AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 83 Monday,

No. 241 December 17, 2018

Pages 64433–64728

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 83 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

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

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

Printed on recycled paper.

Contents

Federal Register

Vol. 83, No. 241

Monday, December 17, 2018

Agriculture Department
See Rural Housing Service

Alcohol and Tobacco Tax and Trade Bureau
PROPOSED RULES
Proposed Establishment of the West Sonoma Coast Viticultural Area, 64495

Bureau of Consumer Financial Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64566–64567

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64575–64578

Centers for Medicare & Medicaid Services
NOTICES
Requests for Nominations:
Advisory Panel on Outreach and Education, 64578–64580

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64580–64581
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Annual Survey of Refugees, 64581–64582

Civil Rights Commission
NOTICES
Meetings:
Delaware Advisory Committee, 64516
District of Columbia Advisory Committee, 64517
New Jersey Advisory Committee, 64516–64517

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Crypto-Asset Mechanics and Markets, 64563–64566

Comptroller of the Currency
PROPOSED RULES
Standardized Approach for Calculating the Exposure Amount of Derivative Contracts, 64660–64728

Corporation for National and Community Service
RULES
Senior Corps:
Senior Companion Program, Foster Grandparent Program, Retired and Senior Volunteer Program, 64636–64658

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Streamlined Clearance Process for Discretionary Grants, 64568–64569
William D. Ford Federal Direct Loan Program General Forbearance Request, 64567–64568

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Indiana; Cross-State Air Pollution Rule, 64472–64478
New Hampshire; Transport Element for the 2010 Sulfur Dioxide National Ambient Air Quality Standard, 64470–64472
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Massachusetts; High Occupancy Vehicle Lanes, 64495–64497
Tennessee; NOx SIP Call and CAIR, 64497–64501

Federal Aviation Administration
RULES
Airworthiness Directives:
Air Comm Corporation Air Conditioning Systems, 64435–64437
Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.) Airplanes, 64441–64443
ATR–GIE Avions de Transport Regional Airplanes, 64438–64441
The Boeing Company Airplanes, 64433–64435
PROPOSED RULES
Establishment of Class E Airspace:
Auburn, NE, 64490–64491
Modification of Class E Airspace:
Hooper Bay, AK; Kaltag, AK; King Salmon, AK; Kodiak, AK; Manokotak, AK; and Middleton Island, AK, 64491–64493
NOTICES
Requests for Information:
Manufacturers of Lithium-Ion Secondary Cell Battery Packs or Comparable Secondary Cell Battery Packs, 64632

Federal Communications Commission
PROPOSED RULES
Unlicensed Use of the 6 GHz Band, 64506–64515

Federal Deposit Insurance Corporation
PROPOSED RULES
Standardized Approach for Calculating the Exposure Amount of Derivative Contracts, 64660–64728

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 64569–64572

Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
AC Energy, LLC, 64571–64572
Records Governing Off-the-Record Communications, 64570

Federal Maritime Commission
RULES
Interpretive Rule, Shipping Act, 64478–64480
PROPOSED RULES
Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries, 64502–64506

Federal Railroad Administration
NOTICES
Petition for Waiver of Compliance, 64632–64633

Federal Reserve System
PROPOSED RULES
Standardized Approach for Calculating the Exposure Amount of Derivative Contracts, 64660–64728
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64573–64575
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 64573
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 64572–64573

Food and Drug Administration
RULES
Listing of Color Additives Subject to Certification; D and C Yellow No. 8; Confirmation of Effective Date, 64443
Medical Device Classification Procedures:
Incorporating Food and Drug Administration Safety and Innovation Act Procedures, 64443–64458
NOTICES
Guidance:
Clarification of Radiation Control Regulations for Manufacturers of Diagnostic X-Ray Equipment, 64584–64585
Manufacturing Site Change Supplements: Content and Submission, 64582–64584

Foreign-Trade Zones Board
NOTICES
Production Activities:
Helix Steel, Foreign-Trade Zone 189, Kent/Ottawa/Muskegon Counties, MI, 64518
Proposed Production Activities:
Gulfstream Aerospace Corp., Foreign-Trade Zone 168, Dallas/Fort Worth, TX, 64517–64518

General Services Administration
NOTICES
Meetings:
World War One Centennial Commission, 64575

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

Health Resources and Services Administration
NOTICES
Meetings:
Advisory Committee on Training in Primary Care Medicine and Dentistry, 64585–64586

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Builder's Certification of Plans, Specifications and Site, 64586–64587

Industry and Security Bureau
NOTICES
Export Priviliges; Denials:, 64518–64525

Interior Department
See National Park Service
See Office of Natural Resources Revenue

Internal Revenue Service
RULES
Tax Return Preparer Due Diligence Penalty Under Section 6695(g); Correction, 64458–64459

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Carbazole Violet Pigment 23 From India, 64529–64530
Certain Corrosion-Resistant Steel Products From Taiwan, 64527–64528
Silicomanganese From India, Kazakhstan, and Venezuela, 64525–64526
Stainless Steel Sheet and Strip From the People's Republic of China, 64526–64527
Steel Concrete Reinforcing Bars From Belarus, the People's Republic of China, Indonesia, Latvia, Moldova, Poland, and Ukraine, 64530–64531

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Automated Teller Machines, ATM Modules, Components Thereof, and Products Containing the Same, 64599–64600
Magnesium From Israel, 64598–64599
Quartz Surface Products From China, 64597–64598

Justice Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Electronic Applications for the Attorney General's Honors Program and the Summer Law Intern Program, 64600–64601
Privacy Act; Systems of Records, 64601–64605

Maritime Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Mariner Survey, 64633–64634

National Capital Planning Commission
NOTICES
Final Adoption and Effective Date, 64605

National Credit Union Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64605–64606
Meetings; Sunshine Act, 64605

National Institute of Standards and Technology
NOTICES
Developing a Privacy Framework, 64531

National Institutes of Health
NOTICES
Meetings:
National Human Genome Research Institute, 64586
National Institute on Aging, 64586

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Reef Fish Resources of the Gulf of Mexico; Commercial Reef Fish Fishery of the Gulf of Mexico; 2019 Red Grouper Commercial Quota Retention, 64480–64481
Fisheries of the Northeastern United States:
Summer Flounder Fishery; Quota Transfer, 64481–64482
Summer Flounder, Scup, and Black Sea Bass Fisheries; 2019 Specifications, 64482–64487
NOTICES
Takes of Marine Mammals Incidental to Specified Activities:
Railroad Dock Dolphin Installation Project, Skagway, AK, 64541–64563
US 101/Chehalis River Bridge-Scour Repair in Washington, 64531–64541

National Park Service
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 64587–64588

Nuclear Regulatory Commission
NOTICES
License Applications:
Virginia Electric and Power Co.; Dominion Energy Virginia; Surry Power Station, Unit Nos. 1 and 2, 64606
Meetings; Sunshine Act, 64606–64607

Office of Natural Resources Revenue
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Indian Oil and Gas Valuation, 64588–64597

Postal Regulatory Commission
NOTICES
New Postal Products, 64607–64608

Postal Service
NOTICES
Product Changes:
Priority Mail and First-Class Package Service Negotiated Service Agreement, 64608
Priority Mail Negotiated Service Agreement, 64608–64609

Rural Housing Service
PROPOSED RULES
Section 538 Guaranteed Rural Rental Housing Program Notice of Funding Availability Elimination, 64488–64490

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 64630–64631
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 64622–64630
Cboe C2 Exchange, Inc, 64618–64622
Financial Industry Regulatory Authority, Inc., 64609–64611
Nasdaq GEMX, LLC, 64611–64612
Nasdaq MRX, LLC, 64612–64614
NYSE Arca, Inc., 64614–64618

Social Security Administration
PROPOSED RULES
Consideration of Pain in the Disability Determination Process, 64493–64495
NOTICES
Agreement on Social Security Between the United States and Slovenia; Entry into Force, 64631

Surface Transportation Board
NOTICES
Abandonment Exemptions:
Union Pacific Railroad Co. in Douglas County, NE, 64631–64632

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Comptroller of the Currency
See Internal Revenue Service

Veterans Affairs Department
RULES
Loan Guaranty:
Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans, 64459–64470

Separate Parts In This Issue

Part II
Corporation for National and Community Service, 64636–64658

Part III
Federal Deposit Insurance Corporation, 64660–64728
Federal Reserve System, 64660–64728
Treasury Department, Comptroller of the Currency, 64660–64728

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:

3565 64488

12 CFR

Proposed Rules:

3 64659
32 64659
217 64659
324 64659

14 CFR

39 (4 documents) 64433, 64435, 64438, 64441

Proposed Rules:

71 (2 documents) 64490, 64491

20 CFR

Proposed Rules:

404 64493
416 64493

21 CFR

74 64443
860 64443

26 CFR

1 64458

27 CFR

Proposed Rules:

9 64495

38 CFR

36 64459

40 CFR

52 (2 documents) 64470, 64472

Proposed Rules:

52 (2 documents) 64495, 64497

45 CFR

2551 64635
2552 64635
2553 64635

46 CFR

545 64478

Proposed Rules:

515 64502

47 CFR

Proposed Rules:

15 64506

50 CFR

622 64480
648 (2 documents) 64481, 64482

Rules and Regulations

Federal Register

Vol. 83, No. 241

Monday, December 17, 2018

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0803; Product Identifier 2018–NM–098–AD; Amendment 39–19526; AD 2018–25–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 727 airplanes. This AD was prompted by a report of cracking in the inboard lower flange and adjacent web near the forward attachment of the outboard flap track at a certain position on a Model 737–300 airplane. The flap tracks of Model 737–300 airplanes are similar to the flap tracks of Model 727 airplanes. This AD requires repetitive detailed inspections and surface high frequency eddy current (HFEC) inspections of each outboard flap track at certain positions for any crack and discrepancy, and applicable on-condition actions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 22, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publication listed in this AD as of January 22, 2019.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0803.

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–2018–0803; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is 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: Muoi Vuong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5205; fax: 562–627–5210; email: *muoi.vuong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 727 airplanes. The NPRM published in the **Federal Register** on September 28, 2018 (83 FR 49017). The NPRM was prompted by a report of cracking in the inboard lower flange and adjacent web near the forward attachment of the outboard flap track at a certain position on a Model 737–300 airplane. The flap tracks of Model 737–300 airplanes are similar to the flap tracks of Model 727 airplanes. The NPRM proposed to require repetitive detailed inspections and surface HFEC inspections of each outboard flap track at certain positions for any crack and discrepancy, and applicable on-condition actions.

We are issuing this AD to address the inability of a principal structural element to sustain required flight loads, which could result in loss of the outboard trailing edge flap and reduced controllability of the airplane.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. Boeing indicated its support for the NPRM.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018. The service information describes procedures for repetitive detailed inspections for discrepancies and surface HFEC inspections for cracks of each outboard flap track at positions 1, 2, 7, and 8, and applicable on-condition actions. On-condition actions include repairs and installation of a new or serviceable flap track. 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.

Costs of Compliance

We estimate that this AD affects 16 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	113 work-hours × $85 per hour = $9,605 per inspection cycle.	$0	$9,605 per inspection cycle.	$153,680 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this 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 AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–25–15 The Boeing Company: Amendment 39–19526; Docket No. FAA–2018–0803; Product Identifier 2018–NM–098–AD.

(a) Effective Date

This AD is effective January 22, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 727, 727–100, 727–100C, 727–200, 727–200F, and 727C series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of cracking in the inboard lower flange and adjacent web near the forward attachment of the outboard flap track at position 8 on a Model 737–300 airplane. The flap tracks of Model 737–300 airplanes are similar to the flap tracks of Model 727 airplanes. We are issuing this AD to address the inability of a principal structural element to sustain required flight loads, which could result in loss of the outboard trailing edge flap and reduced controllability of the airplane.

(f) Compliance

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

(g) Required Actions

Except as required by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018.

Note 1 to paragraph (g) of this AD: Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 727–57A0188, dated May 31, 2018, which is referred to in Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018, uses the phrase ''the original issue date of Requirements Bulletin 727–57A0188 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018, specifies contacting Boeing for repair instructions, this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install, on any airplane, a wing outboard flap track having a part number listed in paragraph 1.B. of Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018, unless the inspections and applicable on-condition actions specified in the Accomplishment Instructions of Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018, are accomplished concurrently with the installation of the part on the airplane.

(j) 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 (k) 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.

(k) Related Information

For more information about this AD, contact Muoi Vuong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5205; fax: 562–627–5210; email: *muoi.vuong@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 the AD specifies otherwise.

(i) Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018.

(ii) [Reserved]

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

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

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

Issued in Des Moines, Washington, on November 29, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–26622 Filed 12–14–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1217; Product Identifier 2016–SW–080–AD; Amendment 39–19528; AD 2018–25–17]

RIN 2120–AA64

Airworthiness Directives; Air Comm Corporation Air Conditioning Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Air Comm Corporation (Air Comm) air conditioning systems installed on various model helicopters. This AD requires replacing electrical connectors and prohibits the installation of other parts. This AD was prompted by reports of overheated connectors. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective January 22, 2019.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of January 22, 2019.

ADDRESSES: For service information identified in this final rule, contact Air Comm Corporation, 1575 West 124th Ave., Westminster, CO 80234; telephone (303) 440–4075; email *service@aircommcorp.com;* website *www.aircommcorp.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1217.

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–2017–1217; 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 AD, any incorporated-by-reference service information, the economic evaluation, the Special Airworthiness Information Bulletin (SAIB), any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is 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: Matthew Bryant, Aerospace Engineer, Denver ACO Branch, Compliance & Airworthiness Division, FAA, 26805 East 68th Ave., Room 214, Denver, CO 80249; telephone (303) 342–1092; email *matthew.bryant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On January 11, 2018, at 83 FR 1313, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, and EC130B4, and Bell Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4, and 407 helicopters with certain part-numbered Air Comm air conditioning systems installed. The NPRM proposed to require replacing certain connectors with Air Comm connectors and to prohibit installing certain part-numbered plugs, sockets, receptacles, and pin in some aft evaporator assemblies, aft evaporator blower assemblies, and aft condenser blowers. The proposed requirements were intended to address the unsafe condition of an overheated connector, which could result in a fire and subsequent loss of control of the helicopter.

Ex Parte Contact

On April 17, 2018, after the comment period closed, we had a teleconference with Air Comm about some of the Air Comm parts identified in the NPRM. We subsequently continued this discussion by email. Air Comm's comment during these discussions is addressed below. A copy of each email contact and a summary of each telephone contact can be found in the rulemaking docket at *http://www.regulations.gov* in Docket No. FAA–2017–1217.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment we received and the FAA's response.

Request

Air Comm requested that we review paragraph (e)(2) of the NPRM, which lists aft evaporator assembly part number (P/N) AS350–6202. Air Comm stated that this P/N is not part of the type design for the air conditioning system. According to Air Comm, the

correct P/N is AS350–6202–1. In support of this request, Air Comm provided the type design data for our review.

We agree. Although Figure 1 of Air Comm Corporation Service Bulletin (SB) AS350–111014, Revision B, dated January 10, 2017, identifies the aft evaporator assembly as P/N AS350–6202, the correct P/N is AS350–6202–1. We have corrected this error in this Final Rule.

Further, because of Air Comm's comments, we conducted additional review of the blower and wire harness drawings for the affected components. As a result, we determined that plug P/N 03–09–1042 and receptacle P/N 03–09–2042 were listed in error in the NPRM. These two P/Ns are also not part of the type design for the air conditioning system. Accordingly, we have removed these P/Ns from paragraph (e)(2) of this Final Rule.

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed with the changes described previously. These changes are consistent with the intent of the proposals in the NPRM and will not increase the economic burden on any operator nor increase the scope of the AD.

Related Service Information Under 1 CFR Part 51

Air Comm Corporation has issued SB AS350–111014, Revision B, dated January 10, 2017, for Airbus Helicopters AS350 series helicopters and SB EC130–6204, Revision B, dated January 10, 2017, for Airbus Helicopters EC130 series helicopters. Air Comm Corporation has also issued SB 206–110414 for Bell 206 series helicopters, Revision C, and SB 407–110414 for Bell Model 407 helicopters, Revision D, both dated January 13, 2017. This service information specifies inspecting certain aft evaporator blower motor and certain condenser blower electrical connectors for indications of overheating, discoloration, and plastic deformation and performing a pull test. This service information also specifies replacing connector housings and contacts that fail the inspection or the pull test.

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

Air Comm Corporation has also issued the following:

- SB AS350–111014 and SB EC130–6204, both Revision A and both dated July 6, 2016;
- SB 206–110414, Revision B, dated January 10, 2017, and Revision A dated June 3, 2016; and
- SB 407–110414, Revision C, dated January 10, 2017, and Revision B, dated July 6, 2016.

This service information contains the same procedures described above. However, SB AS350–111014 and SB EC130–6204, both Revision B and dated January 10, 2017, contain additional instructions and figures for the connectors. SB 206–110414, Revision C, and SB 407–110414, Revision D, both dated January 13, 2017, contain minor corrections.

Differences Between This AD and the Service Information

The Air Comm service information specifies a compliance time of 20 flight hours. This AD requires compliance within 90 hours time-in-service. The Air Comm service information specifies inspecting each connector and replacing the connector housings and contacts that have any signs of overheating or that fail a pull test. This AD requires replacing each connector without an inspection. This AD also prohibits installing certain parts in certain part-numbered aft evaporator assemblies, aft evaporator blower assemblies, and aft condenser blowers.

Costs of Compliance

We estimate that this AD affects 914 units installed on 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 the connectors takes about 1 work-hour and parts cost about $60 for a total estimated cost of $145 per helicopter and $132,530 for the U.S. fleet.

According to Air Comm's service information, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Air Comm. Accordingly, we have included all costs in our cost estimate.

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

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under 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 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–25–17 Air Comm Corporation (Air Comm) Air Conditioning Systems: Amendment 39–19528; Docket No. FAA–2017–1217; Product Identifier 2016–SW–080–AD.

(a) Applicability

This AD applies to the following helicopters, certificated in any category:

(1) Airbus Helicopters Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, and AS350D1 helicopters with an Air Comm air conditioning system part number (P/N) AS350–202–1, AS350–202–2, AS350–202–3, AS350–202–4, AS350–202–5, AS350–204–1, AS350–204–2, AS350–204–3, AS350–204–4, AS350–204–5, AS350–204–6, AS350–204–7, AS350–204–8, AS350–204–9, AS350–204–10, AS350–204–11, or AS350–204–12 installed.

(2) Airbus Helicopters Model EC130B4 helicopters with an Air Comm air conditioning system P/N EC130–202–1, EC130–202–2, EC130–202–3, EC130–202–4, EC130–202–5, EC130–202–6, EC130–202–7, or EC130–202–8 installed.

(3) Bell Helicopter Textron Canada Limited (Bell) Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters with an Air Comm air conditioning system P/N 206EC–200, 206EC–201, 206EC–202, 206EC–203, 206EC–204, 206EC–205, 206EC–206, 206EC–207, 206EC–208, 206EC–209, 206EC–210, 206EC–211, or 206EC–212 installed.

(4) Bell Model 407 helicopters with an Air Comm air conditioning system P/N 407 EC–201, 407 EC–202, or 407 EC–203 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as an overheated connector. This condition could result in a fire and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective January 22, 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

(1) Within 90 hours time-in-service:

(i) For Airbus Helicopters Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, and AS350D1 helicopters, replace each aft evaporator blower motor connector with an Air Comm connector as depicted in Figures 2, 3, and 4 of Air Comm Service Bulletin (SB) SB AS350–1110014, Revision B, dated January 10, 2017, by using a Deutsch HDT–48–00 or an equivalent MIL–DTL22520 Type 1 crimping tool.

(ii) For Airbus Helicopters Model EC130B4 helicopters, replace each aft evaporator blower motor connector with an Air Comm connector as depicted in Figures 2, 3, and 4 of Air Comm SB EC130–6204, Revision B, dated January 10, 2017, by using a Deutsch HDT–48–00 or an equivalent MIL–DTL22520 Type 1 crimping tool.

(iii) For Bell Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters, replace each aft evaporator blower motor connector with an Air Comm connector as depicted in Figures 4, 5, and 6 of Air Comm SB 206–110414, Revision C, dated January 13, 2017, by using a Deutsch HDT–48–00 or an equivalent MIL–DTL22520 Type 1 crimping tool.

(iv) For Bell Model 407 helicopters, replace each aft evaporator blower motor connector with an Air Comm connector as depicted in Figures 4, 5, and 6 of Air Comm SB 407–110414, Revision D, dated January 13, 2017, by using a Deutsch HDT–48–00 or an equivalent MIL–DTL22520 Type 1 crimping tool.

(2) After the effective date of this AD, do not install the following in any aft evaporator assembly P/Ns AS350–6202–1, EC130–6204–1, or EC130–6204–2; aft evaporator blower assembly P/Ns S–6078EC–15, S–6102EC–3, or S–6102EC–4; or aft condenser blower P/Ns S–7060EC–1, S–7060EC–2, S–7062EC–1 or S–7062EC–2:

(i) Plug P/N 03–09–1022 and 03–09–1032;

(ii) Socket P/N 02–09–1103 and 02–09–1104;

(iii) Receptacle P/N 03–09–2022 and 03–09–2032; and

(iv) Pin P/N 02–09–2103.

(f) Credit for Previous Actions

Replacing the connectors before the effective date of this AD in accordance with Air Comm SB 206–110414, Revision A, dated June 3, 2016; SB AS350–111014 or SB EC130–6204, both Revision A and both dated July 6, 2016; SB 407–110414, Revision B, dated July 6, 2016; SB 206–110414, Revision B, dated January 10, 2017; or SB 407–110414, Revision C, dated January 10, 2017, is considered acceptable for compliance with the corresponding required actions specified in paragraph (e)(1) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Denver ACO Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matthew Bryant, Aerospace Engineer, Denver ACO Branch, Compliance & Airworthiness Division, FAA, 26805 East 68th Ave., Room 214, Denver, CO 80249; telephone (303) 342–1092; email *matthew.bryant@faa.gov* and *9-Denver-Aircraft-Cert@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.

(h) Additional Information

Air Comm SB 206–110414, Revision A, dated June 3, 2016; SB AS350–111014 or SB EC130–6204, both Revision A and both dated July 6, 2016; SB 407–110414, Revision B, dated July 6, 2016; SB 206–110414, Revision B, dated January 10, 2017; and SB 407–110414, Revision C, dated January 10, 2017, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Air Comm Corporation, 1575 West 124th Ave., Westminster, CO 80234; telephone (303) 440–4075; email *service@aircommcorp.com;* website *www.aircommcorp.com.* You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2197, Air Conditioning System Wiring.

(j) Material Incorporated by Reference

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

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

(i) Air Comm Corporation Service Bulletin (SB) SB AS350–111014, Revision B, dated January 10, 2017.

(ii) Air Comm Corporation SB EC130–6204, Revision B, dated January 10, 2017.

(iii) Air Comm Corporation SB 206–110414, Revision C, dated January 13, 2017.

(iv) Air Comm Corporation SB 407–110414, Revision D, dated January 13, 2017.

(3) For Air Comm service information identified in this AD, contact Air Comm Corporation, 1575 West 124th Ave., Westminster, CO 80234; telephone (303) 440–4075; email *service@aircommcorp.com*; website *www.aircommcorp.com.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on December 7, 2018.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018–27134 Filed 12–14–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0167; Product Identifier 2017–NM–131–AD; Amendment 39–19530; AD 2018–25–18]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all ATR–GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes. This AD was prompted by reports of cracking in main landing gear (MLG) universal joints (U-joints). This AD requires repetitive detailed inspections of the affected U-joints for cracks, and replacement if necessary. This AD also provides an optional terminating action for the repetitive inspections. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 22, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 22, 2019.

ADDRESSES: For service information identified in this final rule, contact Safran Landing Systems, Inovel Parc Sud—7, rue Général Valérie André, 78140 VELIZY–VILLACOUBLAY–FRANCE; phone: +33 (0) 1 46 29 81 00; internet: *www.safran-landing-systems.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0167.

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–2018–0167; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is 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: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental NPRM (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all ATR–GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes. The SNPRM published in the **Federal Register** on September 19, 2018 (83 FR 47318). We preceded the SNPRM with an NPRM that published in the **Federal Register** on March 29, 2018 (83 FR 13436). The NPRM was prompted by reports of cracking in MLG U-joints. The NPRM proposed to require repetitive detailed inspections of the affected U-joints for cracks, and replacement if necessary. The NPRM also proposed to provide an optional terminating action for the repetitive inspections. We issued the SNPRM to increase the number of affected parts that must be inspected.

We are issuing this AD to address cracking in MLG U-joints, which could lead to MLG structural failure and subsequent collapse of the MLG, possibly resulting in damage to the airplane and injury to the occupants.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0080, dated April 11, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all ATR–GIE Avions de Transport Régional Model ATR42 and Model ATR72 airplanes. The MCAI states:

> Occurrences were reported of finding cracks in certain MLG U-joints. Subsequent investigation identified a batch of affected U-joints which have possibly been subjected to non-detected thermal abuse during the grinding process by the U-joint manufacturer in production, or by a maintenance organization during overhaul and/or repair.
>
> This condition, if not detected and corrected, could lead to MLG structural failure and subsequent collapse of the MLG, possibly resulting in damage to the aeroplane and injury to the occupants.
>
> To address this potential unsafe condition, SLS [Safran Landing Systems] published the applicable SB [service bulletin] to provide inspection instructions. Consequently, EASA issued AD 2017–0172 to require repetitive detailed visual inspection (DVI) of the affected U-joints for cracks, and, depending on findings, replacement.
>
> Since that AD was issued, SLS identified that certain s/n [serial numbers] of affected U-joints were inadvertently not included in the list of the original issue of the applicable SB. Consequently, SLS issued Revision 02 of the applicable SB to clarify the s/n tables of P/N [part number] D56805 and P/N D56805–2, and to add those missed s/n of affected U-joints.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2017–0172, which is superseded, and includes reference to Revision 02 of the applicable SB.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0167.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comment received on the SNPRM and the FAA's response to that comment.

Request To Modify Serviceable Parts Definition

ATR–GIE Avions de Transport Régional (ATR) requested that we revise paragraph (g)(2) of the proposed AD to be consistent with the applicable text of the MCAI. ATR stated that the paragraph as written could allow an old, never-installed part to be considered serviceable even though it is identified as an affected part in the service information.

We agree to clarify the definition of serviceable parts. The language of the identified paragraph could be interpreted to allow certain affected parts, as defined in paragraph (g)(1) of this AD, to be installed as serviceable parts if they had never been previously installed. Our intent is to exclude installation of an affected part even if the part is new or repaired. We have changed the wording of paragraph (g)(2) of this AD accordingly.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Safran Landing Systems has issued Service Bulletin 631–32–249, Revision 2, dated February 13, 2018; Service Bulletin 631–32–250, Revision 2, dated February 13, 2018; and Service Bulletin 631–32–251, Revision 2, dated February 13, 2018. The service information describes procedures for detailed inspections of the affected U-joints for cracking, and replacement if necessary. These documents are distinct since they apply to different airplane models.

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.

Costs of Compliance

We estimate that this AD affects 62 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle.	$5,270 per inspection cycle.

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need these on-condition actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	8 work-hours × $85 per hour = $680	$14,083	$14,763

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–25–18 ATR–GIE Avions de Transport Régional: Amendment 39–19530; Docket No. FAA–2018–0167; Product Identifier 2017–NM–131–AD.

(a) Effective Date

This AD is effective January 22, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to ATR–GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes; and Model ATR72–101, –102, –201, –202, –211, –212,

and –212A airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of cracking in certain main landing gear (MLG) universal joints (U-joints). We are issuing this AD to address cracking in MLG U-joints, which could lead to MLG structural failure and subsequent collapse of the MLG, possibly resulting in damage to the airplane and injury to the occupants.

(f) Compliance

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

(g) Definitions

(1) For the purposes of this AD, an affected U-joint is any U-joint identified by part number (P/N) and serial number listed in the applicable service bulletin specified in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD.

(i) For Model ATR42–200, –300, and –320 airplanes: Safran Landing Systems Service Bulletin 631–32–249, Revision 2, dated February 13, 2018.

(ii) For Model ATR42–500 airplanes: Safran Landing Systems Service Bulletin 631–32–250, Revision 2, dated February 13, 2018.

(iii) For Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes: Safran Landing Systems Service Bulletin 631–32–251, Revision 2, dated February 13, 2018.

(2) For the purposes of this AD, a serviceable part is an affected U-joint, as defined in paragraph (g)(1) of this AD, released to service by Safran Landing Systems, free of defect, with the letter ''V'' added on the part (on the identification plate, or in the vicinity of the P/N marking); or any other U-joint with chrome-plated faces that were never stripped or repaired; or any other U-joint with chrome-plated faces that were stripped and repaired as specified in the applicable component maintenance manual (CMM) identified in paragraph (g)(2)(i), (g)(2)(ii), or (g)(2)(iii).

(i) For Model ATR42–200, –300, and –320 airplanes: Safran Landing Systems CMM 32–18–28, Rev. 10, or Safran Landing Systems CMM 32–18–30, Rev. 8, both dated June 2, 2017.

(ii) For Model ATR42–500 airplanes: Safran Landing Systems CMM 32–18–45, Rev. 5, or Safran Landing Systems CMM 32–18–63, Rev. 6, both dated June 2, 2017.

(iii) For Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes: Safran Landing Systems CMM 32–18–34, Rev. 9, dated June 2, 2017.

(h) Repetitive Inspections

Within 3 months or 500 flight cycles (FC), whichever occurs first, after the effective date of this AD, and thereafter at intervals not to exceed 500 FC: Do a detailed inspection for cracking of each affected U-joint, as identified in paragraph (g)(1) of this AD, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD.

(i) Corrective Action

If, during any inspection required by paragraph (h) of this AD, any cracked U-joint is found, before further flight: Replace the cracked U-joint with a serviceable part, as defined in paragraph (g)(2) of this AD, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD.

(j) Optional Terminating Action for Required Repetitive Inspections

Replacement of all affected U-joints on an airplane, as identified in paragraph (g)(1) of this AD, with serviceable parts, as defined in paragraph (g)(2) of this AD, constitutes terminating action for the repetitive inspections required by paragraph (h) of this AD for that airplane.

(k) Parts Installation Limitation

As of the effective date of this AD, no person may install, on any airplane, an affected U-joint, as identified in paragraph (g)(1) of this AD, unless it is a serviceable part, as defined in paragraph (g)(2) of this AD.

(l) No Reporting Requirement

Although the Accomplishment Instructions of the service bulletins identified in paragraphs (g)(1)(i), (g)(1)(ii), and (g)(1)(iii) of this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

(m) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (h) and (i) of this AD, if those actions were performed before the effective date of this AD using the applicable service bulletin specified in paragraph (m)(1), (m)(2), or (m)(3) of this AD, provided that affected U-joints not identified in the service bulletin specified in paragraph (m)(1), (m)(2), or (m)(3) of this AD comply with the requirements of paragraphs (h) and (i) of this AD.

(1) Safran Landing Systems Service Bulletin 631–32–249, Revision 1, dated June 26, 2017.

(2) Safran Landing Systems Service Bulletin 631–32–250, Revision 1, dated June 26, 2017.

(3) Safran Landing Systems Service Bulletin 631–32–251, Revision 1, dated June 26, 2017.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0080, dated April 11, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0167.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(3) and (p)(4) of this AD.

(p) 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.

(i) Safran Landing Systems Service Bulletin 631–32–249, Revision 2, dated February 13, 2018.

(ii) Safran Landing Systems Service Bulletin 631–32–250, Revision 2, dated February 13, 2018.

(iii) Safran Landing Systems Service Bulletin 631–32–251, Revision 2, dated February 13, 2018.

(3) For service information identified in this AD, contact Safran Landing Systems, Inovel Parc Sud—7, rue Général Valérie André, 78140 VELIZY–VILLACOUBLAY–FRANCE; phone: +33 (0) 1 46 29 81 00; internet: *www.safran-landing-systems.com.*

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

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

Issued in Des Moines, Washington, on December 6, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–27130 Filed 12–14–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0805; Product Identifier 2018–NM–103–AD; Amendment 39–19527; AD 2018–25–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.) Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Defense and Space S.A. Model CN–235, CN–235–200 and CN–235–300 airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 22, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 22, 2019.

ADDRESSES: For service information identified in this final rule, contact Airbus Defense and Space, Services/Engineering Support, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 31 27; email *MTA.TechnicalService@airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0805.

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–2018–0805; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is 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: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Defense and Space S.A. Model CN–235, CN–235–200 and CN–235–300 airplanes. The NPRM published in the **Federal Register** on October 9, 2018 (83 FR 50539). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

We are issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements; such fatigue cracking, damage, and corrosion could result in reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0134, dated June 25, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Defense and Space S.A. Model CN–235, CN–235–200, and CN–235–300 airplanes. The MCAI states:

> The airworthiness limitations and/or certification maintenance instructions for the EADS–CASA CN–235 aeroplanes, which are approved by EASA, are currently defined and published in the Airbus D&S CN–235 ALL [Airworthiness Limitations List] DT–86–3001 document. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition [*i.e.,* fatigue cracking, damage, and corrosion in principal structural elements, which could result in reduced structural integrity of the airplane].
>
> For the reason described above, this [EASA] AD requires accomplishment of the actions specified in the ALL.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0805.

Comments

We gave the public the opportunity to participate in developing this final rule. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus Defence and Space has issued Technical Document DT–86–3001, CN–235 Airworthiness Limitations List, Issue R, dated March 20, 2018. This service information describes airworthiness limitations for airplane systems, structural inspections, safe life structural items, and safe life system items.

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.

Costs of Compliance

We estimate that this AD affects 9 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we

have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–25–16 Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.): Amendment 39–19527; Docket No. FAA–2018–0805; Product Identifier 2018–NM–103–AD.

(a) Effective Date

This AD is effective January 22, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.) Model CN–235, CN–235–200, and CN–235–300 airplanes, all manufacturer serial numbers, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before March 20, 2018. This AD does not apply to Model CN–235–300 airplanes in a Maritime Patrol (SM01) configuration.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. We are issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements; such fatigue cracking, damage, and corrosion could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Airbus Defence and Space Technical Document DT–86–3001, CN–235 Airworthiness Limitations List, Issue R, dated March 20, 2018. The initial compliance times for doing the tasks are at the applicable times specified in Airbus Defence and Space Technical Document DT–86–3001, CN–235 Airworthiness Limitations List, Issue R, dated March 20, 2018, or within 90 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

After accomplishment of the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals, may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0134, dated June 25, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0805.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

(k) 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.

(i) Airbus Defence and Space Technical Document DT–86–3001, CN–235 Airworthiness Limitations List, Issue R, dated March 20, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Airbus Defense and Space, Services/Engineering Support, Avenida de Aragón 404, 28022 Madrid, Spain; telephone: +34 91 585 55 84; fax: +34 91 585 31 27; email: *MTA.TechnicalService@airbus.com.*

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

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

Issued in Des Moines, Washington, on November 29, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–26621 Filed 12–14–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. FDA–2017–C–2902]

Listing of Color Additives Subject to Certification; D&C Yellow No. 8; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA or we) is confirming the effective date of October 26, 2018, for the final rule that appeared in the **Federal Register** of September 25, 2018, and that amended the color additive regulations to provide for the expanded safe use of D&C Yellow No. 8 as a color additive in contact lens solution.

DATES: The effective date of final rule published in the **Federal Register** of September 25, 2018 (83 FR 48373) is confirmed: October 26, 2018.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Molly A. Harry, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1075.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 25, 2018 (83 FR 48373), we amended the color additive regulations to add § 74.3708, ''D&C Yellow No. 8,'' (21 CFR 74.3708) to provide for the expanded safe use of D&C Yellow No. 8 as a color additive in contact lens solution.

We gave interested persons until October 25, 2018, to file objections or requests for a hearing. We explained that, to file an objection, among other things, persons must specify with particularity the provision(s) to which they object. We also explained that if a person who properly submits an objection wants a hearing, he or she must specifically request a hearing and that failure to do so will constitute a waiver of the right to a hearing (83 FR 48373 at 48375).

We received seven comments regarding our decision to amend the color additive regulations to provide for the expanded safe use of D&C Yellow No. 8 as a color additive in contact lens solution. None of the comments, however, specified with particularity the provision(s) of the regulation to which they objected nor specifically requested a hearing. Therefore, we find that the effective date of the final rule that published in the **Federal Register** of September 25, 2018, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs, we are giving notice that no objections or requests for a hearing were filed in response to the September 25, 2018, final rule. Accordingly, the amendments issued in the final rule became effective October 26, 2018.

Dated: December 11, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27234 Filed 12–14–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 860

[Docket No. FDA-2013–N–1529]

RIN 0910–AH75

Medical Device Classification Procedures: Incorporating Food and Drug Administration Safety and Innovation Act Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule to amend its regulations governing classification and reclassification of medical devices to conform to the applicable provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act) as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA). FDA is also making additional changes unrelated to the FDASIA requirements, to update its regulations governing the classification and reclassification of medical devices. FDA is taking this action to codify the procedures and criteria that apply to the classification and reclassification of medical devices and to provide for classification of devices in the lowest regulatory class consistent with the public health and the statutory scheme for device regulation.

DATES: This rule is effective March 18, 2019.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *For information concerning the final rule as it relates to devices regulated by the Center for Devices and Radiological Health (CDRH):* Ana Loloei, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 66, Rm. 5452, Silver Spring, MD 20993–0002.

For information concerning the final rule as it relates to devices regulated by the Center for Biologics Evaluation and Research (CBER): 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:

Table of Contents

I. Executive Summary
A. Purpose of the Final Rule
B. Summary of the Major Provisions of the Final Rule
C. Legal Authority
D. Costs and Benefits
II. Table of Terms, Abbreviations, and Commonly Used Acronyms in This Document
III. Background
A. Need for the Regulation/History of This Rulemaking
B. Summary of Comments in Response to the Proposed Rule
IV. Legal Authority
V. Comments on the Proposed Rule and FDA Response
A. Introduction
B. Description of General Comments and FDA Response
C. Comments and FDA Response on the Proposed Definitions
D. Comments and FDA Response on FDASIA Implementation
E. Comments and FDA Response on Removal of Petition Requirements: Classification Questionnaire and Supplemental Data Sheet
F. Comments on Other Proposed Conforming Changes and Technical Amendments to the Part 860 Regulations
VI. Effective Date
VII. Economic Analysis of Impacts
VIII. Analysis of Environmental Impact
IX. Consultation and Coordination with Indian Tribal Governments
X. Paperwork Reduction Act of 1995
XI. Federalism
XII. References

I. Executive Summary

A. Purpose of the Final Rule

FDA is issuing this final rule to amend part 860 of title 21 of the Code of Federal Regulations (CFR) (part 860), to conform the applicable provisions governing the classification and reclassification of medical devices to the FD&C Act as amended by FDASIA (Pub. L. 112–144). FDASIA, which became effective on July 9, 2012, established new processes for requiring premarket approval (PMA) applications for preamendments devices and for the reclassification of devices by administrative order, instead of by rulemaking. In this final rule, FDA also is amending the provisions of its regulations governing reclassifications initiated by FDA to incorporate the process for issuing administrative orders and to update generally the part 860 regulations governing the classification and reclassification of devices to conform them to the FDASIA changes and current FDA practices. This final rule provides for the classification of devices in the lowest regulatory class consistent with the public health and the statutory scheme for device regulation. We are changing the title of this rulemaking from ''Medical Device Classification Procedures'' to ''Medical Device Classification Procedures: Incorporating Food and Drug Administration Safety and Innovation Act Procedures'' to reflect the limited purpose of this final rule.

B. Summary of the Major Provisions of the Final Rule

FDASIA amended the FD&C Act provisions for reclassification of devices and for requiring PMA applications for preamendments class III devices to change from a rulemaking proceeding to an administrative order process. Under the FD&C Act as amended by FDASIA, prior to publication of a final order reclassifying a device or requiring a PMA application for a preamendments class III device, FDA must publish a proposed order in the **Federal Register**, consider any comments submitted on the proposed order, and hold a device classification panel meeting (see sections 513(e) and 515(b) of the FD&C Act (21 U.S.C. 360c(e) and 360e(b))). To reflect these procedural changes, FDA is issuing this final rule to amend our regulations (amended §§ 860.130, 860.132 and 860.133 of this final rule).

This final rule also clarifies the process where reclassification of a postamendments device or a transitional device is initiated by FDA, rather than in response to a petition (see sections 513(f)(3) and 520(*l*) of the FD&C Act (21 U.S.C. 360c(f)(3) and 360j(*l*))). Specifically, this rule details the procedures for these reclassification actions, which consist of a proposed reclassification order, optional panel consultation, and a final reclassification order published in the **Federal Register** following consideration of comments and any panel recommendations or comments (amended §§ 860.134(c) and 860.136(c) of this final rule). This final rule also removes the requirement for a hearing under part 16 (21 CFR part 16) for reclassifying transitional devices, because we believe the process in this final rule providing for a proposed order, panel consultation as appropriate, consideration of comments, and final order provides sufficient opportunity for participation and review of reclassification of transitional devices.

This final rule also removes two definitions specifically pertaining to FDA forms that the Agency is eliminating under this rule, as we no longer find the forms useful. This rule does not finalize any of the other proposed changes to the current part 860 definitions.

C. Legal Authority

Section 608 of FDASIA amended the procedures for reclassification of devices and for requiring PMA applications for preamendments class III devices (sections 513(e) and 515(b) of the FD&C Act, respectively). FDASIA amended both provisions to remove the prior requirement for a rulemaking proceeding and to replace it with an administrative order process, instead of rulemaking under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). Section 701(a) of the FD&C Act (21 U.S.C. 371(a)) permits the issuance of regulations for the efficient enforcement of the FD&C Act.

D. Costs and Benefits

This final rule amends the regulations governing the process for classification and reclassification of medical devices. It codifies FDASIA amendments to the FD&C Act that are already in effect and updates generally the regulations for device classification and reclassification proceedings to provide clarity.

The costs of this final rule include initial learning costs faced by medical device manufacturers and affiliated regulatory consultants upon publication of the rule, in addition to annual costs incurred by the Agency and industry related to preparation and participation in additional panel meetings. We estimate the rule's present discounted cost, over a 10-year period, to equal $2 million at a 3 percent discount rate and $1.7 million at a 7 percent discount rate. Our estimates of the annualized costs are $0.24 million at a 3 percent discount rate and $0.24 million at a 7 percent discount rate.

The principal benefits of this final rule stem from the reduction in regulatory and economic burden that will accompany the elimination of some paperwork filing requirements, in addition to the enhanced consistency and uniformity across reclassification proceedings. These cost savings will accrue to both medical device manufacturers and to the Agency. Further benefits may be derived from the decreased time a petition will need to be reviewed for device reclassification and the subsequent potential benefits realized by consumers and producers. We estimate the overall cost savings over the next 10 years to be $0.05 million at a 3 percent discount rate and $0.04 million at a 7 percent discount rate. Our estimates of the annualized cost savings are $0.006 million at a 3 percent discount rate and $0.006 million at a 7 percent discount

rate. The estimated costs and cost savings are summarized for a 10-year period in table 1 and for an infinite period in table 2. Additional qualitative analysis of this final rule's benefits is included in the Final Regulatory Impact Analysis.

TABLE 1—SUMMARY OF ESTIMATED COSTS AND COST SAVINGS

[In $ Millions 2016 dollars, at 3% and 7% discount rates, over a 10-year period]

	Primary (3%)	Lower bound (3%)	Upper bound (3%)	Primary (7%)	Lower bound (7%)	Upper bound (7%)
Present Value of Costs	$2.002	$0.014	$23.050	$1.668	$0.014	$18.982
Present Value of Cost Savings	0.047	0.041	0.061	0.039	0.034	0.050
Present Value of Net Costs	1.975	(0.027)	22.989	1.629	(0.020)	18.932
Annualized Costs	0.237	0.002	2.702	0.237	0.002	2.703
Annualized Cost Savings	0.006	0.005	0.007	0.006	0.005	0.007
Annualized Net Costs	0.231	(0.003)	2.695	0.231	(0.003)	2.696

Notes: Benefits include reduction in administrative burden and enhanced clarity and uniformity in petition process. Range of estimates captures uncertainty around petitioner response.

TABLE 2—E.O. 13771 SUMMARY TABLE

[In $ Millions 2016 dollars, at a 7% discount rate, over an infinite time horizon]

	Primary (7%)	Lower bound (7%)	Upper bound (7%)
Present Value of Costs	$3.377	$0.014	$38.593
Present Value of Cost Savings	0.080	0.070	0.102
Present Value of Net Costs	3.297	(0.056)	38.491
Annualized Costs	0.236	0.001	2.700
Annualized Cost Savings	0.006	0.005	0.007
Annualized Net Costs	0.230	(0.005)	2.693

II. Table of Terms, Abbreviations, and Commonly Used Acronyms in This Document

TABLE 3—LIST OF TERMS, ABBREVIATIONS, AND COMMONLY USED ACRONYMS

Term, abbreviation, or acronym	What it means
1976 Amendments	Medical Device Amendments of 1976 (Pub. L. 94–295).
510(k)	Premarket notification.
Agency	Food and Drug Administration.
APA	Administrative Procedure Act, 5 U.S.C. 550 *et seq.*
CFR	Code of Federal Regulations.
De Novo request	Pertaining to the classification process under section 513(f)(2) of the FD&C Act (21 U.S.C. 360c(f)(2)).
E.O	Executive Order.
FACA	Federal Advisory Committee Act, 5 U.S.C. App.
FD&C Act	Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*
FDA	Food and Drug Administration.
FDASIA	Food and Drug Administration Safety and Innovation Act.
FDASIA amendments	Section 608 of FDASIA.
PMA	Premarket approval.
Preamendments device	Medical device that was in commercial distribution before the May 28, 1976 enactment of the 1976 Amendments.
Part 860	21 CFR part 860.
Postamendments device	Medical device that was not in commercial distribution before the May 28, 1976, enactment of the 1976 Amendments.
PRA	Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.
Transitional device	Medical device that was regulated as a new drug before the May 28, 1976, enactment of the 1976 Amendments.
UDI	Unique Device Identifier.
U.S.C.	United States Code.
We or us	Food and Drug Administration.

III. Background

A. Need for the Regulation/History of This Rulemaking

The Medical Device Amendments of 1976 (Pub. L. 94–295) (the ''1976 Amendments'') amended the FD&C Act and established a comprehensive system for the regulation of medical devices intended for human use. The FD&C Act establishes the following three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I (general controls), class II (special controls), and class III (premarket approval) (section 513(a)(1) of the FD&C Act).

To change a device classification, FDA can initiate a reclassification or an interested person can petition FDA to reclassify a device based on new information (section 513(e) of the FD&C Act). Prior to FDASIA, FDA was required to use a rulemaking proceeding to reclassify devices based on new information, in accordance with the rulemaking provisions of the APA (see 5 U.S.C. 553). FDASIA amended the FD&C Act to remove the rulemaking requirement and instead to authorize reclassification through an administrative order process (section 608 of FDASIA, amending section 513(e) of the FD&C Act). The FD&C Act, as amended by FDASIA, requires that FDA, prior to publishing a final order, must publish a proposed order in the **Federal Register** and consider any comments submitted on the proposed order. FDASIA also amended the FD&C Act to require that FDA must hold a device classification panel meeting on the proposed reclassification (section 513(e) of the FD&C Act). This final rule implements these statutory changes (section 513(e) of the FD&C Act; amended § 860.130 of this final rule).

FDASIA also amended the provisions of the FD&C Act authorizing FDA to require submission of a PMA application for a preamendments class III device (referred to as a ''call for PMAs''). Preamendments devices are devices that were in commercial distribution before the enactment of the 1976 Amendments. Under the FD&C Act, preamendments devices classified into class III may be marketed upon clearance of a 510(k) submission, and submission of a PMA is not required until FDA has issued a final order requiring premarket approval (section 515(b) of the FD&C Act). As amended by FDASIA, the FD&C Act requires that FDA, in its call for PMAs, publish a proposed order in the **Federal Register**, hold a classification panel meeting, and consider comments on the proposed order (section 515(b) of the FD&C Act, as amended by FDASIA).

Under the FD&C Act, FDA's call for PMAs must, among other things, contain an opportunity for interested persons to request a change in the classification of the device based on new information (section 515(b)(2) of the FD&C Act). After consideration of comments on the proposed order and findings, FDA must either: (1) Finalize the call for PMAs by issuing an administrative order requiring approval of a PMA and publishing in the **Federal Register** findings with respect to: (i) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed product development protocol and (ii) the benefit to the public from the use of the device; or (2) publish a notice in the **Federal Register** terminating the proceeding and initiate a reclassification proceeding based on new information (section 515(b)(3) of the FD&C Act, as amended by FDASIA; see section 513(e) of the FD&C Act).

FDASIA amended the FD&C Act to require the use of administrative orders, rather than rulemaking, when FDA calls for PMAs for a preamendments device remaining in class III (section 515(b) of the FD&C Act, as amended by FDASIA), and this final rule implements these statutory changes (new § 860.133 of this final rule).

FDA refers to a device that was not in commercial distribution before the 1976 Amendments as a postamendments device. Postamendments devices are classified automatically into class III by statute, without any rulemaking process (section 513(f)(1) of the FD&C Act). A postamendments device remains in class III and is subject to the PMA requirements unless and until: (1) FDA reclassifies the device into class I or II; (2) FDA issues an order classifying the device into class I or II via the De Novo classification process (see section 513(f)(2) of the FD&C Act); or (3) FDA issues an order finding the device to be substantially equivalent to a predicate device that does not require the filing of a PMA (see section 513(i) of the FD&C Act).

FDA may initiate, or the manufacturer or importer of a device may petition for, the reclassification of a postamendments device classified into class III by operation of law (section 513(f)(3) of the FD&C Act). This final rule clarifies the process where reclassification of a postamendments device remaining in class III is initiated by FDA rather than by a petitioner. This FDA-initiated reclassification process, as detailed in this final rule, consists of a proposed reclassification order, optional panel consultation, and a final reclassification order published in the **Federal Register** following consideration of comments and any panel recommendations or comments (new § 860.134(c) of this final rule). The reclassification order may, as appropriate, establish special controls to provide reasonable assurance of the safety and effectiveness of the device (new § 860.134(d) of this final rule).

Under the 1976 Amendments, Congress classified all those devices previously regulated as new drugs into class III (generally referred to as transitional devices). Under the FD&C Act, FDA may initiate, or the manufacturer or importer of a device may petition for, the reclassification of a transitional device remaining in class III (section 520(*l*)(2) of the FD&C Act). This final rule details the process for reclassification of transitional devices initiated by FDA (new § 860.136(c) of this final rule). This process consists of a proposed reclassification order, optional panel consultation, and a final reclassification order published in the **Federal Register** following consideration of comments and any panel recommendations or comments. This final rule also removes the requirement for a part 16 hearing for transitional devices because we believe the process providing for a proposed order, panel consultation as appropriate, consideration of comments, and final order provide sufficient opportunity for participation and review of reclassification of transitional devices.

In the **Federal Register** of March 25, 2014 (79 FR 16252), FDA issued a proposed rule entitled ''Medical Device Classification Procedures'' and requested public comment on the proposed rule within 90 days following its publication.

One of the comments requested that the comment period be extended for an additional 90 days due to the complexity and importance of the issues raised in the proposed rule. In the **Federal Register** of June 12, 2014 (79 FR 33711), FDA reopened the comment period for an additional 90 days.

By direct final rule published on December 24, 2014 (79 FR 77387) and on August 21, 2017 (82 FR 39534), FDA made technical amendments to its existing part 860 regulations to update the mailing address for reclassification petitions currently found at § 860.123(b)(1); neither the proposed rule nor this final rule changes the updated and amended mailing address.

FDA believes this rule will assist the Agency with efficient enforcement of the FD&C Act because it provides

increased clarity, uniformity, and predictability for stakeholders, particularly regulated entities, regarding the procedural framework for reclassifying medical devices and calling for PMAs.

B. Summary of Comments in Response to the Proposed Rule

The comments on the proposed rule break down into two groups: Generally favorable and supportive comments on the proposals to implement the FDASIA-mandated administrative order procedures to change a device classification or when FDA calls for PMAs; but unfavorable comments on the proposed amendment of the definitions in part 860. Many of the commenters expressed concern that the proposed updates and clarifications to the definitions would result in more devices being classified into burdensome, higher-class device categories, particularly into class III. Other commenters opposed these changes because they were perceived as making the class definitions, particularly for class III, too specific and therefore narrower, which might result in unwarranted reclassification of high-risk devices into lower classes. Regardless of the comment's perspective on the effect of the definitions, the comments questioned our legal authority to make the changes. Other comments expressed uncertainty about our intent in proposing to change the definitions currently in part 860 and recommended that we confirm in the final rule that the purpose of this rulemaking is only to codify existing FDA practices and not to make substantive changes, except as required by the FDASIA amendments.

IV. Legal Authority

Among the provisions that provide authority for this final rule are sections 201(h), 501(f), 510(k), 513(d), (e), (f), and (i), 515(b) and (f), 520(*l*), and 701(a) of the FD&C Act (21 U.S.C. 321(h), 351(f), 360(k), 360c(d), (e), (f), and (i), 360e(b) and (f), 360j(*l*), and 371(a)).

As amended by section 608 of FDASIA, sections 513(e) and 515(b) of the FD&C Act mandate that the reclassification of medical devices and the call for PMAs must be done by administrative order, instead of by rulemaking. This final rule finalizes the conforming edits to applicable regulations in part 860 to be consistent with the administrative order procedures mandated by section 608 of FDASIA. Section 701(a) of the FD&C Act permits the issuance of regulations for the efficient enforcement of the FD&C Act.

