshold to less than \$5 billion in total assets as well as the addition of a criterion to exclude institutions that are treated as large or highly complex institutions for deposit insurance assessment purposes. The Call Report instructions currently provide that, beginning with the first quarterly report date following the effective date of a business combination, a transaction between entities under common control, or a branch acquisition that is not a business combination involving an institution and one or more other depository institutions, the resulting institution, regardless of its size prior to the transaction, must file the FFIEC 041 Call Report if its consolidated total assets after the consummation of the transaction are \$1 billion or more. The agencies are proposing to remove this provision from the instructions, but the resulting institution may be required to file the FFIEC 041 Call Report consistent with the reservation of authority in the rule. All of the proposed FFIEC 051 Call Report eligibility criteria, along with justifications, are provided above in section II.A. of the Supplementary Information section (“Covered Depository Institution”). Based on June 30, 2018, Call Report data, there were 547 institutions with \$1 billion or more, but less than \$5 billion in total assets that likely would meet the definition of “covered depository institution” in the proposed rule.

Second, the agencies are proposing to revise the reporting frequency and

applicability of certain data items in the FFIEC 051 Call Report. Specifically, the agencies are proposing to reduce the reporting frequency of certain existing data items in the FFIEC 051 Call Report from quarterly to semiannual reporting. This proposal would reduce reporting in the first and third calendar quarters by 502 data items³⁷ or a reduction of approximately 37 percent of the data items included in the June 30, 2018, FFIEC 051 Call Report.

Third, for covered depository institutions with total assets of \$1 billion or more, but less than \$5 billion, the agencies are proposing to add to the FFIEC 051 Call Report certain data items that these institutions currently report on the FFIEC 041 Call Report, but generally with reduced reporting frequency. The agencies are proposing to add these items to meet the agencies' data needs and assist the agencies in fulfilling their missions of ensuring the safety and soundness of depository institutions and the financial system, as well as the protection of consumer financial rights and providing deposit insurance.

Changes to the Frequency of Data Collection in the FFIEC 051 Call Report

The agencies are proposing, for the reasons explained below, to reduce the frequency of the following items on the FFIEC 051 Call Report from quarterly to semiannual (*i.e.*, these items would be reported in the June 30 and December 31 Call Reports only):

- Schedule RI, Income Statement, Memorandum item 14. Institutions currently report the amount of other-than-temporary impairment losses on certain debt securities that are recognized through earnings in this Memorandum item. The agencies do not believe it is necessary for institutions eligible to file the FFIEC 051 Call Report to continue to provide this amount on a quarterly basis, as most of these institutions are not currently reporting losses in this item given current economic conditions. The agencies note that changes in the accounting for credit losses will eliminate the need for this item for an ever increasing percentage of institutions through year-end 2022. In the interim, the agencies can review other-than-temporary impairment information for the first and third calendar quarters, as necessary, as part of on-site examinations or through other periodic monitoring.

- Schedule RC–C, Part I, Loans and Leases, Memorandum items 1.a through 1.f, and Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, Memorandum items 1.a through 1.f. Institutions currently report breakdowns of troubled debt restructurings by loan category, separately for those restructurings in compliance with their modified terms in Schedule RC–C and those restructurings that are past due 30 days or more or in nonaccrual status in Schedule RC–N. Institutions would still be required to report the totals for their troubled debt restructurings in Schedule RC–C, Part I, Memorandum item 1.g, and Schedule RC–N, Memorandum item 1.g, on a quarterly basis. The agencies do not believe it is necessary for institutions eligible to file the FFIEC 051 Call Report to continue to provide the breakdowns of troubled debt restructurings on a quarterly basis. The agencies can review information on troubled debt restructurings by loan category for the first and third quarters as part of on-site examinations or through other periodic monitoring, as necessary.

- Schedule RC–E, Deposit Liabilities, Memorandum item 1.a. Institutions currently report the total amount of Individual Retirement Account and Keogh plan deposits in this Memorandum item. The agencies do not believe it is necessary for institutions eligible to file the FFIEC 051 Call Report to continue to provide these amounts on a quarterly basis as this item generally does not fluctuate significantly between quarters for most eligible institutions. The agencies can review information on these deposits for the first and third quarters as part of on-site examinations or through other periodic monitoring, as necessary.

- Schedule RC–E, Memorandum item 5. Institutions currently report whether they offer consumer deposit products in this Memorandum item. The agencies do not believe it is necessary for institutions eligible to file the FFIEC 051 Call Report to continue to provide this information on a quarterly basis, as this item does not change frequently for most eligible institutions.

- Schedule RC–M, Memoranda, items 8.a through 8.c. In these items, institutions currently report their primary internet website address, addresses for other websites used to solicit deposits, and alternate trade names used by the institutions. The agencies do not believe it is necessary for institutions eligible to file the FFIEC 051 Call Report to continue to provide this information on a quarterly basis as these items do not change frequently for most eligible institutions.

- Schedule RC–R, Part II, Regulatory Capital Risk-Weighted Assets, items 1 through 25, columns A through S. In these items, institutions currently report detailed information about the risk-weighting of various types of assets and other exposures under the agencies' regulatory capital rules. Institutions still would need to calculate risk-weighted assets, maintain appropriate documentation for this calculation, and report items 26 through 31 of Part II, if applicable, on a quarterly basis. The agencies do not believe it is necessary for institutions eligible to file the FFIEC 051 Call Report to continue to provide the details of their risk-weighting allocations and calculations in Schedule RC–R, Part II, on a quarterly basis as the agencies can adequately review regulatory capital calculations for the first and third calendar quarters as part of on-site examinations or through other types of periodic monitoring, as necessary.

- Schedule RC–R, Part II, Memorandum items 1 through 3, including all subitems and columns. Institutions currently report detailed information in these items about derivative exposures that are elements of the risk-weighting process for these exposures. The agencies do not believe it is necessary for institutions eligible to file the FFIEC 051 Call Report to continue to report these amounts on a quarterly basis. Generally, institutions eligible to file the FFIEC 051 Call Report do not have a significant amount of derivatives contracts, and the agencies can review information about institutions' risk-weighting calculations for derivative exposures for the first and third calendar quarters, as necessary, as part of on-site examinations or through other periodic monitoring.

- Schedule RC–T, Fiduciary and Related Services, items 4 through 13, columns A through D; items 14 through 22; and Memorandum items 3.a through 3.h, for institutions with total fiduciary assets greater than \$250 million but less than or equal to \$1 billion, and gross fiduciary and related services income less than or equal to 10 percent of total revenue.³⁸ Items 4 through 13 collect breakdowns for managed and non-managed accounts of the assets and number of accounts by type of fiduciary account. Fiduciary and related services income by type of fiduciary account is reported in items 14 and 22. Memorandum item 3 is used for reporting on the number and market

³⁷ This number includes 69 data items collected on Schedule RC–T, Fiduciary and Related Services, that are only reported by certain institutions with fiduciary powers that have fiduciary activity to report.

³⁸ Total fiduciary assets are measured as of the preceding December 31. Gross fiduciary and related services income is measured as a percentage of revenue (net interest income plus noninterest income) for the preceding calendar year.

value of collective investment funds. Currently, institutions with total fiduciary assets greater than \$250 million or with fiduciary income greater than 10 percent of total revenue must report these items on a quarterly basis. The proposed change would reduce the reporting of these items to semiannual for institutions with total fiduciary assets greater than \$250 million but less than or equal to \$1 billion and with fiduciary income less than or equal to 10 percent of total revenue. Institutions with total fiduciary assets less than or equal to \$250 million that do not meet the fiduciary income test already have reduced reporting for these items (either through an exemption or annual reporting). The agencies do not believe it is necessary for institutions eligible to file the FFIEC 051 Call Report with total fiduciary assets greater than \$250 million but less than or equal to \$1 billion that do not meet the fiduciary income test to continue to provide managed and non-managed account data and collective investment fund information on a quarterly basis, as these items generally do not fluctuate significantly between quarters for institutions with fiduciary assets in this size range. In addition, when quarter-to-quarter and year-over-year comparisons of an institution's year-to-date income from fiduciary activities, as reported in the Call Report income statement, raise supervisory concerns, the agencies can review information on the composition of fiduciary income for the first and third calendar quarters as part of on-site examinations or through other periodic monitoring.

Detail for each affected data item described above is shown in Appendix A.

Addition of Data Items to the FFIEC 051 Call Report for Institutions With Total Assets of \$1 Billion or More

The agencies are proposing to add certain data items to the FFIEC 051 Call Report that would apply only to covered depository institutions with total assets of \$1 billion or more. These items are currently reported by institutions with total assets of \$1 billion or more that file the FFIEC 031 or FFIEC 041 Call Report, but they are not required to be completed by institutions with less than \$1 billion in total assets that file the FFIEC 031, FFIEC 041, or FFIEC 051 Call Reports. Therefore, the additional data items would not represent new data items for covered depository institutions with total assets of \$1 billion or more, but rather are items carried over from the FFIEC 041 version of the Call Report, generally using the

same definitions and calculations and with reduced reporting frequency.

- Schedule RI, Memorandum items 15.a. through 15.d. These items provide data on the three key categories of service charges on certain deposit accounts: Overdraft-related service charges on consumer accounts, monthly maintenance charges on consumer accounts, and consumer ATM fees. The agencies and the Bureau of Consumer Financial Protection (Bureau) propose to collect these items on an annual reporting frequency as they provide the only comprehensive data source from which supervisors and policymakers can estimate or evaluate the composition of consumer deposit account-related fees and how they affect consumers and a depository institution's earnings stability. The addition of these items to the Call Report in 2015 has supported the agencies and the Bureau in monitoring these types of transactional costs incurred by consumers. The data specific to overdraft-related fees is particularly pertinent for supervisors and policymakers because they compose the majority of consumer deposit service charges (and for many institutions, of total deposit service charges). Continuing to collect these data on an annual basis from covered depository institutions with \$1 billion or more in total assets will support the agencies and the Bureau in monitoring these activities and informing any potential future rulemaking. The agencies are proposing to add these items to the FFIEC 051 on an annual basis (December 31) for covered depository institutions with total assets of \$1 billion or more that respond affirmatively to the screening question (Schedule RC–E, Memorandum item 5, regarding whether an institution offers a consumer deposit account product), while institutions with total assets less than \$1 billion will not need to report these items regardless of their response to the screening question. Institutions with total assets between \$1 billion and less than \$5 billion that file the FFIEC 041 Call Report currently report this information quarterly, so the proposed annual reporting would represent a frequency reduction for institutions filing the FFIEC 051 Call Report, while still meeting the agencies' need for this information.

- Schedule RI–C, Disaggregated Data on the Allowance for Loan and Lease Losses (ALLL). The agencies are proposing to add a condensed version of the existing FFIEC 041 Schedule RI–C to the FFIEC 051 Call Report and reduce the reporting frequency of this condensed schedule from quarterly to

semiannual (*i.e.*, reported in the June 30 and December 31 Call Reports only). The existing six columns in which institutions report the “recorded investment” and “related allowance” by loan category and allowance measurement method in Schedule RI–C in the FFIEC 041 Call Report would be combined into two columns in the FFIEC 051 Call Report, one for total recorded investment by loan category (sum of existing Columns A, C, and E) and the other for the total related allowance by loan category (sum of existing Columns B, D, and F) and any unallocated allowance. Consistent with the agencies' proposed revisions to the Call Report to address the changes in the accounting for credit losses resulting from the Financial Accounting Standards Board's Accounting Standards Update 2016–13,³⁹ effective for the June 30, 2021, report date, text referencing “recorded investment” and “allowance for loan and lease losses” in the condensed version of the FFIEC 041 Schedule RI–C that would be added to the FFIEC 051 reporting form would be changed to “amortized cost” and “allowance for credit losses” (ACL), respectively.⁴⁰ From June 30, 2019, through December 31, 2020, the condensed allowance-related information on the FFIEC 051 Call Report and the related instructions would include guidance stating that institutions that have adopted ASU 2016–13 should report the amortized cost and related ACL by loan category (and any unallocated ACL). For the transition period from June 30, 2021, through December 31, 2022, the reporting form and instructions for this condensed allowance-related information would be updated to include guidance stating that institutions that have not adopted ASU 2016–13 should report the “recorded investment” and the “allowance for loan and lease losses,” as applicable, in these items. In addition, consistent with the proposed revisions to address the changes in accounting for credit losses, the agencies also propose adding data items for institutions to report the disaggregated allowance balances for each category of held-to-maturity (HTM) securities to the FFIEC 051. The agencies believe the condensed semiannual information on the composition of ALLL (allowance for credit losses after adoption of ASU 2016–13) in relation to the total

³⁹ See 83 FR 49160 (September 28, 2018).

⁴⁰ The amortized cost amounts to be reported would exclude any accrued interest receivable that is reported in “Other assets” on the Call Report balance sheet.

recorded investment (amortized cost after adoption of ASU 2016–13) for each loan category, and disaggregated information on HTM securities allowances, is necessary to adequately supervise covered depository institutions with total assets of \$1 billion or more but less than \$5 billion. The information collected in Schedule RI–C as it is proposed to be included in the FFIEC 051 Call Report will support the agencies' analyses of the allowance and credit risk management. The data on allowance allocations by loan category, when reviewed in conjunction with the past due and nonaccrual data reported by loan category in Schedule RC–N, which will continue to be reported on a quarterly basis, assist the agencies in assessing an institution's credit risk exposures and evaluating the appropriateness of the overall level of its ALLL and its allocations by loan category. If changes in the quarterly past due and nonaccrual data by loan category at individual institutions in quarters when the disaggregated allowance data would not be reported in the FFIEC 051 Call Report raise questions about the composition of the allowance, supervisory follow-up can be undertaken on a case-by-case basis. The agencies note that many institutions with \$1 billion or more but less than \$5 billion in total assets do not publicly release quarterly financial statements, which makes the Call Report data the only information regularly available to the agencies on the composition of the allowance. By providing this detail in the FFIEC 051 Call Report, which supports the identification of changes in the ALLL over time, examiners can better perform off-site monitoring of activity within the ALLL in periods between examinations and when planning for examinations.

- Schedule RC–E, Memorandum items 6 and 7, including all subitems. Institutions report disaggregated data on balances in consumer and non-consumer deposit accounts in these items. These items are critical to the agencies' and the Bureau's consumer deposit product monitoring and rulemaking mandates for several reasons. As noted in the agencies' 2013 notice⁴¹ proposing the addition of these items to the Call Report, surveys indicate that over 90 percent of U.S. households maintain at least one deposit account. However, there are no other reliable sources from which to calculate the amount of funds held in consumer accounts. The data now reported in these items on the Call Report significantly enhances the ability

of the agencies and the Bureau to monitor how different tiers of banks serve consumers and, specifically, consumer use of deposit accounts as transactional, savings, and investment vehicles. These data also permit the agencies to conduct improved assessments of institutional liquidity risk and significantly enhance the agencies' ability to assess institutional funding stability. The agencies are proposing to add these items to the FFIEC 051 on an annual basis (December 31) for institutions with total assets of \$1 billion or more but less than \$5 billion that respond affirmatively to the screening question (Schedule RC–E, Memorandum item 5, regarding whether an institution offers a consumer deposit account product), while banks with total assets less than \$1 billion will not need to report these items regardless of their response to the screening question. Institutions with total assets of \$1 billion or more but less than \$5 billion that file the FFIEC 041 currently report this information quarterly, so the proposed annual reporting would represent a frequency reduction for institutions filing the FFIEC 051, while still meeting the agencies' need for this information.

- Schedule RC–O, Other Data for Deposit Insurance and FICO Assessments, Memorandum item 2, “Estimated amount of uninsured deposits, including related interest accrued and unpaid.” The agencies are proposing to add this data item on a quarterly basis for institutions with total assets of \$1 billion or more but less than \$5 billion. The FDIC uses this data item for the calculation of estimated insured deposits, which is the denominator of the Deposit Insurance Fund (DIF) reserve ratio. (The numerator is the balance of the DIF.) The DIF reserve ratio is a key measure in assessing the adequacy and viability of the fund and is a driving force behind setting deposit insurance assessment rate schedules. For example, the FDIC evaluates whether assessment rates are likely to be sufficient to meet statutory requirements related to the minimum reserve ratio.⁴² The FDIC also has established a long-term DIF management plan that adjusts assessment rate schedules as the reserve ratio reaches certain levels.⁴³ Given that assessment regulations depend on the DIF reserve ratio, it is important that the best information be used in estimating insured deposits. This item is necessary

for a more accurate calculation of the DIF reserve ratio and to implement related statutory requirements. This information is also important for safety and soundness purposes. Uninsured deposit data are used to monitor liquidity in a stress event. The higher the percentage of uninsured deposits to available liquidity sources, the greater the liquidity risk to an institution as uninsured depositors are more likely to quickly move funds at risk as a result of negative publicity or other adverse information about the institution.

Detail for each affected data item described above is shown in Appendix B.

The revisions to the FFIEC 051 Call Report described above are proposed to take effect as of the March 31, 2019, report date. The less than \$5 billion asset-size test for determining eligibility to file the FFIEC 051 Call Report beginning March 31, 2019, would be based on the total assets reported on an institution's June 30, 2018, Call Report. An institution eligible to file the FFIEC 051 Call Report also has the option to file the FFIEC 041 Call Report. For an institution with less than \$5 billion in total assets that qualifies to use the FFIEC 051 Call Report for the first time as a result of the agencies' proposal to increase the asset reporting threshold for the FFIEC 051 Call Report from less than \$1 billion to less than \$5 billion, and that desires to use that report form but is unable to do so for the March 31, 2019, Call Report date, the institution may begin reporting on the FFIEC 051 Call Report as of the June 30, 2019, report date or in a subsequent calendar quarter of 2019. Alternatively, the institution could wait until March 31, 2020, to begin reporting on the FFIEC 051 Call Report, assuming it meets the asset-size threshold for eligibility as of June 30, 2019, and meets the non-asset-size criteria as of March 31, 2020. Beginning in 2020, an institution should file whichever version of the Call Report it was both eligible and chose to file in the first quarter of that year for the remainder of that year if it continues to meet the non-asset-size criteria.

Proposed Revision, With Extension, of the Following Information Collections

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: FFIEC 051 (for eligible small institutions).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Type of Review: Revision and extension of currently approved collections.

⁴² See e.g., 12 U.S.C. 1817 note. Generally, the FDIC shall take such steps as may be necessary for the reserve ratio of the DIF to reach 1.35 percent of estimated insured deposits by September 30, 2020.