V. Comments on the Proposed Rule and FDA Response

A. Introduction

We received 15 sets of comments on the proposed rule, mostly from manufacturers of medical devices and their trade representatives and associations. Comments were also received from medical and health care professionals, patient advocacy groups, and consumers.

We describe and respond to the comments in sections B through F of this section. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same set of comments and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

B. Description of General Comments and FDA Response

Some comments made general remarks supporting or opposing the proposed rule without focusing on a particular proposed provision. In the following paragraphs, we discuss and respond to such general comments.

(Comment 1) Several comments opposed finalizing the proposed rule, and recommended that the Agency should either withdraw the proposed rule and re-propose a rule with only the provisions required to implement section 608 of FDASIA, or issue a revised proposed rule to implement only the FDASIA-mandated changes to the part 860 regulations pertaining to reclassifications and start a separate rulemaking to update and clarify the other provisions of part 860. One of the comments recommended, alternatively, that the Agency should implement the FDASIA-required changes to the part 860 regulations governing device reclassification procedures and should make explicitly clear that, except to finalize edits to part 860 to conform to changes that FDASIA made to the FD&C Act, the changes in this rule are meant to update and clarify the part 860 regulations to reflect FDA's existing practices and should not be interpreted as substantive changes.

(Response 1) As recommended in the last comment, FDA confirms that it is finalizing the proposed rule for the purpose of implementing FDASIA and updating and clarifying the part 860 regulations, without the intent otherwise to make substantive changes. Further, because this final rule does not finalize any of the proposed definitions in the proposed rule, as further discussed in our response to Comment 5, this rule is only finalizing the FDASIA-required changes and a few other edits, as proposed, to update and clarify part 860.

(Comment 2) Two comments requested that FDA hold a public workshop to solicit stakeholder dialogue on changes that would be helpful or needed concerning the part 860 regulations.

(Response 2) The principal purpose of this final rule is to implement the provisions of FDASIA mandating administrative order procedures for FDA actions reclassifying medical devices and calling for PMAs and to update and clarify the existing part 860 regulations, as needed, to, among other things, conform them to the FDASIA-mandated changes and current FDA terminology.

We believe that the issues underlying this rulemaking are adequately developed in the proposed rule and that the comments received and FDA responses in this final rule robustly discuss these issues. As discussed in our response to Comment 5, this final rule does not finalize any of the proposed definitions in the proposed rule (see proposed § 860.3). As such, we do not believe that a public workshop is needed to seek further input prior to finalizing this rulemaking. Apart from this rulemaking, we continue to welcome stakeholder communication about how FDA might improve the part 860 regulations.

(Comment 3) A commenter requested that FDA clarify the interplay between its regulations and the use of administrative orders in the device classification and reclassification process under this final rule, to establish procedures for updating the relevant CFR sections when FDA classifies a device by administrative order, and to clarify whether there will be a central site for viewing orders and supporting documentation.

(Response 3) The FDASIA amendments and this final rule do not change the types of classification actions that the Agency is able to take under the FD&C Act and part 860 nor the way that notices of these actions are published when FDA classifies a device. As explained in Section III.A, Need for the Regulation/History of This Rulemaking, FDASIA revises the procedures that the Agency must use to reach its decision to reclassify or to call for PMAs, *i.e.,* to an administrative

order process instead of rulemaking (see sections 513(e) and 515(b) of the FD&C Act, as amended by section 608 of FDASIA). For other types of reclassifications, the Agency has been issuing administrative orders published in the **Federal Register** (see sections 513(f)(3) and 520(*l*)(2) of the FD&C Act). Our use of administrative orders is governed by the relevant provisions of the FD&C Act and ultimately by the provisions finalized in this rule.

The Agency will announce its reclassification orders by publication of the proposed and final orders in the **Federal Register**. This publication process for reclassification actions is the same as used before the enactment of FDASIA when reclassifications were accomplished by rulemaking, *i.e.,* by notice of such action published in the **Federal Register**.

The FDASIA amendments also require FDA to post annually the number and type of devices reclassified in the previous calendar year (section 608(c) of FDASIA). Since the enactment of FDASIA, the Agency has been listing its reclassification orders, initiated by the Agency or in response to a petition, on two websites, found respectively at *https://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHTransparency/ucm240318.htm* and at *https://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHTransparency/ucm378724.htm.* We intend to update these websites periodically and maintain them to assure transparency and public availability of this information.

(Comment 4) Commenters expressly supported our goal to ensure classification of devices in the lowest regulatory class consistent with the protection of public health and the statutory scheme for the device.

(Response 4) As reiterated in the Summary of this final rule, the Agency reaffirms that this is a goal of our device classification system and one of the purposes of this rulemaking.

C. Comments and FDA Response on the Proposed Definitions

The proposed rule suggested revising the current part 860 definitions of ''class I'', ''class II'', and ''class III'', in part by pulling out language now found in the definitions of ''class I'' and ''class II'' into stand-alone definitions of the terms ''general controls'' and ''special controls.'' We also proposed to update and clarify our part 860 regulations by revising the current definitions of the terms ''generic type of device,'' ''implants,'' and ''supporting or sustaining human life'' and by defining the new term ''special controls guideline.'' Because the intent of the proposed modifications to the part 860 definitions was to provide clarity and not to implicitly change the classification/reclassification process, and because none of these definitional changes is needed to conform the part 860 regulations to the administrative order procedures required by FDASIA, we are not finalizing the proposed definitions in this final rule.

We grouped comments related to the proposed definitions together under the same number below and are responding to them collectively.

(Comment 5) We received a significant number of comments on the proposed definitions of the proposed rule (see proposed § 860.3). Several comments opposed finalizing these proposed definitions stating that they conflicted with the statutory definitions of class I, II, and III, and if finalized, would result in uncertainty and the inappropriate classification of many products, as well as additional costs and paperwork burdens that should be analyzed in this rulemaking.

Specifically, many of these comments opposed the proposed changes to the part 860 definition of ''class III'' because of the perception that the changes, if finalized, would make the definition overly broad and result in more devices being classified into class III, while other comments viewed the more detailed criteria of the proposed class III definition as possibly limiting FDA's ability to rely on other standards for assessing risk. Several comments contended that the proposed change of the wording of the definitions of class I and class II, by substituting the wording ''intended for a use'' in place of ''for a use,'' would introduce a subjective intent criterion for devices that otherwise might be classified or reclassified into class I and would require or result in the up-classification of some devices. While not specifically opposing the stand-alone definition of general controls as proposed, several comments raised an overall concern about changing the definitions of class I and class II in this rulemaking, on the grounds that the proposed change is not required to implement section 608 of FDASIA. In addition, a number of commenters indicated that the terms ''general controls'' and ''special controls'' are well understood, and that there are few, if any, public health issues relating to their use in the part 860 regulations, and that changing the definitions will likely create uncertainty without benefit and disturb decades of reliance on the current class I, II, and III definitions.

On the other hand, other commenters indicated that the proposed definition of ''class II'' was too broad, and that it would capture devices that they thought should be regulated as class III.

Some commenters also opposed the proposed amendments to the definition of ''generic type of device.'' One commenter opposed allowing more than one generic type of device in a classification regulation, stating that the term ''generic type of device'' is synonymous with the scope of each classification regulation. Another commenter opposed using product codes as part of the definition, stating that they serve a limited and internal FDA purpose and are unnecessary in this rulemaking to implement section 608 of FDASIA.

Several comments also requested that FDA clarify how reclassification determinations under the revised part 860 regulations would apply to previously approved or cleared devices, including the economic and paperwork burdens of the reclassifications imposed by the proposed definitions changed in this rulemaking and in future reclassifications authorized under this final rule.

(Response 5) This rule does not finalize any of the proposed definitions in proposed § 860.3. We do not believe, given the volume and diversity of opposing comments, that finalizing these definitions would add clarity or transparency to stakeholders' understanding of the part 860 regulations. However, as described in section V.E, we are finalizing the proposed removal of two definitions (§ 860.3(f) and (g)) associated with two forms. FDA did not receive any specific comments about the removal of these definitions.

The principal purpose of this final rule is to implement section 608 of FDASIA, which mandated administrative order procedures for FDA's actions for reclassifying medical devices and calling for PMAs. Our intent in proposing the revised definitions, and in updating and clarifying the part 860 regulations in the proposed rule, was to reflect our current regulatory practices and not to make substantive changes, except as needed to conform the current part 860 regulations to the FDASIA-mandated changes. Nonetheless, as stated above, we do not believe that it is necessary to finalize the proposed definitions. In this rulemaking, we are proceeding to finalize our other proposed updates and clarifications to part 860 to reflect our current regulatory practices and to

conform to the FDASIA-mandated changes.

This rulemaking primarily amends the procedures for reclassifying devices and calling for PMAs. These procedural changes do not affect the classifications of previously cleared or approved devices. Further, as previously stated, we are not finalizing the proposed definitions; nor were the proposed definitions intended to reclassify any cleared or approved devices. Thus, further clarification of the status of previously cleared or approved devices, including an analysis of the economic or paperwork burden of such potential changes, is not necessary.

D. Comments and FDA Response on FDASIA Implementation

1. Administrative Order Procedures in Part 860 Proceedings

This final rule implements the FDASIA amendments that change the following procedures to an administrative order process: (1) The process by which FDA calls for PMAs for preamendments devices and (2) the regulatory procedures for reclassifying medical devices based on new information in response to a petition, as well as for those begun at FDA's initiative (amended §§ 860.84, 860.130, and 860.132 and new § 860.133 of this final rule, implementing sections 513(e) and 515(b) of the FD&C Act, as amended by section 608 of FDASIA). The administrative order process both for requiring PMA applications and for reclassification based on new information includes issuance of a final order in the **Federal Register** following publication of a proposed order in the **Federal Register**, a meeting of a device classification panel, and consideration of comments—notwithstanding 5 U.S.C. 553, which requires Agencies, including FDA, to follow the APA's procedures when engaging in rulemaking. We received no adverse comments concerning our proposed changes to amend the part 860 regulations for this purpose.

This final rule also clarifies the process for when FDA initiates reclassification of devices under certain provisions of the FD&C Act that were not amended by FDASIA. The proposed rule suggested clarifying the procedures for FDA to take reclassification actions on its own initiative under these provisions, by clarifying the current administrative order process for reclassifying postamendments devices that have been automatically classified into class III (see section 513(f)(3) of the FD&C Act; amended § 860.134(c) and (d) of this final rule) and for reclassifying transitional devices, regulated as new drugs before 1976, that previously have been classified into class III (see section 520(*l*) of the FD&C Act; amended § 860.136(c) and (d) of this final rule).

This final rule clarifies, specifically, that FDA can reclassify any device from class III to either of the other two classes (amended §§ 860.84(d)(6), 860.134(c), and 860.136(b)(4) and (c) of this final rule). This final rule also clarifies that reclassifications may be from *any* class to any other class, *i.e.,* reclassification into a higher class (''up-classification'') or into a lower class (''down-classification'') (amended § 860.130(c)(1) through (3) of this final rule).

(Comment 6) For postamendments devices eligible for the De Novo classification process under section 513(f)(2) of the FD&C Act, one commenter requested FDA to clarify how the De Novo process fits into the classification/reclassification process under part 860.

(Response 6) This final rule does not affect the De Novo classification process. Any person who receives a not substantially equivalent determination in response to a 510(k) submission for a device that has not been previously classified under the FD&C Act may request FDA to classify the device (section 513(f)(2)(A)(i) of the FD&C Act). A person who determines that there is no legally marketed device upon which to base a determination of substantial equivalence may request FDA to classify the device without first submitting a 510(k) (section 513(f)(2)(A)(ii) of the FD&C Act). In either case, the classification criteria are the same (see section 513(a)(1) of the FD&C Act).

When FDA classifies a device type as class I or II via the De Novo classification process, other manufacturers do not necessarily have to submit a De Novo request or PMA application in order to legally market a device of the same type. Instead, manufacturers can use the less burdensome pathway of 510(k) notification, when applicable, to legally market their device, because the device that was the subject of the original De Novo request can serve as a predicate device for a substantial equivalence determination. A device classified via the De Novo classification process may subsequently be reclassified under other provisions of the FD&C Act (see section 513(e) and (f)(3) of the FD&C Act).

In the **Federal Register** of December 7, 2018 (83 FR 63127), FDA published a proposed rule to establish requirements for the De Novo classification process. The proposed rule, if finalized, implements the De Novo classification process under the FD&C Act and establishes procedures and criteria for the submission and withdrawal of a request for De Novo classification. The proposed requirements also establish procedures and criteria for FDA accepting, reviewing, granting, and declining a De Novo request.

(Comment 7) Some comments questioned whether there is legal authority or rationale in a reclassification order under part 860 to down-classify an implant device or life-supporting or life-sustaining device into class I or class II.

(Response 7) The FD&C Act directs FDA to classify and reclassify devices into one of three regulatory control categories based on the criteria set forth in the FD&C Act: Class I (general controls), class II (special controls), and class III (premarket approval), depending upon the degree of regulation necessary to provide reasonable assurance of their safety and effectiveness (section 513(a)(1) of the FD&C Act). There is no requirement in the statute that FDA classify all implant devices or life-supporting or life-sustaining devices (*i.e.,* purported or represented for use in supporting or sustaining human life or use which is of substantial importance in preventing impairment of human health) into class III; nor is there a prohibition on classifying these devices into class I or class II.

Class I devices are subject to a comprehensive set of regulatory authorities called general controls, which include provisions that relate to establishment registration and listing, premarket notification, prohibitions against adulteration and misbranding, records and reports, and good manufacturing practices (see section 513(a)(1)(A) of the FD&C Act). General controls apply to all classes of medical devices and provide FDA with the means of regulating products to assure their safety and effectiveness.

Class II devices are devices for which general controls, by themselves, are insufficient to provide reasonable assurance of the safety and effectiveness of the product, and for which there is sufficient information to establish special controls necessary to provide such assurance (see section 513(a)(1)(B) of the FD&C Act). For implant devices or life-supporting or life-sustaining devices to be classified or reclassified into class II, FDA additionally must describe the special controls that, in addition to general controls, are necessary to provide a reasonable assurance of safety and effectiveness of the device and how such controls

provide such assurance (section 513(a)(1)(B) of the FD&C Act).

Class III devices are devices for which general controls, by themselves, are insufficient and for which there is insufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device, and are purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or present a potential unreasonable risk of illness or injury (see section 513(a)(1)(C) of the FD&C Act). Whether a device is life-supporting or life-sustaining is only one factor in determining whether the device should be classified as class III and is not determinative of a device's classification. FDA must also consider whether general controls by themselves are sufficient and whether there is sufficient information to establish special controls before classifying a device as class III.

(Comment 8) One comment requested FDA define the term ''unclassified'' or ''not classified'' devices and explain the classification and 510(k) process for devices that fall into these categories.

(Response 8) FDA guidance provides explanations of the terms requested. ''Unclassified devices'' are preamendments devices for which a classification regulation has not been promulgated (Ref. 1). Until the unclassified device type is formally classified and a regulation established, marketing of new devices within this type will require submission of a 510(k). On the other hand, ''not classified devices'' are postamendments devices for which the Agency has not yet reviewed a marketing application or for which the Agency has not made a final decision on such a marketing application (Ref. 1). As we are not finalizing any of the proposed definitions in proposed § 860.3 and there already are established definitions for ''unclassified'' and ''not classified'' devices, it is not necessary, at this time, to add those definitions to part 860 in this rulemaking. Further, aside from conforming the regulatory procedures for certain reclassifications and calling for PMAs for class III preamendments devices to the FD&C Act as amended by FDASIA, this final rule does not affect FDA's traditional treatment of unclassified and not classified devices. Nor does this rule change the 510(k) process applicable to such devices. Future decisions that affect unclassified and not classified devices will be taken, as appropriate, on a case-by-case basis consistent with the relevant authority.

2. Classification Panels

For reclassification proceedings based on new information and for proceedings calling for PMAs for a class III preamendments device, FDA must convene a classification panel and obtain panel recommendations on classification (sections 513(e) and 515(b) of the FD&C Act, as amended by FDASIA; amended §§ 860.130(d)(1) and 860.133(b) of this final rule). On the other hand, for FDA-initiated reclassification proceedings for postamendments devices and transitional devices, which also involve administrative orders, FDA can, as in the past prior to the passage of FDASIA, choose whether to consult with a panel (sections 513(f)(3) and 520(*l*) of the FD&C Act; amended §§ 860.134(b) and (c)(2), 860.136(c)(2), and 860.125(a) of this final rule).

The final rule includes minor changes to the current classification panel provisions of the part 860 regulations to update their terminology (see amended §§ 860.84(d)(2) and 860.10(a) of this final rule, finalizing proposed §§ 860.84(d)(2) and 860.93(a), respectively). The final rule also clarifies that, in the case of a recommended reclassification into class II, the panel must provide FDA its recommendation whether the device should be exempted from the premarket notification requirement under section 510(k) of the FD&C Act (amended §§ 860.15(a) and 860.84(d)(4) of this final rule). The final rule also updates the docket information of the part 860 regulations that indicates where panel recommendations are available for public viewing, by including the FDA website address (amended §§ 860.84(e) and 860.134(b)(4) of this final rule). We received no comments on any of the changes referred to in this paragraph, and we are finalizing these changes as proposed.

(Comment 9) One comment questioned why all reclassification petitions and proposed orders (including FDA-initiated orders) would not be referred to a classification panel and argued that section 608 of FDASIA and logic dictate that all proposed reclassifications, regardless of who initiates the process, should be reviewed by a classification panel.

(Response 9) FDA may refer a matter to a panel either because it is legally required to do so or because it chooses to do so at its own discretion. The FD&C Act, as amended by FDASIA, dictates specific circumstances in which FDA must hold a panel meeting prior to making a classification or reclassification decision, regardless of who initiates the process. For instance, the process for reclassifications based on new information requires that FDA issuance of an administrative order reclassifying a device be preceded by a proposed order, a meeting of a device classification panel, and consideration of comments to a public docket (section 513(e) of the FD&C Act, as amended by FDASIA). On the other hand, the FD&C Act permits FDA to determine whether to hold a panel meeting when FDA initiates the reclassification of a postamendments or a transitional device (sections 513(f)(3) and 520(*l*) of the FD&C Act). In addition, when reclassifying a postamendments device in response to a petition, FDA ''may for good cause shown'' decide to consult with a panel (section 513(f)(3)(B) of the FD&C Act). FDASIA did not amend these authorities; and thus, a panel is not required for proceedings conducted under these authorities (amended §§ 860.134 and 860.136 of this final rule).

When acting at its own discretion, FDA generally considers taking a matter before a panel if, among other things, the matter is of significant public interest or there is additional or special expertise provided by the panel that could assist FDA in its decision making. Regardless of whether a panel meeting is held, the opportunity to submit comments to a public docket on the Agency's recommendation is an integral part of any such action. FDA also considers whether the process followed by FDA reflects the least burdensome approach to classification and reclassification of devices (section 513(a)(3)(D)(ii) of the FD&C Act).

(Comment 10) Several comments objected to FDA's interpretation of section 608 of FDASIA in the proposed rule that would allow panel meetings to be held prior to the issuance of the order proposing to reclassify a device. These commenters believed that our interpretation ignores the structure and language of FDASIA, undermines the panel protections Congress included in FDASIA to ensure that panels scrutinize the scientific and regulatory soundness of the proposed reclassification, and is inconsistent with our panel process in past part 860 proceedings.

(Response 10) The FD&C Act, as amended by FDASIA, does not prescribe when the panel meeting and proposed order must occur in relation to each other. Therefore, the Agency may hold a panel meeting either before or after the issuance of a proposed reclassification order. This approach is consistent with the FDA practice before FDASIA, which allowed FDA, at its discretion, to secure a panel recommendation prior to the

promulgation of a reclassification rule. Prior to FDASIA, when a panel meeting was discretionary, FDA often held a panel meeting before proposing reclassification of the device. Generally, for future reclassifications when a meeting of a device classification panel has not yet occurred, FDA intends to issue a proposed reclassification order before holding the panel meeting if the panel is required.

(Comment 11) Some comments objected to FDA communications with individual panel members by telephone or by mail and alleged that such communications amount to Agency ex parte communications and do not support transparency, stakeholder involvement, or the opportunity to present supporting or opposing information. One comment requested that consultation by mail should either be removed or used only if a panel meeting is infeasible and the circumstances require prompt decisions to protect the public health.

(Response 11) The Agency agrees that every effort should be made to consult with an entire classification panel when possible, and that an adequate record of such consultation is essential. However, there will be circumstances in which statutory time constraints, the necessity to protect the public health, the request by the petitioner for a timely response, or the unavailability of panel members will require the Commissioner to consult by telephone with at least a majority of current voting panel members. Regardless of the method of consultation with panel members, the Agency conducts panel meetings in accordance with part 14 (21 CFR part 14), which includes record keeping and public participation.

The reference to panel ''consultation by mail'' in the current part 860 regulations is removed (§ 860.125(a)(2), removed by this final rule). The Agency intends to continue its past practice, however, of using postal mail, other delivery services, and electronic email to deliver documents to panel members for the purpose of distributing them at FDA's option in advance of and following panel consultations, at attended meetings, or in telephone- or video-conference sessions.

(Comment 12) One comment requested that FDA operate panels under the rules of the Federal Advisory Committee Act (FACA), Public Law 92–464 (1972), as amended, in order to ensure transparency and stakeholder input, specifically, that panel members should be required to disclose financial and nonfinancial conflicts of interests and that FDA should address any conflicts in a prompt and consistent manner.

(Response 12) The Agency conducts panel meetings in accordance with the FACA and part 14 to provide for transparency through a public meeting where stakeholders can be part of the Agency's decision-making process. Meetings are open to all members of the public and include an open public hearing (OPH) portion where the public can participate. **Federal Register** notices are used by the Agency to announce meetings and to provide information on how the public can request to present in the OPH. The pertinent Agency guidance document provides further information on public participation in the OPH (Ref. 2). Meeting announcements and meeting materials are available on the Agency's website. As outlined in the FD&C Act, classification panels are exempt from FACA section 14 pertaining to the duration of the panel (sections 513(e)(1), 513(f)(3)(B), 515(b), and 520(*l*)(2) of the FD&C Act; see also section 513(b)(1) of the FD&C Act).

Panelists are also subject to the financial disclosure provisions of the Ethics in Government Act of 1978, Public Law 95–521, as amended, and its implementing regulations (5 U.S.C. App. 101 *et seq.;* 5 CFR part 2634, subpart I). These requirements apply to ''special government employees'' and regular government employees throughout the Federal Government, including panelists of FDA's classification panels (§§ 14.1(a)(2)(vi) and 14.31). Panelists have to disclose financial interests on Form FDA 3410 (Confidential Financial Disclosure Report for Special Government Employees) that FDA reviews. If a current disqualifying financial interest exists for which a waiver may be granted, such waiver is disclosed on FDA's website prior to the date of the advisory committee meeting to which the waiver applies providing the type, nature, and magnitude of the financial interest (21 U.S.C. 379d-1(c), see 18 U.S.C. 208(b)). Questions 2 and 3 of Form FDA 3410 address past interests as well as anything that may give an appearance of a conflict of interest (5 CFR 2635.502). Financial disclosures provided by special government employees or regular government employees ''shall be confidential and shall not be disclosed to the public'' (5 U.S.C. App. 107).

3. Unique Device Identifier (UDI) Related Issues

The UDI final rule establishing FDA's unique device identification system provided for implementation of UDI requirements over a 7-year period beginning in 2014 according to a schedule of compliance dates based primarily on device classification (78 FR 58785, September 24, 2013). Among other things, FDA's regulations require a device to bear a UDI on its label and packages unless an exception or FDA-approved alternative applies (21 CFR 801.20). A finished device manufactured and labeled prior to the applicable compliance date for the device is excepted from the requirement to bear a UDI for a period of 3 years after that compliance date (21 CFR 801.30(a)(1)).

(Comment 13) A comment requested the Agency to allow supply chain stakeholders at least 3 years to comply with the UDI labeling requirements following the reclassification of any medical device under the part 860 regulations as amended by this final rule, in order to assure consistency with the UDI final rule, which grants a 3-year grace period, for stakeholders to exhaust existing inventories of finished devices labeled prior to the applicable UDI compliance date.

(Response 13) To the extent that a reclassification would affect the UDI compliance dates or UDI labeling requirements (21 CFR part 801, subpart B) applicable to a device, FDA will consider whether additional time to come into compliance with those UDI requirements is appropriate on a case-by-case basis.

(Comment 14) The same commenter requested FDA to review its existing and proposed rules for medical device tracking and reporting, as well as the requirements of the proposed rule, for inconsistencies and discrepancies with the UDI compliance schedule and its 3-year grace period. Specifically, the commenter stated that FDA should assess and include in this final rule measures to relieve the logistical challenges facing distributors and end users who are required to make labeling, tracking, and reporting changes resulting from reclassifications under the part 860 regulations and affecting products distributed commercially prior to, but resold after, the device reclassification.

(Response 14) This rulemaking, as described previously, finalizes changes to part 860 to conform to FDASIA amendments to the FD&C Act for the processes for reclassification and calling for PMAs and does not affect the UDI requirements. Further, any impact of device reclassifications on device compliance with requirements for device labeling (part 801), including the UDI labeling requirements (part 801, subpart B), for device tracking

requirements (21 CFR part 821), and for device reporting requirements (21 CFR part 803), will be addressed on a case-by-case basis.

E. Comments and FDA Response on Removal of Petition Requirements: Classification Questionnaire and Supplemental Data Sheet

The final rule removes the requirement to provide two forms, Form FDA 3429 (General Device Classification Questionnaire) and Form FDA 3427 (Supplemental Data Sheet), as part of the form and content of a reclassification petition, because the Agency no longer finds the forms useful (amended §§ 860.3, 860.84, and 860.123 of this final rule, removing current §§ 860.3(f) and (g), 860.84(c)(3) and (4), and 860.123(a)(3) and (4)).

(Comment 15) Several comments disagreed with the Agency's proposal to remove Forms FDA 3427 and 3429 as filing requirements for petitions seeking the classification of preamendments devices (proposed § 860.84) and for petitions for the reclassification of postamendments devices (proposed § 860.123). They argued that the forms provide a valuable framework for classification panels and are informative materials for panelists, and that not providing the information contained in the forms will decrease panel efficiency, prejudice the petitioner, and bias the part 860 classification and reclassification processes. The comments acknowledged that the forms are inadequate, but these commenters recommended that the forms should be improved, rather than eliminated.

(Response 15) We disagree. As stated in our proposed rule, we believe that a more efficient use of FDA and petitioner resources would be to focus on the detailed, rather than summarized, information that the petitioner, FDA, panelists, and the public provide in the proceeding concerning available valid scientific evidence about the device and the appropriate regulatory controls to provide reasonable assurance of the safety and effectiveness of the device. Additionally, on January 30, 2017, the President directed FDA and other Agencies of the U.S. Government to identify existing regulations to be repealed and, in accordance with the APA and other applicable law when issuing new regulations, to eliminate existing regulatory costs so that the incremental cost of new regulations, when offset by the eliminated costs, would be zero or minimized (Executive Order (E.O.) 13771, 82 FR 9339). The economic and regulatory burden associated with Forms FDA 3427 and 3429 as filing requirements in the case of petitions seeking the reclassification of devices, and the cost savings from removing these requirements are estimated in the Paperwork Reduction Act (PRA) section of the proposed rule and in section VII, Economic Analysis of Impacts, and section X, PRA, of this final rule. This rule finalizes the provisions removing Forms FDA 3427 and 3429 from the part 860 regulations, as proposed without change (amended §§ 860.3, 860.84 and 860.123 of this final rule, removing current §§ 860.3(f) and (g), 860.84(c)(3) and (4) and 860.123(a)(3) and (4)).

F. Comments on Other Proposed Conforming Changes and Technical Amendments to the Part 860 Regulations

1. Clarifying Amendments to § 860.120(b)

The part 860 regulations explain certain common criteria for reclassifying medical devices under the various authorities of the FD&C Act (§ 860.120(b), containing the general requirements for reclassifications under sections 513(e) and(f), 514(b) (21 U.S.C. 360d(b)), 515(b), and 520(*l*) of the FD&C Act. The final rule removes the term ''substantial equivalence'' in the current version of this part 860 regulation, in order to clarify that reclassifying one device within a generic type of device reclassifies all devices within a generic type of device (amended § 860.120(b) of this final rule).

(Comment 16) Two comments questioned why, under proposed § 860.120(b), the impact of a reclassification decision applies to all devices within the same generic type. Commenters recommended that reclassification should instead be limited to those devices that are substantially equivalent to the reclassified device under question as provided in the current § 860.120(b), because there may be some differences between devices within the same generic type of device that warrant different treatment by a reclassification decision. One commenter suggested that the final rule should provide that the scope of a reclassification decision will be determined based on the reason for the reclassification and the nature of the products affected by the reclassification decision.

(Response 16) Through this rulemaking FDA is clarifying the impact of a reclassification decision under the FD&C Act and is not otherwise changing the scope of reclassifications made in accordance with this provision (see amended § 860.120(b) of this final rule).

The FD&C Act defines the term ''substantial equivalence'' to mean, with respect to a device compared to a predicate device, that FDA has found that the new device has the same intended use as the predicate, has the same technological characteristics as the predicate or different technological characteristics that do not raise different questions of safety and effectiveness from the predicate, and has been demonstrated to be as safe and effective as a legally marketed device (section 513(i) of the FD&C Act). In contrast, the current part 860 regulations define the term ''generic type of device,'' specifically for classification purposes, as a grouping of devices that do not differ significantly in purpose, design, materials, energy sources, function, or any other feature related to safety and effectiveness, and for which similar regulatory controls are sufficient to provide reasonable assurance of safety and effectiveness (current § 860.3(i), not amended by this final rule). The term ''generic type of device'' is a more accurate term than ''substantial equivalence'' to describe the impact, scope, and analysis for a reclassification decision and as such we are finalizing the use of ''generic type of device'' as proposed. Accordingly, this rule also finalizes, as proposed, the removal of the reference elsewhere in the part 860 regulations that limited the scope of reclassification to ''substantially equivalent devices'' within the generic type of the reclassified device (amended § 860.120(b) of this final rule).

2. Other Proposed Conforming Amendments

We did not receive comments concerning any of the other proposed conforming amendments or any of the technical amendments described in the following paragraphs of this section. This rule finalizes all of these conforming and technical changes.

The final rule substitutes the terms ''preamendments devices'' and ''postamendments devices,'' in place of ''old devices'' and ''new devices,'' in the part 860 regulations to reflect modern FDA practice (amended §§ 860.84 and 860.134 of this final rule).

To assure uniform reclassification procedures for transitional devices under part 860, the final rule revises the pertinent part 860 regulation to cover the process for reclassification initiated by FDA and to apply to reclassification initiated by manufacturer or importer (amended § 860.136(a) and (b) of this final rule). The final rule also removes the requirement for a part 16 hearing when FDA is reclassifying transitional devices because we believe the

reclassification process under part 860 (*i.e.,* proposed order, panel consultation as appropriate, consideration of comments, and final order) provides sufficient opportunity for participation and review of reclassifications of transitional devices (amended § 860.136 of this final rule).

The final rule revises some of the citations in the part 860 regulations to clarify to which subsection in the FD&C Act these citations refer (amended §§ 860.84(a), 860.123(b)(2), 860.134 (in the section's title), and 860.134(b) of this final rule). Finally, the final rule also makes minor wording changes to certain part 860 regulations to clarify the meaning of these provisions, which are not intended to make any substantive changes (amended §§ 860.7(b), (c)(2), (d)(2), and (g)(1), 860.10(a), 860.120(c), 860.125(a)(2), 860.130(g), and 860.132 of this final rule).

VI. Effective Date

This final rule will become effective 90 days after the date of its publication in the **Federal Register**. During those 90 days, manufacturers will continue to be under an obligation to comply with all applicable provisions of the FD&C Act and applicable regulations.

VII. Economic Analysis of Impacts

We have examined the impacts of the final rule under E.O. 12866, E.O. 13563, E.O. 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). E.O.s 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). E.O. 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' We believe that this final rule is not a significant regulatory action as defined by E.O. 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. This final rule largely codifies existing FDA practices and clarifies the classification and reclassification procedures currently used. For these reasons, and because panel meetings, which represent the largest source of Agency and industry costs in this analysis, are one-time occurrences, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $150 million, using the most current (2017) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

This final rule amends the regulations governing the process for classification, reclassification, and calling for PMAs for medical devices. It codifies existing provisions that are already in effect, and updates generally the regulations for device reclassification proceedings.

The costs of this final rule include initial learning costs faced by medical device manufacturers and affiliated regulatory consultants upon publication of the rule, in addition to annual costs incurred by the Agency and industry related to preparation and participation in additional panel meetings. We estimate the rule's present discounted cost, over a 10-year period, to equal $2 million at a 3 percent discount rate and $1.7 million at a 7 percent discount rate. Our estimates of the annualized costs are $0.24 million at a 3 percent discount rate and $0.24 million at a 7 percent discount rate.

The principal benefits of this final rule stem from the reduction in regulatory and economic burden that will accompany the elimination of some paperwork filing requirements, in addition to the enhanced consistency and uniformity across reclassification proceedings. These cost savings will accrue to both medical device manufacturers and to the Agency. Further benefits may be derived from the decreased time a petition will need to be reviewed for device reclassification, and the subsequent potential benefits realized by consumers and producers. We estimate the overall cost savings over the next 10 years to be $0.05 million at a 3 percent discount rate and $0.04 million at a 7 percent discount rate. Our estimates of the annualized cost savings are $0.006 million at a 3 percent discount rate and $0.006 million at a 7 percent discount rate.

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Docket No. FDA–2013–N–1529) and is included in the Final Regulatory Impact Analysis available at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm* (Ref. 3).

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) and (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in E.O. 13175. We have determined that the rule does not contain policies that 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. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the E.O. and, consequently, a tribal summary impact statement is not required.

X. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Reclassification Petitions for Medical Devices.

Description: This rule eliminates the requirement for petitioners to complete Form FDA 3429 (Classification Questionnaire) and Form FDA 3427 (Supplemental Data Sheet). The estimated information collection burdens for the forms are currently approved under OMB control number 0910–0138.

Description of Respondents: The reporting requirements referenced in this document are imposed on any person petitioning for reclassification of a preamendments device and any manufacturer or importer of the device petitioning for reclassification of a postamendments or transitional device.

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Supporting data for reclassification petition—§ 860.123	6	1	6	497	2,982

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Section 860.123 is being amended to eliminate the requirement for petitioners to complete Form FDA 3429 (Classification Questionnaire) and Form FDA 3427 (Supplemental Data Sheet). This revision reduces the estimated burden by 18 hours. We expect modest cost savings and easing of economic and regulatory burden due to the reduction in time required in preparing and reviewing these forms.

Based on current trends, FDA anticipates that six petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data and to prepare the form, averages 497 hours per petition. This average is based upon estimates by FDA administrative and technical staff who are familiar with the requirements for submission of a reclassification petition, have consulted and advised manufacturers on these requirements, and have reviewed the documentation submitted.

We received two comments on the proposed rule that are related to the information collection. Please see Comments 5 and 15 for a description of the comments and our response.

The information collection provisions in this final rule have been submitted to OMB for review as required by section 3507(d) of the PRA.

Before the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

This final rule refers to previously approved collections of information found in FDA regulations and guidance. These collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 801, subpart B, regarding unique device identifier, have been approved under OMB control number 0910–0720; the collections of information in 21 CFR part 803, regarding medical device reporting, have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 807, subparts A through D, regarding establishment registration and listing, have been approved under OMB control number 0910–0625; the collections of information in 21 CFR part 807, subpart E, regarding premarket notification, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket notification, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 821, regarding medical device tracking, have been approved under OMB control number 0910–0442; and the collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844.

XI. Federalism

We have analyzed this final rule in accordance with the principles set forth in E.O. 13132. We have determined that the final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the final rule does not contain policies that have federalism implications as defined in the E.O. and, consequently, a federalism summary impact statement is not required.

XII. References

The following references are on display at Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m. Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. ''Medical Device Classification Product Codes; Guidance for Industry and FDA Staff'' (April 2013), available at *https://www.fda.gov/MedicalDevices/ucm285317.htm.*
2. ''The Open Public Hearings at FDA Advisory Committee Meetings; Guidance for the Public, FDA Advisory Committee Members, and FDA Staff'' (May 2013), available at *https://www.fda.gov/downloads/RegulatoryInformation/Guidances/ucm236144.pdf.*
3. ''Final Regulatory Impact Analysis, Final Regulatory Flexibility Analysis, and Final Unfunded Mandates Reform Act Analysis for Medical Device Classification Procedures,'' available at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

List of Subjects in 21 CFR Part 860

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 860 is amended as follows:

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

■ 1. The authority citation for part 860 continues to read as follows:

Authority: 21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374.

§ 860.3 [Amended]

■ 2. Amend § 860.3 by removing and reserving paragraphs (f) and (g).

■ 3. Amend § 860.7 by revising paragraph (b) introductory text, the last sentence in paragraph (c)(2), paragraph (d)(2), and the last sentence in paragraph (g)(1) to read as follows:

§ 860.7 Determination of safety and effectiveness.

* * * * *

(b) In determining the safety and effectiveness of a device for purposes of classification, establishment of special controls for class II devices, and premarket approval of class III devices, the Commissioner and the classification panels will consider the following, among other relevant factors:

* * * * *

(c) * * *

(2) * * * Such information may be considered, however, in identifying a device with questionable safety or effectiveness.

(d) * * *

(2) Among the types of evidence that may be required, when appropriate, to determine that there is reasonable assurance that a device is safe are investigations using laboratory animals, investigations involving human subjects, nonclinical investigations, and analytical studies for in vitro diagnostic devices.

* * * * *

(g)(1) * * * The failure of a manufacturer or importer of a device to present to the Food and Drug Administration adequate, valid scientific evidence showing that there is reasonable assurance of the safety and effectiveness of the device, if regulated by general controls alone, or by general controls and special controls, may support a determination that the device be classified into class III.

* * * * *

■ 4. Add § 860.10 to read as follows:

§ 860.10 Implants and life-supporting or life-sustaining devices.

(a) A classification panel will recommend classification into class III of any implant or life-supporting or life-sustaining device unless the panel determines that such classification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. If the panel recommends classification or reclassification of such a device into a class other than class III, it shall set forth in its recommendation the reasons for so doing and an identification of the risks to health, if any, presented by the device. In the case of such a device being recommended for classification or reclassification into class II, the panel shall describe the special controls that, in addition to general controls, the panel believes are necessary to provide reasonable assurance of safety and effectiveness of the device and how such controls provide such assurance.

(b) The Commissioner will classify an implant or life-supporting or life-sustaining device into class III unless the Commissioner determines that such classification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. If the Commissioner proposes to classify or reclassify such a device into a class other than class III, the regulation or order effecting such classification or reclassification will be accompanied by a full statement of the reasons for so doing. A statement of the reasons for not classifying or retaining the device in class III may be in the form of concurrence with the reasons for the recommendation of the classification panel, together with supporting documentation and data satisfying the requirements of § 860.7 and an identification of the risks to health, if any, presented by the device. In the case of such a device being classified or reclassified into class II, the Commissioner shall describe the special controls that, in addition to general controls, the panel believes are necessary to provide reasonable assurance of safety and effectiveness of the device and how such controls provide such assurance.

■ 5. Add § 860.15 to read as follows:

§ 860.15 Exemptions from sections 510, 519, and 520(f) of the Federal Food, Drug, and Cosmetic Act.

(a) A panel recommendation to the Commissioner that a device be classified or reclassified into class I will include a recommendation as to whether the device should be exempted from some or all of the requirements of one or more of the following sections of the Federal Food, Drug, and Cosmetic Act: Section 510 (registration, product listing, and premarket notification), section 519 (records and reports) and section 520(f) (good manufacturing practice requirements of the quality system regulation), and, in the case of a recommendation for classification into class II, whether the device should be exempted from the premarket notification requirement under section 510.

(b) A regulation or an order classifying or reclassifying a device into class I will specify which requirements, if any, of sections 510, 519, and 520(f) of the Federal Food, Drug, and Cosmetic Act the device is to be exempted from or, in the case of a regulation or an order classifying or reclassifying a device into class II, whether the device is to be exempted from the premarket notification requirement under section 510, together with the reasons for such exemption.

(c) The Commissioner will grant exemptions under this section only if the Commissioner determines that the requirements from which the device is exempted are not necessary to provide reasonable assurance of the safety and effectiveness of the device.

■ 6. Amend § 860.84 by:

■ a. Revising the section heading and paragraph (a);

■ b. Removing the semicolon at the end of paragraph (c)(2) and adding ''; and'' in its place;

■ c. Removing paragraphs (c)(3) and (4);

■ d. Redesignating paragraph (c)(5) as paragraph (c)(3); and

■ e. Revising paragraphs (d)(2), (d)(4) through (6), (e), and (g)(2) and (3).

The revisions read as follows:

§ 860.84 Classification procedures for ''preamendments devices.''

(a) This subpart sets forth the procedures for the original classification of a generic type of device that was in commercial distribution before May 28, 1976. Such a device will be classified by regulation into either class I (general controls), class II (special controls) or class III (premarket approval), depending upon the level of regulatory control required to provide reasonable assurance of the safety and effectiveness of the device (§ 860.3(c)). This subpart does not apply to a device that is classified into class III by statute under section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act because the Food and Drug Administration has determined that the device is not ''substantially equivalent'' to any device subject to this subpart or under section 520(*l*)(1) of the Federal Food, Drug, and Cosmetic Act because the device was regarded previously as a new drug. In classifying a *preamendments* device to which this section applies, the Food and Drug Administration will follow the procedures described in paragraphs (b) through (g) of this section.

* * * * *

(d) * * *

(2) A summary of the data upon which the recommendation is based;

* * * * *

(4) In the case of a recommendation for classification into class I, a recommendation as to whether the device should be exempted from the requirements of one or more of the following sections of the Federal Food, Drug, and Cosmetic Act: Section 510 (registration, product listing, and premarket notification), section 519 (records and reports), and section 520(f) (good manufacturing practice requirements of the quality system regulation) and, in the case of a recommendation for classification into class II, whether the device should be exempted from the premarket notification requirement under section 510, in accordance with § 860.15;

(5) In the case of a recommendation for classification into class II or class III, to the extent practicable, a recommendation for the assignment to the device of a priority for the application of a performance standard or a premarket approval requirement, and in the case of classification into class II, a recommendation on the establishment of special controls and whether the device should be exempted from premarket notification in accordance with § 860.15; and

(6) In the case of a recommendation for classification of an implant or a life-supporting or life-sustaining device into class I or class II, a statement of why premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device and an identification of the risks to health, if any, presented by the device, in accordance with § 860.10.

(e) A panel recommendation is regarded as preliminary until the Commissioner has reviewed it, discussed it with the panel if appropriate, and published a proposed regulation classifying the device. Preliminary panel recommendations are filed at Dockets Management Staff upon receipt and are available to the public at *https://www.regulations.gov.*

* * * * *

(g) * * *

(2) If classifying the device into class II, establish the special controls for the device and prescribe whether the premarket notification requirement will apply to the device; and

(3) If classifying an implant, or a life-supporting or life-sustaining device, comply with § 860.10(b).

■ 7. Add § 860.90 to read as follows:

§ 860.90 Consultation with panels.

(a) When the Commissioner is required to consult with a panel concerning a classification under § 860.84, the Commissioner will consult with the panel in one of the following ways:

(1) Consultation by telephone with at least a majority of current voting panel members and, when possible, nonvoting panel members in a telephone or video conference call; or

(2) Discussion at a panel meeting.

(b) The method of consultation chosen by the Commissioner will depend upon the importance and complexity of the subject matter involved and the time available for action. When time and circumstances permit, the Commissioner will consult with a panel through discussion at a panel meeting.

§ 860.93 [Removed]

■ 8. Remove § 860.93.

§ 860.95 [Removed]

■ 9. Remove § 860.95.

■ 10. Amend § 860.120 by revising paragraphs (b) and (c) to read as follows:

§ 860.120 General.

* * * * *

(b) The criteria for determining the proper class for a device are set forth in § 860.3(c). The reclassification of any device within a generic type of device causes the reclassification of all devices within that generic type. Accordingly, a petition for the reclassification of a specific device will be considered a petition for reclassification of all devices within the same generic type.

(c) Any interested person may submit a petition for reclassification under section 513(e), 514(b), or 515(b) of the Federal Food, Drug, and Cosmetic Act. A manufacturer or importer may submit a petition for reclassification under section 513(f) or 520(*l*) of the Federal Food, Drug, and Cosmetic Act. The Commissioner may initiate the reclassification of a device under the following sections of the Federal Food, Drug, and Cosmetic Act:

(1) Section 513(e) (for a classified device other than a device classified into class III under section 513(f)(1) or 520(*l*)(1) of the Federal Food, Drug, and Cosmetic Act);

(2) Section 513(f)(3) (for a device classified into class III under section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act); or

(3) Section 520(*l*)(2) (for a device classified into class III under section 520(*l*)(1) of the Federal Food, Drug, and Cosmetic Act).

■ 11. Amend § 860.123 by:

■ a. Removing paragraphs (a)(3) and (4);

■ b. Redesignating paragraphs (a)(5) through (10) as paragraphs (a)(3) through (8), respectively;

■ c. Removing the period at the end of newly redesignated paragraph (a)(7) and adding ''; and'' in its place; and

■ d. Revising paragraph (b)(2).

The revision reads as follows:

§ 860.123 Reclassification petition: Content and form.

* * * * *

(b) * * *

(2) Marked clearly with the section of the Federal Food, Drug, and Cosmetic Act under which the petition is being submitted, *i.e.,* ''513(e),'' ''513(f)(3),'' ''514(b),'' ''515(b),'' or ''520(*l*) Petition''; * * * * *

■ 12. Amend § 860.125 by:

■ a. Revising paragraphs (a) introductory text and (a)(1);

■ b. Removing paragraph (a)(2) and redesignating paragraph (a)(3) as paragraph (a)(2);

■ c. Redesignating paragraph (c) as paragraph (d);

■ d. Revising newly redesignated paragraph (d); and

■ e. Adding a new paragraph (c).

The revisions and addition read as follows:

§ 860.125 Consultation with panels.

(a) When the Commissioner chooses to refer a reclassification petition to a classification panel for its recommendation under § 860.134(b), or the Commissioner is required to consult with a panel concerning a reclassification petition submitted under § 860.130(d) or received in a proceeding under § 860.133(b), or the Commissioner chooses to consult with a panel with regard to the reclassification of a device initiated by the Commissioner under § 860.134(c) or § 860.136, the Commissioner will distribute a copy of the petition, or its relevant portions, if applicable, to each panel member and will consult with the panel in one of the following ways:

(1) Consultation by telephone with at least a majority of current voting panel members and, when possible, nonvoting panel members in a telephone or video conference call; or

* * * * *

(c) The Commissioner will consult with a classification panel prior to changing the classification of a device in a proceeding under section 513(e) of the Federal Food, Drug, and Cosmetic Act and § 860.130 upon the Commissioner's own initiative or upon petition of an interested person, and in the latter case, the Commissioner will distribute a copy of the petition, or its relevant portions, to each panel member.

(d) When a petition is submitted under § 860.134 for a postamendments, not substantially equivalent, device, if the Commissioner chooses to consult with the panel, the Commissioner will obtain a recommendation that includes the information described in § 860.84(d). In consulting with a panel about a petition submitted under § 860.130(d), § 860.136(a), or received in a proceeding under § 860.133(b), the Commissioner may or may not obtain a formal recommendation.

■ 13. Amend § 860.130 by revising the section heading and paragraphs (c) through (g) to read as follows:

§ 860.130 General procedures under section 513(e) of the Federal Food, Drug, and Cosmetic Act.

* * * * *

(c) By administrative order published under this section, the Commissioner may change the classification from:

(1) Class I or class II to class III if the Commissioner determines that the device meets the criteria set forth in § 860.3(c)(3) for a class III device; or

(2) Class III or class I to class II if the Commissioner determines that the device meets the criteria set forth in § 860.3(c)(2) for a class II device; or

(3) Class III or class II to class I if the Commissioner determines that the device meets the criteria set forth in § 860.3(c)(1) for a class I device.

(d)(1) The Commissioner shall consult with a classification panel and may secure a recommendation with respect to reclassification of a device from a classification panel. The panel will consider reclassification in accordance with the consultation procedures of § 860.125. A recommendation submitted to the Commissioner by the panel will be published in the **Federal Register** when the Commissioner publishes an administrative order under this section.

(2) The Commissioner may change the classification of a device by administrative order published in the **Federal Register** following publication of a proposed reclassification order in the **Federal Register**, a meeting of a device classification panel described in section 513(b) of the Federal Food, Drug, and Cosmetic Act, and consideration of comments to a public docket.

(e) Within 180 days after the filing of a petition for reclassification under this section, the Commissioner will either deny the petition by order published in the **Federal Register** or give notice of the intent to initiate a change in the classification of the device.

(f) If a device is reclassified under this section, the administrative order effecting the reclassification may revoke any special control or premarket approval requirement that previously applied to the device but that is no longer applicable because of the change in classification.

(g) An administrative order under this section changing the classification of a device to class II may provide that such reclassification will not take effect until the effective date of a performance standard for the device established under section 514 of the Federal Food, Drug, and Cosmetic Act or other special controls established under the order. An order under this section changing the classification of a device to class II may also establish the special controls necessary to provide reasonable assurance of the safety and effectiveness of the device.

■ 14. Amend § 860.132 by:

■ a. Revising the section heading and paragraph (a);

■ b. Redesignating paragraph (b) as paragraph (d);

■ c. Revising newly redesignated paragraphs (d) introductory text and (d)(1) and (3); and

■ d. Adding new paragraphs (b) and (c).

The revisions and additions read as follows:

§ 860.132 Procedures when the Commissioner initiates a performance standard or premarket approval proceeding under section 514(b) or 515(b) of the Federal Food, Drug, and Cosmetic Act.

(a) Sections 514(b) and 515(b) of the Federal Food, Drug, and Cosmetic Act require the Commissioner to provide, by notice in the **Federal Register**, an opportunity for interested parties to petition to change the classification of a device based upon new information relevant to its classification when the Commissioner initiates a proceeding to develop a performance standard for the device if in class II or to issue an order requiring premarket approval for the device if in class III.

(b) If the Commissioner agrees that the new information submitted in response to a proposed order to require premarket approval of a device issued under section 515(b) of the Federal Food, Drug, and Cosmetic Act warrants a change in classification, the Commissioner shall follow the administrative order procedures under section 513(e) of the Federal Food, Drug, and Cosmetic Act and § 860.130 to effect such a change.

(c) If the Commissioner does not agree that the new information submitted in response to a proposed order to require premarket approval of a device issued under section 515(b) of the Federal Food, Drug, and Cosmetic Act warrants a change in classification, the Commissioner will deny the petition.

(d) The procedures under section 514(b) of the Federal Food, Drug, and Cosmetic Act are as follows:

(1) Within 30 days after publication of the Commissioner's notice referred to in paragraph (a) of this section, an interested person files a petition for reclassification in accordance with § 860.123.

* * * * *

(3) Within 60 days after publication of the notice referred to in paragraph (a) of this section, the Commissioner either denies the petition or gives notice of the intent to initiate a change in classification in accordance with § 860.130.

■ 15. Add § 860.133 to read as follows:

§ 860.133 Procedures when the Commissioner initiates a proceeding to require premarket approval under section 515(b) of the Federal Food, Drug, and Cosmetic Act.

(a) Section 515(b) of the Federal Food, Drug, and Cosmetic Act applies to proceedings to require premarket approval for a class III preamendments device.

(b) The Commissioner may require premarket approval for a class III preamendments device by administrative order published in the **Federal Register** following publication of a proposed order in the **Federal Register**, a meeting of a device classification panel described in section 513(b) of the Federal Food, Drug, and Cosmetic Act, and consideration of comments from all affected stakeholders, including patients, payors, and providers. The panel will consider reclassification petitions received in the proceeding in accordance with section 513(e) of the Federal Food, Drug, and Cosmetic and the applicable consultation procedures in § 860.125. A recommendation submitted to the Commissioner by the panel will be published in the **Federal Register** when the Commissioner publishes an administrative order under this section.

■ 16. Amend § 860.134 by:

■ a. Revising the section heading and paragraph (a)(3);

■ b. Removing the undesignated paragraph following paragraph (a)(3);

■ c. Adding paragraph (a)(4);

■ d. Revising paragraphs (b) introductory text and (b)(4) and (6); and

■ e. Adding paragraphs (c) and (d).

The revisions and additions read as follows:

§ 860.134 Procedures for reclassification of "postamendments devices" under section 513(f)(3) of the Federal Food, Drug, and Cosmetic Act.

(a) * * *

(3) The Commissioner has classified the device into class I or class II in response to a petition for reclassification under this section; or

(4) The device is classified under a request for De Novo classification under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act.

(b) The procedures for effecting reclassification under section 513(f)(3) of the Federal Food, Drug, and Cosmetic Act when initiated by a manufacturer or importer are as follows:

* * * * *

(4) Within 90 days after the date the petition is referred to the panel, following the review procedures set forth in § 860.84(c) for the original classification of a "preamendments

device'', the panel submits to the Commissioner its recommendation containing the information set forth in § 860.84(d). A panel recommendation is regarded as preliminary until the Commissioner has reviewed it, discussed it with the panel, if appropriate, and developed a proposed reclassification order. Preliminary panel recommendations are filed at Dockets Management Staff upon receipt and are available to the public and posted at *https://www.regulations.gov.*

* * * * *

(6) Within 90 days after the panel's recommendation is received (and no more than 210 days after the date the petition was filed), the Commissioner denies or approves the petition by order in the form of a letter to the petitioner. If the Commissioner approves the petition, the order will classify the device into class I or class II in accordance with the criteria set forth in § 860.3(c) and subject to the applicable requirements of § 860.10, relating to the classification of implants and life-supporting or life-sustaining devices, and § 860.15, relating to exemptions from certain requirements of the Federal Food, Drug, and Cosmetic Act.