⁴³ See 12 CFR 327.10.

⁴¹ 78 FR 12141 (February 21, 2013).

Timing

The proposed changes in this notice would be effective beginning with the March 31, 2019, Call Report.

OCC:

OMB Control No.: 1557–0081.

Estimated Number of Respondents: 876 national banks and federal savings associations.

Estimated Average Burden per Response: 38.29 burden hours per quarter to file.

Estimated Total Annual Burden: 134,168 burden hours to file.

Board:

OMB Control No.: 7100–0036.

Estimated Number of Respondents: 563 state member banks.

Estimated Average Burden per Response: 41.75 burden hours per quarter to file.

Estimated Total Annual Burden: 94,021 burden hours to file.

FDIC:

OMB Control No.: 3064–0052.

Estimated Number of Respondents: 2,685 insured state nonmember banks and state savings associations.

Estimated Average Burden per Response: 39.60 burden hours per quarter to file.

Estimated Total Annual Burden: 425,304 burden hours to file.

When the estimates are calculated across the agencies considering all expected filers of the FFIEC 051 Call Report under this proposal, the estimated average burden hours per calendar quarter for this report are 39.95. The burden hours for current FFIEC 051 Call Report filers are 39.39. The proposed revisions to the FFIEC 051 Call Report in this notice would represent a reduction in estimated average burden hours per quarter of 1.18 hours to 38.21 hours for the current FFIEC 051 Call Report filers. For newly eligible filers, the average burden hours would decrease from approximately 64.49 hours to 52.31 hours, a reduction of 12.18 hours per quarter. The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices).

Request for Comments

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

a. Whether institutions would find the proposal to reduce the reporting frequency of the risk-weighting data for

the various types of assets and other exposures that are reported in Schedule RC–R, Part II, items 1 through 25, columns A through S, to be beneficial in terms of reducing some of the reporting burden associated with the Call Report even though institutions would still need to calculate, maintain appropriate documentation for, and report the total amount of their risk-weighted assets in Schedule RC–R, Part II. How would semiannual reporting of these risk-weighting data in Schedule RC–R, Part II affect an institution's ability to determine its compliance each calendar quarter with the prompt corrective action requirements in 12 CFR part 6 (OCC); 12 CFR part 208 (Board); 12 CFR 324, subpart H (FDIC)?

b. Whether the data items that the agencies propose for reduced reporting for covered depository institutions are appropriate. Why or why not?

c. The agencies are proposing to discontinue the treatment in the current FFIEC 051 Call Report instructions for institutions with less than \$1 billion in total assets that immediately disqualifies the institution from filing the FFIEC 051 Call Report if it exceeds the asset-size criterion due to a merger or acquisition. Is this appropriate and why?

Comments also are invited on:

d. Whether the collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

e. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

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

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

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

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act⁴⁴ (RFA) requires an agency to either provide an initial regulatory flexibility analysis with a proposed rule for which general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA)

establishes size standards that define which entities are small businesses for purposes of the RFA.⁴⁵ Under regulations issued by the SBA, the size standard to be considered a small business for banking entities subject to the proposed rule is \$550 million or less in consolidated assets.⁴⁶

OCC: The RFA requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of \$550 million or less and trust companies with total revenue of \$38.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. As of December 31, 2017, the OCC supervised 886 small entities. The rule would expand eligibility to file the FFIEC 051 version of the Call Report to institutions with total assets of between \$1 billion and less than \$5 billion. None of these newly eligible institutions would be considered small entities as defined by the SBA. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: In accordance with section 603(a) of the RFA, the Board is publishing an initial regulatory flexibility analysis for the proposed rule. The RFA requires an agency to prepare an initial regulatory flexibility analysis, which must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and (6) a description of significant alternatives to the proposed rule which accomplish its stated objectives.⁴⁷

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the

⁴⁵ U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

⁴⁶ See 13 CFR 121.201.

⁴⁷ 5 U.S.C. 603.

⁴⁴ 5 U.S.C. 601 *et seq.*

reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

1. Reasons for the Proposal

As discussed in the Supplementary Information, the agencies are proposing to implement section 205 of EGRRCPA, which requires the agencies to allow for a reduced reporting requirement for a “covered depository institution” when an institution files the first and third Call Reports for a year. The proposal would define “covered depository institution” and establish the reduced reporting permissible for such institutions in the Call Report for the first and third calendar quarters of a year. In connection with the implementation of reduced reporting mandated by section 205, the Board is proposing to set forth the general requirement that all state member banks must file consolidated reports of condition pursuant to its statutory authority under section 9 of the FRA and section 7(a)(3) of the FDIA.

2. Statement of Objectives and Legal Basis

As discussed above, the agencies’ objectives in proposing this rule are to reduce the reporting burden for covered depository institutions by allowing them to file the FFIEC 051 Call Report in the first and third quarters of a calendar year. The Board has explicit authority under section 7 of the FDI Act, 12 U.S.C. 1817(a)(3) and (12), and section 9 of the Federal Reserve Act, 12 U.S.C. 324, to establish reporting requirements and eligibility criteria to file a reduced report of condition for state member banks.

3. Description of Small Entities to Which the Regulation Applies

The Board’s proposal would apply to state member banks. Under regulations issued by the SBA, a small entity includes a state member bank with total assets of \$550 million or less. As of June 30, 2018, there were approximately 533 state member banks that qualified as small entities. The requirement set forth in section 208.122 of the Board’s proposed rule requiring state member banks to file reports of condition would apply to all state member banks, regardless of size. However, proposed section 208.122 does not establish a new

requirement, but only implements in Board regulation a statutory requirement to which state member banks were already subject.

Section 208.123 of the Board’s proposed rule would allow state member banks that qualify as covered depository institutions to file reduced reporting in first and third calendar quarters of the year, which would apply to approximately 533 state member banks that qualify as small entities. However, proposed section 208.123 would allow but not require these small state member banks to file reduced reporting. Accordingly, the proposed rule would not have a significant economic impact on a substantial number of small entities.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule would not impose any new reporting, recordkeeping, or other compliance requirements on small state member banks. First, state member banks are already required to file reports of condition each quarter of the calendar year in accordance with the instructions of such reports. Second, the proposed rule would allow small state member banks that qualify as covered depository institutions to reduce their reporting, recordkeeping, and compliance burden by filing the FFIEC 051 Call Report, the shortest version of the Call Report, with further reduced reporting in the first and third calendar quarters. As a result, the Board expects that the proposed rule will reduce the reporting and associated recordkeeping and compliance costs for the majority of small state member banks.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

6. Discussion of Significant Alternatives

The Board believes the proposed rule will not have a significant economic impact on small state member banks and, as discussed in Supplementary Information IV, does not believe there are any significant alternatives to the proposal that would reduce the impact of the proposal.

FDIC: The RFA requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed

rule on small entities.⁴⁸ However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The SBA has defined “small entities” to include banking organizations with total assets of less than or equal to \$550 million.⁴⁹

As of June 30, 2018 Call Report data, the FDIC supervises 3,575 insured depository institutions, of which 2,763 are considered small entities for the purposes of RFA. For the reasons described below, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

As the agencies discussed in the Supplementary Information section above, the proposed rule would implement section 205 of EGRRCPA by defining “covered depository institution” to, among other things, expand eligibility for filing the FFIEC 051 Call Report to insured depository institutions with \$1 billion or more, but less than \$5 billion in total assets. Through a related PRA notice, the agencies are proposing to reduce the reporting frequency for more than 400 data items on the FFIEC 051 Call Report for the first and third reports of condition for a year, and to add certain data items to the FFIEC 051 Call Report that would apply only to covered depository institutions with total assets of \$1 billion or more. Out of the additional data items, only 1 would be required to be reported every quarter, while the remaining only would be required semiannually or annually (*i.e.*, in the second and fourth quarters, or only the fourth quarter).

The FDIC estimates that under the proposed definition of “covered depository institution,” 295 FDIC-supervised depository institutions that reported total assets of \$1 billion or more, but less than \$5 billion, could be eligible to file the FFIEC 051 Call Report assuming they meet the other non-asset-

⁴⁸ 5 U.S.C. 601 *et seq.*

⁴⁹ The SBA defines a small banking organization as having \$550 million or less in assets, where “a financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended, effective December 2, 2014). “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is “small” for the purposes of RFA.

size criteria under the proposed rule. However, because this aspect of the rule only affects institutions with \$1 billion or more, but less than \$5 billion in total assets, it will not affect any small, FDIC-supervised institutions.

As the agencies discussed in the PRA section, the FDIC is proposing to reduce the reporting frequency of more than 400 data items on the FFIEC 051 Call Report for the first and third calendar quarters. These data items are currently collected every calendar quarter on the FFIEC 051 Call Report. Every covered depository institution with less than \$5 billion in total assets that files the FFIEC 051 Call Report would experience a reduction in reporting for the first and third calendar quarters as a result of this proposal. The FDIC estimates that the proposed reduction in reporting frequency of more than 400 data items for covered depository institutions in the first and third calendar quarters would reduce the average quarterly burden hours by 1.18 hours per institution. For the 2,221 small, FDIC-supervised depository institutions that filed the FFIEC 051 Call Report for the June 30, 2018 report date, this represents a total estimated burden reduction of 2,621 hours per quarter.⁵⁰ While the proposed reduced reporting could affect a substantial number of small, FDIC-supervised depository institutions, it would not result in a significant economic impact.