* * * * *

(c) By administrative order published under section 513(f)(3) of the Federal Food, Drug, and Cosmetic Act, the Commissioner may, on the Commissioner's own initiative, change the classification from class III under section 513(f)(1) either to class II, if the Commissioner determines that special controls in addition to general controls are necessary and sufficient to provide reasonable assurance of the safety and effectiveness of the device and there is sufficient information to establish special controls to provide such assurance, or to class I if the Commissioner determines that general controls alone would provide reasonable assurance of the safety and effectiveness of the device. The procedures for the reclassification proceeding under this paragraph (c) are as follows:

(1) The Commissioner publishes a proposed reclassification order in the **Federal Register** seeking comment on the proposed reclassification.

(2) The Commissioner may consult with the appropriate classification panel with respect to the reclassification of the device. The panel will consider reclassification in accordance with the consultation procedures of § 860.125.

(3) Following consideration of comments to a public docket and any panel recommendations or comments, the Commissioner may change the classification of a device by final administrative order published in the **Federal Register**.

(d) An administrative order under this section changing the classification of a device from class III to class II may establish the special controls necessary to provide reasonable assurance of the safety and effectiveness of the device.

■ 17. Amend § 860.136 by:

■ a. Revising the section heading, paragraph (a), and paragraph (b) introductory text;

■ b. Removing paragraph (b)(3);

■ c. Redesignating paragraphs (b)(4) through (6) as paragraphs (b)(3) through (5), respectively;

■ d. Revising newly redesignated paragraph (b)(4); and

■ e. Adding paragraphs (c) and (d).

The revisions and additions read as follows:

§ 860.136 Procedures for transitional products under section 520(l) of the Federal Food, Drug, and Cosmetic Act.

(a) Section 520(*l*)(2) of the Federal Food, Drug, and Cosmetic Act applies to reclassification proceedings initiated by the Commissioner or in response to a request by a manufacturer or importer for reclassification of a device currently in class III by operation of section 520(*l*)(1). This section applies only to devices that the Food and Drug Administration regarded as ''new drugs'' before May 28, 1976.

(b) The procedures for effecting reclassification under section 520(*l*) of the Federal Food, Drug, and Cosmetic Act when initiated by a manufacturer or importer are as follows:

* * * * *

(4) Within 180 days after the petition is filed (where the Commissioner has determined it to be adequate for review), the Commissioner, by order in the form of a letter to the petitioner, either denies the petition or classifies the device into class I or class II in accordance with the criteria set forth in § 860.3(c).

* * * * *

(c) By administrative order, the Commissioner may, on the Commissioner's own initiative, change the classification from class III under section 520(*l*) of the Federal Food, Drug, and Cosmetic Act either to class II, if the Commissioner determines that special controls in addition to general controls are necessary and sufficient to provide reasonable assurance of the safety and effectiveness of the device and there is sufficient information to establish special controls to provide such assurance, or to class I if the Commissioner determines that general controls alone would provide reasonable assurance of the safety and effectiveness of the device. The procedures for the reclassification proceeding under this paragraph (c) are as follows:

(1) The Commissioner publishes a proposed reclassification order in the **Federal Register** seeking comment on the proposed reclassification.

(2) The Commissioner may consult with the appropriate classification panel with respect to the reclassification of the device. The panel will consider reclassification in accordance with the consultation procedures of § 860.125.

(3) Following consideration of comments to a public docket and any panel recommendations or comments, the Commissioner may change the classification of a device by final administrative order published in the **Federal Register**.

(d) An administrative order under this section changing the classification of a device from class III to class II may establish the special controls necessary to provide reasonable assurance of the safety and effectiveness of the device.

Dated: December 7, 2018.

Scott Gottlieb,

Commissioner of Food and Drugs.

[FR Doc. 2018–27015 Filed 12–13–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9842]

RIN 1545–BO63

Tax Return Preparer Due Diligence Penalty Under Section 6695(g); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9842) that were published in the **Federal Register** on Wednesday, November 7, 2018. The final regulations relate to the tax return preparer penalty.

DATES: This correction is effective December 17, 2018 and applicable November 7, 2018.

FOR FURTHER INFORMATION CONTACT: Marshall French at (202) 317–6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9842) that are the subject of this correction are

under section 6695(g) of the Internal Revenue Code.

Need for Correction

As published November 7, 2018 (83 FR 55632), the final regulations (TD 9842) contain an error that needs to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

§ 1.6695–2 [Amended]

■ **Par. 2.** Section 1.6695–2 is amended by redesignating the second occurrence of paragraph (b)(3)(ii)(D) as paragraph (b)(3)(ii)(E).

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2018–26969 Filed 12–14–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AQ42

Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its rules on VA-guaranteed or insured cash-out refinance loans. The Economic Growth, Regulatory Relief, and Consumer Protection Act requires VA to promulgate regulations governing cash-out refinance loans. This interim final rule defines the parameters of when VA will permit cash-out refinance loans, to include defining net tangible benefit, recoupment, and seasoning requirements.

DATES: *Effective Date:* This rule is effective February 15, 2019.

Comment date: Comments are due on or before February 15, 2019.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to ''RIN 2900–AQ42, Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-out Home Refinance Loans.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Nelms, Assistant Director for Loan Policy & Valuation, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8978. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 24, 2018, the President signed into law the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act), Public Law 115–174, 132 Stat. 1296. Section 309 of the Act, codified at 38 U.S.C. 3709, provides new statutory criteria for determining when, in general, VA may guarantee a refinance loan. The Act also requires VA to promulgate regulations for cash-out refinance loans within 180 days after the date of the enactment of the Act, specifically for loans where the principal of the new loan to be VA-guaranteed or insured is larger than the payoff amount of the loan being refinanced. Public Law 115–174, 132 Stat. 1296.

VA's current regulation concerning cash-out refinance loans is found at 38 CFR 36.4306. VA is revising § 36.4306 in this rulemaking, and planning additional rulemakings to implement other provisions of the Act.

I. VA's Refinance Program and New Section 3709

A. Two Types of Cash-Out Refinance Loans Under Section 3709

Refinancing loans guaranteed or insured by VA have historically fallen into two broad categories: (i) Cash-out refinance loans (cash-outs) offered under 38 U.S.C. 3710(a)(5) and (a)(9) and (ii) interest rate reduction refinancing loans (IRRRLs) authorized under 38 U.S.C. 3710(a)(8) and (a)(11). VA has not, until the enactment of the Act, seen any reason to delineate in VA's cash-out refinance rule, 38 CFR 36.4306, between cash-out refinance loans where the principal amount of the new loan is either: (a) Higher than, or (b) less than or equal to, the payoff amount of the loan being refinanced. The Act, however, bifurcates cash-out refinance loans relative to payoff amounts of the loan being refinanced, effectively requiring VA to treat the cash-out refinance loans differently, notwithstanding the fact that they are both authorized under the same statutory authority.

Subsections (a), (b), and (c) of 38 U.S.C. 3709 set forth standards for fee recoupment, net tangible benefits, and loan seasoning, respectively, related to the refinancing of loans guaranteed or insured by VA. Subsections (a) through (c) all contain similar introductory text, providing that when a borrower refinances a loan initially made for a purpose under VA's enabling statute in 38 U.S.C. 3710, the new refinance loan must meet the respective requirements of subsections (a), (b), and (c).

Subsections (a) through (c) do not expressly distinguish among the statutory types of refinancing loans that VA can guarantee or insure. While subsections (a) through (c) of section 3709 do not refer specifically to IRRRLs or cash-out refinance loans, subsection (d), which is identified under the statutory heading of ''Cash-out refinances'', explicitly states that subsections (a) through (c) do not apply to refinancing loans where the amount of the new loan is larger than the payoff amount of the loan being refinanced. The explicit delineation provided in subsection (d), *i.e.,* the distinction between loan refinance amounts relative to loan payoff amounts, requires VA to consider cash-out refinances separately. Based on the way Congress structured section 3709, VA-guaranteed or insured refinance loans are now effectively grouped into three categories: (i) IRRRLs, (ii) cash-outs in which the amount of the principal for the new loan is equal to or less than the payoff amount on the refinanced loan (Type I Cash-Outs), and (iii) cash-outs in which the amount of the principal for the new loan is larger than the payoff amount of the refinanced loan (Type II Cash-Outs). (For ease of reference, VA is referring in this preamble to the types of refinancing loans as IRRRLs, Type I Cash-Outs, and Type II Cash-Outs, respectively. VA is not using these terms in the rule text.)

It could be understood that, because the text of section 3709(d) does not make any specific reference to Type I Cash-Outs, such loans fall outside the scope of section 3709 altogether. In other words, it could be suggested that subsections (a) through (c) apply solely to IRRRLs and subsection (d) applies to cash-out refinance loans, generally, both Type I and Type II. Had Congress specified that section 3709(a)–(c) applied to loans made for the purpose authorized in 38 U.S.C. 3710(a)(8) or solely to streamline refinance loans, or had Congress not been explicit in making subsection (d) apply solely to Type II Cash-Outs, VA would have understood the statute this way.

Nevertheless, the text of subsection 3709(d) omits Type I Cash-Outs. In addition, the introductory provisions of subsections (a) through (c) are substantially similar. They refer generally to 38 U.S.C. 3710, without distinction, requiring that if a loan is made for a purpose authorized under section 3710 and is then to be refinanced and guaranteed or insured by VA, the new refinancing loan is subject to the requirements of subsections (a) through (c). On the plain text of subsections (a) through (d), then, the statute requires VA to apply subsections (a) through (c) to all refinances not expressly excepted under subsection (d). Thus, VA understands subsections (a) through (c) to apply to IRRRLs and Type I Cash-Outs and subsection (d) to apply to Type II Cash-Outs.

VA is revising its cash-out refinance rule at 38 CFR 36.4306 to address the new statutory bifurcation. The rule will outline the common characteristics required for the guaranty or insurance of Type I and Type II Cash-Outs. It will also set apart each type of cash-out refinancing to address their unique aspects. VA is further making some technical changes for ease of reading. All the changes are explained in-depth, later in this preamble. VA is not addressing section 3709's impact on IRRRLs, but plans to do so in a separate rulemaking.

B. The Structure of Section 3709(b) and (d) and How It Affects Type I and Type II Cash-Outs

As explained, section 3709 bifurcates cash-out refinance loans into two types. Type I Cash-Outs are subject to 38 U.S.C. 3709(a) through (c). Type II Cash-Outs are subject to subsection (d). Subsections (a) through (c) provide specific criteria before a Type I Cash-Out may be guaranteed or insured.

Subsection (a) imposes requirements related to recoupment of fees and expenses when refinancing a VA-guaranteed or insured loan into a Type I Cash-Out. In this rule, VA is simply restating the statutory criteria Congress prescribed in 38 U.S.C. 3709(a). Likewise, VA is simply restating in this rule the statutory criteria found in subsection (c), which imposes a seasoning period before a VA-guaranteed or insured loan may be refinanced into a Type I Cash-Out. To the extent any changes are made, they are solely for ease of reading and should not imply a substantive effect. VA is required to follow the statute.

Subsection (b) requires that a refinance loan provide a net tangible benefit to a veteran. To that end, the lender must provide a veteran with a net tangible benefit test to ensure that the refinance is in the financial interests of the veteran. Congress required the test, but did not define its parameters. To clarify statutory ambiguity, VA is, therefore, providing the parameters, as described later in this preamble.

VA considered various interpretations in dealing with section 3709(b). As discussed above, one question was whether the section applies only to IRRRLs, excluding Type I Cash-Outs altogether. This would be untenable, however, as the plain text of the introductory paragraph states unambiguously that it applies broadly to VA-guaranteed or insured refinances of VA-guaranteed loans—IRRRLs and cash-outs—except for those Type II Cash-Outs expressly excepted. The reading also would not make sense in application, as it would create a loophole for Type I Cash-Outs, making it easy for unscrupulous lenders to exploit veterans by inflating interest rates and discount points, without regard to net tangible benefits or the recoupment of fees and expenses. Such a loophole is inconsistent with the statute, as such lenders could render the whole of (a) through (c) meaningless.

VA also considered whether the net tangible benefit test described in (b)(1) was introductory to the criteria set forth in (b)(2) through (4). In other words, VA analyzed whether the required interest rate reductions, restricted discount points, and capped loan-to-value ceilings of paragraphs (2) through (4) comprise, in total, the net tangible benefit test mentioned in paragraph (1). This reading also was untenable, however, due to the way Congress structured the plain text of subsection (b). Subsection (b) contains four paragraphs, not three. Had Congress intended for paragraphs (2) through (4) to comprise the net tangible benefit test, Congress would have made the net tangible benefit test part of the introductory text as an overarching requirement, leading into the list of various elements necessary for passing the test. Yet the equal paragraph structure of the law clearly sets the net tangible benefit test as one criterion of equal weight among others necessary to be met for guaranty or insurance.

VA further considered the placement of the conjunction ''and'' between paragraphs (3) and (4). Generally, when Congress enacts a statute that lists multiple standards, utilizing serial commas and conjoining such discrete standards with the word ''and'' at the end, each discrete provision must be applied to the subject of the statute. U.S. House of Representatives Office of the Legislative Counsel, House Legislative Counsel's Manual on Drafting Style, No. HLC 104–1, sec. 351 at 58 (1995). The problem with accepting this principle across the board is that ''and'' is often ambiguous. It can be used jointly or severally. See R. Dickerson, The Fundamentals of Legal Drafting, 76–85 (1965). When courts deviate from the generally accepted principle, the outcome is largely dependent on facts and context. See, *e.g., Shaw* v. *Nat'l Union Fire Ins. Co.,* 605 F.3d 1250 (11th Cir. 2010), which catalogs several cases where ''and'' proved difficult to understand.

One rationale for departing from the generally accepted principle is when courts must reconcile the understanding between two mutually exclusive concepts. *Id.* The rationale applies here. The statutory use of the term ''and'' cannot apply as it generally would, because two of section 309(b)'s criteria are mutually exclusive. Of the four paragraphs in subsection (b), there is one that can apply in every case and two that cannot apply simultaneously. The fourth is dependent. Paragraph (1) provides that refinances of already-guaranteed loans cannot be guaranteed by VA unless ''the issuer of the . . . loan provides the borrower with a net tangible benefit test . . .'' This paragraph is broad enough to apply in the case of all covered loans. Paragraph (2) describes a case where the underlying loan and the refinancing loan both have a fixed interest rate. Paragraph (3) defines a case where the underlying loan has a fixed interest rate and the refinancing loan will have an adjustable interest rate. It follows that paragraph (2) can never apply in the case of a loan described in paragraph (3), and vice versa. They are mutually exclusive, which indicates that the ''and'' between paragraph (3) and (4) cannot mean that a single refinancing loan must meet all of subsection (b)'s requirements.

Since the ''and'' between paragraph (3) and (4) could not mean that all paragraphs (1) through (4) must be applied and satisfied in every single refinance, VA had to determine the meaning. Put another way, VA had to analyze whether the discount points requirement would apply only when refinancing from a loan with a fixed rate to a loan with an adjustable rate (paragraph 3), or if it would also apply when refinancing from a fixed rate loan to a fixed rate loan (paragraph 2).

VA found no legislative history to help clarify the term's meaning. For the reasons explained below, VA interprets the ''and'' to link only paragraphs (3) and (4).

A common usage of the term ''and'' is one that indicates an order of sequence. Even if not the preferred legal understanding (see explanation above), it offers an alternative that resolves the apparent ambiguity.

Accepting this understanding of ''and'', the discount points requirement described in paragraph (4) would clearly follow in sequence the condition prescribed in paragraph (3). The first step of moving from a fixed interest rate mortgage to an adjustable interest rate mortgage would parallel the example of the President signing a bill into law. The next step in the sequence, *i.e.,* compliance with discount points requirements, would be analogous to the rulemaking in the example.

One could argue that the same rationale could apply to paragraphs (2) and (4). If a veteran obtains a loan described in paragraph (2), the next step in the sequence would be to apply paragraph (4). The problem is that paragraph (3) intervenes, and paragraphs (2) and (3) are sequential in number only.

Paragraphs (2) and (3) present different classes of loans entirely, carrying with them different risks. Again, they are mutually exclusive to one another. This exclusivity seems to interrupt the consequential element necessary for continuation of the sequence. If paragraphs (2) and (3) were reconcilable, meaning they could either occur simultaneously or follow one another, one could look to paragraph (4) to complete the sequence. But the differences must be given meaning, and VA interprets that meaning as severing the relationship between paragraphs (2) and (4), limiting to paragraph (3) the relationship with paragraph (4).

VA recognizes other conclusions might be possible. However, VA's interpretation implements the text, on its face, as a coherent and consistent framework, without having to consider whether Congress made a structural error.

The coherent and consistent framework mirrors VA's understanding of the lending market. A refinance loan should meet a net tangible benefit test to ensure that imprudent lenders do not take advantage of veterans and the investors who provide liquidity for VA-guaranteed loans. Additional requirements are tacked on as the risk profile increases. In VA's understanding, Congress addressed the risky aspects of moving from one type of interest rate to another, setting an additional threshold regarding interest rates, depending on what sort of interest rate (fixed versus adjustable) a veteran chooses. Congress addressed the least risky type of loan first, meaning a refinance from a fixed interest rate to a fixed interest rate. The required interest rate shift (50 basis points) is drastically less than that required when refinancing from a fixed interest rate to an adjustable interest rate (200 basis points). VA understands that, although there can be benefits in moving from a fixed interest rate to an adjustable rate, such a move is inherently risky. One reason is that the crossover to a different category of mortgage makes it more difficult for the average borrower to conduct an informed cost-benefit analysis when comparing the two types of mortgages. Where moving from a fixed interest rate mortgage to another fixed rate is like comparing apples to apples, comparing a fixed interest rate mortgage and an adjustable rate mortgage is more like comparing apples to pears. They are simply different, and as a result, borrowers could have a more difficult time calculating an accurate cost-benefit analysis. Also, the adjustable rate means that the monthly payment is essentially out of the borrower's hands, particularly in a time when interest rates are increasing. Thus, the adjustable rate carries with it more risk of payment shock (when the rate is adjusted and a higher payment amount is established) and more chance that a veteran would later opt to refinance again, increasing the risk of serial refinancing and equity stripping. VA understands the more significant interest rate reduction for an adjustable interest rate mortgage, along with the additional discount point and loan to value requirements, as Congress's attempt to counter the potential downsides of the riskier type of loans.

Before moving to the next point, it should be noted, as well, that linking paragraph (4) to both paragraphs (2) and (3) is a restrictive approach. It would result in VA establishing a larger regulatory footprint than if VA were to link paragraph (4) only to paragraph (3). VA is reluctant to take the more restrictive interpretation for this aspect of the rule. VA does not have data, at least at the moment, to demonstrate how linking the additional restrictions of paragraph (4) to paragraph (2) would provide veterans additional advantages. VA also cannot point to data showing a clear market-based reason to impose the larger regulatory footprint. VA does not have other evidence that the more restrictive approach reflects the meaning of the ambiguously structured statute. Nevertheless, VA specifically invites comments on its interpretation of subsection (b), as VA believes it would be helpful to receive public feedback on this important issue.

Finally, VA considered whether a Type I Cash-Out would need to pass a net tangible benefit test to comply with the law or whether the net tangible benefit test is merely a disclosure for informational purposes. The meaning of a word must be ascertained in the context of achieving particular objectives. See *Chevron, U.S.A., Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 861 (1984). VA first reviewed the Act to determine whether another section could provide additional context. The term ''net tangible benefit test'' is not used elsewhere in the Act. Neither is the term ''test''. The nearest analog VA could find in the Act was in section 401, referring to ''supervisory stress tests.'' Under section 401, the Board of Governors of the Federal Reserve System is required to conduct supervisory stress tests of certain bank holding companies ''to evaluate whether such bank holding companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.''

VA does not believe the section 401 supervisory stress test is a valid comparison to section 309's net tangible benefit test. A supervisory stress test based on estimates and forecasts of economies seems a completely different character from a test to show whether a lender is preying upon an individual borrower. The objectives are entirely different. ''Context Counts.'' *Envtl. Def.* v. *Duke Energy Corp.* 549 U.S. 561 (2007) (explaining that ''There is, then, no 'effectively irrebuttable' presumption that the same defined term in different provisions of the same statute must be 'interpreted identically.'''

Guaranteeing a loan when VA and others know it would cause a veteran financial harm would be inconsistent with the statutory context of section 309. In paragraph (2) of subsection (b), Congress required that a fixed rate refinance loan must meet certain

interest rate requirements, or the Secretary is not authorized to guarantee the loan. In paragraphs (3) and (4), Congress required that an adjustable rate refinance loan must meet certain interest rate and discount point requirements, or the Secretary is not authorized to guarantee the loan. If each of these other provisions in subsection (b) sets forth a pass/fail standard that must be met, not just disclosed, VA finds it difficult to conclude that merely disclosing the fact that a loan is harmful would be sufficient to satisfy the net tangible benefit test of paragraph (1). It would be inconsistent to do so.

The consistency in the legislative scheme is not limited to the requirements of subsection (b). The same pass/fail sort of standard applies to the recoupment requirements of subsection (a). If one of the recoupment requirements is not met, the refinance loan cannot be guaranteed. The same pass/fail sort of standard also applies to the seasoning requirements of subsection (c). If the requirement is not met, the loan cannot be guaranteed.

Again, VA interprets the law within the coherent and consistent framework that Congress prescribed. At each step, in every provision in section 309, Congress identified an issue, imposed a requirement, and prohibited a VA guaranty as the consequence of noncompliance with one of the section's requirements. It would be inconsistent with this coherent statutory scheme if the consequence of noncompliance with the net tangible benefit test of subsection (b)(1) would be wholly different. To infer the term ''net tangible benefit disclosure'' within this context when Congress selected the term ''net tangible benefit test,'' would not only fail to give the proper weight to the word selection, but would also require an inference, without evidence, that Congress had departed from the coherent framework it had designed. VA believes it would run counter to the purpose of a statute entitled the ''Protecting Veterans from Predatory Lending Act'' for VA to guarantee or insure a loan when all parties involved—lender, veteran, VA, secondary market investors, and Congress—know a loan fails a net tangible benefit test, meaning that the loan is predatory and indeed will cause financial harm. See *INS* v. *National Ctr. for Immigrants' Rights,* 502 U.S. 183, 189–90 (1991) (acknowledging that title of statute can aid in resolving ambiguity in text).

Furthermore, for additional context in interpreting the meaning of the term ''test'', VA looked at other Government-backed lending programs: HUD, the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Department of Agriculture's Rural Development program. The consensus approach is that, absent a net tangible benefit to a borrower, the loan should not be made.

Accordingly, VA is interpreting section 309's net tangible benefit test as one that must be passed. VA believes that, by selecting the word ''test'', Congress has imposed a requirement to establish the fitness of the loan, as opposed to a requirement only to disclose the characteristics of the loan for the veteran's understanding.

In this rule, VA is defining the parameters of the net tangible benefit test for Type I Cash-Outs. VA is also establishing a net tangible benefit test for Type II Cash-Outs to comply with section 3709(d). The net tangible benefit test for both types of cash-outs overlaps in some ways, but also differs in a few major respects. The full explanation is provided later in this preamble. VA will address the net tangible benefit test for IRRRLs in a future rulemaking.

II. Explanation of Specific Changes to 38 CFR 36.4306

A. Section 36.4306(a)

For ease of reading, VA is revising § 36.4306(a) to discuss the criteria that will apply to both types of cash-out refinance loans. In § 36.4306(a), VA will provide that a refinancing loan made pursuant to 38 U.S.C. 3710(a)(5) qualifies for guaranty in an amount as computed under 38 U.S.C. 3703, provided five conditions are met.

1. Reasonable Value

VA will require that the amount of the new loan must not exceed an amount equal to 100 percent of the reasonable value, as determined by the Secretary, of the dwelling or farm residence which will secure the loan. The Secretary makes determinations of reasonable value pursuant to requirements found in 38 U.S.C. 3731. VA's implementing regulations are found at 38 CFR 36.4301 and 36.4343, and VA's website provides additional resources for fee appraisers. See *https://www.benefits.va.gov/homeloans/appraiser.asp.* The current § 36.4306(a) authorizes a loan in an amount that does not exceed 90 percent of the reasonable value of the dwelling securing the VA-guaranteed loan. 38 CFR 36.4306(a)(1). In 1989, Congress established a 90 percent loan-to-value ratio limit for cash-outs. See Public Law 101–237 sec. 309(b)(3), 103 Stat. 2062. In 2008, Congress enacted Public Law 110–389, which increased the loan-to-value ratio limit for cash-outs to 100 percent. See Public Law 110–389 sec. 504(b); 122 Stat. 4145. The 100-percent loan-to-value ratio remains intact in the statute, and VA has been complying with this amendment. Yet VA has not changed its rule to reflect the 2008 change. VA is, therefore, aligning its rule with the statutory text to ensure that veterans have full access to their home loan benefits as authorized by Congress. This regulatory change has no substantive impact as VA has applied the statutory 100 percent ratio via its policy and procedural guidance to lenders since Congress enacted section 504 of Public Law 110–389, the Veterans' Benefits Improvement Act of 2008, 122 Stat. 4145. See also Lenders Handbook, VA Pamphlet 26–7, Chapter 3, Topic 3, Page 3–8.

2. Funding Fee

VA will require that the funding fee as prescribed by 38 U.S.C. 3729 may be included in the new loan amount, except that any portion of the funding fee that would cause the new loan amount to exceed 100 percent of the reasonable value of the property must be paid in cash at the loan closing. The statute at 38 U.S.C. 3729(a)(2) authorizes borrowers to finance the funding fee. However, as stated in connection with the reasonable value requirement, 38 U.S.C. 3710 requires that cash-out refinance loan amounts not exceed 100 percent of the reasonable value of the property securing the loan. 38 U.S.C. 3710(b)(7)–(8). Therefore, VA is clarifying that, while a funding fee may be financed, it must not increase the loan to value ratio such that the loan would violate 38 U.S.C. 3710. For any overage, a veteran must bring the funds to pay at loan closing.

3. Net Tangible Benefit

For the reasons explained above, VA will require that the new loan must provide a net tangible benefit to the borrower. For the purposes of § 36.4306, net tangible benefit means that the new loan is in the financial interest of the borrower. The lender of the new loan must provide the borrower with a net tangible benefit test and that test must be satisfied.

First, the new loan must meet one or more of the following: The new loan eliminates monthly mortgage insurance, whether public or private, or monthly guaranty insurance; the term of the new loan is shorter than the term of the loan being refinanced; the interest rate on the new loan is lower than the interest rate on the loan being refinanced; the payment on the new loan is lower than the payment on the loan being

refinanced; the new loan results in an increase in the borrower's monthly residual income as explained by § 36.4340(e); the new loan refinances an interim loan to construct, alter, or repair the home; the new loan amount is equal to or less than 90 percent of the reasonable value of the home; or the new loan refinances an adjustable rate loan to a fixed rate loan.

VA has chosen these eight criteria because VA believes a loan that meets at least one of these criteria helps demonstrate that the loan is in the financial interest of the borrower. For example, a lower interest rate, a lower payment, or elimination of monthly mortgage insurance will be in the financial interest of the borrower by reducing the debt service the borrower must cover each month. In many cases, lowering the interest rate or reducing the monthly payment through elimination of monthly mortgage insurance will also decrease the overall cost to the borrower over the life of the loan. In cases where the monthly payment is lowered but the overall cost of the loan will increase (*e.g.,* borrower refinances an existing loan with five years' worth of payments remaining into a new 15-year loan, takes $20,000 in cash out, and realizes a reduction of only 50 basis points), VA believes that the refinance loan may still be in the borrower's financial interest, as the veteran might need access to cash for certain expenses (*e.g.,* home repair for livability, medical bills, or educational expenses). Additionally, VA notes that the loan comparison disclosure mandated by this rule, and discussed in more detail below, will provide the borrower with upfront information about the overall cost of a loan, thereby helping the borrower make an informed decision about whether to proceed with the refinance loan.

A shorter-term loan will be in the borrower's financial interest as the borrower will be paying off the loan in a shorter amount of time. Given that all cash-out refinance loans must be fully underwritten and the borrower must demonstrate an ability to repay, VA sees little downside to a borrower who chooses to refinance his or her loan to a shorter term, as a borrower will most likely end up paying less interest over the life of the loan.

VA also finds that a new loan resulting in an increase in the borrower's monthly residual income as explained by § 36.4340(e) will be in the financial interest of the borrower by providing additional liquidity to the borrower. For example, in cases where borrowers use a cash-out refinance to pay down higher interest rate consumer debts (*e.g.,* credit cards and automobile loans), borrowers use the equity in their home to consolidate debts at a lower interest rate, which results in a lower monthly debt-to-income ratio.

A new loan that refinances an interim loan to construct, alter, or repair the home will provide a financial benefit to the borrower by refinancing out of a loan that is costly to maintain, if it can be maintained at all. Generally, this criterion would apply to borrowers who have obtained a conventional interim construction loan (*i.e.,* one not guaranteed by VA) and who plan to refinance into a permanent VA-guaranteed loan. Such refinancings enable veterans to avoid costly mortgage insurance. In addition, if the reasonable value of a completed construction project exceeds the amount of the original construction loan, a veteran could recoup certain out-of-pocket expenses the veteran incurred during construction. For example, if a veteran obtained an original construction loan in the amount of $200,000 and the reasonable value of the completed project was $210,000, the veteran could recoup, by refinancing into a new loan, up to $10,000 of any personal funds expended during the construction process.

A new loan that is equal to or less than 90 percent of the home's reasonable value will also provide a financial interest to the borrower because at least 10 percent of home equity is maintained. Such equity can, for example, leave some room for a future loan modification if the borrower experiences a temporary reduction in income. Also, maintaining and building home equity is in any homeowner's interest as such equity represents an investment and reduces the likelihood that, when property values fall, a homeowner will be left with a mortgage that exceeds the value of the home (*i.e.,* an ''underwater mortgage'').

VA acknowledges that under 38 U.S.C. 3710 VA is authorized to guarantee certain housing loans with balances equal to 100 percent of the reasonable value of a property. However, VA views 10 percent equity preservation as one criterion out of many that can evidence that a refinance loan provides a net tangible benefit to a borrower. Accordingly, VA is incorporating the 90 percent loan to value criterion into the net tangible benefit test.

VA finds that refinancing from an adjustable rate loan to a fixed rate loan will provide a financial benefit to the borrower by providing a stable interest rate over the life the loan. Generally, borrowers obtain adjustable rate loans to aid in affording a home for a short period (*i.e.,* three to five years). However, when circumstances change (*e.g.,* a change in employment, an increase in benchmark interest rates, or a decision to stay in a home longer) a fixed rate may be more affordable and may provide more certainty in the long term. Enabling borrowers to refinance to a fixed rate, even if such rate is higher than the introductory adjustable rate, can be in a veteran's financial interest.

Second, the lender must provide a borrower with a comparison of the following: The loan payoff amount of the new loan, with a comparison to the loan payoff amount of the loan being refinanced; the new type of loan, with a comparison to type of the loan being refinanced; the interest rate of the new loan, with a comparison to the interest rate of the loan being refinanced; the term of the new loan, with a comparison to the term remaining on the loan being refinanced; the total the borrower will have paid after making all payments of principal, interest, and mortgage or guaranty insurance (if applicable), as scheduled, for both the new loan and the loan being refinanced; and the loan to value ratio of the new loan, with a comparison to the loan to value ratio under the loan being refinanced.

Third, the lender must provide the borrower with an estimate of the dollar amount of home equity that, by refinancing into a new loan, is being removed from the reasonable value of the home, and explain that removal of this home equity may affect the borrower's ability to sell the home at a later date.

VA will require the lender to provide the above information in a standardized format on two separate occasions: Not later than 3 business days from the date of the loan application and again at loan closing. The borrower must certify that the borrower received this information on both occasions.

Requiring lenders to provide borrowers with the above information on two separate occasions will enable borrowers to better understand their cash-out refinance loan transaction and, therefore, make a sound financial decision. VA believes this information will help borrowers avoid costly mistakes that may strip their home equity or make it difficult to sell or refinance their home in the future.

4. Reasonable Discount

VA will require that the dollar amount of discount, if any, to be paid by the borrower must be reasonable in amount as determined by the Secretary in accordance with § 36.4313(d)(7)(i). This requirement is found in current

§ 36.4306(a) and is revised for clarity only.

5. Otherwise Eligible

VA will require that the loan must otherwise be eligible for guaranty. This requirement is found in current § 36.4306(a).

B. Section 36.4306(b)

VA is revising § 36.4306(b) to discuss the additional criteria the Act provided for Type I Cash-Outs. Again, Type I Cash-Outs are cash-out refinance loans where the loan being refinanced is already guaranteed or insured by VA and the new loan amount is equal to or less than the payoff amount of the loan being refinanced. Section 3709 set out specific criteria for recoupment and seasoning for these types of loans. VA is adopting those criteria.

For recoupment, there are three criteria. First, the lender of the refinanced loan must provide the Secretary with a certification of the recoupment period for fees, closing costs, and any expenses (other than taxes, amounts held in escrow, and fees paid under 38 U.S.C. chapter 37) that would be incurred by the borrower in the refinancing of the loan. Second, all the fees and incurred costs must be scheduled to be recouped on or before the date that is 36 months after the date of loan issuance. Finally, the recoupment must be calculated through lower regular monthly payments (other than taxes, amounts held in escrow, and fees paid under 38 U.S.C. chapter 37) as a result of the refinancing loan.

For seasoning, the new loan may not be guaranteed or insured until the date that is the later of 210 days from the date of the first monthly payment made by the borrower and the date on which the sixth monthly payment is made on the loan.

In addition to requiring that the lender of the refinanced loan provide the borrower with a net tangible benefit test, section 3709 also prescribes three net tangible benefit criteria for Type I Cash-Outs. VA is adopting those criteria. First, in a case in which the loan being refinanced has a fixed interest rate and the new loan will also have a fixed interest rate, the interest rate on the new loan must not be less than 50 basis points less than the loan being refinanced. Second, in a case in which the loan being refinanced has a fixed interest rate and the new loan will have an adjustable rate, the interest rate on the new loan must not be less than 200 basis points less than the previous loan. Also, when a borrower is refinancing from a fixed interest rate loan to an adjustable rate loan, the lower interest rate must not be produced solely from discount points, unless such points are paid at closing and such points are not added to the principal loan amount. Such points may be added to the principal loan amount, however, when they are paid at closing and: (i) The discount point amounts are less than or equal to one discount point, and the resulting loan balance after any fees and expenses allows the property with respect to which the loan was issued to maintain a loan to value ratio of 100 percent or less, and (ii) the discount point amounts are greater than one discount point, and the resulting loan balance after any fees and expenses allows the property with respect to which the loan was issued to maintain a loan to value ratio of 90 percent or less.

C. Section 36.4306(c)

VA is redesignating § 36.4306(c) and (d) as § 36.4306(d) and (e) and adding a new § 36.4306(c). In new § 36.4306(c), VA is adding the criteria for Type II Cash-Outs, meaning those cash-out refinance loans where the new loan amount is greater than the payoff amount of the loan being refinanced. For recoupment, VA is stating that meeting the requirements of paragraph (a) is sufficient. This is because it is impossible for VA to determine how to quantify recoupment for veterans who obtain this type of refinance. For example, a veteran may choose to refinance so that the veteran may use home equity to pay for a child's college tuition or help pay for nursing services for a loved one. The reasons veterans may choose to tap into their home equity are countless. VA is concerned that, if VA attempted to establish a recoupment period for this type of loan, VA would put a veteran in a worse financial position than a non-veteran, and that is not VA's intention.

For proper seasoning of the VA-guaranteed loan, VA is adopting the same criteria found in § 36.4306(b)(2) for Type I Cash-Outs, just stated in a different way. The difference is in form only. Where it made sense structurally for § 36.4306(b) to include the requirement in the introductory text, it did not make sense structurally in § 36.4306(c). Accordingly, VA is spelling out that the seasoning period is the later of 210 days from the date of the first monthly payment made by the borrower and the date on which the sixth monthly payment is made on the loan; however, this requirement applies only when the loan being refinanced is a VA-guaranteed or insured loan.

VA is applying the same seasoning standards for Type II Cash-Outs that Congress explicitly set forth for IRRRLs and Type I Cash-Outs because the 210-day/6-monthly payment seasoning requirement is consistent with other federal seasoning requirements for cash-outs and is a viable standard in protecting veterans from predatory lending and safeguarding the financial interest of the United States. For example, housing loans insured by the Federal Housing Administration (FHA) with fewer than six months' worth of payment history are not eligible for cash-out refinances. See U.S. Department of Housing and Urban Development (HUD), Mortgage Credit Analysis for Mortgage Insurance on One- to Four-Unit Mortgage Loans Handbook (4155.1), Chapter 3, Section B.2.b., available at *https://www.hud.gov/sites/documents/4155-1_3_SECB.PDF* (last visited Nov. 20, 2018).

VA's analysis does not suggest a compelling reason to establish a novel seasoning standard for Type II Cash-Outs. In completing its regulatory impact analysis for this interim final rule, VA reviewed Type II Cash-Outs closed in fiscal years 2016, 2017, and 2018 (through July 2018). The vast majority of these refinance loans (96.8 percent) would have passed the 210-day seasoning requirement adopted in this rule, which indicates that VA's Type II Cash-Out portfolio is already achieving the Type I Cash-Out statutory seasoning requirement, as well as those now fairly well-accepted as industry standard for refinances generally (as explained above). VA does not believe that extending the seasoning period would provide substantially more protection to the financial interests of veterans. Rather, VA's analysis demonstrates that a net tangible benefit test would be more effective in preventing riskier Type II Cash-Outs.

D. Section 36.4306(d)

VA is revising paragraph (d) to delimit the scope of the provision. The purpose of paragraph (d) is to explain the calculation of entitlement for non-streamlined refinances. It ensures that a veteran is not precluded from refinancing solely because entitlement has already been used on the loan being refinanced. Where the current rule states, ''nothing shall preclude . . .'' guaranty, however, VA is concerned that it might be easily misunderstood as superseding provisions related to seasoning, recoupment, etc. Therefore, VA is clarifying that paragraph (d) is for the limited purpose of calculating entitlement. No substantive change is intended.

E. Section 36.4306(f)

Similarly, VA is revising paragraph (f) to clarify its scope of application. Paragraph (f) states that ''[n]othing in this section shall preclude the refinancing . . .'' of a land purchase related to new construction. The purpose of the rule is to ensure stakeholders understand that, if a loan was originally made for a land purchase only, refinancing for the home construction is acceptable under 38 U.S.C. 3710. The current rule, however, is overly broad, in that it could easily be misunderstood as an attempt to supersede other provisions of the section, including those sections that, as a matter of statutory law, could not be superseded by rule. Accordingly, VA is revising the paragraph to state that nothing in this section shall preclude the determination that a loan is being made for a purpose authorized under 38 U.S.C. 3710, if the purpose of such loan is the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a borrower's dwelling or farm residence. This is a technical change only, and VA intends no substantive impact.

F. Section 36.4306(g)

As with paragraph (f), paragraph (g) is overly broad. It could be interpreted as the sole provision within § 36.4306 related to manufactured homes. VA does not intend for paragraph (g) to be deemed a standalone provision, rendering the remainder of § 36.4306 inapplicable to manufactured homes. Instead, VA intends for paragraph (g) to be subject to the other relevant requirements (*e.g.,* seasoning, recoupment, etc.) set forth in the section. Therefore, VA is inserting a new subparagraph (6), along with making the necessary grammatical edits to accommodate this addition, as a catch-all, to ensure that stakeholders understand ''[a]ll other requirements of this section are met . . .'' before VA will guarantee or insure the refinance of a manufactured home loan. VA intends this revision as a clarifying amendment only, without substantive impact.

G. Section 36.4306(h)

Section 3709 mentions VA's statutory authority to insure refinancing loans. VA's cash-out refinance rule has not specified how insurance works for cash-out refinances. Although lenders almost always opt for guaranty, rather than insurance, the insurance of loans remains an option. Therefore, VA is adding § 36.4306(h) explaining that any refinancing loan that might be guaranteed under this section, when made or purchased by any financial institution subject to examination and supervision by any agency of the United States or of any State may, in lieu of such guaranty, be insured by the Secretary under an agreement whereby the Secretary will reimburse any such institution for losses incurred on such loan up to 15 percent of the aggregate of loans so made or purchased by it. This provision is a restatement of the law at 38 U.S.C. 3703(a)(2)(A).

III. Defining Home Equity

In § 36.4306, VA uses the term home equity and is therefore adding a definition of this term to § 36.4301. VA will define home equity as the difference between the home's reasonable value and the outstanding balance of all liens on the property. This definition is generally accepted in the financial industry and is modified to refer to VA's specific program terminology. See Home Equity, Investopedia, *https://www.investopedia.com/terms/h/home_equity.asp* (last visited Aug. 30, 2018).

Administrative Procedure Act

Section 309(a)(2) of the Act provides express authority for the Secretary to waive the requirements of 5 U.S.C. 551 through 559, *e.g.,* advance notice and public comment requirements, if the Secretary determines that urgent or compelling circumstances make compliance with such requirements impracticable or contrary to the public interest. See Public Law 115–174, section 309(a)(2)(A). VA believes that, for the reasons explained below, delaying implementation of this rule until after VA could provide advance notice, solicit comment, and address public comments would be contrary to the public interest. In short, VA has determined that urgent and compelling circumstances exist to warrant the implementation of these regulatory amendments through an interim final rule.

It is important to note that the Act establishes a new standard, specific to the implementation of section 309 of the Act, for dispensing with advance notice and comment. The standard Congress created is separate and apart from the more generally applicable ''good cause'' exception under the Administrative Procedure Act, 5 U.S.C. 553(b)(B).

VA believes there are several urgent and compelling circumstances that make advance notice and comment on this rule contrary to the public interest. First, VA is concerned about a small group of lenders who continue to exploit legislative and regulatory gaps related to seasoning, recoupment, and net tangible benefit standards, despite anti-predatory lending actions that VA and Congress have already taken. VA's regulatory impact analysis for this rule indicates that perhaps more than 50 percent of Type II Cash-Out refinances remain vulnerable to predatory terms and conditions until this rule goes into effect. VA believes that VA must immediately seal these gaps to fulfill its obligation to veterans, responsible lenders, and investors.

VA is also gravely concerned about constraints in the availability of program liquidity if VA does not act quickly to address early pre-payment speeds for VA-guaranteed cash-out refinance loans. In large part, cash flows derived from investors in mortgage-backed securities (MBS) provide liquidity for lenders that originate VA-guaranteed refinance loans. When pricing MBS, investors rely on pre-payment models to estimate the level of pre-payments, and any resultant potential losses of revenue, expected to occur in a set period, given possible changes in interest rates. These pre-payment models tend to drive, at least in significant part, the valuation of such MBS. Buyers of VA-guaranteed loans, and other industry stakeholders have expressed serious concerns that early pre-payments of VA-guaranteed loans are devaluing these investments. See ''Slowing Down VA Refi Churn Proving More Difficult Than Expected'', National Mortgage News (November 12, 2018), *https://www.nationalmortgagenews.com/news/slowing-down-va-refi-churn-proving-more-difficult-than-expected* (last visited Nov. 20, 2018). If such stakeholders view MBS investments that include VA-guaranteed refinance loans as less desirable, prudent lenders could be deprived of the cash flows, *i.e.* liquidity, necessary to make new VA-guaranteed loans to veterans.

Exacerbating the issue is the lending industry's varied interpretation of the Act, which has led to lender uncertainty in how to implement a responsible cash-out refinance program. VA believes this uncertainty has caused responsible lenders to employ a high degree of caution, (*e.g.,* refraining from providing veterans with crucial refinance loans that are not predatory or risky). Absent swift implementation of clear regulatory standards, cautious lenders are less likely to make cash-out refinance loans, which means that veterans do not enjoy the widest range of competitive, responsible credit options that can, when used properly, result in placing

the veteran in a better financial position than the veteran's current circumstances afford. Unfortunately, such caution has the potential to compound the risk of predatory lending, as irresponsible lenders have more opportunity to prey upon veterans.

At the same time, VA is concerned that certain lenders are exploiting cash-out refinancing as a loophole to the responsible refinancing Congress envisioned when enacting section 309 of the Act. VA recognizes there are certain advantages to a veteran who wants to obtain a cash-out refinance, and VA has no intention of unduly curtailing veterans' access to the equity they have earned in their homes. Nevertheless, some lenders are pressuring veterans to increase artificially their home loan amounts when refinancing, without regard to the long-term costs to the veteran and without adequately advising the veteran of the veteran's loss of home equity. In doing so, veterans are placed at a higher financial risk, and the lender avoids compliance with the more stringent requirements Congress mandated for less risky refinance loans. Essentially, the lender revives the period of subprime lending under a new name.

Lender uncertainty and the potential loophole may also cause investors to devalue VA refinance loans until VA steps in to resolve the issues. Thus, VA believes that, unless VA promulgates rules quickly, a loss of investor optimism in the VA product could further restrict veterans from being able to utilize their earned VA benefits.

VA does not plan to dispense with the notice and comment requirements altogether. Section 309(a)(2)(A)(ii) and (iii) of the Act requires VA, 10 days before publication of the rule, to submit a notice of the waiver to the House and Senate Committees on Veterans' Affairs and publish the notice in the **Federal Register**. Public Law 115–174, 132 Stat. 1296. VA has complied with these requirements. Section 309(a)(2)(B) further requires VA to seek public notice and comment on this regulation if the regulation will be in effect for a period exceeding one year. Public Law 115–174, 132 Stat. 1296. VA anticipates the regulation will be in effect past the one-year mark. Therefore, VA is seeking public comment on this rulemaking.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined to be an economically significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.'' This interim final rule is considered an E.O. 13771 regulatory action. Details on the estimated costs of this interim final rule can be found in the rule's economic analysis.

Congressional Review Act

This regulatory action is a major rule under the Congressional Review Act, 5 U.S.C. 801–08, because it may result in an annual effect on the economy of $100 million or more. Therefore, in accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this regulatory action and VA's Regulatory Impact Analysis. Provided Congress does not adopt a joint resolution of disapproval, this rule will become effective the later of the date occurring 60 days after the date on which Congress receives the report, or the date the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3)(A).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule 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 (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by OMB. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review with a request for emergency processing.

OMB assigns control numbers to collections of information it approves. VA 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. Section 36.4306 contains a collection of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collections of information contained in this interim final rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503 or emailed to *OIRA_Submission@omb.eop.gov,* with copies sent by mail or hand delivery to the Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1068, Washington, DC 20420; fax to (202) 273–9026; or submitted through *www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AQ42—Loan Guaranty: Revisions to VA-Guaranteed

or Insured Cash-out Home Refinance Loans.''

OMB is required to make a decision concerning the collections of information contained in this interim final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

The Department considers comments by the public on proposed collections of information in—

• Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

• Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collections 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 collection of information contained in 38 CFR 36.4306 is described immediately following this paragraph.

Title: VA-Guaranteed Home Loan Cash-out Refinance Loan Comparison Disclosure.

• *Summary of collection of information:* The new collection of information in 38 CFR 36.4306(a)(3) requires lenders to provide borrowers with a net tangible benefit test. To satisfy the net tangible benefit test, the new loan must meet certain loan criteria; the lender must provide a comparison of the terms of the borrower's current loan to the terms of the new loan; and the lender must provide the borrower a statement concerning the effects of refinancing on the borrower's home equity. This information must be provided to the borrower by the lender in a standardized format not later than 3 business days of the refinance application and again at closing. The borrower must acknowledge receipt of this information on both occasions by signing the certification.

VA notes that it will not require lenders to complete a specific form. Instead, lenders will generate their own certification from their loan origination software. Additionally, any information and response to yes/no questions could be answered automatically by the information that the lender is inputting as they underwrite the loan. VA created a sample certification as an example, but this is not a required document or format. VA is only asking the lender to take the information they already collect from and provide to veterans, and display and provide that information into an easy to read format for the veteran.

• *Description of need for information and proposed use of information:* The information will be used by VA to ensure that the new loan meets the net tangible benefit test.

• *Description of likely respondents:* Lenders refinancing an existing loan product through a cash-out refinance loan.

• *Estimated number of respondents:* VA anticipates the annual estimated number of respondents to be 156,000 per year, which is based on a 3-year average of VA cash-out refinance loans. VA also estimates a one-time burden to the 16,000 loan officers who will require training on the new disclosure requirements.

The training estimate was derived from the 2017 Nationwide Mortgage Licensing System & Registry (NMLS) Industry Report showing 158,199 mortgage loan originators and the July 2018 Ellie Mae Origination Insight Report indicating that VA represents 10 percent of the national mortgage market. VA assumes that loan officers will learn about this new disclosure through annual NMLS TRID/TILA training.

• *Estimated frequency of responses:* Two times per loan for generating and disclosing the information to the borrower. One time for training purposes.

• *Estimated average burden per response:* 5 minutes (total for both instances of generation and disclosure). 5 minutes (for training).

• *Estimated total annual reporting and recordkeeping burden:* The total annual burden is 12,906 hours. This represents the ongoing annual burden of 12,480 hours to generate and provide the disclosure plus the one-time hour burden from training (1,280 hours) that has been annualized to 426 hours per year for the first three years. The total estimated annualized cost to respondents is $483,458.76 (12,906 burden hours × $37.46 per hour).

• VA also estimates a one-time technology cost associated with this information collection of $1,266,366 (annualized to $422,122 per year for the first three years). To derive this estimate, VA generated a high/low estimate of the one-time technology costs associated with this information collection. The low estimate assumes that 80 percent of affected lending entities (*i.e.,* 960 of the 1,200 active VA lenders who make cash-out refinance loans) will not be required to complete any technology upgrades as the software companies who supply their loan origination software (LOS) systems will update their products in time to enable these lenders to comply with the regulatory requirements. The costs therefore represent the costs to the remaining 20 percent of lenders (*i.e.,* 240 lenders) that will need to complete a technology upgrade to generate the disclosure in their LOS. The high estimate assumes that no LOS product updates will be in place on time and all 1,200 lenders will be required to assume the costs of completing a technology upgrade to generate their disclosure.

VA calculated the one-time technology costs utilizing the amount of time estimated to develop a custom disclosure form (either through existing LOS software or via a third-party contract). VA assumed 40 hours of planning, development, testing, and deployment to add the disclosure form to a lender's existing LOS. The wage burden was calculated as a composite wage, with weighting based on information provided by various industry professionals. Mean values from the BLS Occupational Employment and Wages data were used to estimate a composite wage as 5% Compliance Officer (occupation code 13–1041) at $34.39/hour, 5% Lawyer (occupation code 23–1011) at $68.22/hour, and 90% Computer Occupations (occupation code 15–1100) at $43.16/hour, for a composite wage of $43.97.

VA estimated a high annualized cost of $703,520 and a low annualized cost of $140,704. VA therefore estimates that the average cost to be $422,122.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This interim final rule is exempt from the notice and comment requirements of the APA because the Act permitted VA to waive those requirements if the Secretary determined that urgent or compelling circumstances make compliance with such requirements impracticable or

contrary to the public interest. As previously discussed, VA has found urgent and compelling circumstances to waive those requirements do exist. Therefore, the requirements of the RFA applicable to notice and comment rulemaking do not apply to this rule.

Nevertheless, VA does not anticipate that this interim final rule will have a significant impact on small business lenders. The Small Business Administration (SBA) states that a mortgage lending business (NAICS code 522292) is small if annual receipts are less than $38,500,000. See 13 CFR 121.201. Utilizing FY2017 annual lender data and financial information, VA estimates approximately 22 percent (or 324) of its lenders qualify as a small business; of those who participate in VA cash-out loans, VA estimates 20 percent (or 238) of its lenders qualify as a small business.[1] Of the 238 small business lenders who participate in VA cash-out loans, VA notes that 90 percent (216 lenders) completed no more than 20 VA cash-out loans in FY2017, suggesting that the impact of the statute and this regulation on their lending business will be minimal. In that regard, given that VA represents only 10 percent of the national mortgage market, it would be difficult for a small business to rely solely on VA loans in its portfolio. In fact, a sampling of VA small business lenders' websites shows that they all offer the full range of conventional, FHA, and VA loan products.

Relying on its industry knowledge, VA assumes that average loan volume for a one-person lending shop would be approximately 120 loans per year (or 10 loans per month). As such, even if such a lender were to no longer make any VA cash-out loans, it is likely this would represent no more than 20 percent of portfolio for the year. VA believes this is even too conservative of an estimate as its own lender statistics show that for most of its small business lenders (213 out of 238 lenders), VA cash-out loans represent less than half of their VA portfolio. For those whose VA portfolio is majority cash-out refinances, only six lenders completed more than 20 VA cash-outs in FY2017.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing—Guaranteed and Insured Loans.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on September 12, 2018, for publication.

Dated: December 12, 2018.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 36 as set forth below:

PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

Subpart B—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

■ 2. Amend § 36.4301 by adding a definition of *home equity* in alphabetical order to read as follows:

§ 36.4301 Definitions.

* * * * *

Home equity. Home equity is the difference between the home's reasonable value and the outstanding balance of all liens on the property.

* * * * *

■ 3. Amend § 36.4306 by:

■ a. Revising paragraphs (a) and (b).

■ b. Redesignating paragraphs (c) and (d) as new paragraphs (d) and (e).

■ c. Adding new paragraph (c).

■ d. Revising newly redesignated paragraph (d) and paragraphs (f) and (g)(4) and (5).

■ e. Adding paragraphs (g)(6) and (h).

■ f. Revising the authority citation at the end of the section.