Based on the agencies' total hourly wage rate of \$117 for Call Report preparation, and the reduction in reporting hours resulting from the proposed reduced reporting frequency of certain items in the FFIEC 051 Call Report discussed in the PRA section, it is estimated that annual reporting costs could be \$1,226,628 less for small, FDIC-supervised insured depository institutions that file the FFIEC 051 Call Report, or 0.011 percent of total annualized non-interest expenses.⁵¹

The proposed rule could pose some additional regulatory costs for small, FDIC-supervised depository institutions that file the FFIEC 051 Call Report that are associated with changes to internal systems or processes. The FDIC anticipates that costs associated with either switching to file the FFIEC 051 Call Report, or reprogramming for reduced reporting in the first and third calendar quarters, would be one-time costs. However, these costs are difficult to estimate accurately with available information because they depend upon

the individual characteristics of each insured depository institution, their recordkeeping and reporting systems, and the decisions of senior management.

Based on the information above, the FDIC certifies that the proposed rule would not have a significant economic impact, although a substantial number of small entities would be affected.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

D. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition,

new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.⁵²

Because the proposal would not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of the RCDRIA therefore does not apply. Nevertheless, the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

E. OCC Unfunded Mandates Reform Act of 1995

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation). There are 123 national banks and Federal savings associations with total assets between \$1 billion and less than \$5 billion that could be eligible for reduced reporting under the proposed rule. The OCC estimates that each of these institutions that switches to the FFIEC 051 could save approximately \$6,000 per year. Savings may be less during the first year of implementation due to costs associated with updating systems and processes, but these costs are not expected to exceed the estimated savings. Therefore, the OCC has determined that this proposed rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this proposal.

Appendix A: Proposed Reductions in Frequency of Collection for the FFIEC 051

The following data items are currently collected on the FFIEC 051 quarterly. The data items are proposed to be collected semiannually in the June and December reports only.

⁵⁰ 1.18 hours * 2,221 institutions.

⁵¹ \$117 per hour * 2,621 hours per quarter * 4 quarters per year. FDIC Call Report Data June 30th, 2018.

⁵² 12 U.S.C. 4802.

| Schedule | Item | Item name | MDRM No.(s) |
|--------------------|---------------------|---|-------------|
| RI | M.14 | Other-than-temporary impairment losses on held-to-maturity and available-for-sale debt securities recognized in earnings. | RIADJ321. |
| RC-C, Part I | M.1.a.(1) | Loans restructured in troubled debt restructurings (TDRs) that are in compliance with their modified terms: 1-4 family residential construction loans. | RCONK158. |
| RC-C, Part I | M.1.a.(2) | Loans restructured in TDRs that are in compliance with their modified terms: Other construction loans and all land development and other land loans. | RCONK159. |
| RC-C, Part I | M.1.b | Loans restructured in TDRs that are in compliance with their modified terms: Loans secured by 1-4 family residential properties. | RCONF576. |
| RC-C, Part I | M.1.c | Loans restructured in TDRs that are in compliance with their modified terms: Secured by multifamily (5 or more) residential properties. | RCONK160. |
| RC-C, Part I | M.1.d.(1) | Loans restructured in TDRs that are in compliance with their modified terms: Loans secured by owner-occupied nonfarm nonresidential properties. | RCONK161. |
| RC-C, Part I | M.1.d.(2) | Loans restructured in TDRs that are in compliance with their modified terms: Loans secured by other nonfarm nonresidential properties. | RCONK162. |
| RC-C, Part I | M.1.e | Loans restructured in TDRs that are in compliance with their modified terms: Commercial and industrial loans. | RCONK256. |
| RC-C, Part I | M.1.f | Loans restructured in TDRs that are in compliance with their modified terms: All other loans (include loans to individuals for household, family, and other personal expenditures). | RCONK165. |
| RC-C, Part I | M.1.f.(1) | Loans restructured in TDRs that are in compliance with their modified terms: Loans secured by farmland. | RCONK166. |
| RC-C, Part I | M.1.f.(4).(a) | Loans restructured in TDRs that are in compliance with their modified terms: Credit cards. | RCONK098. |
| RC-C, Part I | M.1.f.(4).(b) | Loans restructured in TDRs that are in compliance with their modified terms: Automobile loans. | RCONK203. |
| RC-C, Part I | M.1.f.(4).(c) | Loans restructured in TDRs that are in compliance with their modified terms: Other (includes revolving credit plans other than credit cards and other consumer loans). | RCONK204. |
| RC-C, Part I | M.1.f.(5) | Loans restructured in TDRs that are in compliance with their modified terms: Loans to finance agricultural production and other loans to farmers included in Schedule RC-C, part I, Memorandum item 1.f, above. | RCONK168. |
| RC-E | M.1.a | Total Individual Retirement Accounts (IRAs) and Keogh Plan accounts. | RCON6835. |
| RC-E | M.5 | Does your institution offer one or more consumer deposit account products, i.e., transaction account or nontransaction savings account deposit products intended primarily for individuals for personal, household, or family use?. | RCONP752. |

| Schedule | Item | Item name | MDRM No.(s) |
|------------|--------------------|--|---|
| RC-M | 8.a | Uniform Resource Locator (URL) of the reporting institution's primary Internet Web site (home page), if any (Example: <i>www.examplebank.com</i>). | TEXT4087. |
| RC-M | 8.b | URLs of all other public-facing Internet websites that the reporting institution uses to accept or solicit deposits from the public, if any. | TE01N528, TE02N528, TE03N528, TE04N528, TE05N528, TE06N528, TE07N528, TE08N528, TE09N528, TE10N528. |
| RC-M | 8.c | Trade names other than the reporting institution's legal title used to identify one or more of the institution's physical offices at which deposits are accepted or solicited from the public, if any. | TE01N529, TE02N529, TE03N529, TE04N529, TE05N529, TE06N529. |
| RC-N | M.1.a.(1) | Loans restructured in troubled debt restructurings (TDRs) included in Schedule RC-N, items 1 through 7, above: 1-4 family residential construction loans. | RCONK105, RCONK106, RCONK107. |
| RC-N | M.1.a.(2) | Loans restructured in TDRs included in Schedule RC-N, items 1 through 7, above: Other construction loans and all land development and other land loans. | RCONK108, RCONK109, RCONK110. |
| RC-N | M.1.b | Loans restructured in TDRs included in Schedule RC-N, items 1 through 7, above: Loans secured by 1-4 family residential properties. | RCONF661, RCONF662, RCONF663. |
| RC-N | M.1.c | Loans restructured in TDRs included in Schedule RC-N, items 1 through 7, above: Secured by multifamily (5 or more) residential properties. | RCONK111, RCONK112, RCONK113. |
| RC-N | M.1.d.(1) | Loans restructured in TDRs included in Schedule RC-N, items 1 through 7, above: Loans secured by owner-occupied nonfarm non-residential properties. | RCONK114, RCONK115, RCONK116. |
| RC-N | M.1.d.(2) | Loans restructured in TDRs included in Schedule RC-N, items 1 through 7, above: Loans secured by other nonfarm nonresidential properties. | RCONK117, RCONK118, RCONK119. |
| RC-N | M.1.e | Loans restructured in TDRs included in Schedule RC-N, items 1 through 7, above: Commercial and industrial loans. | RCONK257, RCONK258, RCONK259. |
| RC-N | M.1.f | Loans restructured in TDRs included in Schedule RC-N, items 1 through 7, above: All other loans (include loans to individuals for household, family, and other personal expenditures). | RCONK126, RCONK127, RCONK128. |
| RC-N | M.1.f.(1) | Loans restructured in TDRs included in Schedule RC-N, items 1 through 7, above: Loans secured by farmland. | RCONK130, RCONK131, RCONK132. |
| RC-N | M.1.f.(4)(a) | Loans restructured in TDRs included in Schedule RC-N, items 1 through 7, above: Credit cards. | RCONK274, RCONK275, RCONK276. |
| RC-N | M.1.f.(4)(b) | Loans restructured in TDRs included in Schedule RC-N, items 1 through 7, above: Automobile loans. | RCONK277, RCONK278, RCONK279. |
| RC-N | M.1.f.(4)(c) | Loans restructured in TDRs included in Schedule RC-N, items 1 through 7, above: Other (includes revolving credit plans other than credit cards and other consumer loans). | RCONK280, RCONK281, RCONK282. |