The revisions and addition read as follows:

§ 36.4306 Refinancing of mortgage or other lien indebtedness.

(a) A refinancing loan made pursuant to 38 U.S.C. 3710(a)(5) qualifies for guaranty in an amount as computed under 38 U.S.C. 3703, provided—

(1) The amount of the new loan must not exceed an amount equal to 100 percent of the reasonable value, as determined by the Secretary, of the dwelling or farm residence which will secure the loan.

(2) The funding fee as prescribed by 38 U.S.C. 3729 may be included in the new loan amount, except that any portion of the funding fee that would cause the new loan amount to exceed 100 percent of the reasonable value of the property must be paid in cash at the loan closing.

(3) The new loan must provide a net tangible benefit to the borrower. For the purposes of this section, net tangible benefit means that the new loan is in the financial interest of the borrower. The lender of the new loan must provide the borrower with a net tangible benefit test. The net tangible benefit test must be satisfied. The net tangible benefit test is defined as follows:

(i) The new loan must meet one or more of the following:

(A) The new loan eliminates monthly mortgage insurance, whether public or private, or monthly guaranty insurance;

(B) The term of the new loan is shorter than the term of the loan being refinanced;

(C) The interest rate on the new loan is lower than the interest rate on the loan being refinanced;

(D) The payment on the new loan is lower than the payment on the loan being refinanced;

(E) The new loan results in an increase in the borrower's monthly residual income as explained by § 36.4340(e);

(F) The new loan refinances an interim loan to construct, alter, or repair the primary home;

(G) The new loan amount is equal to or less than 90 percent of the reasonable value of the home; or

(H) The new loan refinances an adjustable rate mortgage to a fixed rate loan.

(ii) The lender must provide a borrower with a comparison of the following:

[1] Fiscal year (FY) 2017 data shows that 1,467 lenders participated in VA loans in FY2017. See VBA Lender Loan Volume Reports, ''FY 2017,'' *https://www.benefits.va.gov/HOMELOANS/Lender_Statistics.asp*. VA first eliminated those whose total VA loan volume for FY2017 was greater than $38.5 million (425 lenders). Of those remaining, VA removed any lenders who were part of a depository institution (*i.e.,* a bank) as they would not fall within SBA's definition of a small business for NAICS code 522292, which specifically applies to non-depository credit. See 13 CFR 121.201. Of those remaining, VA consulted financial information provided by lenders to VA in 2017 for purposes of qualifying for automatic closing authority. If no annual financial data was available, VA assumed the lender was a small business. Of all VA lenders, data showed 324 lenders (22%) met the small business definition. For lenders who made VA cash-out loans in FY2017, 238 (19.8%) met the small business definition.

(A) The loan payoff amount of the new loan, with a comparison to the loan payoff amount of the loan being refinanced;

(B) The new type of loan, with a comparison to the type of the loan being refinanced;

(C) The interest rate of the new loan, with a comparison to the interest rate of the loan being refinanced;

(D) The term of the new loan, with a comparison to the term remaining on the loan being refinanced;

(E) The total the borrower will have paid after making all payments of principal, interest, and mortgage or guaranty insurance (if applicable), as scheduled, for both the loan being refinanced and the new loan; and

(F) The loan to value ratio of the loan being refinanced compared to the loan to value ratio under the new loan.

(iii) The lender must provide the borrower with an estimate of the dollar amount of home equity that, by refinancing into a new loan, is being removed from the reasonable value of the home, and explain that removal of this home equity may affect the borrower's ability to sell the home at a later date.

(iv) The lender must provide the information required under paragraphs (a)(3)(i) through (iii) of this section in a standardized format and on two separate occasions: Not later than 3 business days from the date of the loan application and again at loan closing. The borrower must certify that the borrower received the information required under paragraphs (a)(3)(i) through (iii) on both occasions.

(4) The dollar amount of discount, if any, to be paid by the borrower must be reasonable in amount as determined by the Secretary in accordance with § 36.4313(d)(7)(i).

(5) The loan must otherwise be eligible for guaranty.

(b) If the loan being refinanced is a VA-guaranteed or insured loan, and the new loan amount is equal to or less than the payoff amount of the loan being refinanced, the following requirements must also be met—

(1)(i) The lender of the refinanced loan must provide the Secretary with a certification of the recoupment period for fees, closing costs, and any expenses (other than taxes, amounts held in escrow, and fees paid under 38 U.S.C. chapter 37) that would be incurred by the borrower in the refinancing of the loan;

(ii) All of the fees and incurred costs must be scheduled to be recouped on or before the date that is 36 months after the date of loan issuance; and

(iii) The recoupment must be calculated through lower regular monthly payments (other than taxes, amounts held in escrow, and fees paid under 38 U.S.C. chapter 37) as a result of the refinanced loan.

(2) The new loan may not be guaranteed or insured until the date that is the later of 210 days from the date of the first monthly payment made by the borrower and the date on which the sixth monthly payment is made on the loan.

(3) In a case in which the loan being refinanced has a fixed interest rate and the new loan will also have a fixed interest rate, the interest rate on the new loan must not be less than 50 basis points less than the loan being refinanced.

(4) In a case in which the loan being refinanced has a fixed interest rate and the new loan will have an adjustable rate, the interest rate on the new loan must not be less than 200 basis points less than the previous loan. In addition—

(i) The lower interest rate must not be produced solely from discount points, unless such points are paid at closing; and

(ii) Such points are not added to the principal loan amount, unless—

(A) For discount point amounts that are less than or equal to one discount point, the resulting loan balance after any fees and expenses allows the property with respect to which the loan was issued to maintain a loan to value ratio of 100 percent or less; and

(B) For discount point amounts that are greater than one discount point, the resulting loan balance after any fees and expenses allows the property with respect to which the loan was issued to maintain a loan to value ratio of 90 percent or less.

(c) If the new loan amount exceeds the payoff amount of the loan being refinanced—

(1) The borrower is deemed to have recouped the costs of the refinancing if the requirements prescribed in paragraph (a) are met.

(2) The new loan may not be guaranteed or insured until the date that is the later of 210 days from the date of the first monthly payment made by the borrower and the date on which the sixth monthly payment is made on the loan; however, this requirement applies only when the loan being refinanced is a VA-guaranteed or insured loan.

(d) For the limited purpose of calculating entitlement, nothing shall preclude guaranty of a loan to an eligible veteran having home loan guaranty entitlement to refinance under the provisions of 38 U.S.C. 3710(a)(5) a VA-guaranteed or insured (or direct) mortgage loan made to him or her which is outstanding on the dwelling or farm residence owned and occupied or to be reoccupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as a home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home.

* * * * *

(f) Nothing in this section shall preclude the determination that a loan is being made for a purpose authorized under 38 U.S.C. 3710, if the purpose of such loan is the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a borrower's dwelling or farm residence.

(g) * * *

(4) The amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced; the purchase price, not to exceed the reasonable value of the lot; the costs of the necessary site preparation of the lot as determined by the Secretary; a reasonable discount as authorized in § 36.4313(d)(6) with respect to that portion of the loan used to refinance the existing purchase money lien on the manufactured home, and closing costs as authorized in § 36.4313.

(5) If the loan being refinanced was guaranteed by VA, the portion of the loan made for the purpose of refinancing an existing purchase money manufactured home loan may be, guaranteed without regard to the outstanding guaranty entitlement available for use by the veteran, and the veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for the refinancing portion of the loan. For the purposes enumerated in 38 U.S.C. 3702(b), the refinancing portion of the loan shall be considered to have been obtained with the guaranty entitlement used to obtain VA-guaranteed loan being refinanced. The total guaranty for the new loan shall be the sum of the guaranty entitlement used to obtain VA-guaranteed loan being refinanced and any additional guaranty entitlement available to the veteran. However, the total guaranty may not exceed the guaranty amount as calculated under § 36.4302(a); and

(6) All other requirements of this section are met.

(h) Any refinancing loan that might be guaranteed under this section, when

made or purchased by any financial institution subject to examination and supervision by any agency of the United States or of any State may, in lieu of such guaranty, be insured by the Secretary under an agreement whereby the Secretary will reimburse any such institution for losses incurred on such loan up to 15 percent of the aggregate of loans so made or purchased by it.

(Authority: 38 U.S.C. 3703, 3709, 3710)

[FR Doc. 2018–27263 Filed 12–14–18; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0595; FRL–9987–69–Region 1]

Air Plan Approval; New Hampshire; Transport Element for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

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 New Hampshire. This revision addresses the interstate transport requirements of the Clean Air Act (CAA), referred to as the good neighbor provision, with respect to the 2010 sulfur dioxide (SO_2) national ambient air quality standard (NAAQS). This action approves New Hampshire's demonstration that the State is meeting its obligations regarding the transport of SO_2 emissions into other states.

DATES: This rule is effective on January 16, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2017–0595. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Permits, Toxics and Indoor Programs Unit, 5 Post Office Square—Suite 100, Boston, MA. The 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: Leiran Biton, Air Permits, Toxics, and Indoor Programs 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) 918–1267, email *biton.leiran@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. Statutory and Executive Order Reviews

I. Background and Purpose

On September 27, 2018 (83 FR 48765), the EPA published a Notice of Proposed Rulemaking (NPRM) to approve the June 16, 2017 submittal from the State of New Hampshire as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS. An explanation of the CAA requirements, a detailed analysis of the State's submittal, and the EPA's rationale for approval of the submittal were provided in the NPRM, and will not be restated here. The public comment period for this proposed rulemaking ended on October 29, 2018. The EPA received one comment from an anonymous commenter. The anonymous comment lacked specificity to New Hampshire's SIP submittal and the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) as they relate to the 2010 SO_2 NAAQS. A response to the anonymous comment is provided in the Response to Comments section.

II. Response to Comments

Comment: The commenter stated that emissions of SO_2 can undergo chemical reactions in the atmosphere to form fine particle matter, and that fine particulate matter can travel great distances affecting regional air quality and public health. The commenter stated that the transport of SO_2 and fine particulate matter across state borders, referred to as ''interstate air pollution transport,'' makes it difficult for downwind states to meet health-based air quality standards. The commenter stated the CAA's ''good neighbor'' provision requires the EPA and states to address, through state implementation plans (SIPs), interstate transport of air pollution that significantly contributes to nonattainment or interferes with maintenance of a NAAQS in a downwind area in another state. The commenter asserted that New Hampshire must prove this SIP revision addresses and meets the obligations of the interstate transport requirements of the CAA respective to the 2010 SO_2 NAAQS. The commenter concluded, ''To meet these obligations they must prove that the interstate transport requirements for all NAAQS pollutants prohibit any state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state.''

Response: The commenter did provide some general information about the formation of fine particulate matter from SO_2, but did not provide specific information to support not approving New Hampshire's June 16, 2017 submittal. Fine particulate matter, generally referring to particulate matter (PM) with aerodynamic diameter less than or equal to 2.5 micrometers ($PM_{2.5}$), can travel great distances. $PM_{2.5}$ can be emitted directly or formed secondarily through chemical transformation in the atmosphere involving a variety of precursor pollutants, including SO_2. The EPA has addressed interstate transport of $PM_{2.5}$, including secondarily-formed $PM_{2.5}$, through a separate action related to New Hampshire's SIP submittal for the 2012 $PM_{2.5}$ infrastructure SIP. The EPA proposed to approve a revision to the New Hampshire SIP that included the provisions related to transport for the 2012 $PM_{2.5}$ NAAQS on April 10, 2018 (83 FR 15343); EPA took action in a final rule to approve the New Hampshire SIP provisions related to interstate transport and other elements for the 2012 $PM_{2.5}$ NAAQS on December 4, 2018 (83 FR 62464).

It is unclear what the commenter intended in the quoted final sentence of the comment. If the commenter meant to note that the CAA generally imposes an obligation that the state's interstate transport SIP for a new or revised NAAQS adequately meets the good neighbor provision for *that NAAQS,* we agree and believe that the New Hampshire SO_2 interstate transport SIP submittal meets these CAA obligations, as stated in our NPRM. Alternatively, if the commenter meant that this SO_2 interstate transport SIP must address transport for *all NAAQS,* we disagree.

The EPA interprets the CAA to require each state to demonstrate that it

meets the ''good neighbor'' provisions of the CAA for a new or revised NAAQS for any of the six criteria air pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particle pollution, and sulfur dioxide). Particularly, CAA section 110(a)(1) requires states, three years after the promulgation of a NAAQS, to submit a plan that meets the requirements of 110(a)(2), which includes the interstate transport requirements of 110(a)(2)(D)(i)(I), for ''such'' NAAQS. The EPA believes the specification of ''such'' in relation to a particular NAAQS under 110(a)(1) narrows the state's obligation to submit an interstate transport SIP for that specific NAAQS, rather than requiring the state to demonstrate that its transport SIP is intended to address a particular NAAQS also meets the interstate transport requirements for all NAAQS. The EPA assesses each state's interstate transport SIP demonstration on a pollutant by pollutant basis, and for pollutants that result from both primary emissions and secondary (*i.e.,* chemical) formation, the EPA does assess both primary and secondary impacts. Because SO_2 does not form secondarily in the atmosphere, only an analysis of primary emissions is necessary. The EPA's NPRM to approve New Hampshire's June 16, 2017 submittal provided a weight-of-evidence analysis that addressed the ''good neighbor'' provision of the CAA. The EPA's assessment of New Hampshire's analysis presented in the NPRM proposed to find that the SIP revision sufficiently addresses that New Hampshire will not significantly contribute to nonattainment of the 1-hour SO_2 NAAQS or interfere maintenance of the SO_2 NAAQS in another state. The commenter does not point to any specific alleged flaw or gap in the EPA's assessment.

Therefore, the EPA is not making any changes to its proposed action based on the comments submitted by the commenter.

III. Final Action

The EPA is approving New Hampshire's June 16, 2017 transport SIP submission for the 2010 SO_2 NAAQS as a revision to the New Hampshire SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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);
- This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 February 15, 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, Particulate matter, Sulfur oxides.

Dated: December 10, 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 EE—New Hampshire

■ 2. Amend § 52.1520 in the table in paragraph (e) by adding an entry for ''Amendment to New Hampshire 2010 Sulfur Dioxide NAAQS Infrastructure SIP to Address the Good Neighbor Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I)'' at the end of the table to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(e) * * *

NEW HAMPSHIRE NONREGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
* *	* *	*	*	*
Amendment to New Hampshire 2010 Sulfur Dioxide NAAQS Infrastructure SIP to Address the Good Neighbor Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I).	Statewide	6/16/2017	12/17/2018 [Insert **Federal Register** citation]	

[FR Doc. 2018–27171 Filed 12–14–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0700; FRL–9987–75–Region 5]

Air Plan Approval; Indiana; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state submittal concerning the Cross-State Air Pollution Rule (CSAPR) that was submitted by Indiana on November 27, 2017 as a revision to the Indiana state implementation plan (SIP). Under CSAPR, large electricity generating units (EGUs) in Indiana are currently subject to Federal implementation plans (FIPs) requiring the units to participate in CSAPR's Federal trading program for annual emissions of nitrogen oxides (NO_X), one of CSAPR's two Federal trading programs for annual emissions of sulfur dioxide (SO_2), and one of CSAPR's two Federal trading programs for ozone season emissions of NO_X. This action approves the State's regulations requiring large Indiana EGUs to participate in new CSAPR state trading programs for annual NO_X, annual SO_2, and ozone season NO_X emissions integrated with the CSAPR Federal trading programs, replacing the corresponding FIP requirements. EPA is approving the State's submission because it meets the requirements of the Clean Air Act (CAA or Act) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of the SIP revision automatically eliminates Indiana's units' requirements under the corresponding CSAPR FIPs addressing Indiana's interstate transport (or ''good neighbor'') obligations with respect to the 1997 fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS), the 2006 $PM_{2.5}$ NAAQS, the 1997 ozone NAAQS, and the 2008 ozone NAAQS. Like the CSAPR FIP requirements that are being replaced, approval of the SIP revision fully satisfies Indiana's good neighbor obligations with respect to attainment and maintenance of the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 1997 ozone NAAQS and partially satisfies Indiana's good neighbor obligation with respect to attainment and maintenance of the 2008 ozone NAAQS. EPA proposed approval of the State's submission on August 14, 2018.

DATES: This final rule is effective on December 17, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0700. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (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 either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Overview
II. Background on CSAPR and CSAPR-Related SIP Revisions
III. Indiana's SIP Submittal and EPA's Analysis
IV. Final Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Overview

EPA is approving a November 27, 2017 submittal as a revision to the Indiana SIP to include CSAPR state trading programs for annual emissions of NO_X and SO_2 and ozone season emissions of NO_X. Large EGUs in Indiana are subject to CSAPR FIPs that require the units to participate in the Federal CSAPR NO_X Annual Trading Program, the Federal CSAPR SO_2 Group 1 Trading Program, and the Federal CSAPR NO_X Ozone Season Group 2 Trading Program. CSAPR provides a process for the submission and approval of SIP revisions to replace the requirements of CSAPR FIPs with SIP requirements under which a state's units participate in CSAPR state trading programs that are integrated with and, with certain permissible exceptions, substantively identical to the CSAPR Federal trading programs.

The submission incorporates into Indiana's SIP state trading program regulations for annual NO_X, annual SO_2, and ozone season NO_X emissions that replace EPA's Federal trading program regulations for these emissions from

Indiana units. EPA is approving the submission as a SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a Federal trading program with a state trading program that is integrated with and substantively identical to the Federal trading program. Under the CSAPR regulations, approval of the submission as a SIP revision automatically eliminates the obligations of large EGUs in Indiana to participate in CSAPR's Federal trading programs for annual NO_X, annual SO_2, and ozone season NO_X emissions under the corresponding CSAPR FIPs. EPA finds that approval of the SIP revision fully satisfies Indiana's obligations pursuant to the ''good neighbor'' provisions of CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 1997 ozone NAAQS in any other state and partially satisfies Indiana's corresponding obligation with respect to the 2008 ozone NAAQS.

Approval of the submission as a SIP revision also removes from Indiana's SIP most of the State's rules implementing the discontinued Clean Air Interstate Rule (CAIR) trading programs, including all of the State's rules for the annual NO_X and annual SO_2 trading programs and portions of the State's rule for the ozone season NO_X trading program. The discontinued CAIR state trading programs established under these rules have been replaced by CSAPR trading programs for the affected EGUs.

II. Background on CSAPR and CSAPR-Related SIP Revisions

EPA issued CSAPR [1] in 2011 and the CSAPR Update [2] in 2016 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended (including by the CSAPR Update), CSAPR requires 27 eastern states to limit their statewide emissions of SO_2 and/or NO_X in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: The 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, the 1997 ozone NAAQS, and the 2008 ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide ''budgets'' for emissions of annual SO_2, annual NO_X, and/or ozone season NO_X by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency: The Phase 1 budgets apply to emissions in 2015 and 2016; and the Phase 2 and CSAPR Update budgets apply to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five Federal emissions trading programs: A program for annual NO_X emissions; two geographically separate programs for annual SO_2 emissions; and two geographically separate programs for ozone season NO_X emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state.[3] Currently, the CSAPR FIP provisions require each state's units to participate in up to three of the five CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's Federal emissions trading programs or state emissions trading programs integrated with the Federal programs, provided that the SIP revisions meet all relevant criteria.[4] Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's Federal trading programs for ozone season NO_X emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller EGUs.[5] If a state wants to replace the CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the Federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR Federal trading programs may submit SIP revisions to modify or replace the FIP requirements with respect to some or all of those trading programs.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.[6] Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations. Under the first alternative—an ''abbreviated'' SIP revision—a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR Federal trading program for the state.[7] Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant Federal trading program in place for the state's units.

Under the second alternative—a ''full'' SIP revision—a state may submit a SIP revision that upon approval replaces a CSAPR Federal trading program for the state with a state trading program integrated with the Federal trading program, so long as the state trading program is substantively identical to the Federal trading program or does not substantively differ from the Federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.[8] For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the Federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's

[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through EEEEE of 40 CFR part 97).

[2] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

[3] States are required to submit good neighbor SIPs three years after a NAAQS is promulgated. CAA section 110(a)(1) and (2). Where EPA finds that a state fails to submit a required SIP or disapproves a SIP, EPA is obligated to promulgate a FIP addressing the deficiency. CAA section 110(c).

[4] *See* 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

[5] States covered by both the CSAPR Update and the NO_X SIP Call have the additional option to expand applicability under the CSAPR NO_X Ozone Season Group 2 Trading Program to include non-EGUs that would have participated in the NO_X Budget Trading Program.

[6] CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 (or 2018 for CSAPR NO_X Ozone Season Group 2 units) and is not relevant here. *See* § 52.38(a)(3), (b)(3), (b)(7); § 52.39(d), (g).

[7] 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.39(e), (h).

[8] 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

SIP that was the basis for a particular set of CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR Federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP revision as meeting the requirements of the CSAPR regulations is full and unconditional.[9] Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR Federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.[10] Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the Federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.[11]

In the CSAPR rulemaking, EPA determined that air pollution transported from Indiana would unlawfully affect other states' ability to attain or maintain the 1997 $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 1997 ozone NAAQS and therefore included the State's EGUs in the CSAPR Federal trading programs for SO_2 and annual NO_X (to address the State's obligations regarding transported $PM_{2.5}$ pollution) and the original CSAPR Federal trading program for ozone season NO_X (to address the State's obligations regarding transported ozone pollution).[12] In the CSAPR Update rulemaking, EPA determined that air pollution transported from Indiana would unlawfully affect other states' ability to attain or maintain the 2008 ozone NAAQS, established a more stringent ozone season NO_X budget for the State's EGUs, and coordinated requirements by allowing compliance with the new budget to address the State's obligations regarding transported pollution with respect to both the 1997 ozone NAAQS and the 2008 ozone NAAQS.[13] Indiana's EGUs meeting the CSAPR applicability criteria are consequently subject to CSAPR FIP requirements to participate in the CSAPR SO_2 Group 1 Trading Program, the CSAPR NO_X Annual Trading Program, and the CSAPR NO_X Ozone Season Group 2 Trading Program.[14] In the original CSAPR rulemaking, EPA found that the EGUs' participation in the SO_2 and annual NO_X Federal trading programs fully addresses Indiana's good neighbor obligations with respect to attainment and maintenance of the 1997 $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS.[15] In the CSAPR Update rulemaking, EPA found that the EGUs' participation in the ozone season NO_X Federal trading program fully addresses Indiana's good neighbor obligations with respect to attainment and maintenance of the 1997 ozone NAAQS and partially, but not necessarily fully, addresses the State's good neighbor obligation with respect to attainment and maintenance of the 2008 ozone NAAQS.[16]

III. Indiana's SIP Submittal and EPA's Analysis

On November 27, 2017, Indiana submitted to EPA provisions that, if approved, would incorporate into Indiana's SIP state trading program regulations for Indiana's EGUs that would replace the CSAPR Federal trading program regulations with regard to the units' SO_2, annual NO_X, and ozone season NO_X emissions. The SIP submittal consists of Indiana Rules 326 IAC 24–5, 326 IAC 24–6, and 326 IAC 24–7. In general, each of Indiana's CSAPR state trading program rules are designed to replace the corresponding Federal trading program regulations. For example, Indiana Rule 326 IAC 24–5 (Nitrogen Oxides (NO_X) Annual Trading Program) is designed to replace subpart AAAAA of 40 CFR part 97 (*i.e.,* 40 CFR 97.401 through 97.435). In a letter to EPA dated June 11, 2018, Indiana clarified its interpretation of certain provisions in its three rules, including identification of some minor textual errors that it may correct in subsequent amendments.

Indiana also requests in its submission the removal from the SIP of the State's rules for the CAIR state trading programs for annual NO_X and SO_2 at 326 IAC 24–1 and 24–2, respectively, and sections 3, 5 through 10, and 12 of the State's rule at 326 IAC 24–3 for the CAIR state trading program for ozone season NO_X.[17]

In a notice of proposed rulemaking published on August 14, 2018 (83 FR 40184), EPA proposed to approve Indiana's November 27, 2017 SIP submittal (as clarified in the State's June 11, 2018 letter) designed to replace the CSAPR Federal trading programs. EPA noted that approval of the SIP revision would automatically eliminate Indiana's EGUs' requirements under the CSAPR FIPs and would fully satisfy Indiana's good neighbor obligations with respect to attainment and maintenance of the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 1997 ozone NAAQS and would partially satisfy Indiana's good neighbor obligations with respect to attainment and maintenance of the 2008 ozone NAAQS. EPA also proposed to approve the requested removal of the identified portions of the State's CAIR rules, noting that the CAIR trading programs have been replaced by CSAPR trading programs for affected EGUs. The proposed rulemaking provides additional detail regarding the background and rationale for EPA's action.

Comments on the proposal were due on or before September 13, 2018. EPA received four sets of comments, only one of which substantively addressed the contents of the proposal; EPA's response is below.

The State of Maryland submitted a comment on a matter that is separate from this action. It is related to EPA's June 29, 2018 proposed determination that compliance with the ozone season NO_X budgets established in the CSAPR Update represents a full rather than partial remedy for the good neighbor obligations of 20 states, including Indiana, with respect to attainment and maintenance of the 2008 ozone NAAQS.[18] In the proposal for this action, EPA stated that if the June 29, 2018 proposed determination is finalized as proposed, then approval of Indiana's CSAPR SIP revision would fully address the State's good neighbor obligation with respect to attainment and maintenance of the 2008 ozone NAAQS.[19] The State of Maryland

[9] 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

[10] 40 CFR 52.38(a)(5)(iv)–(v), (a)(6), (b)(5)(v)–(vi), (b)(9)(vi)–(vii), (b)(10)(i); 52.39(f)(4)–(5), (i)(4)–(5), (j).

[11] 40 CFR 52.38(a)(7), (b)(11); 52.39(k).

[12] 76 FR at 48210, 48213.

[13] 81 FR at 74506, 74563 n.169.

[14] 40 CFR 52.38(a)(2)(i), (b)(2)(ii); 52.39(b); *see also* 40 CFR 52.789(a)(1), (b)(2); 40 CFR 52.790(a).

[15] 76 FR at 48210.

[16] 81 FR at 74506–08.

[17] In the SIP submittal, Indiana also requested approval of a revision to 326 IAC 26–1–5 replacing reliance on CAIR in the State's Regional Haze program with reliance on CSAPR. EPA will act on this request in a separate rulemaking.

[18] Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard, 83 FR 31915 (July 10, 2018).

[19] 83 FR at 40185 n.2, 40191 n.33.

disagreed with these statements.[20] The comments are outside the scope of this action because EPA has not finalized the June 29, 2018 proposed determination.[21]

IV. Final Action

EPA is approving Indiana's November 27, 2017, SIP submittal (as clarified in Indiana's June 11, 2018 letter) concerning the establishment for Indiana units of CSAPR state trading programs for SO_2, annual NO_X, and ozone season NO_X emissions. The revision adopts into the SIP the State trading program rules codified at 326 IAC 24–5 (Nitrogen Oxides (NO_X) Annual Trading Program), 326 IAC 24–6 (Nitrogen Oxides (NO_X) Ozone Season Group 2 Trading Program), and 326 IAC 24–7 (Sulfur Dioxide (SO_2) Group 1 Trading Program).

These Indiana CSAPR state trading programs will be integrated with the Federal CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Group 2 Trading Program, and CSAPR SO_2 Group 1 Trading Program, respectively, and are substantively identical to the Federal trading programs except with regard to the allowance allocation provisions. Following approval of these portions of the SIP revision, Indiana units therefore will generally be required to meet requirements under Indiana's CSAPR state trading programs equivalent to the requirements the units otherwise would have been required to meet under the corresponding CSAPR Federal trading programs, but allocations to Indiana units of CSAPR NO_X Annual, CSAPR NO_X Ozone Season Group 2, and CSAPR SO_2 Group 1 allowances for control periods in 2021 and later years will be determined according to the SIP's allocation provisions in Indiana's rules instead of the default allocation provisions under the Federal trading program regulations. EPA is approving the SIP revision because they meet the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a Federal trading program with a state trading program that is integrated with and substantively identical to the Federal trading program except for permissible differences with respect to emission allowance allocation provisions.

Under the CSAPR regulations, upon EPA's full and unconditional approval of a SIP revision as correcting the SIP's deficiency that is the basis for particular CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR Federal trading program is automatically eliminated for units subject to the state's jurisdiction (but not for any units located in any Indian country within the state's borders).[22] EPA promulgated the FIP provisions requiring Indiana units to participate in the Federal CSAPR SO_2 Group 1, CSAPR NO_X Annual, and CSAPR NO_X Ozone Season Group 2 trading programs in order to address a lack of provisions in Indiana's SIP addressing the State's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, the 1997 ozone NAAQS, and the 2008 ozone NAAQS. As noted in section II of this action, EPA has previously found that the CSAPR FIP requirements represent a full remedy for Indiana's obligations with respect to the first three of these NAAQS and a partial, but not necessarily full, remedy for the State's obligations with respect to the 2008 ozone NAAQS. Approval of the portions of Indiana's SIP submittal adopting CSAPR state trading program rules substantively identical to the corresponding CSAPR Federal trading program regulations (or differing only with respect to the allowance allocation methodology) similarly satisfies Indiana's obligations pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 1997 ozone NAAQS in any other state, and partially satisfies Indiana's obligation pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. Thus, the approval corrects the same deficiencies in the SIP that otherwise would be corrected by the CSAPR FIP requirements. Due to this, EPA is fully approving Indiana's infrastructure SIP obligation under CAA section 110(a)(2)(D)(i)(I) for the 1997 $PM_{2.5}$ NAAQS, 2006 $PM_{2.5}$ NAAQS, and 1997 ozone NAAQS (prongs 1 and 2) and is issuing a limited approval on this infrastructure element for the 2008 ozone NAAQS in today's action.

The approval of the portions of Indiana's SIP submittal establishing CSAPR state trading program rules therefore also results in the automatic termination of the obligations of Indiana units to participate in the Federal CSAPR SO_2 Group 1, CSAPR NO_X Annual, and CSAPR NO_X Ozone Season Group 2 trading programs.

EPA is also approving the removal from Indiana's SIP of the State's CAIR rules codified at 326 IAC 24–1 (Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program) and 326 IAC 24–2 (Clean Air Interstate Rule Sulfur Dioxide Trading Program) and sections 3, 5 through 10, and 12 of the State's CAIR rule codified at 326 IAC 24–3 (Clean Air Interstate Rule NO_X Ozone Season Trading Program). The discontinued CAIR state trading programs established under the rule provisions being removed have been replaced by CSAPR trading programs for the affected EGUs.

This final rule is effective immediately upon publication in the **Federal Register**. Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), which generally provides that final rules may not take effect earlier than 30 days after publication in the **Federal Register** but allows exceptions where an agency finds good cause and publishes its finding with the rule, applies to this action. Ordinarily, a 30-day transition period before a new rule takes effect would give affected parties an opportunity to adjust their behavior and prepare for compliance. However, in this instance no transition period is necessary because this rule does not impose new requirements. Under CSAPR's existing requirements, on March 1 of each year affected sources must hold quantities of emissions allowances not less than their emissions during the prior year's control period. The CSAPR regulations provide for default allocations to affected sources of allowances eligible for use in meeting this requirement. In this rule, in accordance with options CSAPR makes available to states, EPA is approving into Indiana's SIP the State's rules which include allocation provisions to replace the default federally-established allocations for control periods in 2021 and later years. The sooner this rule is effective, the sooner allowances eligible for use for the 2021 control period can be issued to affected sources in Indiana in the amounts determined under Indiana's rules, which will assist the sources in planning to meet their March 1, 2022, compliance requirement. EPA therefore finds good cause to make this

[20] Comments of Maryland Dept. of the Environment (September 13, 2018), EPA–R05–OAR–2017–0700–0008.

[21] Maryland's comments also cite a State submittal from Indiana dated March 29, 2018 that seeks to fully address the State's good neighbor obligations with respect to attainment and maintenance of the 2008 ozone NAAQS, relying in part on the CSAPR state trading program rules that are being approved into the SIP in this final action. Although the State's March 2018 submittal has been made available in the docket for this action (EPA–R05–OAR–2017–0700–0003), EPA is not acting on the March 2018 submittal at this time and is not relying on information in that submittal to support this final action.

[22] 40 CFR 52.38(a)(6), (b)(10); 40 CFR 52.39(j); *see also* 40 CFR 52.789(a)(1), (b)(2); 40 CFR 52.790(a).

final rule effective immediately upon publication in the **Federal Register**.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Administrative Code provisions 326 IAC 24–5, 326 IAC 24–6, and 326 IAC 24–7, effective on November 24, 2017. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[23]

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 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, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 27, 2018.

James O. Payne,

Acting Regional Administrator, Region 5.

Part 52 of 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 A—General Provisions

§ 52.38 [Amended]

■ 2. Section 52.38 is amended:

■ a. In paragraph (a)(8)(iii), by adding after the text ''Georgia,'' the text ''Indiana,''; and

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

§ 52.39 [Amended]

■ 3. Section 52.39(l)(3) is amended by removing the text ''[none].'' and adding in its place the text ''Indiana.''.

Subpart P—Indiana

■ 4. Section 52.770 is amended:

■ a. In the table in paragraph (c) by revising the section ''Article 24. Trading Programs: Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2)''; and

■ b. In the table in paragraph (e) by revising the entries for ''Section 110(a)(2) infrastructure requirements for the 1997 8-Hour Ozone NAAQS'', ''Section 110(a)(2) infrastructure requirements for the 1997 $PM_{2.5}$ NAAQS'', ''Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS'', and ''Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS''.

The revisions read as follows:

§ 52.770 Identification of plan.

* * * * *

[23] 62 FR 27968 (May 22, 1997).

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
Article 24. Trading Programs: Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2)				
Rule 3. Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program				
24–3–1	Applicability	2/25/2007	11/29/2010, 75 FR 72956	
24–3–2	Definitions	6/11/2009	11/29/2010, 75 FR 72956	
24–3–4	Standard requirements	2/25/2007	11/29/2010, 75 FR 72956	
24–3–11	Monitoring and reporting requirements	2/25/2007	11/29/2010, 75 FR 72956	
Rule 5. Nitrogen Oxides (NO_X) Annual Trading Program				
24–5–1	Applicability and incorporation by reference	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–2	CSAPR NO_X annual trading budget	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–3	CSAPR NO_X annual allocation timing	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–4	Baseline heat input and historic emissions	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–5	Existing unit allocations and adjustments	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–6	New unit allocations	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–5–7	Unallocated new unit set-aside allowances	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
Rule 6. Nitrogen Oxides (NO_X) Ozone Season Group 2 Trading Program				
24–6–1	Applicability and incorporation by reference	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–2	CSAPR NO_X ozone season group 2 trading budget	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–3	CSAPR NO_X ozone season group 2 allocation timing	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–4	Baseline heat input and historic emissions	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–5	Existing unit allocations and adjustments	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–6	New unit allocations	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–6–7	Unallocated new unit set-aside allowances	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
Rule 7. Sulfur Dioxide (SO_2) Group 1 Trading Program				
24–7–1	Applicability and incorporation by reference	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–2	CSAPRSO_2 group 1 trading budget	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–3	CSAPR SO_2 group 1 allocation timing	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–4	Baseline heat input and historic emissions	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–5	Existing unit allocations and adjustments	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–6	New unit allocations	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
24–7–7	Unallocated new unit set-aside allowances	11/24/2017	12/17/2018 [insert **Federal Register** citation]	
*	*	*	*	*

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* *	* *	*	* *
Section 110(a)(2) infrastructure requirements for the 1997 8-Hour Ozone NAAQS.	12/7/2007, 9/19/2008, 3/23/2011, 4/7/2011, and 11/24/2017.	12/17/2018 [insert **Federal Register** citation].	All CAA infrastructure elements have been approved except the visibility portion of 110(a)(2)(D)(i)(II).
Section 110(a)(2) infrastructure requirements for the 1997 $PM_{2.5}$ NAAQS.	12/7/2007, 9/19/2008, 3/23/2011, 4/7/2011, and 11/24/2017.	12/17/2018 [insert **Federal Register** citation].	All CAA infrastructure elements have been approved except the visibility portion of 110(a)(2)(D)(i)(II).
Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS.	10/20/2009, 6/25/2012, 7/12/2012, 5/22/2013, and 11/24/2017.	12/17/2018 [insert **Federal Register** citation].	All CAA infrastructure elements have been approved except the visibility portion of 110(a)(2)(D)(i)(II).
Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS.	12/12/2011 and 11/24/2017	12/17/2018 [insert **Federal Register** citation].	All CAA infrastructure elements have been approved except the visibility portion of 110(a)(2)(D)(i)(II) and a limited approval for 110(a)(2)(D)(i)(I).
* *	* *	*	* *

[FR Doc. 2018–26920 Filed 12–14–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 545

[Docket No. 18–06]

RIN 3072–AC71

Interpretive Rule, Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (FMC or Commission) is revising its interpretation of the scope of the Shipping Act prohibition against failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. Specifically, the Commission is clarifying that the proper scope of that prohibition in the Shipping Act of 1984 and the conduct covered by it is guided by the Commission's interpretation and precedent articulated in several earlier Commission cases, which require that a regulated entity engage in a practice or regulation on a *normal, customary,* and *continuous* basis and that such practice or regulation is unjust or unreasonable in order to violate that section of the Shipping Act.

DATES: This final rule is effective December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Through this interpretive rule, the Federal Maritime Commission is clarifying its interpretation of the scope of 46 U.S.C. 41102(c) (section 10(d)(1) of the Shipping Act of 1984).[1] Section 41102(c) provides that regulated entities ''may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.'' This interpretive rule clarifies that in order to violate § 41102(c), a regulated entity must engage in an unjust or unreasonable practice or regulation on a *normal, customary,* and *continuous* basis.

II. NPRM and Summary of Comments

On September 7, 2018, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking public comment on its proposed interpretation.[2] Five comments were received in response to the NPRM, which may be found at the Electronic Reading Room on the Commission's website at *https://www.fmc.gov/18-06/.* Comments were received from the American Association of Port Authorities (AAPA), New York New Jersey Foreign Freight Forwarders and Brokers Association (NYNJFFF&BA), World Shipping Council (WSC), International Trade Surety Association (ITSA) and National Customs Brokers and Forwarders Association of America (NCBFAA). All five comments received by the Commission were in support of the rulemaking.

In their submission, AAPA affirms that the rule would bring the Commission's interpretation of the Shipping Act's prohibition on unjust and unreasonable practices and regulations in line with the plain language meaning of the word ''practice,'' Commission precedent and the intent of Congress. AAPA does not believe that the rule would leave potential claimants without remedies, but that the rule would stop individual instances better suited for resolution under the Carriage of Goods by Sea Act (COGSA) or other venue from being brought to the Commission.

NYNJFFF&BA also agrees that the intent of Congress and the plain language reading of § 41102(c) support this rulemaking. NYNJFFF&BA believes that without this rule, ocean transportation intermediaries (OTIs) are at risk of violating the Shipping Act over a single disagreement or accidental misstep, and this risk hinders resolutions through settlement. NYNJFFF&BA argues that this rule would limit the risk of frivolous claims being brought and allow OTIs to operate and settle claims more fairly and cost effectively. NYNJFFF&BA contends that claims that cannot be settled can still be brought through other venues.[3]

In its comment, WSC notes that from 1935 to 2001, the Commission precedent was in line with the

[1] Some authorities cited herein refer to § 41102(c) while others refer to section 10(d)(1). For ease of reading, we will generally refer to § 41102(c) in analyzing these authorities.

[2] NPRM: Interpretive Rule, Shipping Act of 1984, 83 FR 45367 (Sept. 7, 2018).

[3] In addition to its comments on the current interpretive rule, NYNJFFF&BA also encourages the Commission to review other prohibitions in § 41102 as part of future interpretive rulemakings, alleging that its members have been subject to penalties for technical violations involving no injured parties and that these investigations do not serve the purposes of the Shipping Act of 1984. As NYNJFFF&BA notes, these issues are outside the scope of this rulemaking, but the Commission will consider these comments in determining whether to initiate future rulemakings.

interpretation presented by this rule, but the Commission departed from this interpretation between 2010 and 2013. WSC believes that this rule will remove the uncertainty in the Commission's precedent and interpretation of § 41102(c). WSC argues that the rule will also meet the appropriate balance of encouraging meritorious Shipping Act cases and discourage matters that should be heard in other forums. WSC also does not believe that this interpretation will prevent would-be litigants from bringing meritorious claims and that parties will still be able to take advantage of the other forums that were used prior to the 2010 change in the Commission's interpretation.

ITSA also fully supports the Commission's proposed interpretation of § 41102(c). ITSA states that adoption of this interpretation will not cause a barrier to claimants with legitimate disputes. ITSA asserts that this rule still allows claimants to seek resolutions through the claim procedures in 46 CFR 515.23, the Commission's ADR services, presenting a claim to an OTI's surety or bringing an action in a proper legal venue.

Finally, NCBFAA also supports the interpretive rule and believes that this rule will bring § 41102(c) back in line with its original purpose. NCBFAA believes that, as originally written, the term practice was not intended to refer to single instances and from 1935 to 2010, Commission precedent supported this interpretation. NCBFAA argues that cargo owners will still possess ample civil remedies to resolve disputes. NCBFAA also emphasizes the importance of § 41102(c) for stopping systemic malpractices and believes that this rule will assist the Commission in returning their focus and priorities to the activities that negatively affect the broader shipping public.

III. Final Rule

For the reasons stated in the NPRM and by the commenters, the Commission is adopting the proposed interpretive rule without change. Section 41102(c) provides that regulated entities ''may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.'' Beginning with the *Houben* [4] decision in 2010 and presented in full in the Commission's 2013 decision in *Kobel* v. *Hapag-Lloyd,*[5] the Commission has held in a line of recent cases that discrete conduct with respect to a single shipment, if determined to be unjust or unreasonable, represents a violation of § 41102(c). As discussed in the NPRM, this recent interpretation runs contrary to the original intent of Congress, the rules of statutory construction, and Commission precedent.[6] This rule restores the Commission's interpretation of § 41102(c) to its pre-2010 understanding and returns the Commission's focus and priorities to the activities of maritime regulated entities that negatively affect the broader shipping public.

Section 41102(c) was never intended to be a method of resolving every dispute that arises in the receiving, handling, storing or delivering of cargo. In drafting the 1916 Act, and through its revisions and reenactment in 1984, Congress chose the word ''practice'' and the phrase, ''establish, observe, and enforce just and reasonable regulations and practices,'' to describe actions or omissions engaged in on a normal, customary, and continuous basis. From its origin and as recently as 2001,[7] § 41102(c) was interpreted in line with this understanding. To find a violation of § 41102(c), the Commission consistently required that the unreasonable regulation or practice was the normal,[8] customary, often repeated,[9] systematic,[10] uniform,[11] habitual,[12] and continuous manner [13] in which the regulated common carrier was conducting business. This understanding as to what constitutes ''regulations and practice'' under the Shipping Act is supported by multiple accepted rules of statutory construction.[14]

Through this rule, the Commission will return to an interpretation consistent with its precedent and consistent with rules of statutory construction. The Commission is aware that the interpretive rule may prevent some claims from being brought under the Shipping Act. Matters that may previously have been brought under § 41102(c) however, can still find resolution in other provisions or regulations of the Shipping Act [15] or be adjudicated as matters of contract law, agency law, or admiralty law. The Commission believes that existing alternative avenues of redress are sufficient to address those cases. The Commission believes that this rule returns § 41102(c) to its proper purpose and allows the Commission to better meet its mission as intended by Congress.

VI. Rulemaking Analyses

Congressional Review Act

The rule is not a ''major rule'' as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available for public comment a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish a FRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: Interpretive rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. *See* 5 U.S.C. 553(b).

Although the Commission elected to seek public comment, the rule is an interpretive rule. Therefore, the APA did not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare a FRFA.

National Environmental Policy Act

The Commission's regulations categorically exclude certain

[4] *Houben* v. *World Moving Services, Inc.,* 31 S.R.R. 1400 (FMC 2010).

[5] *Kobel* v. *Hapag-Lloyd A.G.,* 32 S.R.R. 1720, 1731 (2013).

[6] *See* 83 FR at 45368–45373.

[7] *Kamara* v. *Honesty Shipping Service,* 29 S.R.R. 321 (ALJ 2001).

[8] *See European Trade Specialists* v. *Prudential-Grace Lines,* 19 S.R.R. 59, 63 (FMC 1979).

[9] *See Intercoastal Investigation, 1935,* 1 U.S.S.B.B. 400, 432 (1935).

[10] *See Whitam* v. *Chicago, R.I. & P. Ry. Co.,* 66 F. Supp. 1014 (N.D. Tex. 1946).

[11] *See, e.g., Stockton Elevators,* 3 S.R.R. 605, 618 (FMC 1964); *Intercoastal Investigation, 1935,* 1 U.S.S.B.B. at 432.

[12] *See Stockton Elevators,* 3 S.R.R. at 618.

[13] *See Stockton Elevators,* 3 S.R.R. at 618. *See also, McClure* v. *Blackshere,* 231 F. Supp. 678, 682 (D. Md. 1964).

[14] *See* 83 FR at 45370–45371.

[15] *See Total Fitness Equipment, Inc. d/b/a/ Professional Gym* v. *Worldlink Logistics, Inc.,* 28 S.R.R. 45 (ALJ 1997); *Brewer* v. *Maralan,* 29 S.R.R. 6 (FMC 2001).

rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This rule regards the Commission's interpretation of the scope of 46 U.S.C. 41102(c) and the elements necessary for a successful claim for reparations under that section. This rulemaking thus falls within the categorical exclusion for matters related solely to the issue of Commission jurisdiction and the exclusion for investigatory and adjudicatory proceedings to ascertain past violations of the Shipping Act. *See* 46 CFR 504.4(a)(20), (22). Therefore, no environmental assessment or environmental impact statement is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects in 46 CFR part 545

Antitrust, Exports, Freight forwarders, Maritime carriers, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

For the reasons set forth above, the Federal Maritime Commission amends 46 CFR part 545 as follows:

PART 545—INTERPRETATIONS AND STATEMENTS OF POLICY

■ 1. The authority citation for part 545 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40307, 40501–40503, 41101–41106, and 40901–40904; 46 CFR 515.23.

■ 2. Add § 545.4 to read as follows:

§ 545.4 Interpretation of Shipping Act of 1984—Unjust and unreasonable practices.

46 U.S.C. 41102(c) is interpreted to require the following elements in order to establish a successful claim for reparations:

(a) The respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary;

(b) The claimed acts or omissions of the regulated entity are occurring on a normal, customary, and continuous basis;

(c) The practice or regulation relates to or is connected with receiving, handling, storing, or delivering property;

(d) The practice or regulation is unjust or unreasonable; and

(e) The practice or regulation is the proximate cause of the claimed loss.

By the Commission.

Rachel E. Dickon,

Secretary.

[FR Doc. 2018–27181 Filed 12–14–18; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 141104927–4927–01]

RIN 0648–XG564

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Commercial Reef Fish Fishery of the Gulf of Mexico; 2019 Red Grouper Commercial Quota Retention

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

ACTION: Temporary rule; withholding of red grouper allocation.

SUMMARY: NMFS intends to withhold a portion of the red grouper commercial quota from the Individual Fishing Quota Program for Grouper and Tilefishes (IFQ) for the 2019 fishing year as a result of a proposed commercial quota reduction. The Gulf of Mexico Fishery Management Council (Council) requested that NMFS reduce the Gulf of Mexico (Gulf) red grouper commercial and recreational annual catch limits (ACLs) and associated annual catch targets (ACTs) through a temporary rule to provide increased protections to the stock. The commercial red grouper quota is equivalent to the commercial ACT. NMFS is currently evaluating the Council's request and may implement, in early 2019, a temporary rule to reduce the red grouper ACLs and ACTs. Because red grouper is managed under an IFQ program, NMFS distributes IFQ allocation to the program shareholders on January 1 of each year. After NMFS distributes the applicable commercial quota to shareholders, it cannot be recalled. Therefore, in anticipation of the possible commercial quota reduction, NMFS will withhold distribution of 59.4 percent, equivalent to 4.78 million lb (2.17 million kg), gutted weight, of red grouper IFQ allocation on January 1, 2019. If the quota reduction is not implemented by June 1, 2019, the withheld quota will be distributed to the shareholders. This action is necessary to protect the red grouper resource and to effectively manage the IFQ program in 2019.

DATES: This rule effective 12:01 a.m., local time, January 1, 2019, until 12:01 a.m., local time, June 1, 2019.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727–824–5305, or email: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf includes red grouper and is managed under the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

All weights in this temporary rule are in gutted weight.

The current red grouper commercial ACT (commercial quota) is 7,780,000 lb (3,528,949 kg) and the commercial ACL is 8,190,000 lb (3,714,922 kg). Under the IFQ program for Gulf grouper and tilefish species, NMFS distributes allocation to shareholders on January 1 each year. However, regulations at 50 CFR 622.22(a)(4), authorize NMFS to withhold distribution of IFQ allocation

on January 1 in the amount equal to an expected reduction in the commercial quota.

The Council's Scientific and Statistical Committee (SSC) recently reviewed the results of an interim analysis performed by the Southeast Fisheries Science Center and recommended that the Council reduce the red grouper commercial and recreational ACLs and ACTs, effective for the 2019 fishing year. In addition, there have been recent deceases in red grouper landings and public testimony at the October Council meeting expressed concern about the status of the red grouper stock. Therefore, at its October 2018 meeting, the Council began developing a framework action to reduce the ACLs and ACTs. In the meantime, the Council requested that NMFS publish an interim or emergency rule to temporarily reduce the red grouper commercial and recreational ACLs and associated ACTs consistent with a red grouper stock ACL of 4.60 million lb (2.09 million kg), or the 2017 total red grouper landings, whichever is less. The 2017 combined red grouper commercial and recreational landings were approximately 4.16 million lb (1.89 million kg). Therefore, NMFS, is considering whether to issue an interim or emergency rule to reduce the red grouper ACLs and ACTs consistent with a stock ACL of 4.16 million lb (1.89 million kg).

If NMFS issues the interim or emergency rule, the commercial ACL for 2019 would be 3.16 million lb (1.43 million kg). This is approximately a 59.4 percent reduction from the current commercial ACL of 8.19 million lb (3.71 million kg). The commercial ACT is 95 percent of the ACL, and would be 3.00 million lb (1.36 million kg).

Based on the Council's request, NMFS expects a reduction in the red grouper quota to occur after January 1, 2019. Therefore, consistent with 50 CFR 622.22(a)(4) NMFS is withholding 4.78 million lb (2.17 million kg) of the red grouper commercial quota when allocation is distributed to shareholders on January 1, 2019. If a final rule implementing the quota reduction is not effective by June 1, 2019, NMFS will distribute the withheld allocation to the shareholders.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of red grouper in the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.22(a)(4) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and public comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to withhold a portion of the red grouper commercial quota constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the ability to withhold a percentage of the commercial quota as specified at 50 CFR 622.22(a)(4) has already been subject to notice and public comment. All that remains is to notify the public of the amount of the applicable commercial quota to be withheld on January 1, 2019. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect the red grouper stock and effectively manage the Gulf IFQ program.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: December 11, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–27201 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170828822–70999–04]

RIN 0648–XG669

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the Commonwealth of Virginia is transferring a portion of its 2018 commercial summer flounder quota to the State of Connecticut. This quota adjustment is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial quotas for Virginia and Connecticut.

DATES: Effective December 14, 2018, through December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102, and the initial 2018 allocations were published on December 22, 2017 (82 FR 60682), and corrected January 30, 2018 (83 FR 4165).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i)(A) through (C) in the evaluation of requests for quota transfers or combinations.

Virginia is transferring 20,000 lb (9,072 kg) of summer flounder commercial quota to Connecticut through mutual agreement of the states. Based on the initial quotas published in the 2018 Summer Flounder, Scup, and Black Sea Bass Specifications and subsequent adjustments, the revised summer flounder quotas for calendar year 2018 are now: Virginia, 1,351,972 lb (613,244 kg); and Connecticut, 167,768 lb (76,098 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 11, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–27200 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180906820–8999–02]

RIN 0648–BI48

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2019 Specifications

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

ACTION: Final rule.

SUMMARY: NMFS implements 2019 specifications for the summer flounder and black sea bass fisheries and maintains previously-established 2019 specifications for the scup fishery. Additionally, this action reopens the February 2018 black sea bass recreational fishery and adjusts the current commercial incidental possession limit for scup. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan require us to publish specifications for the upcoming fishing year for each of these species. The intent of this action is to inform the public of the specifications and management measures for the start of the 2019 fishing year for these three species. These specifications may be revised mid-year based on the results of ongoing stock assessments.

DATES: Effective January 1, 2019.

ADDRESSES: An environmental assessment (EA) was prepared for this action that describes these measures and other considered alternatives, and provides an analysis of the impacts of the measures and alternatives. Copies of the Summer Flounder, Scup, and Black Sea Bass 2019 Specifications, including the EA, 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 *http://www.mafmc.org/s/SFSBSB_2019_specs_EA.pdf.*

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, (978) 281–9244.

SUPPLEMENTARY INFORMATION:

General Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations outline the Council's process for establishing specifications. Specifications in these fisheries include various catch and landing subdivisions, such as the commercial and recreational sector annual catch limits (ACL), annual catch targets (ACT), and sector-specific landing limits (*i.e.,* the commercial fishery quota and recreational harvest limit), as well as management measures, as needed, that are designed to ensure these catch limits will not be exceeded. Annual specifications may be established for three-year periods, and, in interim years, specifications are reviewed by the Council to ensure previously established multi-year specifications remain appropriate. The FMP also contains formulas to divide the specification catch limits into commercial and recreational fishery allocations, state-by-state quotas, and quota periods, depending on the species in question. Rulemaking for measures used to manage the recreational fisheries (minimum fish sizes, open seasons, and bag limits) for these three species occurs separately, and typically takes place in the spring of each year.

This action sets 2019 specifications for summer flounder and black sea bass. The previously-approved 2019 scup specifications (82 FR 60682; December 22, 2017) remain unchanged from the current two-year specifications and are maintained through this action.

An ongoing summer flounder benchmark assessment incorporating updated Marine Recreational Information Program (MRIP) data is scheduled to be available in early 2019. Operational assessments for black sea bass and scup will also be completed in April 2019 to incorporate revised MRIP data. Because new information for all three species is likely in the next few months, the Council and Commission's Summer Flounder, Scup, and Black Sea Bass Board only recommended interim specifications for 2019, and the Council and Board may develop mid-year changes to the summer flounder specifications, and possibly black sea bass specifications, to address the forthcoming updated assessment information.

The proposed rule for this action published in the **Federal Register** on November 15, 2018 (83 FR 57389), and comments were accepted through November 30, 2018. We received 11 comments.

2019 Summer Flounder Specifications

At their August 2018 meeting, the Council and Board recommended interim summer flounder specifications for the start of the 2019 fishing year (Table 1). Compared to 2018, the interim 2019 commercial quota and recreational harvest limit are a 16-percent increase. The Council and Board intend to consider revising these interim summer flounder specifications at a joint meeting in February 2019 to address the results of the benchmark stock assessment. If a change in catch limits is recommended by the Council and Board, we anticipate updated catch limits could be in place this spring and would announce any adjustments through a future rule.

TABLE 1—CURRENT 2018 AND FINAL 2019 SUMMER FLOUNDER SPECIFICATIONS

	2018 (current)		2019		Difference (%)
	million lb	mt	million lb	mt	
Overfishing Limits (OFL)	18.69	8,476	20.60	9,344	10
ABC	13.23	5,999	15.41	6,990	16
Commercial ACL	7.70	3,491	9.18	4,164	19
Commercial ACT	7.70	3,491	*8.14	3,692	19
Projected Commercial Discards	1.07	485	1.47	667	2
Commercial Quota	6.63	3,006	*6.67	3,030	16
Recreational ACL	5.53	2,508	6.22	2,821	12
Recreational ACT	5.53	2,508	6.22	2,821	12

TABLE 1—CURRENT 2018 AND FINAL 2019 SUMMER FLOUNDER SPECIFICATIONS—Continued

	2018 (current)		2019		Difference (%)
	million lb	mt	million lb	mt	
Projected Recreational Discards	1.11	504	1.08	490	−3
Recreational Harvest Limit	4.42	2,004	5.15	2,336	16

* As further explained below, a required accountability measure reduces the commercial ACT from 9.18 million pounds (4,164 mt) to 8.14 million pounds (3,692 mt) and reduces the commercial quota from 7.72 million pounds (3,502 mt) to 6.67 million pounds (3,030 mt).

The Council and Board recommended no adjustment to the commercial minimum fish size (14-inch (35.6 cm) total length), gear requirements, and possession limits. The Council and Board will develop recreational management measures (*i.e.,* minimum fish sizes, open seasons, and bag limits) for summer flounder this fall and NMFS rulemaking will occur in early spring of 2019.

2019 Summer Flounder Commercial Non-Landing Accountability Measure

Our final catch accounting shows that the 2017 commercial fishery exceeded its ACL by 21 percent and the ABC was exceeded by 7 percent, due to higher than expected discards in the commercial fishery. The newly-revised accountability measures (AM) regulations (83 FR 53825, October 25, 2018) require a scaled payback against the commercial fishery's ACT, based on the amount of the overage and the status of the summer flounder stock, using the most recent biological reference points. Based on our AMs, a scaled payback is required because the most recent assessment update (2016) indicated that the stock is experiencing overfishing and is not overfished.

The scaled payback based on the 2016 assessment status is 1.04 million lb (472 mt). This overage, when applied to the 2019 commercial ACT of 9.18 million lb (3,502 mt), results in a commercial quota of 6.67 million lb (3,030 mt), after subtracting the 2019 projected estimated discards. The resulting quota is less than one percent higher than the 2018 quota. The timing of this final rule did not allow for the results of the 2018 benchmark assessment to be incorporated into the AM evaluation. Final results of that assessment are anticipated to be available in early 2019. If the assessment results in changes to the current stock determination criteria, any adjustments to the summer flounder specifications can incorporate a re-evaluation of this AM.

2019 Commercial State Quota Shares

Table 2 summarizes the commercial summer flounder quotas for each state, incorporating the revised 2019 commercial ACT. This rule announces commercial state quota overage reductions necessary for fishing year 2019. Table 2 includes percent shares as outlined in § 648.102(c)(1)(i), the resultant 2019 commercial quotas, quota overages (as needed), and the final adjusted 2019 commercial quotas. The 2018 quota overage is determined by comparing landings for January through October 2018, plus any 2017 landings overage that was not previously addressed in establishing the 2018 summer flounder specifications, for each state. For Delaware, this includes continued repayment of overharvest from previous years.

TABLE 2—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER QUOTAS FOR 2019

State	FMP percent share	2019 Initial quota		2019 Adjusted quota (ACL overage)		Overages through October 31, 2018		Final adjusted 2019 Quota, less overages	
		lb	kg	lb	kg	lb	kg	lb	kg
Maine	0.04756	3,672	1,665	3,172	1,439	0	0	3,172	1,439
New Hampshire	0.00046	36	16	31	14	0	0	31	14
Massachusetts	6.82046	526,540	235,406	454,925	202,922	−7,559	−3,429	447,366	202,922
Rhode Island	15.68298	1,210,726	549,176	1,046,055	474,482	0	0	1,046,055	474,482
Connecticut	2.25708	174,247	79,037	150,547	68,287	0	0	150,547	68,287
New York	7.64699	590,348	267,777	510,054	231,357	0	0	510,054	231,357
New Jersey	16.72499	1,291,169	585,665	1,115,557	506,008	0	0	1,115,557	506,008
Delaware	0.01779	1,373	−24,346	1,187	−24,431	−55,047	−24,969	−53,860	−24,431
Maryland	2.0391	157,419	71,404	136,008	61,692	0	0	136,008	61,692
Virginia	21.31676	1,645,654	746,456	1,421,828	644,930	0	0	1,421,828	644,930
North Carolina	27.44584	2,118,819	961,080	1,830,638	830,363	0	0	1,830,638	830,363
Total	100	7,720,000	3,497,682	6,670,000	3,021,494	0	.....	6,661,255	3,021,494

Notes: Kilograms are as converted from pounds and may not necessarily add due to rounding. Total quota is the sum for all states with an allocation. A state with a negative number has a 2019 allocation of zero (0). Total adjusted 2019 quota, less overages, does not include negative allocations (*i.e.,* Delaware's overage).

Delaware Summer Flounder Closure

Table 2 shows the amount of overharvest from previous years for Delaware is greater than the amount of commercial quota allocated to Delaware for 2019. As a result, there is no quota available for 2019 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the NMFS Greater Atlantic Region Administrator has determined no longer has commercial quota available for harvest. Therefore, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2019 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2019 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

2019 Black Sea Bass Specifications

At the August meeting, the Council and Board made recommendations for the 2019 black sea bass specifications, but for reasons outlined below, we are

maintaining status quo measures currently in place for 2018.

In June 2018, the Center provided the Council with a black sea bass data update, including updated catch, landings, and survey indices through 2017. Black sea bass biomass continues to be high and the 2015 year class appears to be above average in both the northern and southern surveys. Updated stock status information and biomass projections incorporating data on the 2015 year class were not available as part of the Center-provided data update, but will be once the operational assessment is completed in April 2019.

The Council's Scienctific and Statistical Committee (SSC) recommended a 2019 ABC of 7.97 million lb (3,615 mt), which was based on biomass projections from the 2016 benchmark stock assessment. This would have been an 11-percent reduction compared to the 2018 ABC. This decline in the ABC reflects the population responding to fishing at maximum sustainable yield and the decrease of the large 2011 year class, but does not incorporate the information on the 2015 year class. Based on this ABC recommendation, the Council and Board recommended the 2019 specifications that were 11 percent lower than those in place for 2018.

Following the Council and Board meeting, we requested that the Center perform a sensitivity analysis of the 2019 projection derived from the 2016 benchmark stock assessment. As previously described, that projection did not include the 2015 year class because those fish were too small to be widely captured in the surveys at the time of the 2016 assessment. This sensitivity analysis used various recruitment scenarios applied to the original projection and compared them to the most recent survey indices. The objective of this analysis was to see if that projection would have supported different specifications for 2019 had we been able to incorporate what we know now about the strength of the 2015 year class. The results suggest that the 2015 year class would have to be about 50 percent above average to allow for 2019 catch limits to be the same as what they were in 2018. Based on a comparison between the Center's 2018 spring survey results and average recruitment from 2003–2018, the 2015 year class appears to be more than 50 percent above average. Based on this information, we are maintaining status quo black sea bass specifications for 2019 (Table 3).

TABLE 3—2019 BLACK SEA BASS SPECIFICATIONS

	million lb	mt
OFL	10.29	4,667
ABC	8.94	4,055
Commercial ACL	4.35	1,974
Commercial ACT	4.35	1,974
Projected Commercial Discards	0.83	377
Commercial Quota	3.52	1,596
Recreational ACL	4.59	2,083
Recreational ACT	4.59	2,083
Projected Recreational Discards	0.93	422
Recreational Harvest Limit	3.66	1,661

Maintaining status quo allows for stability in the black sea bass commercial and recreational fisheries while we wait for the results of the MRIP operational assessment to be completed in April 2019. Once that information is available, the Council and Board may recommend adjusting black sea bass measures mid-year.

No adjustments are made to the commercial minimum fish size (11-inch (27.9 cm) total length), gear requirements, and possession limits.

Recreational Black Sea Bass Wave 1 Fishery

This action also reopens the black sea bass recreational fishery for the month of February (during MRIP Wave 1). The current Federal black sea bass recreational management measures (*i.e.,* a 12.5-inch (31.8-cm) minimum size and a possession limit of 15 fish) will apply to the fishery for this limited winter season. The intent of this action is to allow for some recreational fishing access during a portion of Wave 1 in 2019.

There are currently no MRIP survey estimates collected for Wave 1 except for occasional estimates in North Carolina, but catch from this time period must be accounted for, and count against the recreational harvest limit. Similar to last year, to account for the harvest during this 28-day season, the Council and Board recommended a coastwide catch estimate of 100,000 lb (45.3 mt). The Board has further divided this coastwide catch estimate across the states. States that decide to participate in the Wave 1 fishery must account for this catch when developing their management measures for the remainder of the fishing year. Only two states participated in the 2018 February recreational fishery. The estimated catch was nominal. Measures for the rest of the 2019 recreational fishery will be developed through the winter for implementation in spring 2019.

2019 Scup Specifications

The scup fishery is currently operating under multi-year specifications projected through 2019. This action reaffirms the Council's and Board's previous recommendation for scup 2019 specifications. Those specifications result in the same commercial quota and recreational harvest limit as implemented in 2018 (Table 4).

TABLE 4—SCUP SPECIFICATIONS FOR 2019

	million lb	mt
OFL	41.03	18,612
ABC	36.43	16,525
Commercial ACL	28.42	12,890
Commercial ACT	28.42	12,890
Commercial Discards	4.43	2,011
Commercial Quota	23.98	10,879
Recreational ACL	8.01	3,636
Recreational ACT	8.01	3,636
Recreational Discards	0.65	293
Recreational Harvest Limit	7.37	3,342

The 2019 scup commercial quota is divided into three commercial fishery quota periods, as outlined in Table 5.

TABLE 5—COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2019 BY QUOTA PERIOD

Quota period	Percent share	2019 Initial quota	
		lb	mt
Winter I	45.11	10,820,000	4,908
Summer	38.95	9,340,986	4,237
Winter II	15.94	3,822,816	1,734
Total	100.0	23,983,802	10,879

Note: Metric tons are as converted from lb and may not necessarily total due to rounding.

The current quota period possession limits are not changed by this action, and are outlined in Table 6. The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter II. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notice in the **Federal Register**. The regulations specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 7.

TABLE 6—COMMERCIAL SCUP POSSESSION LIMITS BY QUOTA PERIOD

Quota period	Percent share	Federal possession limits (per trip)	
		lb	kg
Winter I	45.11	50,000	22,680
Summer	38.95	N/A	N/A
Winter II	15.94	12,000	5,443
Total	100.0	N/A	N/A

TABLE 7—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF UNUSED SCUP ROLLED OVER FROM WINTER I TO WINTER II

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0–499,999	0–226,796	0	0	12,000	5,443
12,000	5,443	500,000–999,999	226,796–453,592	1,500	680	13,500	6,123
12,000	5,443	1,000,000–1,499,999	453,592–680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000–1,999,999	680,389–907,184	4,500	2,041	16,500	7,484
12,000	5,443	*2,000,000–2,500,000.	907,185–1,133,981	6,000	2,722	18,000	8,165

*This process of increasing the possession limit in 1,500 lb (680 kg) increments would continue past 2,500,000 lb (1,122,981 kg), but we end here for the purpose of this example.

Adjustment to the Commercial Scup Gear-Based Possession Limit Thresholds

This action adjusts the gear-based incidental possession limit for the commercial fishery. The incidental possession limit applies to vessels with commercial moratorium scup permits fishing with nets with diamond mesh smaller than 5 inches (12.7 cm) in diameter. The incidental possession limit is currently 1,000 lb (454 kg) during October 1–April 30 and 200 lb (91 kg) during May 1-September 30. The action adds another threshold period from April 15–June 15 to allow for higher retention in the small-mesh squid fishery that operates during that time and occasionally catches larger amounts of scup than the current limits allow to be landed (Table 8). During that time, vessels with scup moratorium permits using small mesh can land up to 2,000 lb (907 kg) of scup.

Table 8. Adjustment to the Scup Incidental Possession Limit.

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
Current	1,000 lb (454 kg)				200 lb (91 kg)					1,000 lb (454 kg)		
Revised	1,000 lb (454 kg)			2,000 lb (907 kg)		200 lb (91 kg)				1,000 lb (454 kg)		

No adjustments are made to the current commercial minimum fish size (9-inch (22.9-cm) total length) and winter quota period directed-fishery possession limits.

Comments and Responses

On November 15, 2018, NMFS published the proposed specifications for public notice and comment. NMFS received six comments from individuals, and comments from the Jersey Coast Anglers Association, the Recreational Fishing Alliance (RFA), the New York Recreational & For-Hire Fishing Alliance, the State of New York and the New York State Department of Environmental Conservation, and the Massachusetts Division of Marine Fisheries. No changes to the proposed specifications were made as a result of these comments.

Comment 1: Two members of the public, a representative of the Jersey Coast Anglers Association, and the Massachusetts Division of Marine Fisheries offered their support of the proposed specifications, particularly the decision to maintain status quo specifications for black sea bass.

Response: NMFS agrees and is implementing the proposed

specifications for the reasons outlined in the preamble to this rule.

Comment 2: One individual commented that specifications for all three species should be reduced by 50 percent, but offered no rationale as to why.

Response: The reasons for implementing these specifications, which are outlined in the preamble to this rule, are based on the best scientific information available. This information does not suggest that 50-percent reductions in catch and harvest limits are appropriate.

Comment 3: Two commenters mentioned that they have noticed a decline in abundance of summer flounder and that the stock is being subject to overfishing.

Response: The most recent stock assessment update (2016) indicates that the summer flounder stock is not overfished, but is experiencing overfishing. The 2019 catch limits for summer flounder consider this information on stock status. We are waiting for the results of a new benchmark assessment and can respond to any adjustments that may be necessary based on new information as it becomes available.

Comment 4: One commenter representing the New York Recreational & For-Hire Fishing Alliance was supportve of the summer flounder and scup specifications, but wanted higher black sea bass specifications, noting that the stock is healthy. This commenter also requested that the black sea bass Wave 1 fishery be open in January and February, and if that was not an option, then January would be preferable due to the better weather conditions.

Response: We agree that the black sea bass stock is healthy, which is why we are maintaining status quo measures, rather than reducing catch limits. The MRIP operational assessment will provide more updated information on the status of the black sea bass stock and will inform future management. The Council and Board may consider adjustments to the Wave 1 fishery next year, but for 2019 decided to recommend the same measures that were in place for 2018 (*i.e.,* opening in February). A longer season in a future year would require a larger payback later in the year for states that choose to participate.

Comment 5: Although supportive of the scup and black sea bass specifications, the RFA stated that the revised MRIP information released this summer should be used to automatically adjust the current commercial and recreational allocations. As a result, RFA suggests that the recreational allocation should be increased and the recreational harvest limit for 2019 should be higher.

Response: NMFS disagrees that the updated MRIP information automatically adjusts the current commercial and recreational allocations. Adjustments to these allocations must occur through an amendment to the FMP. As mentioned throughout the preamble to this rule, we expect the final results from the new summer flounder assessment to be available early in 2019. Once that information is available, the Council and Board intend to review the results and determine if these 2019 specifications should be adjusted. The Council and Board also intend to consider adjustments to the summer flounder recreational fishery, including consideration of the current 60/40 commercial and recreational allocation split, in a future amendment.

Comment 6: The State of New York and the New York State Department of Environmental Conservation submitted a letter stating that the commercial summer flounder state quotas date back to 1993 and have not been updated. The letter claims those allocations are based on unreliable data from 1993 and suggests NMFS implement a coastwide quota for the commercial fishery.

Response: The current regulations governing the FMP require that quota allocations be distributed based on the percentages outlined in Table 2. Adjustments to these quota allocations must be developed through an amendment to the FMP. The Council and Board are taking final action on an amendment considering such adjustments at their December 2019 meeting and will forward their recommendations to NMFS for approval. Adjustments to these state quota allocations are outside the scope of this action. If the Council and Board recommend commercial fishery allocation changes at the joint December meeting, NMFS expects to conduct rulemaking on those recommendations in 2019.

Comment 7: One commenter mentioned frustration over summer flounder recreational measures in state waters.

Response: This topic is outside of the scope of this action. The Council and NMFS will determine summer flounder recreational measures in Federal waters later next year, but do not make determinations about individual state measures.

Changes From the Proposed Rule

There are no changes to the measures from the proposed rule.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that these specifications are necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

This 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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final specifications are in place on January 1, 2019. This action establishes the final specifications (*i.e.,* annual catch limits) for the scup, summer flounder, and black sea bass fisheries for the 2019 fishing year, which begins on January 1, 2019.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the submission of the EA in support of the specifications that is developed by the Council. An initial draft was received by NMFS in mid-October, with a complete document submitted in early December 2018. Documentation in support of the Council's recommended specifications is required for NMFS to provide the public with information from the environmental and economic analyses, as required in rulemaking, and to evaluate the consistency of the Council's recommendation with the Magnuson-Stevens Act and other applicable law. The proposed rule published on November 15, 2018, with a 15-day comment period ending November 30, 2018. Publication of the summer flounder quotas at the start of the fishing year that begins January 1 of each fishing year is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association* v. *Daley.*

If the 30-day delay in effectiveness were not waived, the lack of effective

quota specifications on January 1, 2019, for summer flounder and black sea bass, would present significant confusion to the complex cooperative management regime governing these fisheries. The summer flounder and black sea bass fisheries are all expected, based on historic participation and harvest patterns, to be very active at the start of the fishing season in 2019. Individual states would be unable to set commercial possession and/or trip limits, which apportion the catch over the entirety of the calendar year. NMFS would be unable to control harvest in any way, as there would be no quotas in place for these two species until the regulations are effective. NMFS would be unable to control harvest or close the fishery, should landings exceed the quotas. All of these factors would result in a race for fish wherein uncontrolled landings could occur. Disproportionately large harvest occurring within the first weeks of 2019 could have distributional effects on other quota periods, and would disadvantage some gear sectors or owners and operators of smaller vessels that typically fish later in the fishing season.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 11, 2018.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.125, paragraphs (a)(1) and (5) are revised to read as follows:

§ 648.125 Scup gear restrictions.

(a) * * *

(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess more than 1,000 lb (454 kg) of scup from October 1 through April 14, more than 2,000 lb (907 kg) from April 15 through June 15, or more than 200 lb (91 kg) of scup from June 16 through September 30, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed and not available for immediate use as defined in § 648.2.

* * * * *

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 1,000 lb (454 kg) or more of scup from October 1 through April 14, 2,000 lb (907 kg) or more of scup from April 15 through June 15, or 200 lb (90.7 kg) or more of scup from June 16 through September 30, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.126, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that is stowed and not available for immediate use as defined in § 648.2, and that can be shown not to have been in recent use, is considered to be not available for immediate use.

* * * * *

■ 3. Section 648.146 is revised to read as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from February 1 through February 28, May 15 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

[FR Doc. 2018–27213 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 83, No. 241

Monday, December 17, 2018

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

RIN 0575–AD12

Section 538 Guaranteed Rural Rental Housing Program Notice of Funding Availability Elimination

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule

SUMMARY: The Rural Housing Service (RHS or Agency) is amending its regulation to eliminate the requirement for the annual publication of Notice of Funding Availability (NOFA). Additionally, RHS will remove all references to the term NOFA in other various sections. The intended effect of this action is to allow the Agency to accept and start processing applications in a more fluid manner.

DATES: Written or email comments must be received on or before February 15, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Rural Utilities Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RHS–18–MFH–0025 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Submit written comments to Michele L. Brooks, Team Lead, RD Innovation Center—Regulatory Team, Rural Development, U.S. Department of Agriculture, STOP 1522, 1400 Independence Avenue SW, Washington, DC 20250–1522. All written comments will be available for public inspection during regular work hours at 1400 Independence Avenue SW, Mailstop 1522, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Monica Cole, Finance and Loan Analyst, Multi-Family Housing Guaranteed Loan Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781–Room# 1263S, 1400 Independence Avenue SW, Washington, DC 20250–0781, Telephone: (202) 720–1251 (this is not a toll-free number); email: *monica.cole@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866—Classification

This proposed rule has been determined to be non-significant and; therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Authority

The Guaranteed Rural Rental Housing (GRRH) program is administered subject to appropriations by the U.S. Department of Agriculture (USDA) as authorized under the Housing Act of 1949 as amended, Section 538, Public Law 106–569, 42 U.S.C. 1490 p-2.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 13132—Federalism

The policies contained in this rule do not have any substantial direct effect on 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. This rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

Executive Order 12988—Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandate Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any one-year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal Governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0189. This final rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

RHS is committed to complying with the E-Government Act by promoting the use of the internet and other Information Technologies in order to provide increased opportunities for citizen access to Government information, services, and other purposes.

Programs Affected

The program affected by this regulation is listed in the Catalog of Federal Domestic Assistance under numbers 10.438—Rural Rental Housing Guaranteed Loans (Section 538).

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: *AIAN@wdc.usda.gov* to request such a consultation.

Executive Order 12372—Intergovernmental Consultation

These loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, familial/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992, submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

I. Background and Summary of Changes

The annual publication of the NOFA is currently required by 7 CFR part 3565. While, Section 536 of the Housing Act of 1949, as amended (42 U.S.C. 1490p) (Housing Act) broadly requires a publication of the availability of funds, application procedures, and selection criteria in the **Federal Register**, it does not contain the annual notification requirement. RHS is amending its regulation to align with the Housing Act requirements, which will allow RHS to continue its application process under circumstances such as a Continuing Resolution.

The delay caused by requiring an annual NOFA also creates a disconnect, in regards to the timing of deadlines, with the application process of tax credit financed properties, which represent approximately 85 percent of the Section 538 portfolio. Of these properties that are financed with tax credits, the tax credit equity represents approximately 75 percent of the total development cost (TDC). Without the injection of tax credit equities, rents would not be affordable to low income tenants. When developers use the Section 538 program with tax credits, they are required to submit a preliminary eligibility letter from Rural Development together with the tax credit application. If the NOFA is published after the tax credit application deadline, the developer will not be able to use tax credits to finance the project.

In lieu of the NOFA process, the Section 538 GRRH program will follow procedures similar to other Rural Development guaranteed loan programs and accept applications on a continuous basis. The Agency will make an announcement to the public when funds are available. Rural Development will use the standards from the last NOFA as published in the **Federal Register** on December 21, 2017 (82 FR 60579). If Rural Development chooses to change the selection and/or scoring criteria or fees charged in subsequent years, it will inform the public of those changes through additional notices in the **Federal Register**. Both Empowerment Zone (EZ) and Enterprise Community (EC) Initiatives have expired, so reference to those initiatives will also be removed from 7 CFR part 3565.

List of Subjects in 7 CFR Part 3565

Conflict of interest, Credit, Fair housing, Loan programs-housing and community development, Low and moderate-income housing, Manufactured homes, Mortgages, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RHS proposes to amend 7 CFR part 3565, as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

■ 1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General Provisions

§ 3565.3 [Amended]

■ 2. Amend § 3565.3 by removing the definition of ''NOFA.''

■ 3. Section 3565.4 is revised to read as follows:

§ 3565.4 Availability of assistance.

The Agency's authority to enter into commitments, guarantee loans, or provide interest credits is limited to the extent that appropriations are available to cover the cost of the assistance. The Agency will notify the public of the availability of assistance, changes in application requirements, or changes in the fee structure.

■ 4. Amend § 3565.5 by revising paragraph (b) to read as follows:

§ 3565.5 Ranking and selection criteria.

* * * * *

(b) *Priority projects.* Priority will be given to projects: In smaller rural communities, in the most needy communities having the highest percentage of leveraging, having the lowest interest rate, having the highest ratio of 3–5 bedroom units to total units, or on tribal lands. In addition, the Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. Assistance will include both loan guarantees and interest credits. Priority projects must compete for set-aside funds.

Subpart B—Guarantee Requirements

■ 5. Amend § 3565.53 by revising paragraph (c) to read as follows:

§ 3565.53 Guarantee fees.

* * * * *

(c) *Surcharge for guarantees on construction advances.* The Agency may, at its sole discretion, charge an additional fee on the portion of the loan advanced during construction. If applicable, this fee will be charged in advance at the start of construction.

Subpart C—Lender Requirements

§ 3565.104 [Amended]

■ 6. Amend § 3565.104 by removing the last sentence.

Subpart E—Loan Requirements

■ 7. Section 3565.210 is revised to read as follows:

§ 3565.210 Maximum interest rate.

The interest rate for a guaranteed loan must not exceed the maximum allowable rate specified by the Agency. This interest rate must be fixed over the term of the loan.

Subpart F—Property Requirements

■ 8. Section 3565.252 is revised to read as follows:

§ 3565.252 Housing types.

The property may include new construction or rehabilitation of existing structures. The units may be attached, detached, semi-detached, row houses, modular or manufactured houses, or multifamily structures. Manufactured housing must meet Agency requirements contained in 7 CFR part 1924, subpart A or a successor regulation. The Agency will guarantee proposals for new construction or acquisition with moderate or substantial rehabilitation of at least $6,500 per dwelling unit. The portion of guaranteed funds available for acquisition with rehabilitation may be limited.

Subpart G—Processing Requirements

■ 9. Amend § 3565.302 by revising paragraph (b) introductory text to read as follows:

§ 3565.302 Allowable fees.

* * * * *

(b) *Agency Fees.* The Agency will charge one or more types of fees deemed appropriate as reimbursement for reasonable and necessary costs incurred in connection with applications received from lenders. Agency fees may include, but are not limited to, the following:

* * * * *

Dated: November 20, 2018.

Joel C. Baxley,

Administrator, Rural Housing Service.

[FR Doc. 2018–27138 Filed 12–14–18; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2018–0974; Airspace Docket No. 18–ACE–4]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Auburn, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Farington Field Airport, Auburn, NE. Controlled airspace is necessary to accommodate new standard instrument approach procedures developed at Farington Field Airport, for the safety and management of instrument flight rules (IFR) operations.

DATES: Comments must be received on or before January 31, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2018–0974; Airspace Docket No. 18–ACE–4, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Farington Field Airport, Auburn, NE, in support of standard instrument approach procedures for IFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2018–0974; Airspace Docket No. 18–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air-traffic/publications/airspace-amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Farington Field Airport, Auburn, NE. This action would enhance safety and the management of IFR operations at the airport.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ACE NE E5 Auburn, NE [New]

Farington Field Airport, NE
(Lat. 40°23′12″ N, long. 095°47′17″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Farington Field Airport.

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

John A. Witucki,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2018–26917 Filed 12–14–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2017–0347; Airspace Docket No. 17–AAL–3]

RIN 2120–AA66

Proposed Modification of Class E Airspace for the Following Alaska Towns; Hooper Bay, AK; Kaltag, AK; King Salmon, AK; Kodiak, AK; Manokotak, AK; and Middleton Island, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 1,200 feet above the surface at Hooper Bay Airport, AK; Kaltag Airport, AK; King Salmon Airport, AK; Kodiak Airport, AK, Manokotak Airport, AK, and Middleton Island Airport, AK. This proposal would add exclusionary language to the legal descriptions of these airports to exclude Class E airspace extending beyond 12 miles from the shoreline and would ensure the safety and management of aircraft within the National Airspace System. Also, an editorial change would be made in the airspace designation for King Salmon Airport.

DATES: Comments must be received on or before January 31, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0347; Airspace Docket No. 17–AAL–3, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

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

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

FOR FURTHER INFORMATION CONTACT: Bonnie Malgarini, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th St., Des Moines, WA 98198–6547; telephone (206) 231–2329.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace extending upward from 1,200 feet above the surface at Kaltag Airport, AK, King Salmon Airport, AK, Kodiak Airport, AK, Manokotak Airport, AK, Middleton Island Airport, AK, and Hooper Bay Airport, AK, to support IFR operations in standard instrument approach and departure procedures at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0347 Airspace Docket No. 17–AAL–3.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th St., Des Moines, WA 98198–6547.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 1,200 feet above the surface at Hooper Bay Airport, AK; Kaltag Airport, AK; King Salmon Airport, AK; Kodiak Airport, AK; Manokotak Airport, AK; and Middleton Island Airport, AK. This action would add language to the legal descriptions of these airports that reads ''excluding that airspace that extends beyond 12 miles from the shoreline.''

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, and is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E5 Hooper Bay, AK [Amended]

Hooper Bay Airport, AK
(Lat. 61°31′26″ N, long. 166°08′48″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Hooper Bay Airport; and that airspace extending upward from 1,200 feet above the surface within a 45-mile radius of Hooper Bay Airport, excluding that airspace extending beyond 12 miles from the shoreline.

AAL AK E5 Kaltag, AK [Amended]

Kaltag Airport, AK
(Lat. 64°19′08″ N, long. 158°44′29″ W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Kaltag Airport, and that airspace extending upward from 1,200 feet above the surface within a 72-mile radius of the Kaltag Airport, excluding that airspace extending beyond 12 miles from the shoreline.

AAL AK E5 King Salmon, AK [Amended]

King Salmon, King Salmon Airport, AK
(Lat. 58°40′35″ N, long. 156°38′55″ W)
King Salmon VORTAC
(Lat. 58°43′29″ N, long. 156°45′08″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of King Salmon Airport, AK, and within 5 miles north and 9 miles south of the 132° radial of the King Salmon VORTAC, AK, extending from the King Salmon VORTAC, AK, to 36 miles southeast of the King Salmon VORTAC, AK, and within 3.9 miles either side of the 312° radial of the King Salmon VORTAC, AK, extending from the 6.9-mile radius to 13.9 miles northwest of the King Salmon VORTAC, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the King Salmon Airport, AK., excluding that airspace extending beyond 12 miles of the shoreline.

AAL AK E5 Kodiak, AK [Amended]

Kodiak Airport, AK
(Lat. 57°45′00″ N, long. 152°29′38″ W)

That airspace extending upward from 700 feet above the surface within an 6.9-mile radius of Kodiak Airport, AK, and within 3.1 miles either side of the 072° bearing from Kodiak Airport, AK, extending from the 6.9-mile radius from the airport, to 12.2 miles east of the airport, and within 1 mile either side of the 091° bearing from Kodiak Airport, AK, extending from the 6.9-mile radius from the airport, to 8.2 miles east of the airport, and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Kodiak Airport, AK., excluding that airspace extending beyond 12 miles of the shoreline.

AAL AK E5 Manokotak, AK [Amended]

Manokotak Airport, AK
(Lat. 58°55′55″ N, long. 158°54′07″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Manokotak Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of Manokotak Airport, AK, excluding that airspace extending beyond 12 miles of the shoreline.

AAL AK E5 Middleton Island, AK [Amended]

Middleton Island Airport, AK
(Lat. 59°27′00″ N, long. 146°18′26″ W)
Middleton Island VOR/DME
(Lat. 59°25′19″ N, long. 146°21′00″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Middleton Island Airport, and within 4 miles either side of the 038° radial of the Middleton Island VOR/DME extending from the 6.5-mile radius to 12 miles northeast of the VOR/DME, and that airspace extending upward from 1,200 feet above the surface within a 42-mile radius of the Middleton Island VOR/DME, excluding that airspace extending beyond 12 miles of the shoreline.

Issued in Seattle, Washington, on November 30, 2018.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2018–26810 Filed 12–14–18; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2018–0017]

RIN 0960–AI35

Consideration of Pain in the Disability Determination Process

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: We are soliciting public input to ensure that the manner in which we consider pain in adult and child disability claims under titles II and XVI of the Social Security Act (Act) remains aligned with contemporary medicine and health care delivery practices. Specifically, we are requesting public comments and supporting data related to the consideration of pain and documentation of pain in the medical evidence we use in connection with claims for benefits. We will use the responses to the questions below and any relevant research and data we obtain or receive to determine whether and how we should propose revisions to our current policy regarding the evaluation of pain.

DATES: To be sure that we consider your comments, we must receive them no later than February 15, 2019.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2018–0017 so that we may associate your comments with this ANPRM.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the Search function to find docket number SSA–

2018–0017. Once you submit your comment, the system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Act defines ''disability'' for titles II and XVI as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.[1] We use a five-step sequential evaluation process to determine whether a claimant who files an initial claim for benefits is disabled under the Act.[2] If we can make a determination or decision that a claimant is disabled or not disabled at a step, we do not go on to the next step.[3] If we cannot make a determination or decision at a step, we continue to the next step in the sequential evaluation process.[4] At various steps of the sequential evaluation process, we will consider both the medical evidence of an impairment and the claimant's descriptions of his or her symptoms, including pain.[5]

Our current regulations prescribe a two-stage process for evaluating a claimant's pain.[6] At stage one, we determine whether there is objective medical evidence showing the existence of a medically determinable impairment that could reasonably be expected to produce the pain.[7] When the medical signs or laboratory findings show that a claimant has a medically determinable impairment(s) that could reasonably be expected to produce the pain, we proceed to stage two and evaluate the intensity and persistence of a claimant's pain based on all the evidence in the record. We consider several factors at this second stage, including:

- The objective medical evidence;
- the claimant's medical history, the clinical signs and laboratory findings, and statements about the pain's effect on the claimant;
- the claimant's daily activities;
- the location, duration, frequency, and intensity of the pain;
- any precipitating or aggravating factors;
- the type, dosage, effectiveness, and side effects of medication;
- any treatments, other than medication, the claimant receives or has received for relief of pain;
- any measures the claimant uses or has used to relieve pain (*e.g.,* lying flat on the back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.); and
- any other factors concerning functional limitations and restrictions due to pain.[8]

What is the purpose of this ANPRM?

We are soliciting public comments about our rules for evaluating the intensity and persistence of pain and documentation of pain in the medical evidence as part of the disability determination process. In addition to seeking public input on the specific questions below, we are also asking for public input to help identify research and data that will help us ensure our policy on the evaluation of pain remains aligned with contemporary medicine and health care delivery practices. We will use the responses to the questions below and any relevant research and data we obtain or receive to determine whether and how we should propose revisions to our current policy regarding the evaluation of pain.

What will we consider when we decide whether to propose revisions to our rules?

We will consider the public comments and any research or data identified in response to this solicitation. We will also consider any information we obtain through research or other activities intended to inform our policy decisions in this area, such as the National Disability Forum.[9]

What should you comment about?

When we evaluate the intensity and persistence of a claimant's pain, we consider all of the available evidence, including the types of evidence discussed above. We are soliciting public input, research, and data about the following:

1. Are there changes that we should consider about how we consider pain in the disability evaluation process? If so, what changes do you suggest we make? Please provide data, research, or any other evidence supporting your suggestions where applicable.

2. Within the United States, which standard scales, questionnaires, or other methods to evaluate the intensity and persistence of pain that are commonly accepted in the medical community do you recommend we consider and why? What information exists about the efficacy or accuracy of those scales, questionnaires, or other methods?

3. How is pain and documentation of pain in the medical evidence assessed in other Federal, State, and private disability programs?

4. Should we evaluate chronic[10] pain differently than acute[11] pain? If so, why and how?

5. Should we evaluate nociceptive[12] pain differently than neuropathic[13] pain? If so, why and how? Please submit research or data that support your recommendation.

6. What information and evidence is available on the effectiveness and side effects of the traditional and alternative

[1] 42 U.S.C. 423(d)(1)(A) and 1382c(a)(3)(A); see also 20 CFR 404.1505(a) and 416.905(a).

[2] 20 CFR 404.1520(a)(4), 416.920(a)(4), and 416.924.

[3] Id.

[4] Id.

[5] 20 CFR 404.1529 and 416.929.

[6] Id.

[7] 20 CFR 404.1529(b) and 416.929(b).

[8] 20 CFR 404.1529(a), (c) and 416.929(a), (c).

[9] Information regarding the National Disability Forum is available on our internet site at: *https://www.ssa.gov/ndf/.*

[10] Pain that ''persist[s] over a long period of time.'' *Chronic, Dorland's Illustrated Medical Dictionary* (31st ed. 2007).

[11] ''[A] short and relatively severe course'' of pain. *Acute, Dorland's Illustrated Medical Dictionary* (31st ed. 2007).

[12] Pain that pertains to a nociceptor, which is a receptor for pain caused by injury to body tissues from physical chemical stimuli. *Nociceptive, Nociceptor, Dorland's Illustrated Medical Dictionary* (31stth ed. 2007).

[13] Pain that pertains to, or is characterized by, a functional disturbance or pathological change in the peripheral nervous system. *Neuropathic, Neuropathy, Dorland's Illustrated Medical Dictionary* (31st ed. 2007).

modalities for treating pain that we should consider?

7. Can health care utilization and treatment regimens employed by physicians to manage patient pain provide objective insights into the intensity and persistence of pain? When should those regimens not be an indication of the severity of an individual's pain?

8. Is there any additional information that we should consider when we evaluate pain in our disability program?

Will we respond to your comments?

We will consider all relevant public comments we receive in response to this notice, but we will not respond directly to them. If we decide to propose specific revisions to our rules, we will publish a notice of proposed rulemaking in the **Federal Register**, and you will have a chance to comment on any revisions we propose.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Blind, Disability benefits, Supplemental Security Income, Reporting and recordkeeping requirements, Social Security.

Nancy A. Berryhill,

Acting Commissioner of Social Security.

[FR Doc. 2018–27169 Filed 12–14–18; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2018–0008; Notice No. 177]

RIN 1513–AC40

Proposed Establishment of the West Sonoma Coast Viticultural Area

Correction

In proposed rule document C1–2018–26321 appearing on page 63824 in the issue of Wednesday, December 12, 2018, make the following corrections:

1. On page 63824, in the third column, the fourth line from the bottom of the page ''January 7, 2018'' should read ''January 7, 2019.''

2. On page 63824, in the third column, the third line from the bottom of the page ''February 4, 2018'' should read ''February 4, 2019.''

[FR Doc. C2–2018–26321 Filed 12–14–18; 8:45 am]

BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0790; FRL–9987–51-Region 1]

Air Plan Approval; Massachusetts; High Occupancy Vehicle Lanes

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 Commonwealth of Massachusetts. This revision provides for the Massachusetts Department of Transportation (MassDOT) to construct and operate specified transit facilities and high occupancy vehicle (HOV) lanes established therein. Implementation and continued monitoring of these projects will help reduce the use of automobiles and improve traffic operations on the region's roadways, resulting in improved air quality. This action will have a beneficial effect on air quality because it is intended to reduce vehicle miles traveled (VMT) and traffic congestion in the Boston Metropolitan Area. Massachusetts has adopted these revisions to reduce emissions of volatile organic compounds (VOC), particulate matter (PM), and nitrogen oxides (NO_X). This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before January 16, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2018–0790 at *https://www.regulations.gov,* or via email to *rackauskas.eric@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, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, 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: Eric Rackauskas, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1628, fax number (617) 918–0628, email *rackauskas.eric@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. Administrative Changes
III. Summary of Changes to the Amended High Occupancy Vehicle Lanes Regulation
IV. Proposed Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background and Purpose

On July 9, 1996, the Massachusetts Department of Environmental Protection (MassDEP) submitted a revision to the Massachusetts State Implementation Plan (SIP) consisting of amendments to 310 CMR 7.37: High Occupancy Vehicle Lanes. The submitted amended 310 CMR 7.37 contains added definitions, revised due dates for certain requirements, minor technical amendments, and clarifying language. This regulation is designed to help

reduce the use of automobiles in the Metropolitan Boston Area, and to improve traffic operations on the region's roadways. Reducing the number of vehicles on the road and easing traffic conditions on major highways will result in a reduction in VMT, which eases traffic congestion and will lead to improved air quality by lowering mobile source emissions.

EPA previously approved 310 CMR 7.37 into the Massachusetts SIP on October 4, 1994 (59 FR 50495). That SIP revision required Massachusetts to study the feasibility of constructing HOV lanes on certain roadways to reduce VMT and traffic congestion. The 1994 SIP revision also required the construction of HOV lanes for certain roadways, *i.e.* on Interstate-93 (I–93) southbound, north of Boston, and south of Boston on I–93 (both northbound and southbound) between Interstate-90 (I–90) and Route 3.

The SIP-approved 310 CMR 7.37 roadway trip time threshold standards were established to reflect a significant increase in traffic volume above baseline roadway conditions which, if exceeded, would trigger construction of additional HOV lanes. The threshold standards were calculated to represent an average weekday peak trip time increase of 35% from baseline roadway conditions. The SIP-approved regulation also established monitoring and reporting standards to ensure and enforce the successful implementation and desired outcome of HOV lanes, and to determine the feasibility and necessity of constructing additional HOV lanes. The updated regulation being proposed for SIP approval in this rulemaking addresses and incorporates into the regulation a number of comments and suggestions made by the public, including EPA, during the Commonwealth's public comment period on the regulation.

II. Administrative Changes

It is EPA's understanding that in June 2009, Governor Deval Patrick signed Chapter 25 of the Acts of 2009, ''An Act Modernizing the Transportation Systems of the Commonwealth of Massachusetts.'' This transportation reform legislation integrated transportation agencies and authorities into a new, streamlined MassDOT, which is a merger of the Executive Office of Transportation and Construction (EOTC), and its divisions, with the Massachusetts Turnpike Authority (MTA), the Massachusetts Highway Division (MHD), the Registry of Motor Vehicles (RMV), the Massachusetts Aeronautics Commission (MAC), and the Tobin Bridge. On December 8, 2015, EPA approved into the Massachusetts SIP a transportation-related regulation that reflected this reorganization. *See* 80 FR 76225. These changes did not interfere with attainment, reasonable further progress, or any other applicable Clean Air Act (CAA) requirement, satisfying CAA section 110(l) and, for the regulation in question, made the Massachusetts SIP consistent with the Commonwealth's administrative agency organizational structure.

This proposed rulemaking publication will use ''MassDOT'' in lieu of all references to the former agencies (MTA, MHD, and EOTC) referenced within the submitted 310 CMR 7.37. Though MassDOT did not exist at the time the regulation was written, it is EPA's understanding that MassDOT has replaced or absorbed all referenced transit agencies found within the regulation we are proposing to approve today.

III. Summary of Changes to the Amended High Occupancy Vehicle Lanes Regulation

The Commonwealth's July 9, 1996 submittal of 310 CMR 7.37 contains several minor changes compared to the SIP-approved version. These changes contain new and revised definitions of certain terms for the existing HOV regulation. The updated regulation also contains revised due dates for certain actions and reporting requirements, and new language clarifying certain sections of the regulation. The main updates are summarized as follows:

Definitions: Notably, the updated definitions establish the Baseline Roadway Conditions to be the average weekday peak hour trip time in minutes for each roadway segment based on monitoring of traffic and recording of trip times during the 12 months period from April 1, 1992 to April 1, 1993. This section also establishes the Roadway Threshold Standards to be the Baseline Roadway Conditions increased by 35%.

Attainment of Performance Standards: MassDOT is required to monitor the referenced roadways and HOV performance, as measured by trip times, during peak periods of travel, to ensure HOV performance standards are being met. Trip times are required to be measured at least monthly and during at least five sample days each month. MassDOT is required to use all appropriate and feasible measures to maintain compliance with the HOV lane performance standards. MassDOT is also required to submit performance standard reports for each HOV facility or HOV lane being monitored. The updated regulation also removed the language ''not increase congestion in general purpose traffic flow lanes,'' found in the original SIP-approved regulation. EPA and MassDEP believed this language could have been interpreted to mean that HOV lanes could be moving as slowly or slower than general traffic, without giving MassDOT the ability to take corrective action.

Substitute HOV Projects: This section has been updated to include stronger language than in the previous version of the regulation for deeming a substitute project appropriate. If studies demonstrate that an HOV lane is infeasible, MassDOT must substitute an alternative project by petitioning MassDEP. All such petitions shall include a demonstration that the substitute project achieves equal or greater emission reductions of VOC, CO, and NO_X from mobile sources than the installation of an HOV lane. The petition must also show that the substitute project provides for greater improvement in air quality for these pollutants in the area where the required HOV lane is targeted, both in the short and long term.

EPA's review of this regulation indicates that the implementation and operation of HOV lanes will result in improved air quality by both reducing vehicle trips and easing traffic congestion. A reduction in VMT results in a reduction in total vehicle emissions.

IV. Proposed Action

EPA is proposing to approve, and incorporate into the Massachusetts SIP, revised regulation 310 CMR 7.37, High Occupancy Vehicle Lanes. This regulation was submitted to EPA on July 9, 1996. This updated regulation includes technical amendments, changes in due dates for certain actions, and clarifying language in relation to the previous SIP-approved version of 310 CMR 7.37. EPA is proposing to approve 310 CMR 7.37 into the Massachusetts SIP because EPA has found that the requirements are consistent with the CAA, including CAA section 110(l) in that the regulation will not interfere with attainment, reasonable further progress, or any other applicable CAA requirement. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rulemaking by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference of 310 CMR 7.37, High Occupancy Vehicle Lanes. The EPA has made, and will continue to make, these documents generally available through *https://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).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: December 10, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

[FR Doc. 2018–27170 Filed 12–14–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0631; FRL–9988–00–Region 4]

Air Plan Approval; Tennessee; NO_X SIP Call and CAIR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve a portion of a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) with a letter dated February 27, 2017, to establish a SIP-approved state control program to comply with the obligations of the Nitrogen Oxides (NO_X) SIP Call with respect to certain sources. EPA is also proposing to fully approve the remaining portion of the same Tennessee SIP revision to remove the SIP-approved portions of the State's Clean Air Interstate Rule (CAIR) Program rules from the Tennessee SIP. In addition, EPA is proposing to fully approve a revision to the Tennessee SIP submitted with a letter dated April 3, 2018, to remove regulations related to a previous NO_X trading program.

DATES: Comments must be received on or before January 16, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0631 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Sanchez can be reached by telephone at (404) 562–9644 or via electronic mail at *sanchez.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), which EPA has traditionally termed the good neighbor provision, states are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that significantly contribute to

nonattainment of the national ambient air quality standards (NAAQS), or that interfere with maintenance of the NAAQS, in any other state.

In October 1998 (63 FR 57356), EPA finalized the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone''—commonly called the ''NO_X SIP Call.'' The NO_X SIP Call addressed the good neighbor provision for the 1979 1-hour ozone NAAQS and was designed to mitigate the impact of transported NO_X emissions, one of the precursors of ozone.[1] The rule originally required 22 states—including Tennessee—and the District of Columbia to amend their SIPs to reduce NO_X emissions that contribute to ozone nonattainment in downwind states. EPA developed the NO_X Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO_X SIP Call. The NO_X Budget Trading Program allowed certain types of sources to participate in a regional NO_X cap and trade program: Generally electric generating units (EGUs) greater than 25 megawatts; and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as ''large non-EGUs.''[2] On January 22, 2004, EPA approved into the Tennessee SIP the State's NO_X Budget Trading Program rule.[3] The NO_X Budget Trading Program was implemented from 2003 to 2008, and in 2009 it was effectively replaced by the ozone season NO_X program under CAIR.

On May 12, 2005 (70 FR 25162), EPA promulgated CAIR to address transported emissions that would significantly contribute to downwind states' nonattainment or interfere with maintenance of the 1997 ozone and fine particulate matter ($PM_{2.5}$) NAAQS. CAIR required SIP revisions in 28 states—including Tennessee—and the District of Columbia to reduce emissions of sulfur dioxide (SO_2) and/or NO_X, precursors of $PM_{2.5}$ (SO_2 and NO_X) and ozone (NO_X). Under CAIR, EPA developed separate cap-and-trade programs for annual NO_X, ozone season NO_X, and annual SO_2 emissions. On April 28, 2006 (71 FR 25328), EPA also promulgated federal implementation plans (FIPs) requiring the EGUs greater than 25 MW in each affected state, but not large non-EGUs, to participate in the CAIR trading programs. An affected state could comply with the requirements of CAIR either by remaining under the FIP, which applied only to EGUs, or by submitting a CAIR SIP revision that achieved the required emission reductions from EGUs and/or other types of sources. States had the further option to remain subject to the CAIR FIP generally, but also adopt ''abbreviated'' CAIR SIP provisions that made certain modifications to the trading programs by allocating allowances among covered units, allowing units to opt-in to the trading programs, or expanding applicability of the CAIR ozone season NO_X trading program to the non-EGUs that formerly participated in the NO_X Budget Trading Program under the NO_X SIP Call.

On August 20, 2007, EPA approved into the Tennessee SIP an abbreviated CAIR SIP revision with allowance allocation and opt-in provisions.[4] On November 25, 2009, EPA approved into the Tennessee SIP a further abbreviated CAIR SIP revision expanding applicability of the CAIR ozone season NO_X trading program to NO_X SIP Call non-EGUs.[5]

EPA discontinued administration of the NO_X Budget Trading Program in 2009 upon the start of the CAIR trading programs. The NO_X SIP Call requirements continued to apply, however, and EGUs that formerly participated in the NO_X Budget Trading Program in almost all states continued to meet their NO_X SIP Call requirements under the generally more stringent requirements of the CAIR ozone season trading program. States needed to assess their NO_X SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for the large non-EGUs continued to be met either through submission of a CAIR SIP or other NO_X regulation. EPA has implementing regulations for the NO_X SIP Call at 40 CFR 51.121.

On December 23, 2008, CAIR was remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *North Carolina* v. *EPA,* 531 F.3d 896 (2008), *modified on rehearing,* 550 F.3d 1176. This ruling allowed CAIR to remain in effect until a new interstate transport rule consistent with the Court's opinion was developed. While EPA worked on developing a new rule to address the interstate transport of air pollution, the CAIR program continued to be implemented with the NO_X annual and ozone season programs beginning in 2009 and the SO_2 annual program beginning in 2010.

EPA issued the Cross-State Air Pollution Rule (CSAPR) in July 2011 to replace CAIR[6] and address the requirements of the good neighbor provision for the 1997 Annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 1997 8-hour Ozone NAAQS. As amended (including by the 2016 CSAPR Update, which addressed good neighbor requirements for the 2008 8-hour Ozone NAAQS), CSAPR currently requires 27 Eastern states—including Tennessee—to limit their statewide emissions of SO_2 and/or NO_X in order to mitigate transported air pollution impacting other states' ability to attain or maintain the previously-listed NAAQS. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: A program for annual NO_X emissions, two geographically separate programs for annual SO_2 emissions, and two geographically separate programs for ozone-season NO_X emissions. Currently, through FIP provisions established in CSAPR and subsequent SIP revisions from various states, each affected state's units are required to participate in up to three of the five CSAPR trading programs.

The CSAPR trading programs for annual NO_X, annual SO_2, and ozone season NO_X are applicable to the large EGUs (*i.e.,* EGUs that are greater than 25 megawatts) in each covered state, and a state may also expand trading program applicability to include certain smaller EGUs. Under CSAPR as originally promulgated, states could not expand the applicability under CSAPR's ozone season NO_X trading program to include non-EGUs that formerly participated in the NO_X Budget Trading Program. Starting in 2017, with implementation of the CSAPR Update, states once again have this option, as they did under CAIR.

With respect to Tennessee, large EGUs in Tennessee are currently subject to three of the CSAPR trading programs, including one addressing ozone season NO_X emissions. Tennessee has not chosen to expand CSAPR applicability to small EGUs or non-EGUs.

[1] *See* 63 FR 57356 (October 27, 1998). As originally promulgated, the NO_X SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed the rule's provisions with respect to that standard. 40 CFR 51.121(q).

[2] The NO_X SIP Call also identified potential emissions reductions from other non-EGUs, including cement kilns and stationary internal combustion (IC) engines.

[3] *See* 69 FR 3015 (January 22, 2004).

[4] *See* 72 FR 46388 (August 20, 2007).

[5] *See* 74 FR 61535 (November 25, 2009).

[6] Implementation of CAIR was formally sunset upon the implementation of CSAPR, which—because of extended litigation—was delayed until 2015. *See* 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

II. Tennessee's SIP Submissions and EPA's Analysis

A. Tennessee's Submittal To Address NO_X SIP Call Requirements and EPA's Analysis

Via a letter to EPA dated February 27, 2017,[7] Tennessee provided a SIP revision to incorporate a new provision—Tennessee Comprehensive Rules and Regulation (TCRR) 1200–03–27–.12, ''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines'' (TN 2017 NO_X SIP Call Rule)—into the SIP. The TN 2017 NO_X SIP Call Rule establishes a state control program for sources that are subject to the NO_X SIP Call, but not covered under CSAPR. The TN 2017 NO_X SIP Call Rule contains several subsections that together comprise a non-EGU control program under which Tennessee will allocate a specified budget of allowances to affected sources.