| Schedule | Item | Item name | MDRM No.(s) |
|---------------------|-----------------|--|---|
| RC–N | M.1.f.(5) | Loans restructured in TDRs included in Schedule RC–N, items 1 through 7, above: Loans to finance agricultural production and other loans to farmers. | RCONK138, RCONK139, RCONK140. |
| RC–R, Part II | 1 | Cash and balances due from depository institutions. | RCOND957, RCOND958, RCOND959, RCOND960, RCONS396, RCONS397, RCONS398. |
| RC–R, Part II | 2.a | Held-to-maturity securities | RCOND961, RCOND962, RCOND963, RCOND964, RCOND965, RCONHJ74, RCONHJ75, RCONS399, RCONS400. |
| RC–R, Part II | 2.b | Available-for-sale securities | RCOND967, RCOND968, RCOND969, RCOND970, RCONH271, RCONH272, RCONHJ76, RCONHJ77, RCONJA21, RCONS402, RCONS403, RCONS405, RCONS406. |
| RC–R, Part II | 3.a | Federal funds sold | RCOND971, RCOND972, RCOND973, RCOND974, RCONS410, RCONS411. |
| RC–R, Part II | 3.b | Securities purchased under agreements to resell. | RCONH171, RCONH172. |
| RC–R, Part II | 4.a | Loans and leases held for sale: Residential mortgage exposures. | RCONH173, RCONH273, RCONH274, RCONS413, RCONS414, RCONS415, RCONS416, RCONS417. |
| RC–R, Part II | 4.b | Loans and leases held for sale: High volatility commercial real estate exposures. | RCONH174, RCONH175, RCONH176, RCONH177, RCONH275, RCONH276, RCONS419, RCONS420, RCONS421. |
| RC–R, Part II | 4.c | Loans and leases held for sale: Exposures past due 90 days or more or on nonaccrual. | RCONH277, RCONH278, RCONHJ78, RCONHJ79, RCONS423, RCONS424, RCONS425, RCONS426, RCONS427, RCONS428, RCONS429. |
| RC–R, Part II | 4.d | Loans and leases held for sale: All other exposures. | RCONH279, RCONH280, RCONHJ80, RCONHJ81, RCONS431, RCONS432, RCONS433, RCONS434, RCONS435, RCONS436, RCONS437. |
| RC–R, Part II | 5.a | Loans and leases held for investment: Residential mortgage exposures. | RCONH178, RCONH281, RCONH282, RCONS439, RCONS440, RCONS441, RCONS442, RCONS443. |
| RC–R, Part II | 5.b | Loans and leases held for investment: High volatility commercial real estate exposures. | RCONH179, RCONH180, RCONH181, RCONH182, RCONH283, RCONH284, RCONS445, RCONS446, RCONS447. |
| RC–R, Part II | 5.c | Loans and leases held for investment: Exposures past due 90 days or more or on nonaccrual. | RCONH285, RCONH286, RCONHJ82, RCONHJ83, RCONS449, RCONS450, RCONS451, RCONS452, RCONS453, RCONS454, RCONS455. |
| RC–R, Part II | 5.d | Loans and leases held for investment: All other exposures. | RCONH287, RCONH288, RCONHJ84, RCONHJ85, RCONS457, RCONS458, RCONS459, RCONS460, RCONS461, RCONS462, RCONS463. |
| RC–R, Part II | 6 | LESS: Allowance for loan and lease losses. | RCON3123 (column A), RCON3123 (column B). |

| Schedule | Item | Item name | MDRM No.(s) |
|---------------------|-----------|---|---|
| RC–R, Part II | 7 | Trading assets | RCOND976, RCOND977, RCOND978, RCOND979, RCOND980, RCONH186, RCONH187, RCONH290, RCONH291, RCONH292, RCONHJ86, RCONHJ87, RCONS466, RCONS467. |
| RC–R, Part II | 8 | All other assets | RCOND981, RCOND982, RCOND983, RCOND984, RCOND985, RCONH185, RCONH188, RCONH294, RCONH295, RCONHJ88, RCONHJ89, RCONS469, RCONS470, RCONS471. |
| RC–R, Part II | 8.a | Separate account bank-owned life insurance. | RCONH296, RCONH297. |
| RC–R, Part II | 8.b | Default fund contributions to central counterparties. | RCONH298, RCONH299. |
| RC–R, Part II | 9.a | On-balance sheet securitization exposures: Held-to-maturity securities. | RCONS475, RCONS476, RCONS477, RCONS478, RCONS479. |
| RC–R, Part II | 9.b | On-balance sheet securitization exposures: Available-for-sale securities. | RCONS480, RCONS481, RCONS482, RCONS483, RCONS484. |
| RC–R, Part II | 9.c | On-balance sheet securitization exposures: Trading assets. | RCONS485, RCONS486, RCONS487, RCONS488, RCONS489. |
| RC–R, Part II | 9.d | On-balance sheet securitization exposures: All other on-balance sheet securitization exposures. | RCONS490, RCONS491, RCONS492, RCONS493, RCONS494. |
| RC–R, Part II | 10 | Off-balance sheet securitization exposures. | RCONS495, RCONS496, RCONS497, RCONS498, RCONS499. |
| RC–R, Part II | 11 | Total balance sheet assets | RCON2170, RCOND987, RCOND988, RCOND989, RCOND990, RCONH300, RCONHJ90, RCONHJ91, RCONS500, RCONS503, RCONS505, RCONS506, RCONS507, RCONS510. |
| RC–R, Part II | 12 | Financial standby letters of credit | RCOND991, RCOND992, RCOND993, RCOND994, RCOND995, RCOND996, RCONHJ92, RCONHJ93, RCONS511. |
| RC–R, Part II | 13 | Performance standby letters of credit and transaction-related contingent items. | RCOND997, RCOND998, RCOND999, RCONG603, RCONG604, RCONG605, RCONS512. |
| RC–R, Part II | 14 | Commercial and similar letters of credit with an original maturity of one year or less. | RCONG606, RCONG607, RCONG608, RCONG609, RCONG610, RCONG611, RCONHJ94, RCONHJ95, RCONS513. |
| RC–R, Part II | 15 | Retained recourse on small business obligations sold with recourse. | RCONG612, RCONG613, RCONG614, RCONG615, RCONG616, RCONG617, RCONS514. |
| RC–R, Part II | 16 | Repo-style transactions | RCONH301, RCONH302, RCONS515, RCONS516, RCONS517, RCONS518, RCONS519, RCONS520, RCONS521, RCONS522, RCONS523. |
| RC–R, Part II | 17 | All other off-balance sheet liabilities .. | RCONG618, RCONG619, RCONG620, RCONG621, RCONG622, RCONG623, RCONS524. |

| Schedule | Item | Item name | MDRM No.(s) |
|---------------------|-------------|--|---|
| RC–R, Part II | 18.a | Unused commitments: Original maturity of one year or less. | RCONH303, RCONH304, RCONHJ96, RCONHJ97, RCONS525, RCONS526, RCONS527, RCONS528, RCONS529, RCONS530, RCONS531. |
| RC–R, Part II | 18.b | Unused commitments: Original maturity exceeding one year. | RCONG624, RCONG625, RCONG626, RCONG627, RCONG628, RCONG629, RCONH307, RCONH308, RCONHJ98, RCONHJ99, RCONS539. |
| RC–R, Part II | 19 | Unconditionally cancelable commitments. | RCONS540, RCONS541. |
| RC–R, Part II | 20 | Over-the-counter derivatives | RCONH309, RCONH310, RCONHK00, RCONHK01, RCONS542, RCONS543, RCONS544, RCONS545, RCONS546, RCONS547, RCONS548. |
| RC–R, Part II | 21 | Centrally cleared derivatives | RCONS549, RCONS550, RCONS551, RCONS552, RCONS554, RCONS555, RCONS556, RCONS557. |
| RC–R, Part II | 22 | Unsettled transactions (failed trades) | RCONH191, RCONH193, RCONH194, RCONH195, RCONK196, RCONH197, RCONH198, RCONH199, RCONH200. |
| RC–R, Part II | 23 | Total assets, derivatives, off-balance sheet items, and other items subject to risk weighting by risk-weight category. | RCONG630, RCONG631, RCONG632, RCONG633, RCONS558, RCONS559, RCONS560, RCONS561, RCONS563, RCONS564, RCONS565, RCONS566, RCONS567, RCONS568. |
| RC–R, Part II | 25 | Risk-weighted assets by risk-weight category. | RCONG634, RCONG635, RCONG636, RCONG637, RCONS569, RCONS570, RCONS571, RCONS572, RCONS574, RCONS575, RCONS576, RCONS577, RCONS578, RCONS579. |
| RC–R, Part II | M.1 | Current credit exposure across all derivative contracts covered by the regulatory capital rules. | RCONG642. |
| RC–R, Part II | M.2.a | Notional principal amounts of over-the-counter derivative contracts: Interest rate. | RCONS582, RCONS583, RCONS584. |
| RC–R, Part II | M.2.b | Notional principal amounts of over-the-counter derivative contracts: Foreign exchange rate and gold. | RCONS585, RCONS586, RCONS587. |
| RC–R, Part II | M.2.c | Notional principal amounts of over-the-counter derivative contracts: Credit (investment grade reference asset). | RCONS588, RCONS589, RCONS590. |
| RC–R, Part II | M.2.d | Notional principal amounts of over-the-counter derivative contracts: Credit (non-investment grade reference asset). | RCONS591, RCONS592, RCONS593. |
| RC–R, Part II | M.2.e | Notional principal amounts of over-the-counter derivative contracts: Equity. | RCONS594, RCONS595, RCONS596. |
| RC–R, Part II | M.2.f | Notional principal amounts of over-the-counter derivative contracts: Precious metals (except gold). | RCONS597, RCONS598, RCONS599. |
| RC–R, Part II | M.2.g | Notional principal amounts of over-the-counter derivative contracts:.. | RCONS600, RCONS601, RCONS602. |
| RC–R, Part II | M.3.a | Notional principal amounts of centrally cleared derivative contracts: Interest rate. | RCONS603, RCONS604, RCONS605. |

| Schedule | Item | Item name | MDRM No.(s) |
|---------------|-------|--|-------------------------------|
| RC-R, Part II | M.3.b | Notional principal amounts of centrally cleared derivative contracts: Foreign exchange rate and gold. | RCONS606, RCONS607, RCONS608. |
| RC-R, Part II | M.3.c | Notional principal amounts of centrally cleared derivative contracts: Credit (investment grade reference asset). | RCONS609, RCONS610, RCONS611. |
| RC-R, Part II | M.3.d | Notional principal amounts of centrally cleared derivative contracts: Credit (non-investment grade reference asset). | RCONS612, RCONS613, RCONS614. |
| RC-R, Part II | M.3.e | Notional principal amounts of centrally cleared derivative contracts: Equity. | RCONS615, RCONS616, RCONS617. |
| RC-R, Part II | M.3.f | Notional principal amounts of centrally cleared derivative contracts: Precious metals (except gold). | RCONS618, RCONS619, RCONS620. |
| RC-R, Part II | M.3.g | Notional principal amounts of centrally cleared derivative contracts: Other. | RCONS621, RCONS622, RCONS623. |

The following data items on Schedule RC-T are currently collected on the FFIEC 051 quarterly for institutions with total fiduciary assets greater than \$250 million (as of the preceding December 31) or with gross fiduciary and related services income greater

than 10 percent of revenue (net interest income plus noninterest income) for the preceding calendar year.

The data items are proposed to be collected semiannually in the June and December reports only for institutions with total

fiduciary assets greater than \$250 million but less than or equal to \$1 billion (as of the preceding December 31) that do not meet the fiduciary income test for quarterly reporting.

| Schedule | Item | Item name | MDRM No.(s) |
|----------|------|---|---|
| RC-T | 4 | Fiduciary and Related Assets: Personal trust and agency accounts. | RCONB868, RCONB869, RCONB870, RCONB871. |
| RC-T | 5.a | Fiduciary and Related Assets: Employee benefit—defined contribution. | RCONB872, RCONB873, RCONB874, RCONB875. |
| RC-T | 5.b | Fiduciary and Related Assets: Employee benefit—defined benefit. | RCONB876, RCONB877, RCONB878, RCONB879. |
| RC-T | 5.c | Fiduciary and Related Assets: Other employee benefit and retirement-related accounts. | RCONB880, RCONB881, RCONB882, RCONB883. |
| RC-T | 6 | Fiduciary and Related Assets: Corporate trust and agency accounts. | RCONB884, RCONB885, RCONC001, RCONC002. |
| RC-T | 7 | Fiduciary and Related Assets: Investment management and investment advisory agency accounts. | RCONB886, RCONB888, RCONJ253, RCONJ254. |
| RC-T | 8 | Fiduciary and Related Assets: Foundation and endowment trust and agency accounts. | RCONJ255, RCONJ256, RCONJ257, RCONJ258. |
| RC-T | 9 | Fiduciary and Related Assets: Other fiduciary accounts. | RCONB890, RCONB891, RCONB892, RCONB893. |
| RC-T | 10 | Fiduciary and Related Assets: Total fiduciary accounts. | RCONB894, RCONB895, RCONB896, RCONB897. |
| RC-T | 11 | Fiduciary and Related Assets: Custody and safekeeping accounts. | RCONB898, RCONB899. |
| RC-T | 13 | Fiduciary and Related Assets: Individual Retirement Accounts, Health Savings Accounts, and other similar accounts (included in items 5.c and 11). | RCONJ259, RCONJ260, RCONJ261, RCONJ262. |
| RC-T | 14 | Fiduciary and Related Services Income: Personal trust and agency accounts. | RIADB904. |
| RC-T | 15.a | Fiduciary and Related Services Income: Employee benefit—defined contribution. | RIADB905. |
| RC-T | 15.b | Fiduciary and Related Services Income: Employee benefit—defined benefit. | RIADB906. |
| RC-T | 15.c | Fiduciary and Related Services Income: Other employee benefit and retirement-related accounts. | RIADB907. |

| Schedule | Item | Item name | MDRM No.(s) |
|------------|-------------|---|---------------------|
| RC-T | 16 | Fiduciary and Related Services Income: Corporate trust and agency accounts. | RIADA479. |
| RC-T | 17 | Fiduciary and Related Services Income: Investment management and investment advisory agency accounts. | RIADJ315. |
| RC-T | 18 | Fiduciary and Related Services Income: Foundation and endowment trust and agency accounts. | RIADJ316. |
| RC-T | 19 | Fiduciary and Related Services Income: Other fiduciary accounts. | RIADA480. |
| RC-T | 20 | Fiduciary and Related Services Income: Custody and safekeeping accounts. | RIADB909. |
| RC-T | 21 | Fiduciary and Related Services Income: Other fiduciary and related services income. | RIADB910. |
| RC-T | 22 | Fiduciary and Related Services Income: Total gross fiduciary and related services income. | RIAD4070. |
| RC-T | M.3.a | Collective investment funds and common trust funds: Domestic equity. | RCONB931, RCONB932. |
| RC-T | M.3.b | Collective investment funds and common trust funds: International/Global equity. | RCONB933, RCONB934. |
| RC-T | M.3.c | Collective investment funds and common trust funds: Stock/Bond blend. | RCONB935, RCONB936. |
| RC-T | M.3.d | Collective investment funds and common trust funds: Taxable bond. | RCONB937, RCONB938. |
| RC-T | M.3.e | Collective investment funds and common trust funds: Municipal bond. | RCONB939, RCONB940. |
| RC-T | M.3.f | Collective investment funds and common trust funds: Short-term investments/Money market. | RCONB941, RCONB942. |
| RC-T | M.3.g | Collective investment funds and common trust funds: Specialty/Other. | RCONB943, RCONB944. |
| RC-T | M.3.h | Collective investment funds and common trust funds: Total collective investment funds. | RCONB945, RCONB946. |

Appendix B: Data Items To Be Collected From Institutions With \$1 Billion or More in Total Assets on the FFIEC 051.

The following data item is currently collected on the FFIEC 041 from institutions

with \$1 billion or more in total assets. The data item is proposed to be reported quarterly by institutions with \$1 billion or more in total assets on the FFIEC 051.

| Schedule | Item | Item name | MDRM No. |
|------------|-----------|--|-----------|
| RC-O | M.2 | Estimated amount of uninsured deposits, including related interest accrued and unpaid. | RCON5597. |

The following data items are currently collected quarterly on the FFIEC 041 from institutions with \$1 billion or more in total assets. The data items are proposed to be

reported on the FFIEC 051 by institutions with \$1 billion or more in total assets with a reduction in the frequency of collection.

Semiannual Reporting (June and December only)

| Schedule | Item | Item name | MDRM No.(s) |
|--------------|-----------|-------------------------------------|--------------------------|
| RI-C * | 1.a | Construction loans | TBD (2 New MDRM Numbers) |
| RI-C * | 1.b | Commercial real estate loans | TBD (2 New MDRM Numbers) |
| RI-C * | 1.c | Residential real estate loans | TBD (2 New MDRM Numbers) |
| RI-C * | 2 | Commercial loans | TBD (2 New MDRM Numbers) |
| RI-C * | 3 | Credit cards | TBD (2 New MDRM Numbers) |
| RI-C * | 4 | Other consumer loans | TBD (2 New MDRM Numbers) |
| RI-C * | 5 | Unallocated, if any | TBD (1 New MDRM Number) |

| Schedule | Item | Item name | MDRM No.(s) |
|----------|------|-----------|--------------------------|
| RI-C * | 6 | Total | TBD (2 New MDRM Numbers) |

*The FFIEC 041 Schedule RI-C collects disaggregated data on the allowance for loan and lease losses by loan category and the related recorded investment based on whether the reported allowance relates to loans that are individually impaired, purchased credit-impaired, or collectively evaluated for impairment in six columns. The proposed Schedule RI-C for the FFIEC 051 will consolidate the disaggregated data into two columns: "Recorded Investment" (column A) and "Allowance Balance" (column B).

Effective June 30, 2021, the column captions would be changed to "Amortized Cost" (column A) and "Allowance for Credit Losses" (ACL) (column B). From June 30, 2019, through December 31, 2020, institutions that have adopted Accounting Standards Update No. 2016-13, "Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments" (ASU 2016-13) would report the amortized cost and related ACL by loan category in columns A and B, respectively. From June 30, 2021, through December 31, 2022, institutions that have not adopted ASU 2016-13 would report the recorded investment and related allowance balance by loan category in columns A and B, respectively.