Subsections 1200–03–27–.12(1) and 1200–03–27–.12(3) contain the basic definitions and applicability defining the program. 1200–03–27–.12(1) contains the definitions applicable to the section, including a definition of affected units under the TN 2017 NO_X SIP Call Rule as units with maximum design heat input greater than 250 MMBtu/hr that combust fossil fuel in specified amounts, except units that are covered under CSAPR or serve generators producing power for sale. 1200–03–27–.12(1) also contains a list of specific ''existing affected units,''[8] while it defines a ''new affected unit'' as any affected unit that is not an existing affected unit. 1200–03–27–.12(3) establishes the applicability of the rule to each affected unit and each affected facility.

Subsections 1200–03–27–.12(5) and 1200–03–27–.12(6) provide the state budget as well as the State's methodology for allocating allowances to affected units. 1200–03–27–.12(5) sets the state emissions budget for allowance allocations to affected units at 5,666 tons per control period. 1200–03–27–.12(6)(a) provides that Tennessee will allocate NO_X allowances in amounts specified in the SIP to existing units. The amounts allocated to existing units are contained in Tennessee Air Pollution Control Board Order 16–0163, as identified in Table 1, below.[9]

TABLE 1—TENNESSEE LIST OF EXISTING AFFECTED UNITS AND ALLOCATION AMOUNTS

Facility name	Units	Allocation amount
Packaging Corporation of America	Unit 17	85
Tate & Lyle, Loudon	Units 34 and 35	264
Resolute FP, US, Inc	Units 11 and 12	456
Eastman Chemical Company	Units 83–23 and 83–24; Units 253–25, Units 253–26, Units 253–27, Units 253–28, and Units 253–29; Units 325–30 and 325–31.	3,047
The Valero Refining Company—Tennessee, LLC	Unit P049	23
Tennessee Valley Authority, Cumberland Fossil Plant (startup boilers).	Startup Boilers A1 and A2	31
New Unit Set-Aside[10]		1,760
Total Allowances Allocated		5,666

1200–03–27–.12(6)(b)–(c) provide the methodology for allocation of allowances to new affected units, which are based on NO_X emission rates for new sources and converted to tons based on heat input.

1200–03–27–.12(7) and 1200–03–27–.12(11) contain provisions relating to NO_X emission requirements and monitoring and reporting. 1200–03–27–.12(7)(a) limits the total tons of NO_X emissions from a facility to the total number of allowances allocated to that facility. 1200–03–27–.12(11) requires units to comply with the emissions monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. 1200–03–27–.12(7)(b) specifies additional reporting and recordkeeping requirements related to each facility, which require the facility to report its emissions and to generally maintain records for at least five years.[11] 1200–03–27–.12(7)(c) provides the penalties if a unit's emissions exceed allocated allowances, and 1200–03–27–.12(7)(d) provides information related to liability under the Rule.

Other sections in the rule include the following topics: Abbreviations (1200–03–27–.12(2)); exemptions for permanently retired units (1200–03–27–.12(4)); computation of time under the rule (1200–03–27–.12(8)); and additional information about the TDEC Technical Secretary's actions under the rule (1200–03–27–.12(9) and 1200–03–27–.12(10)).

In order to address the requirements of the NO_X SIP Call for sources that are not covered under a CSAPR trading program for ozone season NO_X emissions, as described above, SIP revisions must provide for enforceable emissions limitations and require part 75 monitoring.[12] The TN 2017 NO_X SIP Call Rule provides for enforceable emissions limitations by establishing a state budget representing the maximum amount of NO_X emission allowances that may be issued for each control period, allocating the allowances to affected units, and requiring units to limit their emissions to the number of allowances they hold. The amount of the budget matches the portion of the State's total emissions budget assigned to non-EGUs under the NO_X Budget Trading Program.[13] As discussed above, the TN 2017 NO_X SIP Call Rule also requires affected units to comply with part 75 monitoring (1200–03–27–.12(11)).

[7] EPA notes that it received the submittal on February 28, 2017.

[8] *See* Table 1 for the list of existing affected units.

[9] Tennessee included Board Order 16–0163 in its February 2017 SIP revision as Attachment 3.

[10] The New Unit Set Aside is not an ''existing affected unit,'' however, it is included to show Tennessee's allocation of its entire budget. The New Unit Set Aside is defined as the state budget from 1200–03–27–.12(5), minus the amount of allocations to existing units in 1200–03–27–.12(6)(a). *See* 1200–03–27–.12(6)(c)(1).

[11] EPA notes that the February 27, 2018 SIP submission contains paragraph 1200–3–27–.12(7)(b)4. 1200–3–27–.12(7)(b)4 contained a requirement for sources to report to the Tennessee Division of Air Pollution Control, in addition to EPA. However, as reporting to EPA continues to be required for sources, Tennessee withdrew 1200–3–27–.12(7)(b)4 from the February 27, 2018 submission in the July 24, 2018 Letter. As a result, EPA is not acting on the withdrawn paragraph.

[12] *See* 40 CFR 51.121(f)(2)(ii) and 51.121(i)(4).

[13] *See* 71 FR 25072 (April 28, 2006).

While the TN 2017 NO_X SIP Call Rule generally addresses the NO_X SIP Call requirements for non-EGUs, EPA identified several potential ambiguities. Accordingly, Tennessee submitted two supplemental letters that impact EPA's proposed action.

First, EPA notes that 1200–03–27–.12(6)(d) provides the TDEC Technical Secretary with a mechanism for adjusting the existing units' allocation amounts specified in the State's regulations but does not explicitly state that Tennessee will provide these changes for approval into the SIP. On July 24, 2018, Tennessee submitted a letter clarifying that, consistent with 1200–03–27–.12(6)(a), it interprets the provision to require that any adjusted allowance allocation amounts for existing affected units under 1200–03–27.12(6)(d) be submitted to EPA for approval as a SIP revision to be incorporated into the SIP prior to allocation. *See* July 24, 2018 Letter. EPA's proposed action on Tennessee's SIP is therefore based on the clarification of the State's interpretation of this provision as explained in the State's July 24, 2018 letter.

Second, Tennessee's February 27, 2017 submission provides for a state control program that is generally applicable to units with a maximum design heat input greater than 250 MMBtu/hr, that either combust more than 50 percent fossil fuel or are projected to combust more than 50 percent fossil fuel, and that are not subject to CSAPR. While these applicability criteria would cover all existing Tennessee units that have been identified as having obligations under the NO_X SIP Call and that are not subject to CSAPR, as well as most types of potential new units that should be covered, the February 27, 2017 SIP submission also exempts any unit that serves a generator that produces power for sale. Because certain potential new units serving generators that produce power for sale could qualify for a cogeneration exemption under CSAPR but still have obligations under the NO_X SIP Call, the February 27, 2017 submission does not cover all types of potential new units that must be covered to fully address NO_X SIP Call obligations. On May 11, 2018, Tennessee submitted a commitment letter requesting conditional approval of the 2017 NO_X SIP Call Rule; and committing to provide a SIP revision to EPA by April 30, 2019, that addresses this deficiency by revising the definition of ''affected unit'' to remove the unqualified exclusion for any unit that serves a generator that produces power for sale. *See* May 11, 2018 Letter. In a letter dated October 11, 2018, Tennessee revised the commitment date from April 30, 2019, to December 31, 2019. *See* October 11, 2018 Letter.

Based on the State's commitment to submit a SIP revision addressing the identified deficiency, EPA is proposing to conditionally approve the February 27, 2017 submission, as clarified by the State's July 24, 2018 Letter. If Tennessee meets its commitment to submit a SIP revision addressing the deficiency by December 31, 2019, the TN 2017 NO_X SIP Call Rule will remain a part of the SIP until EPA takes final action approving or disapproving the new SIP revision. However, if the State fails to submit this revision on or before December 31, 2019, the conditional approval will become a disapproval and EPA will issue a notice to that effect. If the conditional approval becomes a disapproval, the disapproval triggers the FIP requirement under CAA section 110(c).

Last, Tennessee has voluntarily committed to revising potentially ambiguous provisions of its regulations at 1200–03–27–.12(6)(c)2.(ii), to clarify that the State will allocate allowances for all 3,672 hours of the ozone season, and at 1200–03–27.12(11)(a), to clarify that the State intends for the Responsible Official to be a designated representative as the term is defined in 40 CFR 72 subpart B.[14] Because EPA interprets these provisions, as currently written, in a manner consistent with the State's interpretations and intended clarifications, EPA's proposed approval is not conditioned upon these particular commitments.

B. Tennessee's SIP Submission as It Relates to CAIR and EPA's Analysis

Tennessee's February 27, 2017 submission also seeks to remove the SIP-approved portions of the state trading program rules adopted to comply with annual CAIR programs from Tennessee's SIP at 1200–03–14–.04—''CAIR SO_2 Annual Trading Program'' and 1200–03–27–.10—''CAIR NO_X Annual Trading Program'' because the CAIR annual programs have been replaced by the CSAPR annual programs.[15] In addition, Tennessee's February 27, 2017, submission seeks to remove the SIP-approved portions of the State's trading program rules adopted to comply with ozone season CAIR programs from Tennessee's SIP at 1200–03–27–.11—''CAIR NO_X Ozone Season Trading Program,'' because the CAIR program has been replaced by CSAPR for EGUs, and, if approved, Tennessee's state control program would address the outstanding NO_X SIP Call requirements for non-EGUs.[16]

In this notice, EPA proposes to approve the removal of these CAIR-related provisions from Tennessee's SIP. As explained above, the D.C. Circuit remanded CAIR to EPA in 2008; however, the court left CAIR in place while EPA worked to develop a new interstate transport rule. CSAPR was promulgated to respond to the Court's concerns and to replace CAIR. The implementation of CSAPR was delayed for several years beyond its originally expected implementation timeframe of 2012, and therefore, the sunsetting of CAIR was also deferred. CAIR was implemented through the 2014 compliance periods and was replaced by CSAPR on January 1, 2015. EPA promulgated regulations to sunset the CAIR trading programs and is no longer administering them.[17] EPA therefore proposes to approve the removal of Tennessee's SIP provisions related to CAIR.

C. Tennessee's Submission To Remove Prior NO_X SIP Call Provisions and EPA's Analysis

In a letter dated April 3, 2018,[18] Tennessee provided a SIP revision to remove Tennessee Rule 1200–03–27–.06—''NO_X Budget Trading Program for State Implementation Plans'' (TN 2003 NO_X Rule). The TN 2003 NO_X Rule was approved into the Tennessee SIP to address the requirements of the NO_X SIP Call.[19] This rule was sunset when Tennessee's rule Section 1200–3–27.11—''CAIR NO_X Ozone Season Trading Program'' was approved into its SIP in 2009[20] through a provision in the adopted CAIR rules at 1200–03–27–

[14] In its May 11, 2018 letter, Tennessee also committed to add the simple cycle combustion turbines at Tennessee Valley Authority's Allen Fossil Plant to the definition of ''existing affected unit'' in 1200–03–27–.12(1). However, in its July 24, 2018 letter, Tennessee amended its May 11, 2018 letter and withdrew this commitment. Because these particular units are below the 25 MW NO_X SIP Call applicability threshold for EGUs, inclusion of the units is not required under the NO_X SIP Call.

[15] *See* 40 CFR 52.38(a) and 52.39. The SIP-approved portions of the State's CAIR annual trading program rules include the allowance allocation and opt-in provisions. *See* 72 FR 46388 (August 20, 2007).

[16] *See* 40 CFR 52.38(b). The SIP-approved portions of the State's CAIR ozone season trading program rule include the allowance allocation and opt-in provisions and the provisions extending applicability to non-EGUs. *See* 72 FR 46388 (August 20, 2007), 74 FR 61535 (November 25, 2009).

[17] 40 CFR 51.123(ff) and 52.35(f) (SIP and FIP requirements related to NO_X); 40 CFR 51.124(s) and 52.36(e) (SIP and FIP requirements related to SO_2).

[18] EPA notes that the submittal was received on April 6, 2018.

[19] *See* 69 FR 3016 (January 22, 2004) (with a state-effective date of July 27, 2003).

[20] *See* 74 FR 61535 (November 25, 2009).

.11(1)(b),[21] and although the earlier rule has not been implemented since that time, it has not been removed from the approved SIP. Tennessee provided the April 6, 2018 submission to remove the TN 2003 NO_X Rule in order to avoid any uncertainty that could otherwise arise when the state CAIR rule provision sunsetting implementation of the TN 2003 NO_X Rule is removed from the SIP.

EPA is proposing to approve the revision to remove the TN 2003 NO_X Rule from the Tennessee SIP because it is consistent with the CAA and will provide clarity to affected sources and the public. Thus, EPA proposes to conclude that removal of the TN 2003 NO_X Rule from the Tennessee SIP is appropriate.

D. Analysis of NO_X Emissions

Approval of the February 27, 2017 and April 3, 2018, Tennessee SIP submittals would not result in increased NO_X emissions,[22] and therefore would have no impact on any requirements related to attainment, reasonable further progress, or any other NAAQS requirements under the CAA. The submittals therefore meet section 110(l) of the CAA.

III. 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 TCRR 1200–03–27–.12—''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines,'' state effective February 19, 2017, which establishes a state control program to comply with the obligations of the NO_X SIP Call (with the exception of paragraph 1200–3–27–.12(7)(b)4.). EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

As described above, EPA is proposing to conditionally approve the portion of the February 27, 2017, SIP revision to add TCRR 1200–03–27–.12—''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines'' (except paragraph 1200–03–27–.12(7)(b)4.) to the Tennessee SIP, which establishes a state control program to comply with the obligations of the NO_X SIP Call, as clarified in the July 24, 2018 Letter. If finalized, approval of this portion of the February 27, 2017, SIP revision will be conditioned on Tennessee submitting by December 31, 2019, a complete SIP revision amending the rule's applicability provisions to cover certain potential new units as discussed in section II.A. of this proposed action, consistent with the State's commitment. In addition, EPA is proposing to approve the portion of the February 27, 2017 SIP submission to remove the SIP-approved portions of the State's CAIR trading program rules from the Tennessee SIP at TCRR 1200–03–14–.04—''CAIR SO_2 Annual Trading Program,'' 1200–03–27–.10—''CAIR NO_X Annual Trading Program,'' and 1200–03–27–.11—''CAIR NO_X Ozone Season Trading Program.'' Further, EPA is proposing to approve the April 3, 2018, SIP revision to remove a previous NO_X SIP Call trading program at TCRR 1200–03–27–.06—''NO_X Budget Trading Program for State Implementation Plans.'' EPA requests comment on the proposed actions.

V. Statutory and Executive Order Reviews

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

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 6, 2018.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2018–27254 Filed 12–14–18; 8:45 am]

BILLING CODE 6560–50–P

[21] 1200–03–27–.11(1)(b) states: ''The provisions of 1200–03–27–.06 shall not apply to the control period beginning in 2009 and any control period thereafter.''

[22] *See* 1200–03–27–.12(5) (maintaining the NO_X SIP Call budget for non-EGUs of 5,666 tons NO_X per ozone season); *see also* the February 28, 2017, SIP submittal at Attachment 4 (containing a technical support document that showing that actual emissions are not exceeding the non-EGU NO_X SIP Call budget for Tennessee).

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 18–11]

RIN 3072–AC73

Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (FMC or Commission) proposes to amend its rules governing licensing, financial responsibility requirements, and general duties for ocean transportation intermediaries (OTIs). The proposed changes are mainly administrative and procedural.

DATES: Submit comments on or before January 18, 2019.

ADDRESSES: You may submit comments, identified by the Docket Number in the heading of this document by the following methods:

- *Email: secretary@fmc.gov.* For comments, include in the subject line: ''Docket No. 18–11, Comments on Proposed OTI Regulations.'' Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.
- *Mail:* Rachel E. Dickon, Secretary, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001.

Instructions: For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to the Commission's website, unless the commenter has requested confidential treatment.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at*: http://www.fmc.gov/18-11,* or to the Docket Activity Library at 800 North Capitol Street NW, Washington, DC 20573, between 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary. *Phone:* (202) 523–5725. *Email: secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

There are two types of OTIs that serve as transportation middlemen for cargo moving in the U.S.-foreign oceanborne trades: Non-vessel-operating common carriers (NVOCCs) and ocean freight forwarders (OFFs). An NVOCC is a common carrier that holds itself out to the public to provide ocean transportation and issues its own house bill of lading or equivalent document, but does not operate the vessel by which ocean transportation is provided. An OFF domiciled in the U.S. arranges for the transportation of cargo with a common carrier on behalf of shippers and processes documents related to U.S. export shipments. The Shipping Act of 1984 and 46 CFR part 515 require that all NVOCCs and OFFs located in the U.S. must be licensed by the Commission and must establish financial responsibility.

NVOCCs doing business in the U.S.-foreign trades but located outside the U.S. (foreign NVOCCs) may choose to become FMC-licensed, but are not required to do so. Foreign-based NVOCCs must nonetheless register with the Commission and establish financial responsibility if not licensed under the FMC's program.

On November 3, 2015, the Federal Maritime Commission published a final rule making significant amendments to its regulations governing OTIs. These changes included adding requirements to renew OTI licenses every three years; providing for simple on-line renewals; eliminating the $10,000 financial responsibility coverage requirement for each unincorporated branch office; and establishing an expedited hearing process for license denials, revocations, and suspensions, while continuing to provide applicants and licensees due process and the ability to appeal adverse decisions to the Commission. Most of the changes were implemented in December 2015, and OTI license renewals were initiated in 2017.

II. Proposed Changes to Part 515

Based on its experience implementing the revised regulations, the Commission has identified a number of regulatory provisions where clarification is warranted. Accordingly, the Commission is proposing changes to its current rules that are administrative or procedural in nature or will further reduce the regulatory burden on regulated entities and include: (1) Updating the title and scope of Part 515 to include foreign-based NVOCC registrations; (2) clarifying the requirements for U.S. agents of foreign-based registered NVOCCs; (3) removing the optional paper application process and related reference to fee amounts; (4) adding language to clarify who can be the Qualifying Individual (QI) in partnerships between entities other than individuals; (5) updating and improving processes (renewal, bond, and termination); (6) adding clarifying language regarding the Commission's direct review of applications in certain cases; (7) clarifying the information that sureties are to provide regarding claims against OTIs; (8) adding a requirement that NVOCCs submit their Form FMC–1 prior to being issued a license; and (9) deleting reference to availability of the Regulated Person's Index. None of the proposed changes increase the burden to applicants, licensees, or registered foreign-based NVOCCs.

A. Part 515 Title and Scope

The proposed rule would add ''Registration'' to the part heading to reflect that foreign-based NVOCCs have the option of registering or becoming licensed. The proposed rule would similarly include registration in the description of the scope of part 515 in § 515.1.

B. U.S. Agents for Registered NVOCCs

Section 515.3 currently requires a registered foreign-based NVOCC to use licensed OTIs as agents to provide NVOCC services in the United States. Stakeholders have asked for clarification as to whether such agents can be either OFFs or NVOCCs. The proposed language clarifies that the licensed OTI agents can be either OFFs or NVOCCs.

C. Forms and Application Fees

The proposed rule would remove references in §§ 515.5 and 515.14 to renewal forms for licensed OTIs. These references are not needed because the data collection during the renewal process is the same as the data collection of the initial Form FMC–18.

Proposed changes to § 515.5(b) and § 515.12(a) would eliminate the paper application option for OTI licenses, based on the Commission's experience since introducing the electronic filing option. The Commission has not received any requests for a waiver to file a paper application since the waiver requirement was implemented in November 2015.

Finally, the Commission is proposing to replace an outdated reference to ''Form FMC–18 Rev.'' in §§ 515.5, 515.12 with ''Form FMC–18.''

D. Qualifying Individuals in Partnerships Between Entities

The qualifying individual (QI) requirements in § 515.11(b) regarding

partnerships assume that the managing partners are individuals and thus eligible to be the QI for the partnership. In order to address the situation in which the managing partners are entities rather than individuals, clarifying language has been added indicating that an officer of a general partner entity may be the QI.

E. Submission of Form FMC–1 as Prerequisite for License

The proposed changes to § 515.14(a) would require NVOCCs applying for a license to provide the Commission with a Form FMC–1 prior to the Commission issuing a license, which conforms to the current procedures for foreign-based NVOCCs that register with the Commission.[1] Currently, a license is issued after approval by the Commission and receipt of proof of financial responsibility. Although NVOCCs are required under § 520.3 to submit a Form FMC–1 prior to the commencement of common carrier service pursuant to a published tariff, submission of the form is not currently a prerequisite for receiving a license. Like the current requirement for submitting proof of financial responsibility, the proposed change would require NVOCCs to submit a Form FMC–1 within 120 days of the conditional approval of their license application. Failure to submit the form within that time period would require the NVOCC to submit a new application to restart the license process. This change would ensure that NVOCCs comply with all requirements for commencing service in the U.S. trades in a timely manner. This change would add no additional burden to NVOCCs seeking licenses as they are already required to provide the Commission with a Form FMC–1; the proposed change merely affects the timing of the submission of the form.

Because the proposed Form FMC–1 requirements mirror the existing requirements for submitting proof of financial responsibility, the latter requirement would be removed from § 515.25 and combined with the Form FMC–1 requirements being added to § 515.14(a).

F. License Renewal Process

The proposed rule would make a number of changes to § 515.14 to improve and clarify the license renewal process. In addition to some minor clarifying the language changes, the proposed rule would change the initial period between licensing and renewal from three years to a period of not less than one year to not greater than four years. This change would spread out license renewals across the entire year and thereby facilitate the efficient and prompt processing of such renewals.

The proposed rule would also change the deadline for completing the renewal process. Currently, § 515.14 requires licensed OTIs to complete the renewal process no later than 60 days prior to the renewal date. The proposed rule would change the deadline to the renewal date itself. This change would reduce the burden on licensed OTIs by allowing them additional time to complete the renewal process.

G. Application After Revocation or Denial

The proposed rule would expand the types of applications subject to direct Commission review to include applicants employing any of the same officers, managers, or members as an OTI whose license was revoked or denied within the previous three years because the Commission determined that the OTI was not qualified to provide OTI services. The applications currently subject to direct Commission review are limited to those submitted by the OTI whose license was previously denied or revoked, or those from another OTI that employs the same QI or is controlled by persons whose conduct formed the basis for the previous revocation or denial. The Commission believes that an OTI employing an officer, manager, or member of another OTI that previously had its license denied or revoked raises the same concerns as an OTI employing the same QI and has tentatively concluded that direct review of applications by such OTIs is warranted.

The proposed rule would also add clarifying language to more clearly reflect that denial of an application under § 515.18 is final and not subject to the hearing procedures in § 515.17.

H. Reporting Changes in Trade Names

The proposed rule would clarify in § 515.20 that a change in a licensee's name includes adding or deleting a trade name relating to its OTI services. OTIs must seek prior approval from the Commission before making such changes.

I. Proof of Financial Responsibility

The proposed rule would clarify in § 515.22 that OTIs may submit proof of financial responsibility via email, and, in § 515.26, that the Commission may transmit notices of termination of financial instruments via email. Allowing transmission of this information by email reduces delays and the burdens on both OTIs and the Commission.

The proposed rule would also clarify that in addition to the principal's name, trade name, and address, the financial responsibility instrument must clearly identify the principal's state of incorporation or formation, and the printed name and title of the signatory.

J. Claims Against an OTI

The proposed rule would require that financial responsibility providers include a registered foreign-based NVOCC's organization number when notifying the Commission of claims against that NVOCC under § 515.23(c). The current rule requires that financial responsibility providers include an OTI's license number, but registered foreign-based NVOCC's do not have license numbers. This change would ensure that the organization number for registered NVOCCs would be included in claim notifications to the Commission. Notwithstanding the ambiguity in the rule, financial responsibility providers currently provide this information with OTI claim information; thus, this proposed change would not result in any additional burdens for financial responsibility providers.

K. Regulated Persons Index

The proposed rule would delete § 515.34, which references the availability of the Regulated Persons Index (RPI) on the Commission website. The Commission has tentatively determined that because the RPI is available on the website, and the Commission advertises that fact, this section is no longer helpful or necessary.

III. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under **ADDRESSES**. Please include the docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

[1] The proposed rule would also make minor clarifying changes to the corresponding requirement in § 515.19 for foreign-based NVOCCs registering with the Commission.

You may also submit comments by mail to the address listed above under **ADDRESSES**.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by mail to the address listed above under **ADDRESSES**:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date. If the Commission receives a comment too late to consider in developing a final rule (assuming that one is issued), the Commission will consider that comment as an informal suggestion for future rulemaking action.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission's Electronic Reading Room or the Docket Activity Library at the addresses listed above under **ADDRESSES**.

Please note that even after the comment closing date, we may continue to file relevant information in the docket as it becomes available. Further, some commenters may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

IV. Rulemaking Analyses and Notices

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605. Based on the analysis below, the Chairman of the Federal Maritime Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The Commission recognizes that the majority of businesses affected by these rules (OTIs) qualify as small entities under the guidelines of the Small Business Administration. The proposed rule would not, however, result in a significant economic impact on these businesses. No material changes are being proposed; the proposed rule would make minor changes to the licensing, registration, and financial responsibility processes. Most of the proposed changes will have little to no economic impact on OTIs, while some of the proposed changes, *e.g.,* changes to the deadline for renewing licenses, expressly allowing email transmission of documents between OTIs and the Commission, are expected to reduce burdens on OTIs.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11.

The information collection requirements for Part 515 are currently authorized under OMB Control Numbers 3072–0018: *46 CFR 515—Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries and Related Forms.* Although the proposed rule would result in very minor changes to this collection of information, none of these changes is substantive or material. The proposed rule would result minor adjustments to information provided to the Commission and the timing of such submissions, as well as expressly allowing the submission of certain information by email. None of these changes are expected to affect the burden hours associated with the information collection.

As these changes are neither substantive nor material, the Commission is not required to submit them to OMB for approval. *See* 44 U.S.C. 3507(h)(3); 5 CFR 1320.5(g) (requiring OMB approval of substantive or material modifications to information collections).

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This proposed rule relates to OTI licensing and financial responsibility requirements and therefore falls within the categorical exclusions for matters related to the issuance, modification, denial and revocation of ocean transportation intermediary licenses, and matters related to the receipt of surety bonds from OTIs. § 504.4(a)(1), (3). Therefore, no environmental assessment or environmental impact statement is required.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects in 46 CFR Part 515

Freight, Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission proposes to amend 46 CFR part 515 as follows:

PART 515—LICENSING, REGISTRATION, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41301–41302, 41305–41307; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

■ 2. Revise the part heading to read as set forth above.

■ 3. Amend § 515.1 by revising the first sentence of paragraph (a) to read as follows:

§ 515.1 Scope.

(a) This part sets forth regulations providing for the licensing and registration as ocean transportation intermediaries of persons who wish to carry on the business of providing intermediary services, including the grounds and procedures for revocation and suspension of licenses and registrations. * * *

* * * * *

■ 4. Revise § 515.3 to read as follows:

§ 515.3 License; when required.

Except as otherwise provided in this part, no person in the United States may act as an ocean transportation intermediary unless that person holds a valid license issued by the Commission. For purposes of this part, a person is considered to be ''in the United States'' if such person is resident in, or incorporated or established under, the laws of the United States. Registered NVOCCs must utilize only licensed ocean transportation intermediaries (Ocean Freight Forwarders or NVOCCs) to provide NVOCC services in the United States. In the United States, only licensed OTIs (Ocean Freight Forwarders or NVOCCs) may act as agents to provide OTI services for registered NVOCCs.

■ 5. Amend § 515.5 by revising paragraphs (a), (b), and (c)(2) to read as follows:

§ 515.5 Forms and fees.

(a) *Forms.* License Application Form FMC–18 is found at the Commission's website *www.fmc.gov* for completion on-line by applicants and licensees. Foreign-based Unlicensed NVOCC Registration/Renewal Form FMC–65 and financial responsibility Forms FMC–48, FMC–67, FMC–68, FMC–69 may be obtained from the Commission's website at *www.fmc.gov,* from the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, or from any of the Commission's Area Representatives.

(b) *Filing of license application forms.* All application forms are to be filed electronically.

(c) * * *

(2) Fees under this part 515 shall be as follows:

(i) Application for new OTI license as required by § 515.12(a): Filing $250.

(ii) Application for change to OTI license or license transfer as required by § 515.20(a) and (b): Filing $125.

■ 6. Amend § 515.11 by revising paragraph (b)(2) to read as follows:

§ 515.11 Basic requirements for licensing; eligibility.

* * * * *

(b) * * *

(2) *Partnership.* At least one of the active managing partners, unless the partners are entities, such as corporations, in which case an officer, member, or manager of one of the entities as long as the entity is a general partner.

* * * * *

■ 7. Amend § 515.12 by revising the first sentence of paragraph (a)(1) to read as follows:

§ 515.12 Application for license.

(a) * * * (1) Any person who wishes to obtain a license to operate as an ocean transportation intermediary shall submit electronically a completed application Form FMC–18 (Application for a License as an Ocean Transportation Intermediary) in accordance with the automated FMC–18 filing system and corresponding instructions. * * *

* * * * *

■ 8. Amend § 515.14 by revising paragraphs (a), (c), (d)(1), and the first sentence of paragraph (d)(2) to read as follows:

§ 515.14 Issuance, renewal, and use of license.

(a) *Qualification necessary for issuance.* (1) The Commission will issue a license if it determines, as a result of its investigation, that the applicant possesses the necessary experience and character to render ocean transportation intermediary services; has filed the required bond, insurance or other surety; and has electronically submitted Form FMC–1 pursuant to § 520.3 if approved to offer NVOCC service.

(2) If, within 120 days of notification of conditional approval for licensing by the Commission, proof of financial responsibility and, in the case of an NVOCC, the Form FMC–1 is not received, the conditional approval of the application will be invalid. Applicants whose applications/approvals have become invalid may submit a new Form FMC–18, together with the required filing fee, at any time.

* * * * *

(c) *Duration of license.* Licenses shall be issued for an initial period of not less than one year and not greater than four years as determined by the license number and published on the Commission website. Thereafter, licenses will be renewed for sequential three-year periods upon successful completion of the renewal process in paragraph (d) of this section.

(d) * * * (1) The licensee shall submit the renewal electronically to the Director of the Bureau of Certification and Licensing (BCL) no later than the renewal date as published on the Commission website. The renewal date (month/day) will remain the same for subsequent renewals irrespective of the date on which the license renewal is submitted or when the renewal is accepted by the Commission, unless another renewal date is assigned by the Commission.

(2) Where information identified in an OTI's license renewal process is changed from that set out in its current Form FMC–18 and requires Commission approval pursuant to § 515.20, the licensee must promptly submit a request for such approval on Form FMC–18 together with the required filing fee.

* * *

* * * * *

■ 9. Revise § 515.18 to read as follows:

§ 515.18 Application after revocation or denial.

Whenever a license has been revoked or an application has been denied because the Commission has found the licensee or applicant to be not qualified to render ocean transportation intermediary services, any further application within 3 years of the Commission's notice of revocation or denial, made by such former licensee or applicant or by another applicant employing the same qualifying individual, officer(s), member(s), manager(s) or controlled by persons on whose conduct the Commission based its determination for revocation or denial, shall be reviewed directly by the Commission. If the Commission denies

the application, such denial is final and not subject to the hearing procedures described in §§ 515.15 and 515.17.

■ 10. Amend § 515.19 by revising paragraphs (c), (e), and (g)(1)(viii) to read as follows:

§ 515.19 Registration of foreign-based unlicensed NVOCC.

* * * * *

(c) Registrations are complete upon receipt of a registration form which meets the requirements of this section, evidence of financial responsibility pursuant to § 515.21, and Form FMC–1 pursuant to § 520.3.

* * * * *

(e) A tariff shall not be published and NVOCC service shall not commence until the Commission receives valid proof of financial responsibility from the registrant and a Form FMC–1 has been submitted.

* * * * *

(g) * * *

(1) * * *

(viii) Failure to designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process, including subpoenas, as required by § 515.24.

* * * * *

■ 11. Amend § 515.20 by revising paragraph (a)(4) to read as follows:

§ 515.20 Changes in organization.

(a) * * *

(4) Any change in a licensee's name, including adding or deleting a trade name relating to its OTI services; or

* * * * *

■ 12. Amend § 515.22 by revising paragraph (e) to read as follows:

§ 515.22 Proof of financial responsibility.

* * * * *

(e) All forms and documents for establishing financial responsibility of ocean transportation intermediaries prescribed in this section shall be submitted to the Director, Bureau of Certification and Licensing, via email to *bcl@fmc.gov.* Such forms and documents must clearly identify the principal's name; trade name, if any; address; the state of incorporation/formation; and the printed name and title of the signatory.

■ 13. Amend § 515.23 by revising paragraph (c)(3) to read as follows:

§ 515.23 Claims against an ocean transportation intermediary.

* * * * *

(c) * * *

(3) Notices required by this section shall include the name of the claimant, name of the court and case number assigned, and the name and license or organization number of the OTI involved. Such notices may include or attach other information relevant to the claim.

* * * * *

■ 14. Amend § 515.25 by revising paragraph (a)(1) to read as follows:

§ 515.25 Filing of proof of financial responsibility.

(a) * * * (1) *Licenses.* Upon notification by the Commission that an applicant has been conditionally approved for licensing, the applicant shall file with the Director of the Commission's Bureau of Certification and Licensing, proof of financial responsibility in the form and amount prescribed in § 515.21. No license will be issued until the Commission is in receipt of valid proof of financial responsibility.

* * * * *

■ 15. Revise § 515.26 to read as follows:

§ 515.26 Termination of financial responsibility.

No license or registration shall remain in effect unless valid proof of a financial responsibility instrument is maintained on file with the Commission. Upon receipt of notice of termination of such financial responsibility, the Commission shall notify the concerned licensee, registrant, or registrant's legal agent in the United States, by email, mail, courier, or other method reasonably calculated to provide actual notice, at its last known email address or address, that the Commission shall, without hearing or other proceeding, revoke the license or terminate the registration as of the termination date of the financial responsibility instrument, unless the licensee or registrant shall have submitted valid replacement proof of financial responsibility before such termination date. Replacement financial responsibility must bear an effective date no later than the termination date of the expiring financial responsibility instrument.

§ 515.34 [REMOVED]

■ 16. Remove § 515.34.

By the Commission.

Rachel E. Dickon,

Secretary.

[FR Doc. 2018–27062 Filed 12–14–18; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 18–295, GN Docket No. 17–183; FCC 18–147]

Unlicensed Use of the 6 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to expand unlicensed use of the 5.925–7.125 GHz band (6 GHz band) while protecting the incumbent licensed services that operate in this spectrum. In the 5.925–6.425 GHz and 6.525–6.875 GHz sub-bands the proposed rules will allow unlicensed access points to operate only on frequencies determined by an automated frequency control (AFC) system. In the remainder of the 6 GHz band, the 6.425–6.525 GHz and 6.875–7.125 GHz sub-bands, no AFC system will be required, and the unlicensed access points will be permitted to operate at lower transmitted power. The proposed rules will also permit unlicensed client devices to operate under the control of an access point throughout the 6 GHz band.

DATES: Comments are due on or before February 15, 2019; reply comments are due on or before March 18, 2019. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 16, 2019.

ADDRESSES: You may submit comments, identified by ET Docket No. 18–295 and GN Docket No. 17–183, by any of the following methods;

- *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs.* Follow the instructions for submitting comments.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone; 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the

Federal Communications Commission via email to *PRA@fcc.gov* and to Nicole Ongele, Federal Communications Commission, via email to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Nicholas Oros, Office of Engineering and Technology, 202–418–0636, *Nicholos.Oros@fcc.gov;* or Michael Ha, Office of Engineering and Technology, 202–418–2099, *Michael.Ha@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, ET Docket No. 18–295, GN Docket No. 17–183, FCC 18–17, adopted October 23, 2018, and released October 24, 2018. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW, Washington, DC 20554. The full text may also be downloaded at: *https://www.fcc.gov/edocs/search-results?t=advanced&fccNo=18-147.* People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

1. *Discussion.* The rules the Commission proposes for unlicensed use of the 5.925–7.125 GHz band (6 GHz band) are designed to protect important incumbent licensed services that operate in various sub-bands of this spectrum. To do this, the Commission proposes dividing the 6 GHz band into four sub-bands, each based on the prevalence and characteristics of the incumbent services that operate in that spectrum. The 5.925–6.425 GHz and 6.525–6.875 GHz sub-bands are heavily used by point-to-point microwave links, including critical links that must maintain a high level of availability. In these parts of the 6 GHz band, the Commission proposes to permit only ''standard-power access points''—using power levels permitted for unlicensed use in the U–NII–1 (5.15–5.25 GHz) and U–NII–3 (5.725–5.85 GHz) bands—to operate only on frequencies determined by an automated frequency control (AFC) system. Other portions of the 6 GHz band, specifically the 6.425–6.525 GHz and 6.875–7.125 GHz sub-bands (totaling 350 megahertz), are used by mobile stations where the locations of the incumbent receivers are not necessarily known or cannot be easily determined from existing databases. Because the lack of location information on mobile stations makes an AFC approach impractical, the Commission proposes to allow only indoor ''low-power access point'' operation in these sub-bands—using lower, more restricted power levels applicable to operations in the U–NII–2 (5.25–5.35 GHz and 5.47–5.725 GHz) band. The Commission also proposes to permit client devices to operate across the entire 6 GHz band while under the control of either a standard-power access point or a low-power access point. The Commission tentatively concludes that this two-class approach can expand unlicensed use without causing harmful interference to the incumbent services that will continue to be authorized to use this spectrum.

2. *Unlicensed Operation in the U–NII–5 and U–NII–7 Bands.* The Commission proposes to make the 5.925–6.425 GHz and 6.525–6.875 GHz bands, referenced herein as the U–NII–5 and U–NII–7 bands respectively, available for unlicensed operations under rules consistent with the existing rules for unlicensed device operations in the nearby U–NII–1 and U–NII–3 bands (5.150–5.250 GHz and 5.725–5.850 GHz bands, respectively). Under this proposal, the power levels permitted for the standard-power access points would be the same as the power levels already permitted for unlicensed device operations in the nearby U–NII–1 and U–NII–3 bands. The U–NII–5 and U–NII–7 bands are heavily used for point-to-point fixed links, which support a variety of critical services. The U–NII–5 and U–NII–7 frequencies are also allocated to the fixed-satellite service.

3. The proposed framework for U–NII–5 and U–NII–7 prohibits unlicensed devices from operating co-channel with any fixed link within that link's defined exclusion zone. Thus, for example, if a fixed service receiver is receiving a specific channel, then unlicensed devices operating in the defined exclusion zone of this receiver must use a different channel. The Commission seeks comment on this proposal. Similar to the licensing of new fixed links, which require frequency coordination to protect existing links, the Commission proposes to implement a frequency coordination process for unlicensed devices in these bands to ensure that these new unlicensed devices do not cause harmful interference to fixed service incumbents. Prior to operating in these bands, a standard-power access point would determine or receive a list of permissible operating frequencies and restrict operation to those frequencies. Similarly, client devices would have to obtain a list of permissible operating frequencies from a standard-power access point and restrict operation to those frequencies. The Commission seeks comment on this proposal. Are there any alternative methods to ensure protection of incumbent services? What are the costs and benefits of any proposed alternative?

4. Additionally, the Commission tentatively concludes that a similar coordination process is not needed to protect incumbent FSS operations because incumbent operations are limited to Earth-to-space transmissions in the 6 GHz band. As such, any interference from unlicensed devices would be experienced at the space station receivers and the particular location of the standard-power access point would in most case have a negligible effect. Since there will be no interference to FSS earth stations, they would not be considered by the AFC system. The Commission seeks comment on this proposal and on whether there would be any benefits in including satellite earth station information in the AFC system at this time.

5. *Determining Permissible Frequencies of Operation.* To determine whether an individual unlicensed device can transmit at a particular location on a given frequency, the Commission proposes that standard-power access points be required to obtain a list of permissible frequencies from an AFC system prior to transmitting or a list of prohibited frequencies in which it cannot transmit. The Commission envisions the AFC system to be a simple database that is easy to implement. The Commission seeks comment on this proposal. What capabilities should be incorporated into the AFC system? Should it be a centralized model where all data and computations are in a central location or the cloud? In this case, the standard-power access point will establish a connection with the AFC system, provide its location and technical details, and the AFC system will communicate the list of permissible frequencies (or a list of prohibited frequencies) back to the standard-power access point. Or should the AFC system's architecture be a de-centralized model where the standard-power access point maintains a local database and performs the necessary computations to determine which frequencies are permissible? Under such a model, how would the local database within the

standard-power access point be kept up to date? What are the trade-offs, including the costs and benefits, between a centralized versus a decentralized model in terms of efficiency, device complexity, and ability to protect fixed service stations?

6. Should the AFC system determine frequency availability using the maximum permissible power for a standard-power access point, or should it determine frequency availability at power levels less than the maximum, and calculate a list of available frequencies and the maximum power permitted on each one? If the AFC system calculates the maximum power for each frequency, how would it control the power levels of standard-power access points to ensure that they operate at permissible levels? How should frequency availability information be reported to standard-power access points? Should the AFC system report availability for discrete frequency bands, *e.g.,* 10 or 20 megahertz channels, or should it simply report the range or ranges of available frequencies? Alternatively, should the AFC simply list the range or ranges of unavailable frequencies?

7. Under a registration requirement, a standard-power access point would transmit identifying information along with its location to the AFC system before receiving a list of permissible channels. Alternatively, a device under a centralized system architecture could provide only its location data and the AFC system would provide it with the list of permissible channels for that location. Under a decentralized system architecture, registration is not necessarily required as the device only needs periodic updates of the local fixed service operating environment.

8. The Commission seeks comment on whether device registration in the AFC database is necessary. What are the advantages and disadvantages of each approach? Would a registration requirement increase cost or complicate design and operations of devices and the AFC? Would a registration requirement be beneficial for determining the source if a fixed service station were to experience harmful interference? If device registration is required, what information should be provided? Should the information be limited to a device identifier, location, and some basic technical information? Or should device ownership data and contact information also be required? The Commission also seeks comment on how registration information should be entered into the AFC system. Should it be entered manually by a person, such as a professional installer or the equipment user, or should we require automated entry of some or all of the information? The Commission additionally seeks comment on whether there are methods that can be used when a device registers and/or operates to verify its location and operating parameters. For example, could a two-step verification process be used such that registrants must certify as to the accuracy of the information entered into the AFC system?

9. The Commission recognizes that, because licensed use of these bands is not static, the AFC system must be designed to ensure that unlicensed operations protect new and modified licensed operations. The Commission proposes to adopt a requirement that devices periodically verify whether frequency availability has changed. Is a periodic re-check interval the most appropriate method to determine changes in frequency availability information and, if so, what should the maximum permissible interval for verifying frequency availability be? Would an alternative method be more appropriate, such as requiring the AFC system to have the capability to direct devices to change frequencies? Should the Commission adopt a general performance rule instead of specifying a particular re-verification mechanism? The Commission also seeks comment on what should happen when a device and the AFC system are temporarily unable to communicate during the frequency re-verification/update process. Should the Commission, for example, allow the device to temporarily continue operating for a period before requiring it to cease operations?

10. The Commission seeks comment on the types of security requirements that would be necessary for standard-power access points in the U–NII–5 and U–NII–7 bands to ensure that the interference mitigation regime is not thwarted. White space devices and databases, as well as Citizens Broadband Radio Service Devices and the Spectrum Access System, are required to incorporate security measures to ensure that devices communicate only with authorized databases, that all communications and interactions between a database and devices are accurate and secure, and that unauthorized parties cannot access or alter a database or the list of available frequencies sent to a device. They are also subject to requirements that communications between devices and the database, and between different databases, must be secure to prevent corruption or unauthorized interception of data, and that databases be protected from unauthorized data input or alteration of stored data. Are similar requirements necessary or appropriate for devices and the AFC in the U–NII–5 and U–NII–7 bands? Are any additional requirements necessary? Does the Commission need to specify security requirements for devices to ensure that the software within them cannot be easily modified to enable operation on frequencies other than those indicated as available by the AFC system?

11. The Commission proposes to designate multiple entities to operate AFC systems. The Commission seeks comment on this proposal. Should the Commission require that devices have the capability to communicate with all AFC systems or should they only be required to have the capability to communicate with a subset of the designated AFC systems? For example, should a manufacturer be allowed to operate an AFC system that serves only devices that it produces? Should the Commission allow the functions of an AFC system, such as a data repository, registration, and query services, to be divided among multiple entities, or should the Commission require all functions of a single AFC system to be performed by a single entity? Can each AFC system operate autonomously or is there a need for them to communicate any information with each other? If so, what information would need to be exchanged? Given the potential complexity of multiple AFC system operators needing to coordinate, should the Commission instead designate only a single AFC system operator?

12. The Commission seeks comment on the procedures that should be used to test and validate the capabilities of the AFC and to designate AFC system operators. For example, should the Commission follow procedures similar to those the Office of Engineering and Technology (OET) used for designating white space database administrators? If not, what certification procedure should be implemented? Additionally, the Commission notes that parties have suggested that a multi-stakeholder group could administer AFC system requirements and standards through interaction with AFC system operators. The Commission seeks comment on this suggestion, and on the appropriate mechanism for ensuring Commission oversight of such a multi-stakeholder group.

13. The Commission proposes that an AFC system operator be required to serve for a five-year term which can be renewed by the Commission based on performance during the operating term. The Commission also proposes that if an AFC system ceases operation, the

operator provide a minimum of 30-days' notice to the Commission and it transfer its registration data, if registration is required, to another AFC system operator. The Commission seeks comment on these proposals. Are there other functions an AFC system operator should be required to perform?

14. The Commission proposes that an AFC system operator be permitted to charge a fee for providing registration and channel availability functions. The Commission notes that fees could be charged on a transaction basis every time a device is registered or receives an update from an AFC system. The Commission also notes that device manufacturers or a trade association could fund an AFC system as part of its business and that no individual transaction fees would be charged. The Commission proposes that any of these methods be permitted. Are there other funding mechanisms for AFC systems that should be permitted? What are the costs and benefits of each type of proposed funding mechanism?

15. *Protecting Fixed Service from Harmful Interference.* In general, fixed services use highly directional antennas where the energy transmitted and received is concentrated in a particular direction. This suggests that unlicensed devices need only be excluded from a zone determined by the fixed service receive antenna pattern and the EIRP of the unlicensed device. Using those parameters along with an appropriate propagation model would allow an AFC system to determine an exclusion zone, an area inside of which unlicensed devices would not be able to operate co-channel with fixed service systems. The size of the exclusion zone would be based on the specific interference protection criteria used.

16. The Commission proposes that the AFC system use data from its Universal Licensing System (ULS) to facilitate access by unlicensed devices in the bands that are used for the fixed service. The Commission does not believe it is necessary to propose a mandatory requirement on information collections for the ULS that were previously voluntary in order to increase the efficacy of the AFC system. The Commission notes that licensees have an obligation to keep their information filed with the Commission current and complete. The Commission seeks comment on this proposal.

17. Is there any additional technical data, not currently collected in ULS, that is necessary to facilitate automatic coordination? If so, should that information be collected by the Commission and stored in ULS, or can such supplemental information be reported to and stored in the AFC system? In cases of missing data, how should the AFC operate? Should the Commission establish default values to be used to reach a reasonable assessment with a high degree of confidence that harmful interference will not occur? How should the Commission handle a situation where harmful interference occurs to a fixed service station due to that station's failure to keep its ULS records up-to-date? Should the unlicensed device be required to switch channels? Should there be any obligation on the fixed service station to update its ULS records before it can seek remedy from the Commission?

18. The Commission seeks comment on how the AFC system should take into consideration temporary fixed operations and/or stations operating under conditional authority which may not be listed ULS. Should the Commission require the operators of temporary fixed and/or stations operating under conditional authority to provide notification of the details of their operations (location, antenna height, antenna pattern, etc.)? Or can those details be reported directly to an AFC? In the latter case, does there need to be a requirement to share such data among AFCs? If so, how would such a sharing system be implemented in a centralized or decentralized AFC system architecture? Are there other methods of protecting temporary fixed operations? Should the AFC system account for filed applications in addition to licensed stations when determining a list of frequencies on which an unlicensed device can operate?

19. The Commission seeks comment on whether to adopt the interference to noise power (I/N ratio) or the ratio of the carrier to interference power (C/I ratio) for specifying the interference protection criteria. The Commission also seeks comment on whether any other metrics could be used for specifying the interference protection criteria. What are the respective costs and benefits of each metric? The interference protection criteria will be used by the AFC system to determine whether a standard-power access point would cause harmful interference to a fixed link receiver. The interference protection criteria the Commission specifies will in effect determine how close co-channel standard-power access points can operate to the fixed link receivers. The Commission seeks comment on the interference protection criteria to adopt. Commenters are encouraged to provide technical analysis supporting the particular interference protection criteria that they advocate.

20. The Commission does not propose to protect fixed links operating on adjacent channels or second-adjacent channels as FWCC suggests. The Commission invites parties who believe that specific adjacent or second-adjacent channel protection rules be adopted to submit technical showings to support their position.

21. To counteract the effects of fading, FWCC states that licensees design their fixed microwave systems with fade margins of 25–40 dB. The Commission seeks comment on FWCC's characterization of the fade margin. What are the typical design criteria for fixed service station fade margins? The Commission also seeks comment on whether and specifically how fading might affect the levels of the potentially interfering signal being transmitted from unlicensed devices. Given that atmospheric conditions affect multipath fading, should the interference protection criteria be relaxed or other allowances made in areas where fades are not as prominent? How might this be accomplished? Should the Commission consider the time of day fading occurs in conjunction with the relative busy hours for unlicensed traffic when determining the interference protection criteria? To what degree? Given that the loss of synchronization can occur even without the presence of any interference, can such events be attributed to atmospheric multipath fading? Given the diurnal and seasonal nature of atmospheric multipath fading, are there mitigation strategies that can take advantage of this phenomenon to ensure the potential for causing harmful interference is minimized?

22. Several different propagation models can be used to determine the appropriate exclusion zones. The Commission believes that in the first kilometer, an effective propagation model should include clutter loss in addition to both line-of-sight and non-line-of-sight conditions. Beyond the first kilometer, the propagation model should include a combination of a terrain-based path loss model and a clutter loss model appropriate for the environment. The Commission seeks comment on this approach, as well as the appropriate propagation models for this application. Can some of the propagation models for different conditions be combined into a single model? Is using curve fitting to combine propagation models of different ranges of applicability into a single model an appropriate approach for this application? What are the costs and benefits of each propagation model?

What other factors should be considered when choosing an appropriate propagation model?

23. If expressed in terms of latitude, longitude, and height, what is the required accuracy of the location of each standard-power access point to ensure fixed service protection? Rather than requiring a certain location accuracy for a standard-power access point, would it be more appropriate to assign an area of uncertainty around the computed location, based on the underlying technology and propagation environment, and then build the necessary processing into the AFC system to adjust its separation distance between the standard-power access point and fixed service receiver based on the area of uncertainty? If so, who will determine such an assignment and how, particularly with respect to indoor deployment? How will the location accuracy information be shared with the AFC? Will it be part of the registration process? What are the costs and benefits of any proposed alternative?

24. The typical installation height above ground of a standard-power access points should probably range from 5 meters to 30 meters. The Commission seeks comment on whether this estimate of typical standard-power access point heights is appropriate. The Commission seeks comment on whether to limit the maximum installation height of outdoor standard-power access points. If so, should that limit be set to 30 meters? Because frequency availability will depend on the height of standard-power access points, will the AFC system inherently address this matter by limiting the availability of permissible frequencies?

25. The Commission seeks comment on requiring that every standard-power access point be professionally installed. If the Commission requires professional installation, what mechanisms should be in place to ensure that a non-professional or unlicensed person cannot perform an installation? Should the Commission rely on an industry-led process to develop professional installer accreditation standards as the Commission has done in similar situations? Should AFC system(s) be required to take steps to ensure that only standard-power access points that have been professionally installed can receive a list of frequencies upon which to operate? If the Commission adopts a professional installation requirement, should it exempt certain access points that are less likely to cause interference such as, for example, those installed indoors or that are below a specified height? Are there other measurement/geolocation tools, existing or on the horizon, that can complement GPS? If so, can they be used in lieu of professional installation? Should the Commission require that geolocation capability be built into the standard-power access points? Are there other means of obtaining location information, such as street address and floor number? If so, how will this impact the contour calculations? What are the costs and benefits of any proposed alternative?

26. The Commission proposes to require client devices that operate in the U–NII–5 and U–NII–7 bands to be under the control of a standard-power access point. Notwithstanding this proposal, the Commission seeks comment on whether client devices should be allowed to transmit probe requests, consistent with 802.11 standard, as means for joining a network, prior to receiving a frequency assignment. If so, is there any way to allow such use without causing harmful interference to the incumbent users? The Commission seeks comment on what assumptions to make about the area in which a client device can operate.

27. The Commission seeks comment on the typical or maximum operating radius for communications between a client device and a standard-power access point. How should the distance be incorporated into any frequency coordination computation to ensure incumbents are protected? The Commission's proposed rules define a client device as ''a U–NII device whose transmissions are generally under the control of an access point and that is not capable of initiating a network.'' The Commission seeks comment on this definition.