Annual Reporting (December only)

| Schedule | Item | Item name | MDRM No.(s) |
|----------|-----------|--|-------------|
| RI ** | M.15.a | Consumer overdraft-related service charges levied on those transaction account and nontransaction savings account deposit products intended primarily for individuals for personal, household, or family use. | RIADH032. |
| RI ** | M.15.b | Consumer account periodic maintenance charges levied on those transaction account and nontransaction savings account deposit products intended primarily for individuals for personal, household, or family use. | RIADH033. |
| RI ** | M.15.c | Consumer customer automated teller machine (ATM) fees levied on those transaction account and nontransaction savings account deposit products intended primarily for individuals for personal, household, or family use. | RIADH034. |
| RI ** | M.15.d | All other service charges on deposit accounts. | RIADH035. |
| RC-E ** | M.6.a | Total deposits in those noninterest-bearing transaction account deposit products intended primarily for individuals for personal, household, or family use. | RCONP753. |
| RC-E ** | M.6.b | Total deposits in those interest-bearing transaction account deposit products intended primarily for individuals for personal, household, or family use. | RCONP754. |
| RC-E ** | M.7.a.(1) | Total deposits in those MMDA deposit products intended primarily for individuals for personal, household, or family use. | RCONP756. |
| RC-E ** | M.7.a.(2) | Deposits in all other MMDAs of individuals, partnerships, and corporations. | RCONP757. |
| RC-E ** | M.7.b.(1) | Total deposits in those other savings deposit account deposit products intended primarily for individuals for personal, household, or family use. | RCONP758. |
| RC-E ** | M.7.b.(2) | Deposits in all other savings deposit accounts of individuals, partnerships, and corporations. | RCONP759. |

** Items are to be completed by institutions with \$1 billion or more in total assets that answered "Yes" to Schedule RC-E, Memorandum item 5.

The following data items are currently being proposed to be collected quarterly on the FFIEC 041 by those institutions with \$1

billion or more in total assets that have adopted ASU 2016-13.⁵³

For this proposal, the data items are proposed to be reported on the FFIEC 051 by

institutions with \$1 billion or more in total assets that have adopted ASU 2016-13 with a reduction in the frequency of collection.

Semiannual Reporting (June and December only)

⁵³ See 83 FR 49160 (September 28, 2018).

| Schedule | Item | Item name | MDRM No.(s) |
|------------|-----------|--|--------------------------|
| RI-C | 7 | Held-to-Maturity: Securities issued by states and political subdivisions in the U.S.. | TBD (1 New MDRM Number). |
| RI-C | 8.a | Held-to-Maturity: Mortgage-backed securities issued or guaranteed by U.S. Government agencies or sponsored agencies. | TBD (1 New MDRM Number). |
| RI-C | 8.b | Held-to-Maturity: Other mortgage-backed securities. | TBD (1 New MDRM Number). |
| RI-C | 9 | Held-to-Maturity: Asset-backed securities and structured financial products. | TBD (1 New MDRM Number). |
| RI-C | 10 | Held-to-Maturity: Other debt securities. | TBD (1 New MDRM Number). |
| RI-C | 11 | Held-to-Maturity: Total | TBD (1 New MDRM Number). |

List of Subjects

12 CFR Part 52

Banks, banking, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Consumer protection, Currency, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities

12 CFR Part 304

Bank deposit insurance, Banks, banking, Freedom of information, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

■ For the reasons set out in the joint preamble, the OCC proposes to add 12 CFR part 52 as follows:

PART 52—REGULATORY REPORTING

Sec.

52.1 Authority and purpose.

52.2 Definitions.

52.3 Reduced reporting.

52.4 Reservation of authority.

Authority: 12 U.S.C. 93a, 161, 1463(a), 1464(v), and 1817(a)(12).

§ 52.1 Authority and purpose.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 93a, 161, 1463(a), 1464(v), and 1817(a)(12).

(b) *Purpose.* This part establishes a reduced reporting requirement for a covered depository institution making its reports of condition for the first and third calendar quarters of a year.

§ 52.2 Definitions.

Covered depository institution means:

A national bank, Federal savings association, or insured Federal branch that meets the following criteria:

(1) Has less than \$5 billion in total consolidated assets as reported in its report of condition for the second calendar quarter of the preceding year;

(2) Has no foreign offices, as defined in this subpart;

(3) Is not required to or has not elected to use 12 CFR part 3, subpart E (for advanced approaches banks) to calculate its risk-based capital requirements;

(4) Is not a large institution or highly complex institution, as such terms are defined in 12 CFR 327.8, or treated as a large institution, as requested under 12 CFR 327.16(f); and

(5) Is not subject to the filing requirements for the FFIEC 002 report of condition.

Foreign country refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States.

Foreign office means:

(1) A branch or consolidated subsidiary in a foreign country, unless the branch is located on a U.S. military facility;

(2) An international banking facility as such term is defined in 12 CFR 204.8;

(3) A majority-owned Edge Act or Agreement subsidiary as defined in 12 CFR 28.2, including both its U.S. and its foreign offices; and

(4) For an institution chartered or headquartered in any U.S. state or the District of Columbia, a branch or consolidated subsidiary located in a U.S. territory or possession.

Report of condition means the FFIEC 031, FFIEC 041, or FFIEC 051 versions of the Consolidated Report of Condition and Income (Call Report) or the FFIEC 002 (Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks), as applicable, and as they may be amended or superseded from time to time in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Total consolidated assets means total assets as reported in an institution's report of condition.

§ 52.3 Reduced reporting.

A covered depository institution may file the FFIEC 051 version of the Call Report, or any successor thereto, to satisfy its requirement to file a report of condition for the first and third calendar quarters of a year.

§ 52.4 Reservation of authority.

The OCC may determine that a covered depository institution shall not use the reduced reporting in § 52.3. In making this determination, the OCC will consider whether the institution is significantly engaged in complex, specialized, or higher risk activities, for which a reduced reporting requirement would not provide sufficient information. The institution has 30 days following notification from the OCC to inform the OCC, in writing, of why it should continue to be eligible to use reduced reporting or cannot cease using reduced reporting in the OCC's proposed timeframe. The OCC will make a final decision after reviewing any response. Nothing in this part shall be construed to limit the OCC's authority to obtain information from a covered depository institution.

FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the joint preamble, the Board proposes to amend 12 CFR part 208 as follows:

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

■ 1. The authority citation of part 208 is amended to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12),

1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, and 5371; 15 U.S.C. 78b, 78l(b), 78l(i), 780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

■ 2. Add new subpart K to part 208 to read as follows:

Subpart K—Forms, Instructions and Reports

Sec.

- § 208.120 Authority, Purpose, and Scope
- § 208.121 Definitions
- § 208.122 Reporting
- § 208.123 Reduced Reporting
- § 208.124 Reservation of Authority

Subpart K—Forms, Instructions and Reports

§ 208.120 Authority, Purpose, and Scope

(a) *Authority.* Subpart K of Regulation H (12 CFR part 208, subpart K) is issued by the Board under section 7 of the Federal Deposit Insurance Act, 12 U.S.C. 1817(a)(3) and (12), and section 9 of the Federal Reserve Act, 12 U.S.C. 324.

(b) *Purpose and scope.* This subpart informs a state member bank where it may obtain forms and instructions for reports of conditions and implements 12 U.S.C. 1817(a)(12) to allow reduced reporting for a covered depository institution when such institution makes its reports of condition for the first and third calendar quarters of a year.

§ 208.121 Definitions

Covered depository institution means: a state member bank that meets all of the following criteria:

- (1) Has less than \$5 billion in total consolidated assets as reported in its report of condition for the second calendar quarter of the preceding year;
- (2) Has no foreign offices, as defined in this subpart;
- (3) Is not required to or has not elected to use 12 CFR part 217, subpart E to calculate its risk-based capital requirements; and
- (4) Is not a large institution or highly complex institution, as such terms are defined in 12 CFR 327.8, or treated as a large institution, as requested under 12 CFR 327.16(f).

Foreign country refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States.

Foreign office means:

- (1) A branch or consolidated subsidiary in a foreign country, unless the branch is located on a U.S. military facility;
- (2) An international banking facility as such term is defined in 12 CFR 204.8;

(3) A majority-owned Edge Act or Agreement subsidiary including both its U.S. and its foreign offices; and

(4) For an institution chartered or headquartered in any U.S. state or the District of Columbia, a branch or consolidated subsidiary located in a U.S. territory or possession.

Report of condition means the FFIEC 031, FFIEC 041, or FFIEC 051 versions of the Consolidated Report of Condition and Income (Call Report) or the FFIEC 002 (Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks), as applicable, and as they may be amended or superseded from time to time in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Total consolidated assets means total assets as reported in a state member bank's report of condition.

§ 208.122 Reporting

(a) A state member bank is required to file the report of condition (Call Report) in accordance with the instructions for these reports. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of, the Call Report. The Board uses Call Report data to monitor the condition, performance, and risk profile of individual state member banks and the banking industry. Reporting state member banks must also submit annually such information on small business and small farm lending as the Board may need to assess the availability of credit to these sectors of the economy. The report forms and instructions can be obtained from Federal Reserve District Banks or through the website of the Federal Financial Institutions Examination Council, <http://www.ffiec.gov/>.

(b) Every insured U.S. branch of a foreign bank is required to file the FFIEC 002 version of the report of condition (Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks) in accordance with the instructions for the report. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of the report. The Board uses the reported data to monitor the condition, performance, and risk profile of individual insured branches and the banking industry. Insured branches must also submit annually such information on small business and small farm lending as the Board may need to assess the availability of credit to these sectors of the economy. The report forms and instructions can be obtained

from Federal Reserve District Banks or through the website of the Federal Financial Institutions Examination Council, <http://www.ffiec.gov/>.

§ 208.123 Reduced Reporting

A covered depository institution may file the FFIEC 051 version of the report of condition, or any successor thereto, which shall provide for reduced reporting for the reports of condition for the first and third calendar quarters for a year.