28. *Preventing Aggregate Interference to Operations in the Fixed-Satellite Service.* The Commission tentatively concludes that use of the AFC is not necessary to protect satellite receivers and that limits on radiated power will prevent interference to space station receivers from individual unlicensed devices. The Commission seeks comment on whether a restriction on pointing toward the geostationary arc would be appropriate. The Commission seeks comment on the potential for the satellite receivers in the U–NII–5 and U–NII–7 bands to receive harmful aggregate interference due to transmissions from unlicensed devices operating in these bands. The Commission also seeks comment on methods that could be used to monitor aggregate interference to satellite receivers and potential remediation techniques in the event that such aggregate interference reaches levels that would require action. In this respect, the Commission asks about the feasibility of developing monitoring techniques that would be agreeable for all parties involved and whether there is any role that unlicensed users could play with regard to such monitoring.

29. No earth stations are currently licensed to use the space-to-Earth allocation in the 6.7–6.875 GHz portion of the U–NII–7 band. If this spectrum is used for space-to-Earth links in the future, the Commission proposes that the AFC system could be used to prevent harmful interference to the earth station receivers by excluding standard-power access point from operating in this spectrum near the associated earth stations. The Commission seeks comment on how the AFC system might be used to protect any future receiving satellite earth stations. In particular, the Commission asks what interference protection criteria and propagation models might be appropriate

30. *Lower Power Indoor Unlicensed Devices in the U–NII–6 and U–NII–8 Bands.* The Commission proposes to allow unlicensed devices to operate in the 6.425–6.525 GHz and 6.875–7.125 GHz bands, referenced herein as the U–NII–6 and U–NII–8 bands respectively, under two specific conditions: (1) Unlicensed devices are limited to the lower power levels applicable to unlicensed operations in the U–NII–2 bands and (2) such devices are restricted to indoor operation.

31. Many incumbents in the U–NII–6 and U–NII–8 bands conduct mobile operations. Because exclusion zone calculations require knowledge of the incumbent receiver location and antenna orientation, the Commission does not believe that an AFC system would be feasible in these bands. Instead, the Commission proposes technical rules for unlicensed devices designed to minimize the potential harmful interference to incumbent operations in these bands. By restricting such devices to low power, indoor use, the Commission anticipates that incumbent licensed services would be protected from harmful interference, in part due to significant building attenuation and clutter losses for transmissions originating from indoor devices. The Commission recognizes that its assessment that there is a low likelihood that indoor low power devices will cause harmful interference depends in part on the assumptions that are made with respect to the number and density of these devices and assumptions about the incumbent services interference protections. The Commission proposes to adopt power limits that are based on the existing

rules in the U–NII–2C band (5.47–5.725 GHz).

32. The Commission seeks comment on the compatibility between unlicensed indoor low power devices and Low Power Auxiliary Station services which may operate indoors in the U–NII–8 band. Commenters should provide all study assumptions, including appropriate propagation models, availability requirements, receiver sensitivity, noise figure, antenna patterns, and fade margins, between indoor low power unlicensed devices anticipated under our proposals and mobile and fixed links in these bands. The Commission believes the same conditions that protect incumbents from harmful interference from a single U–NII device will also protect those same incumbents from aggregate interference. Nevertheless, the Commission requests that commenters address this assumption. The Commission encourages parties to employ statistical models to evaluate the risk of harmful interference.

33. Given the uncertainties inherent in establishing mobile links and the attenuation of the signals due to building and clutter losses, the Commission anticipates that low-power indoor operation will not increase the risk of harmful interference to mobile service incumbents. The Commission seeks comment on this assessment. The Commission seeks comment on factors that it has not accounted for in this analysis, including more detailed information on the specific mobile deployment configurations in these bands. Are Cable Television Relay Service and TV pickup mobile station deployment configurations largely similar? Are receive sites for the TV pickup and Cable Television Relay Service mobile assignments typically deployed at fixed locations? What are the typical fade margins for mobile links and what types of service are these fade margins required for? For the approximately 200 public safety or business/industrial pool assignments in these bands, do they operate on a mobile basis or are they temporarily fixed for longer periods of time when in use? How many mobile stations are typically associated with an assignment?

34. The Commission seeks comment on whether requirements for the various fixed services in the U–NII–6 and U–NII–8 bands differ. For example, do Broadcast Auxiliary Service point-to-point links have the same design criteria regarding availability and fade margins as Private Operational Fixed public safety and business/industrial pool links or common carrier point-to-point links? Fixed Service commenters have raised the possibility of indoor unlicensed devices in tall buildings causing unacceptable degradation to the fade margin of a fixed service link. Under what conditions would such interference occur? How do these design criteria for fixed service links in these bands relate to the potential for such interference? Are there mitigation strategies that will reduce the potential for unlicensed devices to cause harmful interference under these conditions? Would unlicensed device operation in these bands have any detrimental effect on Broadcast Auxiliary Service operations, which are characterized by transmitting to strategically located receive sites?

35. The Commission believes that the technical characteristics proposed for indoor low-power access points in the U–NII–6 and U–NII–8 bands will protect the FSS and that additional interference mitigation techniques are unnecessary. Because of the low power and low probability that an indoor unlicensed device will have a direct line of sight with Sirius/XM satellites, the Commission believes the risk of causing harmful interference to those satellites is low. Regarding the limited number of MSS feeder downlinks in the U–NII–8 band, the Commission tentatively concludes that MSS operations will be similarly protected by the limitations on unlicensed use proposed in this Notice, particularly given the small number and isolated nature of these locations. The Commission seeks comment on these tentative conclusions, and on whether any additional mitigation techniques might be necessary to protect satellite services in these bands.

36. The Commission proposes to restrict operation of unlicensed devices in the U–NII–6 and U–NII–8 bands to indoor operation. Broadcasters covering large venues such as sporting events and political conventions rely on the U–NII–6 and U–NII–8 bands for operations that may take place indoors. Are there additional low-power device restrictions that the Commission should consider to prevent interference to broadcaster indoor operations in these bands? The Commission also proposes to require client devices that operate in the U–NII–6 and U–NII–8 bands to be under the control of low-power access point. This requirement will help prevent uncontrolled outdoor operation of client devices.

37. The Commission believes that in most cases Broadcast Auxiliary Service operations will be between a mobile transmitter and a fixed location to which it will have a direct line of sight. ITU models give values for both building entry and clutter losses with some probability of occurrence. The Commission notes that the ITU model shows a median building entry losses of approximately 18 dB for traditional construction and 30 dB for thermally efficient construction for horizontal incidence, with increasing building entry losses at larger elevation angles. Are assumptions for building entry losses and clutter loss enough to overcome concerns of interference even when the unlicensed device might be in the main beam of the receiver? Are there other factors or models that should be considered when evaluating loses between indoor unlicensed devices and U–NII–6 and U–NII–8 incumbent services?

38. The Commission also invites comment on how the Commission could ensure that low-power access points are restricted to indoor use. Should the Commission adopt a requirement that indoor devices have direct connection to a power outlet? Are there other methods or equipment form-factors that would discourage outdoor usage of low-power access point unlicensed devices that the Commission should consider? For example, noting that GPS signals generally do not penetrate very far into buildings, would it be feasible and cost effective to require low-power access points to monitor GPS satellite signals and to cease transmissions if a GPS signal is detected? Would it be better to set a GPS signal threshold rather than a detection threshold above which a low-power access point would be required to shut off to differentiate between clear-sky (outdoor) GPS satellite view and indoor detection? The Commission seeks comment on this and other methods of ensuring devices operate in accordance with the indoor-only restriction. Finally, given that client devices are even lower power (5 mW/MHz EIRP) and are required to only operate in the U–NII–6 and U–NII–8 bands after receiving an authorization from a low-power access point, are there any other considerations the Commission needs to take into account to ensure these devices do not cause harmful interference to incumbent operations?

39. The Commission does not propose to make changes to existing provisions in Part 15 for unlicensed wideband and ultra-wideband systems as the Commission expects such systems will continue to coexist with all other systems, both licensed and unlicensed, within the 6 GHz band. The Commission seeks comment from interested parties regarding the potential effect of our proposals on their existing unlicensed devices and use models. To

the extent that parties believe new devices could adversely affect existing operations, they should suggest specific rules and mitigation strategies that would minimize such risk.

40. *Other Unlicensed Operation Options.* The Commission seeks comment on whether we should allow indoor low-power access point operations in the U–NII–5 and U–NII–7 bands under the same conditions as proposed for the U–NII–6 and U–NII–8 bands; *i.e.,* low power, indoor-only use without the need for authorization from an AFC system. If so, what power level could be permitted for such operation without increasing the risk of harmful interference to licensed services? Are there any other operational requirements, rules or mitigation techniques that would allow low-power access points to operate in the U–NII–5 and U–NII–7 bands without the use of an AFC system?

41. The Commission seeks comment on whether there are any ways to protect incumbent mobile operations, if the Commission were to allow unlicensed operations in the U–NII–6 or U–NII–8 bands at the same power levels as those proposed for U–NII–5 and U–NII–7 bands, both indoors and outdoors. Are a significant number of Broadcast Auxiliary Service and Cable Television Relay Service receive sites fixed, such that they could be protected by the AFC in the same fashion as fixed operations? Do fixed received sites associated with mobile operations typically use fixed antennas or steerable antennas and could a protection contour be defined around a fixed receive site taking into consideration the characteristics of the receive antenna? Is it possible, for example, to dynamically update the permissible frequency list whenever mobile sites become active or when the information for these sites becomes available? Can push notifications serve as a means of informing affected standard-power access points that the permissible frequency list must be updated to protect the incumbents? Additionally, would the Commission's tentative conclusions regarding protections of satellite services in the U–NII–6 and U–NII–8 bands be undermined by permitting high power unlicensed operations in these bands?

42. The Commission seeks comment on whether unlicensed devices in the U–NII–5 and U–NII–7 bands should be explicitly permitted to operate either as a mobile hotspot or as a transportable device. As with fixed access points in these bands, such operation would be under the control of an AFC system. Is such operation feasible under such a condition? Are there rules we can put in place to permit such operation while still ensuring that licensed services are protected from harmful interference? For example, the rules for Mode II personal/portable white space devices allow them to load channel availability information for multiple locations to define a geographic area in which the device can operate. Could a similar mechanism work in these bands? Are there specific capabilities that need to be included in the AFC to enable such operation? Should such operation be restricted to certain power levels? Are there other safeguards that could be implemented to permit such operation?

43. *Power Limits.* Based on the experience of the existing U–NII bands, the Commission believes these levels will provide the proper balance between allowing flexibility for unlicensed devices to deploy while still protecting incumbent systems. Therefore, the Commission proposes maximum EIRP power spectral density limits of:

- For U–NII–5 and U–NII–7 standard-power access points, the maximum conducted output power is 1 watt and maximum power spectral density is 17 dBm in any 1 megahertz band. If a transmitting antenna with directional gain greater than 6 dBi is used, the maximum power and power spectral density shall be reduced by the amount in dBi that the directional gain is greater than 6 dBi.
- For U–NII–6 and U–NII–8 band low-power access points, the maximum conducted output power is 250 milliwatts and maximum power spectral density is 11 dBm in any 1 megahertz band. If a transmitting antenna with directional gain greater than 6 dBi is used, the maximum power and power spectral density shall be reduced by the amount in dBi that the directional gain is greater than 6 dBi.
- For client devices, the maximum conducted output power is 63 milliwatts and maximum power spectral density is 5 dBm in any 1 megahertz band. If a transmitting antenna with directional gain greater than 6 dBi is used, the maximum power and power spectral density shall be reduced by the amount in dBi that the directional gain is greater than 6 dBi.

44. The Commission seeks comment on these proposed power limits. The Commission also seeks comment on whether higher power operations could be permitted in rural and underserved areas under certain conditions. If so, should such operations be limited to only the U–NII–5 and U–NII–7 bands and only under the control of an AFC system? Commenters advocating for higher power should also address how much more power they believe is necessary to serve these areas and provide comment on how to define rural and underserved areas in this context. Additionally, commenters should address whether such operations should be limited to point-to-point operations (possibly with a minimum antenna gain) or if point-to-multipoint operations should be permitted.

45. The Commission also seeks comment on whether to adopt power rules that are structured differently than the existing U–NII rules. For example, the Commission could specify only a radiated power spectral density limit or a combination of a radiated maximum power and a radiated power spectral density limit. What are the benefits and drawbacks of each approach as it relates to equipment design and cost as well as maximizing the area over which unlicensed devices can operate and ensuring incumbents are protected from harmful interference? Should the Commission specify a maximum transmit power based on a 20 megahertz channel bandwidth in addition to the power and power spectral density limits described above? What are the benefits of such an approach? Would such a rule unnecessarily restrict devices to less efficient operational modes? Should certain types of transmitters that employ electrically steerable, MIMO, or phased array antennas have special rules which allow the device to operate with higher power levels?

46. Additionally, the Commission seeks comment on our proposal to reduce the permitted transmitted power and power spectral density when using antennas with a directional gain greater than 6 dBi. Should the Commission require that antennas be integrated with the device or can the Commission permit users to choose an appropriate antenna for their application? If antennas are not integrated with the device, should an equipment authorization grantee be required to maintain a list of permissible antennas with its equipment authorization or in the manual or on a website? What effect will our proposal have on the equipment authorization process?

47. *Unwanted Emissions Limits.* The Commission proposes that for all unlicensed devices operating in the 6 GHz band under the proposals herein, all emissions below 5.925 GHz and above 7.125 GHz shall not exceed an EIRP of -27 dBm/MHz. The Commission seeks comment on this proposal. In addition, the Commission seeks comment on the need to specify out-of-band emission limits between the sub-bands of the 6 GHz band—*i.e.* between the U–NII–5, U–NII–6, U–NII–7 and U–NII–8 bands? What are the

appropriate emission limits? The Commission also seeks comment on the transmit emission mask that unlicensed devices should be required to meet to protect incumbent services operating on adjacent frequencies within the band. Is the emission mask suggested by RKF Engineering in the technical study submitted by Apple Inc., Broadcom Corporation, et al. appropriate for this purpose? If not, what is the appropriate emission mask?

48. *Prohibition on use in Moving Vehicles and Drones.* The Commission proposes that unlicensed access points (both standard-power access point and low-power access point) be prohibited from operating in moving vehicles such as cars, trains, or aircraft. The Commission is especially concerned about the interference consequences of allowing operation onboard aircraft because the longer line-of-sight distances from devices at typical aircraft altitude could result in interference over a wide area. The Commission seeks comment on this proposal and whether there are alternative, feasible proposals to use the band for moving vehicles. The Commission also propose that unlicensed devices, whether a standard-power access point, low-power access point, or client device, operating under these rules not be permitted for use with unmanned aircraft systems. The Commission seeks comment on this proposal.

49. *Additional Mitigation Measures.* Although the Commission believes that unlicensed device operation as discussed herein will not result in harmful interference to licensed services, the Commission nonetheless ask whether any additional requirements are necessary to ensure that any instances of harmful interference that may occur can be resolved expeditiously.

50. The Commission seeks comment on whether to require standard-power access points in these bands to transmit digital identifying information. If so, should such a requirement be applied in all instances (standard-power access points and low-power access points and their associated client devices)? If, as proposed, low-power access point operation would be restricted to indoors and such devices would not have any identifying information in the AFC database, would there be any practical benefit to requiring low-power access points to transmit digitally identifying information? Would a specific format for such information need to be specified and would there be a need for specialized equipment to detect and decode the identifying information? If so, could this function be easily incorporated into new equipment or retrofitted to existing equipment? How much would adding this capability into equipment cost?

51. As an additional means to locate the source of harmful interference, the Commission could require that the AFC record the actual frequency being used by each standard-power access point. This information could be useful for locating interference sources if it can be collected from every standard-power access point and stored in a relational database. The Commission seeks comment on this tool and other means for remediation of interference.

52. The Commission seeks comment on whether it would be necessary to institute an interference resolution process beyond the existing rule for unlicensed devices. For example, would it be necessary to establish an interference detection and identification procedure? If so, who will develop this procedure and who will be responsible for exercising it? Should the AFC system operator(s) be responsible for this task?

53. The Commission seeks comment on requiring manufacturers to provide consumers with information on any specific operational requirements applicable to devices operating in the U–NII–5 through U–NII–8 bands to prevent harmful interference. How should this information be conveyed, *e.g.,* by device labeling or in the user's manual, and what information should be provided? Depending on the types of operational requirements that the Commission adopts, examples of information that could be provided include that certain devices may be operated only indoors, may not be operated on board aircraft, require professional installation, or must update their location information with an AFC system when installed at a new location.

54. *Procedural Matters. Paperwork Reduction Act Analysis.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

55. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this document. The IRFA is Appendix C of the Notice of Proposed Rulemaking, which can be obtained as described above. We request written public comment on the IRFA. Comments must be filed in accordance with the same filing deadlines as comments filed in response to the NPRM and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

56. *Filing Requirements.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

57. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

58. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

59. *Ex Parte Presentations.* The proceedings shall be treated as ''permit-but-disclose'' proceedings in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in these proceeding should familiarize themselves with the Commission's *ex parte* rules.

I. Ordering Clauses

60. *It is ordered,* pursuant to the authority found in Sections 4(i), 201, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 302a, 303, and § 1.411 of the Commission's Rules, 47 CFR 1.411, that this *Notice of Proposed Rulemaking is hereby adopted.*

61. *It is ordered* that *notice is hereby given* of the proposed regulatory changes described in this *Notice of Proposed Rulemaking,* and that comment is sought on these proposals.

62. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 2. Revise § 15.401 to read as follows:

§ 15.401 Scope.

This subpart sets out the regulations for unlicensed National Information Infrastructure (U–NII) devices operating in the 5.15–5.35 GHz, 5.47–5.725 GHz, 5.725–5.85 GHz, 5.925–6.425 GHz, 6.425–6.525 GHz, 6.525–6.875 GHz, and 6.875–7.125 GHz bands.

■ 3. Amend § 15.403 by:

■ a. Redesignating paragraphs (f) through (s) as paragraphs (h) through (u);

■ b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f); and

■ c. Adding new paragraphs (b) and (g).

The additions read as follows:

§ 15.403 Definitions.

* * * * *

(b) *Automated Frequency Coordination (AFC)* is a system that automatically determines and provides lists of which frequencies are available for use by access points operating in the 5.925–6.425 GHz and 6.525–6.875 GHz bands.

* * * * *

(g) *Client Device.* A U–NII device whose transmissions are generally under the control of an access point and that is not capable of initiating a network.

* * * * *

■ 4. Amend § 15.407 by:

■ a. Redesignating paragraphs (a)(4) and (5) as paragraphs (a)(7) and (8);

■ b. Adding new paragraphs (a)(4) through (6);

■ c. Revising newly redesignated paragraph (a)(8);

■ d. Redesignating paragraphs (b)(5) through (8) as paragraphs (b)(6) through (9);

■ e. Adding new paragraph (b)(5);

■ f. Revising paragraph (d); and

■ g. Adding paragraph (k).

The revisions and additions read as follows:

§ 15.407 General technical requirements.

(a) * * *

(4) For an access point operating in the 5.925–6.425 GHz and 6.525–6.875 GHz bands, the maximum conducted output power over the frequency band of operation shall not exceed 1 W, provided the maximum antenna gain does not exceed 6 dBi. In addition, the maximum power spectral density shall not exceed 17 dBm in any 1 megahertz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(5) For an access point operating in the 6.425–6.525 GHz, and 6.875–7.125 GHz bands, the maximum conducted output power over the frequency band of operation shall not exceed 250 mW, provided the maximum antenna gain does not exceed 6 dBi. In addition, the

maximum power spectral density shall not exceed 11 dBm in any 1 megahertz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(6) For client devices in the 5.925–6.425 GHz, 6.425–6.525 GHz, 6.525–6.875 GHz, and 6.875–7.125 GHz bands, the maximum conducted output power over the frequency band of operation shall not exceed 63 mW provided the maximum antenna gain does not exceed 6 dBi. In addition, the maximum power spectral density shall not exceed 5 dBm in any 1 megahertz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

* * * * *

(8) The maximum power spectral density is measured as a conducted emission by direct connection of a calibrated test instrument to the equipment under test. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. Measurements in the 5.725–5.85 GHz band are made for a reference bandwidth of 500 kHz or the 26 dB emission bandwidth of the device, whichever is less. Measurements in the 5.15–5.25 GHz, 5.25–5.35 GHz, 5.47–5.725 GHz, 5.925–6.425 GHz, 6.425–6.525 GHz, 6.525–6.875 GHz, and 6.875–7.125 GHz bands are made for a reference bandwidth of 1 megahertz or the 26 dB emission bandwidth of the device, whichever is less. A narrower resolution bandwidth can be used, provided that the measured power is integrated over the full reference bandwidth.

(b) * * *

(5) For transmitters operating within the 5.925–7.125 GHz band: All emissions outside of the 5.925–7.125 GHz band shall not exceed an e.i.r.p. of −27 dBm/MHz.

* * * * *

(d) *Operational restrictions.* (1) Operation of access points in the 5.925–6.425 GHz, 6.425–6.525 GHz, 6.525–6.875 GHz and 6.875–7.125 GHz bands is prohibited in moving vehicles such as cars, trains, and aircraft.

(2) Operation in the 5.925–6.425 GHz, 6.425–6.525 GHz, 6.525–6.875 GHz and 6.875–7.125 GHz bands is prohibited for control of or communications with unmanned aircraft systems.

(3) Operation in the 6.425–6.525 GHz and 6.875–7.125 GHz bands is limited to indoor locations.

* * * * *

(k) *Automated frequency coordination (AFC).* (1) Access points operating in the 5.925–6.425 GHz and 6.525–6.875 GHz bands shall access an AFC system to determine the available frequencies at their geographic coordinates prior to transmitting. Access points may transmit only on frequencies indicated as being available by an AFC system.

(2) An AFC system shall obtain information on protected services within the 5.925–6.425 GHz and 6.525–6.875 GHz bands from Commission databases and use that information to determine frequency availability for access points based on protection criteria specified by the Commission.

(3) An AFC system operator will be designated for a five-year term which can be renewed by the Commission based on the operator's performance during the term. If an AFC system ceases operation, it must provide at least 30-days' notice to the Commission and transfer any registration data to another AFC system operator.

(4) An AFC system operator may charge fees for providing registration and channel availability functions.

[FR Doc. 2018–26013 Filed 12–14–18; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 83, No. 241

Monday, December 17, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Delaware Advisory Committee to the Commission will convene by conference call, on Monday, January 28, 2019 at 4:00 p.m. (EST). The purpose of the meeting is to discuss preparation of the Committee's report on implicit bias and policing in communities of color in Delaware.

DATES: Monday, January 28, 2019, at 4:00 p.m. (EST).

PUBLIC CALL-IN INFORMATION: Conference call number: 1–888–254–3590 and conference call ID: 4124362.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–888–254–3590 and conference call ID: 4124362. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number:1–888–254–3590 and conference call ID: 4124362.

Members of the public are invited to make statements during the Public Comment section of the meeting or to submit written comments; the written comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlEAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Monday, January 28, 2019 at 4:00 p.m. (EST)

I. Welcome and Roll Call
II. HQ News
III. Project Planning
IV. Other Business
V. Public Comment
VI. Next Meeting
VII. Adjournment

Dated: December 12, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–27216 Filed 12–14–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New Jersey Advisory Committee to the Commission will convene by conference call, on Friday, January 18, 2019 at 11:30 a.m. (EST). The purpose of the meeting is to discuss the topics under consideration and to select the Committee's civil rights project; to select the Committee Secretary.

DATES: Friday, January 18, 2019, at 11:30 a.m. (EST).

PUBLIC CALL-IN INFORMATION: Conference call number: 1–888–394–8218 and conference call ID: 6970676.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–888–394–8218 and conference call ID: 6970676. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–888–394–8218 and conference call ID: 6970676.

Members of the public are invited to make statements during the Public Comment section of the meeting or to submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at

ero@usccr.gov. Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjVAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Friday, January 18, 2019 at 11:30 a.m. (EST)

I. Welcome and Roll Call
II. Planning Meeting
—Discuss Project Topics
—Select Committee Secretary
III. Other Business
IV. Public Comment
V. Adjournment

Dated: December 12, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–27217 Filed 12–14–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the District of Columbia Advisory Committee to the Commission will convene by conference call, at 12:00 p.m. (EST) Tuesday, January 22, 2019. The purpose of the planning meeting is to continue project planning for a future briefing meeting on the Committee's civil rights project, which will examine the treatment of homeless persons that get swept up in the DC criminal justice system, including a review of the DC Mental Health Court.

DATE/TIME: Tuesday, January 22, 2019 at 12:00 p.m. (EST).

PUBLIC CALL-IN INFORMATION: Conference call number: 1–855–719–5012 and conference call ID: 3606878.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–855–719–5012 and conference call ID: 3606878. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–855–719–5012 and conference call ID: 3606878.

Members of the public are invited to make statements during the Public Comment section of the meeting or to submit written comments. The comments must be received in the regional office by Friday, February 22, 2019. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlKAAQ.* Please click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Tuesday, January 22, 2019, at 12:00 p.m. (EST)

I. Rollcall
II. Welcome and Introductions
III. Discuss Project Planning
IV. Other Business
V. Adjourn

Dated: December 12, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–27218 Filed 12–14–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–77–2018]

Foreign-Trade Zone (FTZ) 168—Dallas/Fort Worth, Texas; Notification of Proposed Production Activity; Gulfstream Aerospace Corporation (Disassembly of Aircraft); Dallas, Texas

The Metroplex International Trade Development Corporation, grantee of FTZ 168, submitted a notification of proposed production activity to the FTZ Board on behalf of Gulfstream Aerospace Corporation (Gulfstream), located in Dallas, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on December 7, 2018.

Gulfstream already has authority to produce passenger jet aircraft within Subzone 168E. The current request involves the removal of items from finished aircraft and would add finished products and a foreign status material/component to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status material/component and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Gulfstream from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Gulfstream would be able to choose the duty rates during customs entry procedures that apply to: Accumulators; actuators; adapters; amplifiers; arm assemblies; armrests; attenuators; auxiliary power units; avionics media; crash axes; baffles;

ballast; lithium, lead-acid and nickel-metal hydride batteries; bearings; bell assemblies; bellcranks; bellows; transmission belts; fan blades; thermal insulation blankets; bolts; technical-flight manual books; boost pump cartridges; turbine boots; bootstrap reservoirs; brackets; brake assemblies; bushings; cabin air distribution kits; cables; engine cams; interlock cams; cameras; caps; capacitors; cargo straps; cockpit carpet; turbine chambers; circlips; circuit breakers; integrated circuits; clamps; clevis; clutches; coils; collars; combustors; commutators; compensators; compressors; computers; oil level conditioners; conduits; wheel cones; connectors; electrical contacts; ferry containers; grip controls; control panels; control units; static converters; oil coolers; ferrite cores; couplings; covers; partition curtains; pneumatic cylinders; cowl dampers; deflectors; turbine engine valve diaphragms; diodes; satcom diplexers; LED, LCD and analog displays; LED, LCD and analog display components; hot air distributors; ditching lifelines and pouches; doors; drains; ducts; elbows; elevator assemblies; gas turbine engines; equipment stands; heat exchangers; ignition exciters; external compensation units; faceplates; fairings; engine and avionics fans; filters; engine fire bottles; fire extinguishers; first-aid kits; fittings; flanges; flaps; flashlights; flight data recorders; floor boards; fuses; gaskets; gears; gear motors; gear shafts; generators; handles; handrail assemblies; wire and cable harnesses; headsets; heat shields; heat sinks; heating elements; hoses; housings; impellers; indicators; inductors; fuel injectors; inlet assemblies; rubber inner tubes; nickel inserts; insulators; interface units; interlock rollers; inverters; knobs; landing gear assemblies; latches; lavatories; ignitor leads; leading edges; lens assemblies; life jackets; life rafts; light assemblies; hydraulic lines; magnetometers; bleed air manifolds; microphones; control modules; waste tank modules; AC motors; mounts; nipples; switching nodes; nuts; rubber O-rings; structural overhead strips; instrument panel overlays; oxygen cylinders and full face masks; panels; rudder pedal assemblies; piccolo tubes; pins; pipes; nameplates and placards; plates; plugs; port kits; potentiometers; static pressure ports; printed circuits; oil probes; pumps; radar; radio racks; radio receiver and transmitter; radomes; spring reels; voltage regulators; relays; resistors; restraint systems; rig pin assemblies; rollers; rotors; screws; seals; seats; security wedges; sensors; servos; shafts; aluminum sheets; shock absorbers; slider assemblies; spacers; springs; stators; strut assemblies; studs; sun visors; support assemblies; switches; tail cones; T-fittings; thermocouples; thermostats; throttle quadrants; tie rod assemblies; rubber tires; traffic surveillance systems; transceivers; transducers; transformers; transistors; transponders; trim assemblies; tubes; valves; vibration isolators; washers; wheel assemblies; window assemblies; and, winglets (duty rate ranges from duty-free to 12.5%). Gulfstream would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material/component sourced from abroad is: Aircraft (duty-free).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 28, 2019.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: December 11, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–27245 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–51–2018]

Foreign-Trade Zone (FTZ) 189—Kent/Ottawa/Muskegon Counties, Michigan; Authorization of Production Activity, Helix Steel (Twisted Steel Micro Rebar) Grand Rapids, Michigan

On August 13, 2018, KOM Foreign Trade Zone Authority, grantee of FTZ 189, submitted a notification of proposed production activity to the FTZ Board on behalf of Helix Steel, within Site 11, in Grand Rapids, Michigan.

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 42109, August 20, 2018). On December 11, 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: December 11, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–27246 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Order Temporarily Denying Export Privileges

Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran;

Pejman Mahmood Kosarayanifard, a/k/a Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates;

Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates;

Kerman Aviation, a/k/a GIE Kerman Aviation, 42 Avenue Montaigne 75008, Paris, France;

Sirjanco Trading LLC, P.O. Box 8709, Dubai, United Arab Emirates;

Mahan Air General Trading LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates;

Mehdi Bahrami, Mahan Airways—Istanbul Office, Cumhuriye Cad. Sibil Apt No: 101 D:6, 34374 Emadad, Sisli Istanbul, Turkey;

Al Naser Airlines, a/k/a al-Naser Airlines, a/k/a Al Naser Wings Airline, a/k/a Alnaser Airlines and Air Freight Ltd., Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq; and Al Amirat Street, Section 309, St. 3/H.20, Al Mansour, Baghdad, Iraq; P.O. Box 28360, Dubai, United Arab Emirates; and P.O. Box 911399, Amman 11191, Jordan;

Ali Abdullah Alhay, a/k/a Ali Alhay, a/k/a Ali Abdullah Ahmed Alhay, Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq; and Anak Street, Qatif, Saudi Arabia 61177;

Bahar Safwa General Trading, P.O. Box 113212, Citadel Tower, Floor-5, Office #504, Business Bay, Dubai, United Arab Emirates; and P.O. Box 8709, Citadel Tower, Business Bay, Dubai, United Arab Emirates;

Sky Blue Bird Group, a/k/a Sky Blue Bird Aviation, a/k/a Sky Blue Bird Ltd., a/k/a Sky Blue Bird FZC, P.O. Box 16111, Ras Al

Khaimah Trade Zone, United Arab Emirates;

Issam Shammout, a/k/a Muhammad Isam Muhammad, Anwar Nur Shammout, a/k/a Issam Anwar, Philips Building, 4th Floor, Al Fardous Street, Damascus, Syria; and Al Kolaa, Beirut, Lebanon 151515; and 17–18 Margaret Street, 4th Floor, London, W1W 8RP, United Kingdom; and Cumhuriyet Mah. Kavakli San St. Fulya, Cad. Hazar Sok. No.14/A Silivri, Istanbul, Turkey

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2018) (''EAR'' or ''the Regulations''), I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the temporary denial order issued in this matter on June 14, 2018. I find that renewal of this order, as modified, is necessary in the public interest to prevent an imminent violation of the Regulations.[1]

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement (''Assistant Secretary''), signed an order denying Mahan Airways' export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order also named as denied persons Blue Airways, of Yerevan, Armenia (''Blue Airways of Armenia''), as well as the ''Balli Group Respondents,'' namely, Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd., all of the United Kingdom. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations, and went into effect on March 21, 2008, the date it was published in the **Federal Register**.

This temporary denial order (''TDO'') was renewed in accordance with Section 766.24(d) of the Regulations.[2] Subsequent renewals also have issued pursuant to Section 766.24(d), including most recently on June 14, 2018.[3] Some of the renewal orders and the modification orders that have issued between renewals have added certain parties as respondents or as related persons, or effected the removal of certain parties.[4]

The September 11, 2009 renewal order continued the denial order as to Mahan Airways, but not as to the Balli Group Respondents or Blue Airways of Armenia.[5] As part of the February 25, 2011 renewal order, Pejman Mahmood Kosarayanifard (a/k/a Kosarian Fard), Mahmoud Amini, and Gatewick LLC (a/k/a Gatewick Freight and Cargo Services, a/k/a Gatewick Aviation Services) were added as related persons to prevent evasion of the TDO.[6] A modification order issued on July 1, 2011, adding Zarand Aviation as a respondent in order to prevent an imminent violation.[7]

As part of the August 24, 2011 renewal, Kerman Aviation, Sirjanco Trading LLC, and Ali Eslamian were added as related persons. Mahan Air General Trading LLC, Equipco (UK) Ltd., and Skyco (UK) Ltd. were added as related persons by a modification order issued on April 9, 2012. Mehdi Bahrami was added as a related person as part of the February 4, 2013 renewal order.

On May 21, 2015, a modification order issued adding Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading as respondents. As detailed in that order and discussed further *infra,* these respondents were added to the TDO based upon evidence that they were acting together to, inter alia, obtain aircraft subject to the Regulations for export or reexport to Mahan in violation of the Regulations and the TDO.

Sky Blue Bird Group and its chief executive officer, Issam Shammout, were added as related persons as part of the July 13, 2015 renewal order.[8] On

[1] The Regulations, currently codified at 15 CFR parts 730–774 (2018), originally issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623) (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 FR 39,871 (Aug. 13, 2018)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Public Law 115–232, 132 Stat. 2208 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA also authorizes the issuance of temporary denial orders.

[2] Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order. Renewal requests may include discussion of any additional or changed circumstances, and may seek appropriate modifications to the order, including the addition of parties as respondents or related persons, or the removal of parties previously added as respondents or related persons. BIS is not required to seek renewal as to all parties, and a removal of a party can be effected if, without more, BIS does not seek renewal as to that party. Any party included or added to a temporary denial order as a respondent may oppose a renewal request as set forth in Section 766.24(d). Parties included or added as related persons can at any time appeal their inclusion as a related person, but cannot challenge the underlying temporary denial order, either as initially issued or subsequently renewed, and cannot oppose a renewal request. *See also* note 4, *infra.*

[3] The June 14, 2018 renewal order was effective upon issuance and published in the **Federal Register** on June 21, 2018 (83 FR 28,801). Prior renewal orders issued on September 17, 2008, March 16, 2009, September 11, 2009, March 9, 2010, September 3, 2010, February 25, 2011, August 24, 2011, February 15, 2012, August 9, 2012, February 4, 2013, July 31, 2013, January 24, 2014, July 22, 2014, January 16, 2015, July 13, 2015, January 7, 2016, July 7, 2016, December 30, 2016, June 27, 2017, and December 20, 2017, respectively. The August 24, 2011 renewal followed the issuance of a modification order that issued on July 1, 2011, to add Zarand Aviation as a respondent. The July 13, 2015 renewal followed a modification order that issued May 21, 2015, and added Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading as respondents. Each of the renewal orders and each of the modification orders referenced in this footnote or elsewhere in this order has been published in the **Federal Register.**

[4] Pursuant to Sections 766.23 and 766.24(c) of the Regulations, any person, firm, corporation, or business organization related to a denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may be added as a ''related person'' to a temporary denial order to prevent evasion of the order.

[5] Balli Group PLC and Balli Aviation settled proposed BIS administrative charges as part of a settlement agreement that was approved by a settlement order issued on February 5, 2010. The sanctions imposed pursuant to that settlement and order included, inter alia, a $15 million civil penalty and a requirement to conduct five external audits and submit related audit reports. The Balli Group Respondents also settled related charges with the Department of Justice and the Treasury Department's Office of Foreign Assets Control.

[6] *See* note 4, *supra,* concerning the addition of related persons to a temporary denial order. Kosarian Fard and Mahmoud Amini remain parties to the TDO. On August 13, 2014, BIS and Gatewick resolved administrative charges against Gatewick, including a charge for acting contrary to the terms of a BIS denial order (15 CFR 764.2(k)). In addition to the payment of a civil penalty, the settlement includes a seven-year denial order. The first two years of the denial period were active, with the remaining five years suspended conditioned upon Gatewick's full and timely payment of the civil penalty and its compliance with the Regulations during the seven-year denial order period. This denial order, in effect, superseded the TDO as to Gatewick, which was not included as part of the January 16, 2015 renewal order. The Gatewick LLC Final Order was published in the **Federal Register** on August 20, 2014. *See* 79 FR 49283 (Aug. 20, 2014).

[7] Zarand Aviation's export privileges remained denied until July 22, 2014, when it was not included as part of the renewal order issued on that date.

[8] The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') designated Sky Blue Bird and Issam Shammout as Specially Designated Global Terrorists (''SDGTs'') on May 21,

Continued

November 16, 2017, a modification order issued to remove Ali Eslamian, Equipco (UK) Ltd., and Skyco (UK) Ltd. as related persons following a request by OEE for their removal.[9]

The June 14, 2018 renewal order continued the denial of the export privileges of Mahan Airways, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Al Naser Airlines, Ali Abdullah Alhay, Bahar Safwa General Trading, Sky Blue Bird Group, and Issam Shammout.

On November 20, 2018, BIS, through OEE, submitted a written request for renewal of the TDO that issued on June 14, 2018. The written request was made more than 20 days before the TDO's scheduled expiration. Notice of the renewal request was provided to Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received. Furthermore, no appeal of the related person determinations made as part of the September 3, 2010, February 25, 2011, August 24, 2011, April 9, 2012, February 4, 2013, and July 13, 2015 renewal or modification orders has been made by Kosarian Fard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Sky Blue Bird Group, or Issam Shammout.[10]

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue or renew an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent [.]'' Id. A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO, and the renewal and modification orders subsequently issued in this matter, including the May 21, 2015 modification order and the renewal order issued on June 14, 2018, and the evidence developed over the course of this investigation, which indicate a blatant disregard of U.S. export controls and the TDO. The initial TDO was issued as a result of evidence that showed that Mahan Airways and other parties engaged in conduct prohibited by the EAR by knowingly re-exporting to Iran three U.S.-origin aircraft, specifically Boeing 747s (''Aircraft 1–3''), items subject to the EAR and classified under Export Control Classification Number (''ECCN'') 9A991.b, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Mahan Airways was involved in the attempted re-export of three additional U.S.-origin Boeing 747s (''Aircraft 4–6'') to Iran.

As discussed in the September 17, 2008 renewal order, evidence presented by BIS indicated that Aircraft 1–3 continued to be flown on Mahan Airways' routes after issuance of the TDO, in violation of the Regulations and the TDO itself.[11] It also showed that Aircraft 1–3 had been flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline. Moreover, as discussed in the March 16, 2009, September 11, 2009 and March 9, 2010 renewal orders, Mahan Airways registered Aircraft 1–3 in Iran, obtained Iranian tail numbers for them (EP–MNA, EP–MNB, and EP–MNE, respectively), and continued to operate at least two of them in violation of the Regulations and the TDO,[12] while also committing an additional knowing and willful violation when it negotiated for and acquired an additional U.S.-origin aircraft. The additional acquired aircraft was an MD–82 aircraft, which subsequently was painted in Mahan Airways' livery and flown on multiple Mahan Airways' routes under tail number TC–TUA.

The March 9, 2010 renewal order also noted that a court in the United Kingdom (''U.K.'') had found Mahan Airways in contempt of court on February 1, 2010, for failing to comply with that court's December 21, 2009 and January 12, 2010 orders compelling Mahan Airways to remove the Boeing 747s from Iran and ground them in the Netherlands. Mahan Airways and the Balli Group Respondents had been litigating before the U.K. court concerning ownership and control of Aircraft 1–3. In a letter to the U.K. court dated January 12, 2010, Mahan Airways' Chairman indicated, *inter alia,* that Mahan Airways opposes U.S. Government actions against Iran, that it continued to operate the aircraft on its routes in and out of Tehran (and had 158,000 ''forward bookings'' for these aircraft), and that it wished to continue to do so and would pay damages if required by that court, rather than ground the aircraft.

The September 3, 2010 renewal order discussed the fact that Mahan Airways' violations of the TDO extended beyond operating U.S.-origin aircraft and attempting to acquire additional U.S.-origin aircraft. In February 2009, while subject to the TDO, Mahan Airways participated in the export of computer motherboards, items subject to the Regulations and designated as EAR99, from the United States to Iran, via the United Arab Emirates (''UAE''), in violation of both the TDO and the Regulations, by transporting and/or forwarding the computer motherboards from the UAE to Iran. Mahan Airways' violations were facilitated by Gatewick LLC, which not only participated in the transaction, but also has stated to BIS that it acted as Mahan Airways' sole booking agent for cargo and freight forwarding services in the UAE.

2015, pursuant to Executive Order 13324, for ''providing support to Iran's Mahan Air.'' See 80 FR 30762 (May 29, 2015).

[9] The November 16, 2017 modification was published in the **Federal Register** on December 4, 2017. *See* 82 FR 57,203 (Dec. 4, 2017). On September 28, 2017, BIS and Ali Eslamian resolved an administrative charge for acting contrary to the terms of the denial order (15 CFR 764.2(k)) that was based upon Eslamian's violation of the TDO after his addition to the TDO on August 24, 2011. Equipco (UK) Ltd. and Skyco (UK) Ltd., two companies owned and operated by Eslamian, also were parties to settlement agreement and were added to the settlement order as related persons. In addition to other sanctions, the settlement provides that Eslamian, Equipco, and Skyco shall be subject to a conditionally-suspended denial order for a period of four years from the date of the settlement order.

[10] A party named or added as a related person may not oppose the issuance or renewal of the underlying temporary denial order, but may file an appeal of the related person determination in accordance with Section 766.23(c). See also note 2, *supra.*

[11] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[12] The third Boeing 747 appeared to have undergone significant service maintenance and may not have been operational at the time of the March 9, 2010 renewal order.

Moreover, in a January 24, 2011 filing in the U.K. court, Mahan Airways asserted that Aircraft 1–3 were not being used, but stated in pertinent part that the aircraft were being maintained in Iran especially ''in an airworthy condition'' and that, depending on the outcome of its U.K. court appeal, the aircraft ''could immediately go back into service . . . on international routes into and out of Iran.'' Mahan Airways' January 24, 2011 submission to U.K. Court of Appeal, at p. 25, ¶¶ 108, 110. This clearly stated intent, both on its own and in conjunction with Mahan Airways' prior misconduct and statements, demonstrated the need to renew the TDO in order to prevent imminent future violations. Two of these three 747s subsequently were removed from Iran and are no longer in Mahan Airways' possession. The third of these 747s, with Manufacturer's Serial Number (''MSN'') 23480 and Iranian tail number EP–MNE, remained in Iran under Mahan's control. Pursuant to Executive Order 13324, it was designated a Specially Designated Global Terrorist (''SDGT'') by the U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') on September 19, 2012.[13] Furthermore, as discussed in the February 4, 2013 Order, open source information indicated that this 747, painted in the livery and logo of Mahan Airways, had been flown between Iran and Syria, and was suspected of ferrying weapons and/or other equipment to the Syrian Government from Iran's Islamic Revolutionary Guard Corps. Open source information showed that this aircraft had flown from Iran to Syria as recently as June 30, 2013, and continues to show that it remains in active operation in Mahan Airways' fleet.

In addition, as first detailed in the July 1, 2011 and August 24, 2011 orders, and discussed in subsequent renewal orders in this matter, Mahan Airways also continued to evade U.S. export control laws by operating two Airbus A310 aircraft, bearing Mahan Airways' livery and logo, on flights into and out of Iran.[14] At the time of the July 1, 2011 and August 24, 2011 orders, these Airbus A310s were registered in France, with tail numbers F–OJHH and F–OJHI, respectively.[15]

The August 2012 renewal order also found that Mahan Airways had acquired another Airbus A310 aircraft subject to the Regulations, with MSN 499 and Iranian tail number EP–VIP, in violation of the TDO and the Regulations.[16] On September 19, 2012, all three Airbus A310 aircraft (tail numbers F–OJHH, F–OJHI, and EP–VIP) were designated as SDGTs.[17]

The February 4, 2013 renewal order laid out further evidence of continued and additional efforts by Mahan Airways and other persons acting in concert with Mahan, including Kral Aviation and another Turkish company, to procure U.S.-origin engines—two GE CF6–50C2 engines, with MSNs 517621 and 517738, respectively—and other aircraft parts in violation of the TDO and the Regulations.[18] The February 4, 2013 order also added Mehdi Bahrami as a related person in accordance with Section 766.23 of the Regulations. Bahrami, a Mahan Vice-President and the head of Mahan's Istanbul Office, also was involved in Mahan's acquisition of the original three Boeing 747s (Aircraft 1–3) that resulted in the original TDO, and has had a business relationship with Mahan dating back to 1997.

The July 31, 2013 renewal order detailed additional evidence obtained by OEE showing efforts by Mahan Airways to obtain another GE CF6–50C2 aircraft engine (MSN 528350) from the United States via Turkey. Multiple Mahan employees, including Mehdi Bahrami, were involved in or aware of matters related to the engine's arrival in Turkey from the United States, plans to visually inspect the engine, and prepare it for shipment from Turkey.

Mahan Airways sought to obtain this U.S.-origin engine through Pioneer Logistics Havacilik Turizm Yonetim Danismanlik (''Pioneer Logistics''), an aircraft parts supplier located in Turkey, and its director/operator, Gulnihal Yegane, a Turkish national who previously had conducted Mahan related business with Mehdi Bahrami and Ali Eslamian. Moreover, as referenced in the July 31, 2013 renewal order, a sworn affidavit by Kosol Surinanda, also known as Kosol Surinandha, Managing Director of Mahan's General Sales Agent in Thailand, stated that the shares of Pioneer Logistics for which he was the listed owner were ''actually the property of and owned by Mahan.'' He further stated that he held ''legal title to the shares until otherwise required by Mahan'' but would ''exercise the rights granted to [him] exactly and only as instructed by Mahan and [his] vote and/or decisions [would] only and exclusively reflect the wills and demands of Mahan[.]'' [19]

The January 24, 2014 renewal order outlined OEE's continued investigation of Mahan Airways' activities and detailed an attempt by Mahan, which OEE thwarted, to obtain, via an Indonesian aircraft parts supplier, two U.S.-origin Honeywell ALF–502R–5 aircraft engines (MSNs LF5660 and LF5325), items subject to the Regulations, from a U.S. company located in Texas. An invoice of the Indonesian aircraft parts supplier dated March 27, 2013, listed Mahan Airways as the purchaser of the engines and included a Mahan ship-to address. OEE also obtained a Mahan air waybill dated March 12, 2013, listing numerous U.S.-origin aircraft parts subject to the Regulations—including, among other items, a vertical navigation gyroscope, a transmitter, and a power control unit—

[13] *See http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20120919.aspx.*

[14] The Airbus A310s are powered with U.S.-origin engines. The engines are subject to the EAR and classified under Export Control Classification (''ECCN'') 9A991.d. The Airbus A310s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified under ECCN 9A991.b. The export or reexport of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[15] OEE subsequently presented evidence that after the August 24, 2011 renewal, Mahan Airways worked along with Kerman Aviation and others to de-register the two Airbus A310 aircraft in France and to register both aircraft in Iran (with, respectively, Iranian tail numbers EP–MHH and EP–MHI). It was determined subsequent to the February 15, 2012 renewal order that the registration switch for these A310s was cancelled and that Mahan Airways then continued to fly the aircraft under the original French tail numbers (F–OJHH and F–OJHI, respectively). Both aircraft apparently remain in Mahan Airways' possession.

[16] See note 14, *supra.*

[17] *See http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20120919.aspx.* Mahan Airways was previously designated by OFAC as a SDGT on October 18, 2011. 77 FR 64,427 (October 18, 2011).

[18] Kral Aviation was referenced in the February 4, 2013 renewal order as ''Turkish Company No. 1.'' Kral Aviation purchased a GE CF6–50C2 aircraft engine (MSN 517621) from the United States in July 2012, on behalf of Mahan Airways. OEE was able to prevent this engine from reaching Mahan by issuing a redelivery order to the freight forwarder in accordance with Section 758.8 of the Regulations. OEE also issued Kral Aviation a redelivery order for the second CF6–50C2 engine (MSN 517738) on July 30, 2012. The owner of the second engine subsequently cancelled the item's sale to Kral Aviation. In September 2012, OEE was alerted by a U.S. exporter that another Turkish company (''Turkish Company No. 2'') was attempting to purchase aircraft spare parts intended for re-export by Turkish Company No. 2 to Mahan Airways. *See* February 4, 2013 renewal order.

On December 31, 2013, Kral Aviation was added to BIS's Entity List, Supplement No. 4 to Part 744 of the Regulations. *See* 78 FR75458 (Dec. 12, 2013). Companies and individuals are added to the Entity List for engaging in activities contrary to the national security or foreign policy interests of the United States. *See* 15 CFR 744.11.

[19] Pioneer Logistics, Gulnihal Yegane, and Kosol Surinanda also were added to the Entity List on December 12, 2013. *See* 78 FR 75458 (Dec. 12, 2013).

being transported by Mahan from Turkey to Iran in violation of the TDO.

The July 22, 2014 renewal order discussed open source evidence from the March–June 2014 time period regarding two BAE regional jets, items subject to the Regulations, that were painted in the livery and logo of Mahan Airways and operating under Iranian tail numbers EP–MOK and EP–MOI, respectively.[20] In addition, aviation industry resources indicated that these aircraft were obtained by Mahan Airways in late November 2013 and June 2014, from Ukrainian Mediterranean Airline, a Ukrainian airline that was added to BIS's Entity List (Supplement No. 4 to Part 744 of the Regulations) on August 15, 2011, for acting contrary to the national security and foreign policy interests of the United States.[21] Open source information indicated that at least EP–MOI remained active in Mahan's fleet, and that the aircraft was being operated on multiple flights in July 2014.

The January 16, 2015 renewal order detailed evidence of additional attempts by Mahan Airways to acquire items subject the Regulations in further violation of the TDO. Specifically, in March 2014, OEE became aware of an inertial reference unit bearing serial number 1231 (''the IRU'') that had been sent to the United States for repair. The IRU is subject to the Regulations, classified under ECCN 7A103, and controlled for missile technology reasons. Upon closer inspection, it was determined that IRU came from or had been installed on an Airbus A340 aircraft bearing MSN 056. Further investigation revealed that as of approximately February 2014, this aircraft was registered under Iranian tail number EP–MMB and had been painted in the livery and logo of Mahan Airways.

The January 16, 2015 renewal order also described related efforts by the Departments of Justice and Treasury to further thwart Mahan's illicit procurement efforts. Specifically, on August 14, 2014, the United States Attorney's Office for the District of Maryland filed a civil forfeiture complaint for the IRU pursuant to 22 U.S.C. 401(b) that resulted in the court issuing an Order of Forfeiture on December 2, 2014. EP–MMB remains listed as active in Mahan Airways' fleet and has been used on flights into and out of Iran as recently as December 19, 2017.

Additionally, on August 29, 2014, OFAC blocked the property and interests in property of Asian Aviation Logistics of Thailand, a Mahan Airways affiliate or front company, pursuant to Executive Order 13,224. In doing so, OFAC described Mahan Airways' use of Asian Aviation Logistics to evade sanctions by making payments on behalf of Mahan for the purchase of engines and other equipment.[22]

The May 21, 2015 modification order detailed the acquisition of two aircraft, specifically an Airbus A340 bearing MSN 164 and an Airbus A321 bearing MSN 550, that were purchased by Al Naser Airlines in late 2014/early 2015 and were under the possession, control, and/or ownership of Mahan Airways.[23] The sales agreements for these two aircraft were signed by Ali Abdullah Alhay for Al Naser Airlines.[24] Payment information reveals that multiple electronic funds transfers (''EFT'') were made by Ali Abdullah Alhay and Bahar Safwa General Trading in order to acquire MSNs 164 and 550.

The May 21, 2015 modification order also laid out evidence showing the respondents' attempts to obtain other controlled aircraft, including aircraft physically located in the United States in similarly-patterned transactions during the same recent time period. Transactional documents involving two Airbus A320s bearing MSNs 82 and 99, respectively, again showed Ali Abdullah Alhay signing sales agreements for Al Naser Airlines.[25] A review of the payment information for these aircraft similarly revealed EFTs from Ali Abdullah Alhay and Bahar Safwa General Trading that follow the pattern described for MSNs 164 and 550, *supra.* MSNs 82 and 99 were detained by OEE Special Agents prior to their planned export from the United States.

The July 13, 2015 renewal order outlined evidence showing that Al Naser Airlines' attempts to acquire aircraft on behalf of Mahan Airways extended beyond MSNs 164 and 550 to include a total of nine aircraft.[26] Four of the aircraft, all of which are subject to the Regulations and were obtained by Mahan from Al Naser Airlines, had been issued the following Iranian tail numbers: EP–MMD (MSN 164), EP–MMG (MSN 383), EP–MMH (MSN 391) and EP–MMR (MSN 416), respectively.[27] Publicly available flight tracking information provided evidence that at the time of the July 13, 2015

[20] The BAE regional jets are powered with U.S.-origin engines. The engines are subject to the EAR and classified under ECCN 9A991.d. These aircraft contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified under ECCN 9A991.b. The export or reexport of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[21] *See* 76 FR 50407 (Aug. 15, 2011). The July 22, 2014 renewal order also referenced two Airbus A320 aircraft painted in the livery and logo of Mahan Airways and operating under Iranian tail numbers EP–MMK and EP–MML, respectively. OEE's investigation also showed that Mahan obtained these aircraft in November 2013, from Khors Air Company, another Ukrainian airline that, like Ukrainian Mediterranean Airlines, was added to BIS's Entity List on August 15, 2011. Open source evidence indicates the two Airbus A320 aircraft may be been transferred by Mahan Airways to another Iranian airline in October 2014, and issued Iranian tail numbers EP–APE and EP–APF, respectively.