§ 208.124 Reservation of Authority

(a) Notwithstanding § 208.123, the Board in consultation with the applicable state chartering authority may require an otherwise eligible covered depository institution to file the FFIEC 041 version of the report of condition, or any successor thereto, based on an institution-specific determination. In making this determination, the Board may consider criteria including, but not limited to, whether the institution is significantly engaged in one or more complex, specialized, or other higher risk activities, such as those for which limited information is reported in the FFIEC 051 version of the report of condition compared to the FFIEC 041 version of the report of condition. Nothing in this part shall be construed to limit the Board's authority to obtain information from a state member bank.

(b) Nothing in this subpart limits the authority of the Board under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions or violations of law.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

■ For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 304 to read as follows:

PART 304—FORMS, INSTRUCTIONS, AND REPORTS

Contents

Subpart A—In General

- § 304.1 Purpose.
- § 304.2 Where to obtain forms and instructions.
- § 304.3 Reports.
- § 304.4–304.10 [Reserved].

Subpart B—Implementation of Reduced Reporting Requirement

- § 304.11 Authority, purpose and scope.
- § 304.12 Definitions.
- § 304.13 Reduced reporting.

§ 304.14 Reservation of authority.

Authority: 5 U.S.C. 552; 12 U.S.C. 1464, 1817, 1831, 1867.

Subpart A—In General

§ 304.1 Purpose.

Part 304 informs the public where it may obtain forms and instructions for reports, applications, and other submittals used by the FDIC, and also describes certain forms that are not described elsewhere in FDIC regulations.

§ 304.2 Where to obtain forms and instructions.

Forms and instructions used in connection with applications, reports, and other submittals used by the FDIC can be obtained by contacting the FDIC Public Information Center (550 17th Street NW, Washington, DC 20429; telephone: (877) 275-3342 or (703) 562-2200), except as noted below in § 304.3. In addition, many forms and instructions can be obtained from FDIC regional offices. A list of FDIC regional offices can be obtained from the FDIC Public Information Center, or found at the FDIC's website at <http://www.fdic.gov>, or in the directory of FDIC Law, Regulations, Related Acts published by the FDIC.

§ 304.3 Reports.

(a) Consolidated Reports of Condition and Income, Forms FFIEC 031, 041, and 051. Pursuant to section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) and other applicable law, every insured depository institution is required to file Consolidated Reports of Condition and Income (also known as the Call Report) in accordance with the instructions for these reports. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of, the Call Report. The FDIC uses Call Report data from all insured depository institutions to calculate deposit insurance assessments and monitor the condition, performance, and risk profile of individual banks and the banking industry. Reporting banks must also submit annually such information on small business and small farm lending as the FDIC may need to assess the availability of credit to these sectors of the economy. The report forms and instructions can be obtained from the Division of Insurance and Research (DIR), FDIC, 550 17th Street NW, Washington, DC 20429 or through the website of the Federal Financial

Institutions Examination Council, <http://www.ffiec.gov/>.

(Approved by the Office of Management and Budget under control number 3064-0052)

(b) Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, Form FFIEC 002. Pursuant to section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) and other applicable law, every insured U.S. branch of a foreign bank is required to file a Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks in accordance with the instructions for the report. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of the report. The FDIC uses the reported data to calculate deposit insurance assessments and monitor the condition, performance, and risk profile of individual insured branches and the banking industry. Insured branches must also submit annually such information on small business and small farm lending as the FDIC may need to assess the availability of credit to these sectors of the economy. Because the Board of Governors of the Federal Reserve System collects and processes this report on behalf of the FDIC, the report forms and instructions can be obtained from Federal Reserve District Banks or through the website of the Federal Financial Institutions Examination Council, <http://www.ffiec.gov/>.

(Approved by the Office of Management and Budget under control number 7100-0032)

(c) Summary of Deposits, Form FDIC 8020/05. Form 8020/05 is a report on the amount of deposits for each authorized office of an insured depository institution with branches; institutions with only a main office are exempt from reporting. Reports as of June 30 of each year must be submitted no later than the immediately succeeding July 31. The report forms and the instructions for completing the reports will be furnished to all such banks by, or may be obtained upon request from, the Division of Insurance and Research (DIR), FDIC, 550 17th Street NW, Washington, DC 20429.

(Approved by the Office of Management and Budget under control number 3064-0061)

(d) Notification of Performance of Bank Services, Form FDIC 6120/06. Pursuant to Section 7 of the Bank Service Company Act (12 U.S.C. 1867), as amended, FDIC-supervised banks must notify the agency about the existence of a service relationship within thirty days after the making of

the contract or the performance of the service, whichever occurs first. Form FDIC 6120/06 may be used to satisfy the notice requirement. The form contains identification, location and contact information for the bank, the servicer, and a description of the services provided. In lieu of the form, notification may be provided by letter. Either the form or the letter containing the notice information must be submitted to the regional director—Division of Risk Management Supervision (RMS) of the region in which the bank's main office is located.

(Approved by the Office of Management and Budget under control number 3064-0029)

Subpart B—Implementation of Reduced Reporting Requirement

Authority: 12 U.S.C. 1464(v), 1817(a), and 1819 Tenth.

§ 304.11 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to 12 U.S.C. 1464(v), and sections 7 (12 U.S.C. 1817(a)(12)) and section 9 (12 U.S.C. 1819 Tenth) of the Federal Deposit Insurance Act.

(b) *Purpose.* This subpart implements 12 U.S.C. 1817(a)(12) to allow reduced reporting for a covered depository institution when such institution makes its reports of condition for the first and third calendar quarters of a year.

(c) *Scope.* This subpart applies to an insured depository institution, as that term is defined in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), that meets the definition of a covered depository institution under section 304.12.

(d) *Preservation of authority.* Nothing in this subpart in any way limits the authority of the Corporation under other provisions of applicable law and regulation.

§ 304.12 Definitions.

(a) *Covered depository institution* means an insured depository institution, as such term is defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, for which the Corporation is the appropriate Federal banking agency and that meets all of the following criteria:

- (1) Has less than \$5 billion in total consolidated assets as reported in its report of condition for the second calendar quarter of the preceding year;
- (2) Has no foreign offices, as defined in this subpart;
- (3) Is not required to or has not elected to use 12 CFR part 324, subpart E to calculate its risk-based capital requirements;
- (4) Is not a large institution or highly complex institution, as such terms are

defined in 12 CFR 327.8, or treated as a large institution, as requested under 12 CFR 327.16(f); and

(5) Is not a state-licensed insured branch of a foreign bank, as such terms are defined in section 3(s) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(s).

(b) *Foreign country* refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States.

(c) *Foreign office* means:

(1) A branch or consolidated subsidiary in a foreign country, unless the branch is located on a U.S. military facility;

(2) An international banking facility as such term is defined in 12 CFR 204.8;

(3) A majority-owned Edge Act or Agreement subsidiary including both its U.S. and its foreign offices; and

(4) For an institution chartered or headquartered in any U.S. state or the District of Columbia, a branch or consolidated subsidiary located in a U.S. territory or possession.

(d) *Report of condition* means the FFIEC 031, FFIEC 041, or FFIEC 051 versions of the Consolidated Report of Condition and Income (Call Report) or the FFIEC 002 (Report of Assets and

Liabilities of U.S. Branches and Agencies of Foreign Banks), as applicable, and as they may be amended or superseded from time to time in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

(e) *Total consolidated assets* means total assets as reported in an insured depository institution's report of condition.

§ 304.13 Reduced reporting.

A covered depository institution may file the FFIEC 051 version of the report of condition, or any successor thereto, which shall provide for reduced reporting for the reports of condition for the first and third calendar quarters for a year.

§ 304.14 Reservation of authority.

Notwithstanding § 304.13, the Corporation, in consultation with the applicable state chartering authority, may require an otherwise eligible covered depository institution to file the FFIEC 041 version of the report of condition, or any successor thereto, based on an institution-specific determination. In making this determination, the Corporation may consider criteria including, but not

limited to, whether the institution is significantly engaged in one or more complex, specialized, or other higher-risk activities, such as those for which limited information is reported in the FFIEC 051 version of the report of condition compared to the FFIEC 041 version of the report of condition. Nothing in this part shall be construed to limit the Corporation's authority to obtain information from insured depository institutions.

Dated: November 5, 2018.

Joseph M. Otting,
Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 30, 2018.

Ann E. Misback,
Secretary of the Board.

Dated at Washington, DC, on October 17, 2018.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 2018-24587 Filed 11-16-18; 8:45 am]

BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P



FEDERAL REGISTER

Vol. 83

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No. 223

November 19, 2018

Part IV

The President

Notice of November 16, 2018—Continuation of the National Emergency
With Respect to Burundi

Presidential Documents

Title 3—

Notice of November 16, 2018

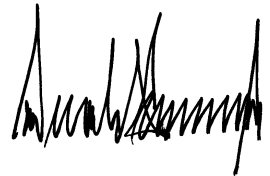
The President

Continuation of the National Emergency With Respect to Burundi

On November 22, 2015, by Executive Order 13712, the President declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in Burundi, which has been marked by the killing of and violence against civilians, unrest, the incitement of imminent violence, and significant political repression, and which threatens the peace, security, and stability of Burundi and the region.

The situation in Burundi continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on November 22, 2015, to deal with that threat must continue in effect beyond November 22, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13712.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
November 16, 2018.

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