[22] See *http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20140829.aspx. See* 79 FR 55073 (Sep. 15, 2014). OFAC also blocked the property and property interests of Pioneer Logistics of Turkey on August 29, 2014. *Id.* Mahan Airways' use of Pioneer Logistics in an effort to evade the TDO and the Regulations was discussed in a prior renewal order, as summarized, *supra,* at 13–14. BIS added both Asian Aviation Logistics and Pioneer Logistics to the Entity List on December 12, 2013. *See* 78 FR 75458 (Dec. 12, 2013).

[23] Both of these aircraft are powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. Both aircraft contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[24] The evidence obtained by OEE showed Ali Abdullah Alhay as a 25% owner of Al Naser Airlines.

[25] Both aircraft were physically located in the United States and therefore are subject to the Regulations pursuant to Section 734.3(a)(1). Moreover, these Airbus A320s are powered by U.S.-origin engines that are subject to the Regulations and classified under Export Control Classification Number ECCN 9A991.d. The Airbus A320s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[26] This evidence included a press release dated May 9, 2015, that appeared on Mahan Airways' website and stated that Mahan ''added 9 modern aircraft to its air fleet [,]'' and that the newly acquired aircraft included eight Airbus A340s and one Airbus A321. See *http://www.mahan.aero/en/mahan-air/press-room/44.* The press release was subsequently removed from Mahan Airways' website. Publicly available aviation databases similarly showed that Mahan had obtained nine additional aircraft from Al Naser Airlines in May 2015, including MSNs 164 and 550. As also discussed in the July 13, 2015 renewal order, Sky Blue Bird Group, via Issam Shammout, was actively involved in Al Naser Airlines' acquisition of MSNs 164 and 550, and the attempted acquisition of MSNs 82 and 99 (which were detained by OEE).

[27] The Airbus A340s are powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. The Airbus A340s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

renewal, both EP–MMH and EP–MMR were being actively flown on routes into and out of Iran in violation of the TDO and Regulations.[28]

The January 7, 2016 renewal order discussed evidence that Mahan Airways had begun actively flying EP–MMD on international routes into and out of Iran, including from/to Bangkok, Thailand. Additionally, the January 7, 2016 order described publicly available aviation database and flight tracking information indicating that Mahan Airways continued efforts to acquire Iranian tail numbers and press into active service under Mahan's livery and logo at least two more of the Airbus A340 aircraft it had obtained from or through Al Naser Airlines: EP–MME (MSN 371) and EP–MMF (MSN 376), respectively. Since January 2016, EP–MME has logged flights to and from Tehran, Iran involving various destinations, including Guangzhou, China and Dubai, United Arab Emirates, in further violation of the TDO and the Regulations.

The July 7, 2016 renewal order described Mahan Airways' acquisition of a BAE Avro RJ–85 aircraft (MSN 2392) in violation of the TDO and its subsequent registration under Iranian tail number EP–MOR.[29] This information was corroborated by publicly available information on the website of Iran's civil aviation authority. The July 7, 2016 order also outlined Mahan's continued operation of EP–MMF in violation of the TDO on routes from Tehran, Iran to Beijing, China and Shanghai, China, respectively.

The December 30, 2016 renewal order outlined Mahan's continued operation of multiple Airbus aircraft, including EP–MMD (MSN 164), EP–MMF (MSN 376), and EP–MMH (MSN 391), which were acquired from or through Al Naser Airlines in violation of the TDO, as previously detailed in pertinent part in the July 13, 2015 and January 7, 2016 renewal orders. Publicly available flight tracking information showed that the aircraft were operated on flights into and out of Iran, including from/to Beijing, China, Kuala Lumpur, Malaysia, and Istanbul, Turkey.[30]

The June 27, 2017 renewal order included similar evidence regarding Mahan Airways' violation of the TDO by operating multiple Airbus aircraft subject to the Regulations, including, but not limited to, aircraft procured from or through Al Naser Airlines, on flights into and out of Iran, including from/to Moscow, Russia, Shanghai, China and Kabul, Afghanistan. [31]

The June 27, 2017 order also detailed evidence concerning a suspected planned or attempted diversion to Mahan of an Airbus A340 subject to the Regulations that had first been mentioned in OEE's December 13, 2016 renewal request.

The December 20, 2017 renewal order presented evidence that a Mahan employee attempted to initiate negotiations with a U.S. company for the purchase of an aircraft subject to the Regulations and classified under ECCN 9A610. Moreover, the order highlighted Al Naser Airlines' acquisition, via lease, of at least possession and/or control of a Boeing 737 (MSN 25361), bearing tail number YR–SEB, and an Airbus A320 (MSN 357), bearing tail number YR–SEA, from a Romanian company in violation of the TDO.[32] Open source information indicates that after the December 20, 2017 renewal order publicly exposed Al Naser's acquisition of these two aircraft (MSNs 25361 and 357), the leases were subsequently cancelled and the aircraft returned to their owner.

The December 20, 2017 renewal order also included evidence indicating that Mahan Airways was continuing to operate a number of aircraft subject to the Regulations, including aircraft originally procured from or through Al Naser Airlines, on flights into and out of Iran from/to Lahore, Pakistan, Shanghai, China, Ankara, Turkey, Kabul, Afghanistan, and Baghdad, Iraq, in violation of the TDO.[33]

The June 14, 2018 renewal order outlined evidence that Mahan began actively operating EP–MMT, an Airbus A340 aircraft (MSN 292) acquired in 2017 and previously registered in Kazakhstan under tail number UP–A4003, on international flights into and out of Iran.[34] It also discussed evidence that Mahan continued to operate a number of aircraft subject to the EAR, including, but not limited to, EP–MME, EP–MMF, and EP–MMH, on international flights into and out of Iran from/to Beijing, China, Dubai, United Arab Emirates, and Istanbul, Turkey.[35]

The June 14, 2018 order also noted that on May 24, 2018, OFAC had designated a number of Mahan-related entities and individuals as Specially Designated Global Terrorists, pursuant to Executive Order 13,224, for providing material support to Mahan, including, but not limited to, Otik Aviation, a/k/a Otik Havacilik Sanayi Ve Ticaret Limited Sirketi, of Turkey.[36] On May 24,

[28] There is some publicly available information indicating that the aircraft Mahan Airways is flying under Iranian tail number EP–MMR is now MSN 615, rather than MSN 416. Both aircraft are Airbus A340 aircraft that Mahan acquired from Al Naser Airlines in violation of the TDO and the Regulations. Moreover, both aircraft were designated as SDGTs by OFAC on May 21, 2015, pursuant to Executive Order 13324. See 80 FR 30762 (May 29, 2015).

[29] The BAE Avro RJ–85 is powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. The BAE Avro RJ–85 contains controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result is subject to the EAR regardless of its location. The aircraft is classified under ECCN 9A991.b, and its export or re-export to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[30] Specifically, on December 22, 2016, EP–MMD (MSN 164) flew from Dubai, UAE to Tehran, Iran. Between December 20 and December 22, 2016, EP–MMF (MSN 376) flew on routes from Tehran, Iran to Beijing, China and Istanbul, Turkey, respectively. Between December 26 and December 28, 2016, EP–MMH (MSN 391) flew on routes from Tehran, Iran to Kuala Lumpur, Malaysia.

[31] Publicly available flight tracking information shows that on June 22, 2017, EP–MME (MSN 371) flew from Moscow, Russia to Tehran, Iran. Additionally, between June 19, 2017, and June 20, 2017, EP–MMQ (MSN 449), an Airbus A430 also obtained from or through Al Naser Airlines, flew on routes between Shanghai, China and Tehran, Iran. Similar flight tracking information shows that on June 20, 2017, EP–MNK (MSN 618), an Airbus A300 originally acquired by Mahan via a Ukrainian company, flew between Kabul, Afghanistan and Mashhad, Iran.

[32] The Airbus A320 is powered with U.S.-origin engines, which are subject to the EAR and classified under Export Control Classification (''ECCN'') 9A991.d. The engines are valued at more than 10 percent of the total value of the aircraft, which consequently is subject to the EAR. The aircraft is classified under ECCN 9A991.b, and its export or reexport to Iran would require U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[33] For example, publicly available flight tracking information shows that on December 17, 2017, EP–MNV (MSN 567) flew from Lahore, Pakistan to Tehran, Iran. On December 18–19, 2017, EP–MMQ (MSN 449) flew on routes between Istanbul, Turkey and Tehran, Iran. Additionally, on December 17, 2017, EP–MNK (MSN 618), an Airbus A300 originally acquired by Mahan via a Ukrainian company, flew on routes between Baghdad, Iraq and Mashhad, Iran.

[34] The Airbus A340 is powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. The Airbus A340 contains controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result is subject to the EAR regardless of its location. The aircraft is classified under ECCN 9A991.b. The export or re-export of this aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations. On June 4, 2018, EP–MMT (MSN 292) flew from Bangkok, Thailand to Tehran, Iran.

[35] Publicly available flight tracking information shows that on June 3, 2018, EP–MMF (MSN 376) flew on routes between Beijing, China and Tehran, Iran and on June 4, 2018, EP–MMH (MSN 391) flew from Dubai, United Arab Emirates to Tehran, Iran. Additionally, on June 4, 2018, EP–MME (MSN 371) flew on routes between Istanbul, Turkey and Tehran, Iran.

[36] *See* FR 27,828 (June 14, 2018). OFAC's related press release states in part that ''[o]ver the last several years, Otik Aviation has procured and delivered millions of dollars in aviation-related spare and replacement parts for Mahan Air, some

Continued

2018, OFAC also designated an additional twelve aircraft owned and/or operated by Mahan.[37]

The June 14, 2018 renewal order also cited the April 2018 arrest and arraignment of a U.S. citizen on a three-count criminal information filed in the United States District Court for the District of New Jersey involving the unlicensed exports of U.S.-origin aircraft parts to Iran valued at over $2 million. The criminal information listed Mahan Airways as one of the defendant's customers.

OEE's November 20, 2018 renewal request details publicly available information showing that Mahan Airways has continued operating a number of aircraft subject to the EAR, including, but not limited to, EP–MMB, EP–MME, EP–MMF, and EP–MMQ, on international flights into and out of Iran from/to Istanbul, Turkey, Guangzhou, China, Bangkok, Thailand, and Dubai, United Arab Emirates, including as recently as December 10, 2018.[38]

Since the TDO was last renewed on June 14, 2018, OFAC has designated additional Mahan-related entities as SDGTs pursuant to Executive Order 13,224, namely, My Aviation Company Limited, of Thailand, and Mahan Travel and Tourism SDN BHD, a/k/a Mahan Travel a/k/a Mihan Travel & Tourism SDN BHD, of Malaysia.[39] As general sales agents for Mahan Airways, these companies sell cargo space aboard Mahan Airways' flights, including on flights to Iran, and provide other services to or for benefit of Mahan Airways and its operations.[40]

Lastly, on October 3, 2018, OEE's continued investigation of Mahan Airways and its affiliates resulted in a guilty plea by Arzu Sagsoz, a Turkish national, in the United States District Court for the District of Columbia stemming from her involvement in a conspiracy to export a U.S.-origin aircraft engine valued at approximately $810,000 to Mahan.

C. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that the denied persons have acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of future violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should continue to cease dealing with Mahan Airways and Al Naser Airlines and the other denied persons in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

I*t is therefore ordered:* FIRST, that MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; PEJMAN MAHMOOD KOSARAYANIFARD A/K/A KOSARIAN FARD, P.O. Box 52404, Dubai, United Arab Emirates; MAHMOUD AMINI, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; KERMAN AVIATION A/K/A GIE KERMAN AVIATION, 42 Avenue Montaigne 75008, Paris, France; SIRJANCO TRADING LLC, P.O. Box 8709, Dubai, United Arab Emirates; MAHAN AIR GENERAL TRADING LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates; MEHDI BAHRAMI, Mahan Airways-Istanbul Office, Cumhuriye Cad. Sibil Apt No: 101 D:6, 34374 Emadad, Sisli Istanbul, Turkey; AL NASER AIRLINES A/K/A AL–NASER AIRLINES A/K/A AL NASER WINGS AIRLINE A/K/A AL NASER AIRLINES AND AIR FREIGHT LTD., Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq, and Al Amirat Street, Section 309, St. 3/H.20, Al Mansour, Baghdad, Iraq, and P.O. Box 28360, Dubai, United Arab Emirates, and P.O. Box 911399, Amman 11191, Jordan; ALI ABDULLAH ALHAY A/K/A ALI ALHAY A/K/A ALI ABDULLAH AHMED ALHAY, Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq, and Anak Street, Qatif, Saudi Arabia 61177; BAHAR SAFWA GENERAL TRADING, P.O. Box 113212, Citadel Tower, Floor-5, Office #504, Business Bay, Dubai, United Arab Emirates, and P.O. Box 8709, Citadel Tower, Business Bay, Dubai, United Arab Emirates; SKY BLUE BIRD GROUP A/K/A SKY BLUE BIRD AVIATION A/K/A SKY BLUE BIRD LTD A/K/A SKY BLUE BIRD FZC, P.O. Box 16111, Ras Al Khaimah Trade Zone, United Arab Emirates; and ISSAM SHAMMOUT A/K/A MUHAMMAD ISAM MUHAMMAD ANWAR NUR SHAMMOUT A/K/A ISSAM ANWAR, Philips Building, 4th Floor, Al Fardous Street, Damascus, Syria, and Al Kolaa, Beirut, Lebanon 151515, and 17–18 Margaret Street, 4th Floor, London, W1W 8RP, United Kingdom, and Cumhuriyet Mah. Kavakli San St. Fulya, Cad. Hazar Sok. No.14/A Silivri, Istanbul, Turkey, and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering,

---

of which are procured from the United States and the European Union. As recently as 2017, Otik Aviation continued to provide Mahan Air with replacement parts worth well over $100,000 per shipment, such as aircraft brakes.'' *See https://home.treasury.gov/news/press-releases/sm0395. See also https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180524.aspx.*

[37] *See* FR 27,828 (June 14, 2018). These twelve aircraft, in which Mahan Airways has an interest, are: EP–MMA (MSN 20), EP–MMB (MSN 56), EP–MMC (MSN 282), EP–MMJ (MSN 526), EP–MMV (MSN 2079), EP–MNF (MSN 547), EP–MOD (MSN 3162), EP–MOM (MSN 3165), EP–MOP (MSN 2257), EP–MOQ (MSN 2261), EP–MOR (MSN 2392), and EP–MOS (MSN 2347).

[38] Flight tracking information shows that on December 10, 2018, EP–MMB (MSN 56) flew from Istanbul, Turkey to Tehran, Iran, and EP–MME (MSN 371) flew from Guangzhou, China to Tehran, Iran. Additionally, on December 6, 2018, EP–MMF (MSN 376) flew from Bangkok, Thailand to Tehran, Iran, and on December 9, 2018, EP–MMQ (MSN 449) flew on routes between Dubai, United Arab Emirates and Tehran, Iran.

[39] *See* 83 FR 34,301 (July 19, 2018) (designation of Mahan Travel and Tourism SDN BHD on July 9, 2018), and 83 FR 53,359 (Oct. 22, 2018) (designation of My Aviation Company Limited and updating of entry for Mahan Travel and Tourism SDN BHD on September 14, 2018).

[40] OFAC's press release concerning its designation of My Aviation Company Limited on September 14, 2018, states in part that ''[t]his Thailand-based company has disregarded numerous U.S. warnings, issued publicly and delivered bilaterally to the Thai government, to sever ties with Mahan Air.'' My Aviation provides cargo services to Mahan Airways, including freight booking, and works with local freight forwarding entities to ship cargo on regularly-scheduled Mahan Airways' flights to Tehran, Iran. My Aviation has also provided Mahan Airways with passenger booking services. *See https://home.treasury.gov/news/press-releases/sm484.*

storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or engaging in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by ownership, control, position of responsibility, affiliation in the conduct of trade or business may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Sections 766.24(e) of the EAR, Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and/or Bahar Safwa General Trading may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022. In accordance with the provisions of Sections 766.23(c)(2) and 766.24(e)(3) of the EAR, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Sky Blue Bird Group, and/or Issam Shammout may, at any time, appeal their inclusion as a related person by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and/or Bahar Safwa General Trading as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading and each related person, and shall be published in the **Federal Register**. This Order is effective immediately and shall remain in effect for 180 days.

Dated: December 11, 2018.

Douglas R. Hassebrock,

Director, Office of Export Enforcement, performing the non-exclusive functions, and duties of the Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2018–27225 Filed 12–14–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–823; A–834–807; A–307–820]

Silicomanganese From India, Kazakhstan, and Venezuela: Final Results of Expedited Third Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela would be likely to lead to continuation or recurrence of dumping. The magnitude of the dumping margins likely to prevail are indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 2002, Commerce published the *Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Orders: Silicomanganese from India, Kazakhstan, and Venezuela* (*AD Orders*).[1] On October 2, 2013, the Department published the notice of continuation of these *AD Orders*.[2]

On September 11, 2018, Commerce published the notice of initiation of the sunset reviews of the *AD Orders* on silicomanganese from India, Kazakhstan, and Venezuela, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3]

On September 13, 2018, Commerce received a notice of intent to participate from Eramet Marietta, Inc. (Eramet) as a domestic interested party, within the deadline specified in 19 CFR

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Orders: Silicomanganese from India, Kazakhstan, and Venezuela,* 67 FR 36149 (May 23, 2002).

[2] *See Silicomanganese from India, Kazakhstan, and Venezuela: Continuation of Antidumping Duty Orders,* 78 FR 60846 (October 2, 2013) (*Third Continuation of the AD Orders*).

[3] *See Initiation of Five-Year (''Sunset'') Reviews,* 83 FR 45887 (September 11, 2018) (*Initiation*).

351.218(d)(1)(i).[4] Eramet claimed interested party status under section 771(9)(C) of the Act as a producer in the United States of the domestic like product. On October 1, 2018, the Department received a complete substantive response to the notice of initiation from Eramet within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received no substantive responses from respondent interested parties. As a result, the Department conducted an expedited, *i.e.,* 120-day, sunset review of these *AD Orders* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Orders

For purposes of these orders, the products covered are all forms, sizes and compositions of silicomanganese, except low-carbon silicomanganese, including silicomanganese briquettes, fines and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Parties can find the full description of the scope of these *AD Orders* in the Issues and Decision Memo, which 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 *http://access.trade.gov* and is available to all parties in the Central Records Unit in Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://trade.gov/enforcement/.* The signed and electronic versions of the Decision Memorandum are identical in content.

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of dumping margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in the Issues and Decision Memorandum.

[4] *See* Eramet's submission ''Five-Year (''Sunset'') Reviews of Antidumping Duty Orders on Silicomanganese from India, Kazakhstan, and Venezuela: Notice of Intent to Participate'' (September 13, 2018).

Final Results of Sunset Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela would be likely to lead to continuation or recurrence of dumping. We determine that the weighted-average dumping margins likely to prevail are up to the following percentages:

Country	Weighted average margin (percent)
India	20.53
Kazakhstan	247.88
Venezuela	24.62

Notification to Interested Parties

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the 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.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: December 10, 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.

[FR Doc. 2018–27242 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–043]

Stainless Steel Sheet and Strip From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on stainless steel sheet and strip (SSSS) from the People's Republic of China (China) for the period July 18, 2016, through December 31, 2017.

DATES: Applicable December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Charlotte Baskin-Gerwitz, Enforcement and Compliance, AD/CVD Operations, Office VII, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880.

Background

On April 2, 2018, Commerce published a notice of opportunity to request an administrative review of the CVD order on SSSS from China for the period July 18, 2016, through December 31, 2017.[1] On April 30, 2018, Hans-Mill Corporation and C.Y. Housewares (Dongguan) Co., Ltd. (collectively, C.Y. Housewares), requested an administrative review of its exports of subject merchandise to the United States.[2] On June 6, 2018, in accordance with section 751(a) the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on SSSS from China.[3] On June 22, 2018, C.Y. Housewares timely withdrew its request for an administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, ''in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review.'' C.Y. Housewares withdrew its request within the 90-day time limit. Because we received no other requests for review of the order on SSSS from China, we are rescinding the administrative review of the order in full, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of SSSS from China during the period of review at rates equal to the

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 13949 (April 2, 2018).

[2] *See* C.Y. Houseware's letter, ''Stainless Steel Sheet and Strip from the People's Republic of China: Request for Administrative Review,'' dated April 30, 2018.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 26258 (June 6, 2018) (*Initiation Notice).*

[4] *See* C.Y. Houseware's letter, ''Stainless Steel Sheet and Strip from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated June 22, 2018.

cash deposit rate of estimated countervailing 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 instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of countervailing duties occurred and the subsequent assessment of doubled countervailing duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 11, 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. 2018–27241 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–856]

Certain Corrosion-Resistant Steel Products From Taiwan: 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 producers/exporters subject to this review made sales of subject merchandise at less than normal value during the period of review (POR) June 2, 2016, through June 30, 2017.

DATES: Applicable December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Shanah Lee or Emily Halle, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6386 or (202) 482–0176, respectively.

Background

On August 10, 2018, Commerce published the *Preliminary Results* for this administrative review.[1] We invited interested parties to comment on the *Preliminary Results.* This review covers four respondents: Chung Hung Steel Corporation, Prosperity, SYSCO, and Yieh Phui/Synn. We received case briefs from AK Steel Corporation, California Steel Industries, Inc., Steel Dynamics Inc., ArcelorMittal USA LLC, Nucor Corporation (collectively, the petitioners), United States Steel Corporation (U.S. Steel), Prosperity Tieh Enterprise Co., Ltd. (Prosperity), Sheng Yu Steel Co., Ltd. (SYSCO), Toyota Tsusho America, Inc. (TAI), and Yieh Phui Enterprise Co., Ltd. (Yieh Phui) and Synn Industrial Co., Ltd. (collectively, Yieh Phui/Synn). We received rebuttal briefs from the petitioners, U.S. Steel, and SYSCO. Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the order is flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The subject merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000. The products subject to the orders may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice.[2] A list of the issues which parties raised, and to which we respond in the Issues and Decision Memorandum, is attached at the Appendix. The Issues and Decision Memorandum 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, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum 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 made certain changes to the preliminary weighted-average margin calculations for Prosperity, SYSCO, and Yieh Phui/Synn. For detailed

[1] *See Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 39679 (August 10, 2018) (*Preliminary Results*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Certain Corrosion-Resistant Steel Products from Taiwan, 2016–2017,'' dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

information, *see* the Issues and Decision Memorandum.

Final Results of the Administrative Review

We determine that the following weighted-average dumping margins exist for the respondents for the period June 2, 2016, through June 30, 2017.

Exporter/producer	Weighted-average dumping margin (percent)
Chung Hung Steel Corporation	[3] 2.59
Prosperity Tieh Enterprise Co., Ltd	2.15
Yieh Phui Enterprise Co., Ltd. and Synn Industrial Co., Ltd	2.22
Sheng Yu Steel Co. Ltd	4.90

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For Prosperity, SYSCO, and Yieh Phui/Synn, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[4] For entries of subject merchandise during the POR produced by Prosperity, SYSCO, or Yieh Phui/Synn for which the producer did not know 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.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average of the cash deposit rates calculated for Prosperity, SYSCO, or Yieh Phui/Synn.[5] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[6]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice for all shipments of certain corrosion-resistant steel products from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above will be equal to the weighted-average dumping margins established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior complete segment of this proceeding, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.34 percent,[7] the all-others rate determined in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

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(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 terms of an APO is a violation, which is subject to sanction.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: December 10, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive duties and functions of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Margin Calculations
V. Discussion of the Issues
- Comment 1: Whether to Use Quarterly Costs for Yieh Phui/Synn and Prosperity
- Comment 2: Minor Corrections to Prosperity's *Preliminary Results*
- Comment 3: Whether to Adjust Prosperity's Material Cost for Scrap
- Comment 4: Whether to Grant Certain Post-Sale Price Adjustments to SYSCO
- Comment 5: Company-Specific Assessment Rate
- Comment 6: Whether to Apply Partial Facts Available to Calculate the Indirect Selling Expenses of SYSCO's Affiliated Reseller
- Comment 7: Correct Conversion of SYSCO's Commission
- Comment 8: Corrections to Yieh Phui/Synn's *Preliminary Results*
- Comment 9: Yieh Phui/Synn's Correct Date of Sale

VI. Recommendation

[FR Doc. 2018–27244 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–DS–P

[3] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[4] 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 Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[5] This rate was calculated as discussed in footnote 3, above.

[6] *See* section 751(a)(2)(C) of the Act.

[7] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 82 FR 48390 (July 25, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Carbazole Violet Pigment 23 From India: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Pidilite Industries Limited (Pidilite), producer/exporter of carbazole violet pigment 23 (CVP 23) from India, did not sell subject merchandise at prices below normal value (NV) during the period of review (POR) December 1, 2016, through November 30, 2017.

DATES: Applicable December 17, 2018.

FOR FURTHER INFORMATION CONTACT: George Ayache, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–2623.

SUPPLEMENTARY INFORMATION:

Scope of the Order [1]

The merchandise covered by the *Order* is CVP–23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2-b:3′,2′-m]* [2] *triphenodioxazine, 8,18-dichloro-5, 15-diethy-5, 15-dihydro-,* and molecular formula of C34 H22 Cl2 N4 O2. The subject merchandise includes the crude pigment in any form (*e.g.,* dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.,* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the order.

The merchandise subject to the *Order* is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the *Order* is dispositive.

Methodology

We are conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[3] The Preliminary Decision Memorandum 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 *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 0.00 percent exists for Pidilite for the period December 1, 2016, through November 30, 2017.

Disclosure and Public Comment

We intend to disclose the calculations performed in connection with these preliminary results to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[4] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[5] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Case and rebuttal briefs should be filed using ACCESS.[6]

All submissions to Commerce must be filed electronically using ACCESS and must also be served on interested parties.[7] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[8] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.[9]

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess upon issuance of the final results, antidumping duties on all appropriate entries covered by this review.[10]

If Pidilite's calculated weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate importer-

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 From India,* 69 FR 77988 (December 29, 2004) (*Order*).

[2] The bracketed section of the product description, [3,2-b:3′,2′-m], is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* ''Amendment to Petition for Antidumping Investigations of China and India and a Countervailing Duty Investigation of India on Imports of Carbazole Violet Pigment 23 in the forms of Crude Pigment, Presscake and Dry Color Pigment,'' dated December 3, 2003, at 8.

[3] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Carbazole Violet Pigment 23 from India; 2016–2017,'' dated concurrently with these results and hereby adopted by this notice.

[4] *See* 19 CFR 351.309(c)(1)(ii).

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.303.

[7] *See* 19 CFR 351.303(f).

[8] *See* 19 CFR 351.310(c).

[9] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[10] *See* 19 CFR 351.212(b)(1).

specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales to that importer, and we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review. If Pidilite's weighted-average dumping margin continues to be zero or *de minimis,* or the importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[11]

In accordance with our ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Pidilite for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate.[12]

We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Pidilite will be the rate established in the final results of this review, except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1) (*i.e.,* less than 0.50 percent), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (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 for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 27.48 percent, the all-others rate established in the less-than-fair-value investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 11, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Discussion of the Methodology
  A. Comparisons to Normal Value
  1. Determination of Comparison Method
  2. Results of the Differential Pricing Analysis
  B. Date of Sale
  C. Product Comparisons
  D. Constructed Export Price
  E. Normal Value
  1. Home Market Viability and Selection of Comparison Market
  2. Level of Trade (LOT)
  F. Cost of Production (COP) Analysis
  1. Calculation of COP
  2. Test of Comparison Market Sales Prices
  3. Results of the COP Test
  G. Calculation of NV Based on Comparison Market Prices
  H. Currency Conversion
IV. Recommendation

[FR Doc. 2018–27243 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* 19 CFR 351.106(c)(2).

[12] For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

A–449–804, A–455–803, A–560–811, A–570–860, A–822–804, A–823–809, A–841–804

Steel Concrete Reinforcing Bars From Belarus, the People's Republic of China, Indonesia, Latvia, Moldova, Poland, and Ukraine: Continuation of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on steel concrete reinforcing bars (rebar) from Belarus, the People's Republic of China (China), Indonesia, Latvia, Moldova, Poland, and Ukraine would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD orders.

DATES: Applicable December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Keith Haynes, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5139.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2018, Commerce published the notice of initiation of the third sunset reviews of the *Orders*[1] on rebar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).[2] As a result of its reviews, Commerce determined that revocation of the *Orders* on rebar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine would likely lead to the continuation or recurrence of dumping.[3] Commerce, therefore,

[1] *See Antidumping Duty Orders: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine,* 66 FR 46777 (September 7, 2001) (*Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 83 FR 25436 (June 1, 2018).

[3] *See Steel Concrete Reinforcing Bars from Belarus, the People's Republic of China, Indonesia, Latvia, Moldova, Poland, and Ukraine: Final Results of Expedited Third Sunset Reviews of the Antidumping Duty Orders,* 83 FR 50344 (October 5, 2018), and accompanying Issues and Decision Memorandum (*Rebar 2018 Sunset Final*).

notified the ITC of the magnitude of the margins of dumping likely to prevail were the *Orders* revoked.[4]

On December 7, 2018, the ITC published its determinations, pursuant to sections 751(c) and 752 of the Act, that revocation of the *Orders* on rebar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The product covered by the orders is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7214.20.00, 7228.30.8050, 7222.11.0050, 7222.30.0000, 7228.60.6000, 7228.20.1000, or any other tariff item number. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth bars) and rebar that has been further processed through bending or coating.[6]

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders* on rebar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

These sunset reviews and notice are in accordance with sections 751(c), 752, and published pursuant to 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: December 11, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–27239 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–DS–P

[4] *Id.*

[5] *See Steel Concrete Reinforcing Bars from Belarus, the People's Republic of China, Indonesia, Latvia, Moldova, Poland, and Ukraine: Final Results of Expedited Third Sunset Reviews of the Antidumping Duty Orders; Determination,* 83 FR 63188 (December 7, 2018).

[6] *Id.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 181101997–8999–02]

Developing a Privacy Framework

AGENCY: National Institute of Standards and Technology, U.S. Department of Commerce.

ACTION: Notice; extension of comment period.

SUMMARY: The National Institute of Standards and Technology (NIST) extends the period for submitting written comments on the request for information (RFI) entitled ''Developing a Privacy Framework,'' published on November 14, 2018. The public comment period was originally to close on December 31, 2018; the comment period is extended to now end on January 14, 2019. NIST is taking this action to provide additional time to submit comments because multiple interested parties have expressed difficulty in submitting comments by the original deadline and have asked for an extension.

DATES: Comments must be received on or before January 14, 2019 at 5:00 p.m. Eastern Time.

ADDRESSES: Written comments may be submitted by mail to Katie MacFarland, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2000, Gaithersburg, MD 20899. Electronic submissions may be sent to *privacyframework@nist.gov,* and may be in any of the following formats: HTML, ASCII, Word, RTF, or PDF. Please cite ''Developing a Privacy Framework'' in all correspondence. Comments received by the deadline will be posted at *http://www.nist.gov/privacyframework* without change or redaction, so commenters should not include information they do not wish to be posted (*e.g.,* personal or confidential business information). Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be posted or considered.

FOR FURTHER INFORMATION CONTACT: For questions about the RFI contact: Naomi Lefkovitz, U.S. Department of Commerce, NIST, MS 2000, 100 Bureau Drive, Gaithersburg, MD 20899, telephone (301) 975–2924, email *privacyframework@nist.gov.* Please direct media inquiries to NIST's Public Affairs Office at (301) 975–NIST.

SUPPLEMENTARY INFORMATION: On November 14, 2018, NIST published a notice and RFI in the **Federal Register** (83 FR 56824), about developing a privacy framework. The notice requested public comments on or before December 31, 2018. Multiple interested parties have expressed difficulty in submitting comments by the original deadline, and have asked for an extension. In light of these requests, NIST extends the period for submitting public comments to January 14, 2018. Previously submitted comments do not need to be resubmitted.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2018–27248 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG454

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to US 101/Chehalis River Bridge-Scour Repair in Washington State

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to Washington State Department of Transportation (WSDOT) to take small numbers of marine mammals, by harassment, incidental to US 101/Chehalis River Bridge-Scour Repair in Washington State.

DATES: This authorization is valid from July 15, 2019, through February 15, 2020.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The National Defense Authorization Act (Pub. L. 108–136) removed the small numbers and specified geographical region limitations indicated above and amended the definition of harassment as it applies to a military readiness activity

Summary of Request

On July 26, 2018, NMFS received a request from WSDOT for an IHA to take marine mammals incidental to US 101/Chehalis River Bridge-Scour Repair in the State of Washington. WSDOT's request was for take of small numbers of harbor seal (*Phoca vitulina*); California sea lion (*Zalophus californianus*); Steller sea lion (*Eumetopias jubatus*); gray whale (*Eschrichtius robustus*); and harbor porpoise (*Phocoena phocoena*) by Level B harassment only. This authorization is valid from July 15, 2019, through February 15, 2020. Neither WSDOT nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of the Activity

Overview

WSDOT plans to conduct in-water construction work as part of the US 101/Chehalis River Bridge-Scour Repair Project in Washington State between July 15, 2019 and February 15, 2020. Vibratory pile driving will be required to remove and install timber piles, steel sheets and steel H-piles. Sound in the water from vibratory driving may result in behavioral harassment. NMFS previously issued an IHA to WSDOT to incidentally take five species of marine mammal by Level B harassment on October 18, 2017 (82 FR 50628; November 1, 2017). That IHA is valid from July 1, 2018 through June 30, 2019. However, WSDOT has made minor changes to the project plan and delayed the work by one year. Therefore, WSDOT has requested that NMFS re-issue the IHA with the dates changed to accommodate the analyzed work with minor modifications to the number of piles driven and removed as well as the number of animals authorized for take. No work was conducted or is planned to occur under the original IHA. The purpose of the US 101/Chehalis River Bridge-Scour Repair Project is to make the bridge foundation stable and protect the foundation from further scour. Bridge scour is the removal of sediment such as sand and gravel from around bridge abutments or piles. Scour, caused by swiftly moving water, can scoop out scour holes, compromising the integrity of a structure. WSDOT plans to remove debris from the scour area, fill the scour void under Pier 14 with cement (to protect the pilings from marine borers), fill the scour hole, and protect the pier with scour resistant material.

Note that WSDOT has made revisions to the number and types of piles that would be installed and removed under the proposed 2019 IHA. The first change is the removal of 44 timber piles (some of which may be treated with creosote) from the immediate vicinity of the scour repair project. Additionally, 18 sheet piles will be temporarily installed adjacent to Pier 14, instead of the 44 sheet piles originally proposed. A detailed description of the planned WSDOT project is provided in the **Federal Register** notice for the proposed IHA (83 FR 53033; October 19, 2018). Since that time, no changes have been made to the planned WSDOT construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Dates and Duration

Due to NMFS and the U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect Endangered Species Act (ESA)-listed salmonids, planned WSDOT in-water construction is limited each year to July 15 through February 15. For this project, in-water construction is planned to take place between July 15, 2019 and September 30, 2019. The IHA is effective from July 15, 2019 to February 15, 2020. The estimated number of piles and maximum time period for pile installation and removal is 37 hours over 6 days as shown in Table 1.

TABLE 1—PILE REMOVAL MITIGATION AND SCOUR REPAIR PILE SUMMARY

Method	Pile type	Number of piles	Minutes per pile	Total minutes	Duration (hours)	Piles per day	Duration (11-hour work days)
Vibratory Removal	14-inch diameter timber.	44	30	1320	22	22	2
Vibratory Driving	Sheet	18	30	540	9	9	2
Vibratory Driving	H pile	6	30	180	3	6	1
Vibratory Removal	H pile	6	30	180	3	6	1
Total				2220	37		6.0

Comments and Responses

A notice of NMFS's proposal to issue an IHA to WSDOT was published in the **Federal Register** on October 19, 2018 (83 FR 53033). That notice described, in detail, WSDOT's planned activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). Please see the letter, available online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities,* for full details of the Commission's recommendations. The Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Comment 1: The Commission expressed concern that the renewal process proposed in the **Federal Register** notice is inconsistent with the statutory requirements. The Commission recommended that NMFS refrain from implementing its proposed renewal process and instead use abbreviated **Federal Register** notices and reference existing documents to streamline the incidental harassment authorization process. The Commission further recommended that if NMFS did not pursue a more general route, NMFS should provide the Commission and the public with a legal analysis supporting its conclusion that the process is consistent with the requirements under section 101(a)(5)(D) of the MMPA.

Response 1: The notice of the proposed IHA expressly notifies the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought. Additional reference to this solicitation of public comment has recently been added at the beginning of **Federal Register** notices that consider renewals. NMFS appreciates the streamlining achieved by the use of abbreviated **Federal Register** notices and intends to continue using them for proposed IHAs that include minor changes from previously issued IHAs, but which do not satisfy the renewal requirements. However, we believe our proposed method for issuing renewals meets statutory requirements and maximizes efficiency. Importantly, such renewals would be limited to where the activities are identical or nearly identical to those analyzed in the proposed IHA, monitoring does not indicate impacts that were not previously analyzed and authorized, and the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as are all IHAs. Last, NMFS will publish on our website a description of the renewal process before any renewal is issued utilizing the new process.

Description of Marine Mammals in the Area of Specified Activities

A detailed description of the species likely to be affected by WSDOT's project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (83 FR 53033; October 19, 2018); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Table 2 lists all species with expected potential for occurrence in the project location and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2017). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. 2017 SARs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and draft U.S. 2018 SARS (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*). All values presented in Table 2 are the most recent available at the time of publication.

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	N	20,990 (0.05, 20,125, 2011).	624	132
Family Phocoenidae (porpoises)						
Harbor porpoise	*Phocoena phocoena*	Northern Oregon/Washington Coast.	N	21,487 (0.44, 15,123, 2011).	151	≥3.0

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	*Zalophus californianus*	U.S	N	296,750 (n/a, 153,337, 2011).	9,200	389
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	N	41,638 (n/a, 41,638, 2015) [4].	2,498	108
Family Phocidae (earless seals)						
Harbor seal	*Phoca vitulina*	Oregon/Washington Coast	N	Unk [5]	undet	10.6

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases a CV is not applicable For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Best estimate of pup and non-pup counts, which have not been corrected to account for animals at sea during abundance surveys.

[5] Harbor seal estimate is based on data that are 8 years old, but this is the best available information for use here.

All species that could potentially occur in the survey areas are included in Table 2.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from vibratory pile driving and removal activities for the planned River Bridge-Scour repair project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (83 FR 53033; October 19, 2018) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to the **Federal Register** notice (83 FR 53033; October 19, 2018) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to vibratory driving. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown, establishment and monitoring of harassment zones) discussed in detail below in the Mitigation section), Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 decibel (dB) re 1 micro pascal (μPa) root means square (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) sources such as those used here.

WSDOT's planned activity includes the use of continuous (vibratory driving and removal and, therefore, the 120 dB re 1 μPa (rms) is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). WSDOT's planned activity includes the use non-impulsive (vibratory driving) sources.

These thresholds are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Table 3. Thresholds identifying the onset of Permanent Threshold Shift.

	PTS Onset Acoustic Thresholds* (Received Level)	
Hearing Group	**Impulsive**	**Non-impulsive**
Low-Frequency (LF) Cetaceans	*Cell 1* $L_{pk,flat}$: 219 dB $L_{E,LF,24h}$: 183 dB	*Cell 2* $L_{E,LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	*Cell 3* $L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB	*Cell 4* $L_{E,MF,24h}$: 198 dB
High-Frequency (HF) Cetaceans	*Cell 5* $L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB	*Cell 6* $L_{E,HF,24h}$: 173 dB
Phocid Pinnipeds (PW) (Underwater)	*Cell 7* $L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	*Cell 8* $L_{E,PW,24h}$: 201 dB
Otariid Pinnipeds (OW) (Underwater)	*Cell 9* $L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB	*Cell 10* $L_{E,OW,24h}$: 219 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Reference sound source levels used by WSDOT vibratory piling driving and removal activities were derived from several sources. WSDOT utilized in-water measurements generated by the Greenbusch Group (2018) from the WDOT Seattle Pier 62 project (83 FR 39709) to establish proxy sound source levels for vibratory removal of 14-inch timber piles. The results determined unweighted rms ranging from 140 dB to 169 dB. WSDOT used the 75th percentile of these values (161 dB rms measured at 10 meters) as a proxy for vibratory removal of 14-inch timber piles at the Chehalis River Bridge.

However, NMFS reviewed the report by the Greenbusch Group (2018) and determined that the findings were derived by pooling together all steel pile and timber pile at various distance measurements data together. The data was not normalized to the standard 10 m distance. NMFS analyzed source measurements at different distances for all 63 individual timber piles that were removed and normalized the values to 10 m. The results showed that the median is 152 dB SPLrms. This value was used as the source level for vibratory removal of 14-inch timber piles.

The planned project includes vibratory driving of 18 sheet piles as well as vibratory driving and removal of six steel H piles. Based on in-water measurements at the Elliot Bay Seawall Project, vibratory pile driving of steel sheet piles generated a source level of 165 dB rms measured at 10 m (Greenbush Group 2015). According to CalTrans (2015), 150 dB rms at 10 m is a typical source level for vibratory driving and removal of steel H piles.

Level B Harassment Zones

The practical spreading model was used by WSDOT to establish the Level B harassment zones for all vibratory pile installation and removal activities. Practical spreading is described in full detail below.

Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log10 (R1/R2),$$

Where:

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20 * log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10 * log[range]). A practical spreading value of 15 is often used under conditions where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Utilizing the practical spreading loss model, WSDOT determined the distance and area where the noise will fall below the behavioral effects threshold of 120 dB rms. The distances and areas are shown in Table 4. Note that the ensonified area is based on a GIS analysis of the area accounting for structures and landmasses which would block underwater sound transmission.

TABLE 4—LEVEL B HARASSMENT ENSONIFIED AREA

Pile type	Level B harassment zone isopleth (meters)	Area (km^2)
14-inch timber vibratory removal	1,359	0.93
Steel sheet vibratory driving	10,000	2.04
Steel H-pile vibratory driving and removal	1,000	0.67

Level A Harassment Zones

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as vibratory driving, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. User Spreadsheet inputs are shown in Table 5 and outputs are shown in Table 6. Note that since no Level A harassment take is authorized, the areas of the Level A harassment zones were not calculated.

TABLE 5—PARAMETERS OF PILE DRIVING ACTIVITY

	14-inch timber	Sheet	H-Pile
USER SPREADSHEET INPUT			
Spreadsheet Tab Used	A.1) Vibratory driving	A.1) Vibratory driving	A.1) Vibratory driving.
Source Level (rms SPL)	152	165	150.
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5.
Number of piles in 24-h period	22	9	6.
Duration to drive a single pile (minutes)	30	30	30.
Propagation (xLogR)	15	15	15.

TABLE 5—PARAMETERS OF PILE DRIVING ACTIVITY—Continued

	14-inch timber	Sheet	H-Pile
Distance of source level measurement (meters)	10	10	10.

TABLE 6—LEVEL A HARASSMENT ZONE ISOPLETHS

Source type	PTS Isopleth (meters)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
USER SPREADSHEET OUTPUT					
14-inch timber	8.5	0.8	12.5	5.2	0.4
Sheet pile	34.4	3	50.9	20.9	1.5
H-pile	2.6	0.2	3.9	1.6	0.1

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

There is little abundance or density data available for marine mammal species that are likely to occur within Grays Harbor and which could potentially be found in the Chehalis River near the project site. In most cases, WSDOT relied on density data from the U.S. Navy Marine Species Density Database (NMSDD) (U.S. Navy 2015). NMFS concurs that this, and the exceptions described below, represent the best available data for use here.

Harbor Seal

While the NMSDD (U.S. Navy 2015) estimates the density of harbor seals in the waters offshore of Grays Harbor as 0.279 animals per square kilometer, WSDOT relied on a study which identified 44 harbor seal haul-outs in Grays Harbor and provided very rough estimates of the number of seals at each site. Twenty-seven haul-outs had less than 100 animals; 16 haul-outs had 100–500 animals; and 2 haul outs were reported to support over 500 animals (Jeffries *et al.* 2000). These data likely represent the best estimate of harbor seal numbers in Grays Harbor. Using median numbers of each haul-out estimate range resulted in an estimated 7,150 harbor seals in Grays Harbor. The area of the estuary during mean higher high water (243 km^2) was used to derive a density estimate of 29.4 harbor seals per square kilometer.

California Sea Lion

Only 10 California sea lion strandings have been documented between 2006 and 2015 (NMFS 2016c), and no haul-outs have been identified. Therefore, it is expected that the density of California sea lions in Grays Harbor is low. The NMSDD (U.S. Navy 2015) estimates the density of California sea lions in the waters offshore of Grays Harbor as ranging from 0.020 to 0.033 animals per square kilometer in summer and fall. The higher estimate is used as a surrogate for Grays Harbor.

Steller Sea Lion

According to the NMFS National Stranding Database, there were four confirmed Steller sea lion strandings in Grays Harbor between 2006 and 2015 (NMFS 2016c) and no haul-outs have been identified in Grays Harbor. The NMSDD (U.S. Navy 2015) estimates the density of Steller sea lions in the waters offshore of Grays Harbor as 0.0145 animals per square kilometer. This estimate is used as a surrogate for Grays Harbor.

Gray Whale

Between 1998 and 2010, gray whale numbers peaked in spring and fall in a study area that included waters inside Grays Harbor and coastal waters along the south Washington coast (Calambokidis, *et al.* 2012). However, no density estimates are available for Grays Harbor. The NMSDD (U.S. Navy 2015) estimates the density of gray whales in nearshore waters near Grays Harbor as 0.00045 animal per square kilometer in summer and fall. This density is used for Grays Harbor.

Harbor Porpoise

The NMSDD (U.S. Navy 2015) estimates the density of harbor porpoises in the waters offshore of Grays Harbor as a range between 0.69 and 1.67 animals per square kilometer. According to Evenson *et al.* (2016), the maximum harbor porpoise density in the Strait of Juan de Fuca (approximately 105 miles north of Grays Harbor) in 2014 was 0.768 animals per square kilometer. The higher density estimate for waters offshore of Grays Harbor (1.67) is used to estimate take.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

No Level A harassment take is likely because of the small injury zones and relatively low average animal density in the area. Since the largest Level A harassment distance is only 50.9 m from the source for high-frequency cetaceans (harbor porpoise), NMFS considers that WSDOT can effectively monitor such small zones to implement shutdown measures and avoid Level A harassment takes. Therefore, no Level A harassment take of marine mammal is authorized.

NMFS used an estimated harbor seal density of 29.4 animals/km^2 in the US 101/Chehalis River Bridge-Scour Repair Project area to estimate the following number of Level B harassment exposures that may occur:

- 14-inch timber pile removal: 29.4. animals/km^2 * 0.93 km^2 * 2 days = 54.68
- Sheet pile installation: 29.4 animals/km^2 * 2.04 km^2 * 2 days = 119.95
- H-pile installation and removal: 29.4 animals/km^2 * 0.67 km^2 * 2 days = 39.39

Based on the sum of the equations above, NMFS authorizes 214 takes of harbor seals by Level B harassment.

NMFS inserted the California sea lion density of 0.033 animals/km^2 into the same equation used above for harbor seals to estimate Level B harassment exposures. Based on the sum of the equations, an estimated 0.24 California sea lions would be taken by Level B harassment. Due to this low value, NMFS conservatively authorizes the take of two California sea lions each day of in-water activities, resulting in 12 takes by Level B harassment.

NMFS estimated take of Steller sea lions by inserting a density of 0.0145 animals/km² into the same equation used above for harbor seals resulting in 0.10 takes of sea lions. Given the low value, NMFS conservatively authorizes the take of two Steller sea lions during each day of in-water activities, resulting in 12 takes by Level B harassment.

NMFS used the same equation that was used for harbor seals to estimate take for gray whales by inserting a density value of 0.00045 animals/km². Since this resulted in a value less than one, NMFS authorizes Level B harassment take of two gray whales per day based on average group size.

For the proposed IHA, a density value of 1.67 animal/km² for harbor porpoises was plugged into the harbor seal equation to arrive at an estimated 2 harbor porpoise takes per day for a total of 12.

Table 7 shows total number of authorized Level B harassment takes and take as a percentage of population for each of the species.

TABLE 7—TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Authorized take by Level B harassment	% population
Harbor seal	214	1.9
California sea lion	12	<0.01
Steller sea lion	12	<0.01
Gray whale	2	<0.01
Harbor porpoise	12	<0.01

Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

Temporal and Seasonal Restrictions—Timing restrictions would be used to avoid in-water work when ESA-listed salmonids are most likely to be present. The combined work window for in-water work for the U.S. 101/Chehalis River Bridge–Scour Project is July 15 through February 15. Furthermore, work may only occur during daylight hours, when visual monitoring of marine mammals can be effectively conducted.

Establishment of Shutdown Zone—For all pile driving activities, WSDOT will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). In this case, shutdown zones are intended to contain areas in which sound pressure levels (SPLs) equal or exceed acoustic injury criteria for authorized species. If a marine mammal is observed at or within the shutdown zone, work must shut down (stop work) until the individual has been observed outside of the zone, or has not been observed for at least 15 minutes for all marine mammals. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye). If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving and removal activities at that location must be halted or delayed, respectively. If pile driving or removal is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. Pile driving and removal activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Shutdown zone sizes are shown in Table 8. Note that NMFS has increased the shutdown zone described in the **Federal Register** notice for proposed IHA for high-frequency cetaceans from 50 m to 55 m as well as the shutdown zone for phocid pinnipeds from 20 m to 25 m during sheet pile installation. In this notice of issuance, NMFS has elected to round up to these higher values instead of rounding down as was done in the proposed notice.

TABLE 8—SHUTDOWN ZONES FOR VARIOUS PILE DRIVING ACTIVITIES AND MARINE MAMMAL HEARING GROUPS (METERS)

Source type	Low-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
14-inch timber removal	10	15	10	10
Sheet pile installation	35	55	25	10
H-pile installation and removal	10	10	10	10

For in-water heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions. WSDOT must also implement shutdown measures if the cumulative total number of individuals observed within the Level B harassment monitoring zones for any particular species reaches the number authorized under the IHA and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B Harassment/Monitoring Zone during in-water construction activities.

Establishment of Level B Harassment/Monitoring Zones—WSDOT must identify and establish Level B harassment zones which are areas where SPLs equal or exceed 120 dB rms. Observation of monitoring zones enables observers to be aware of and communicate the presence of marine mammals in the project area and outside the shutdown zone and thus prepare for potential shutdowns of activity. Monitoring zones are also used to document instances of Level B harassment. Monitoring zone isopleths are shown in Table 4.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, the observer shall observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone shall be cleared when a marine mammal has not been observed within the zone for that 30-minute period. When a marine mammal permitted for Level B harassment take is present in the Level B harassment zone, piling activities may begin and Level B harassment take shall be recorded. As stated above, if the entire Level B harassment zone is not visible at the start of construction, piling driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone shall commence.

Non-Authorized Take Prohibited—If a species enters or approaches the Level B harassment zone and that species is not authorized for take or a species for which authorization has been granted but the authorized takes have been met, pile driving and removal activities must shut down immediately. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed.

Based on our evaluation of the applicant's mitigation measures, NMFS has determined that the required mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

WSDOT shall employ NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for its US 101/Chehalis River Bridge-Scour Repair Project. The purposes of marine mammal monitoring are to implement mitigation measures and learn more about impacts to marine mammals from WSDOT's construction activities. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;
2. At least one observer must have prior experience working as an observer;
3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;
4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and
5. NMFS will require submission and approval of observer CVs;

WSDOT must ensure that observers have the following additional qualifications:

1. Ability to conduct field observations and collect data according to assigned protocols;

2. Experience or training in the field identification of marine mammals, including the identification of behaviors;

3. Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

4. Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

5. Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power). Due to the different sizes of monitoring zones from different pile types, separate zones and monitoring protocols corresponding to each specific pile type will be established.

For vibratory pile driving of sheet piles, a total of four land-based PSOs will monitor the shutdown and Level B harassment zones. For vibratory pile driving and pile removal of H piles and timber piles, a total of three land-based PSOs will monitor the shutdown and Level B harassment zones.

Reporting Measures

WSDOT is required to submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA, whichever comes earlier. This report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS will have an opportunity to provide comments on the report, and if NMFS has comments, WSDOT will address the comments and submit a final report to NMFS within 30 days. Reports shall contain, at minimum, the following:

- Date and time that monitored activity begins and ends for each day conducted (monitoring period);
- Construction activities occurring during each daily observation period, including how many and what type of piles driven;
- Deviation from initial proposal in pile numbers, pile types, average driving times, etc.
- Weather parameters in each monitoring period (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions in each monitoring period (*e.g.,* sea state, tide state);
- For each marine mammal sighting:
  - Species, numbers, and, if possible, sex and age class of marine mammals;
  - Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
  - Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point; and
  - Estimated amount of time that the animals remained in the Level B harassment zone;
- Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay);
- Other human activity in the area within each monitoring period; and
- A summary of the following:
  - Total number of individuals of each species detected within the Level B harassment zone;
  - Total number of individuals of each species detected within the shutdown zone and the average amount of time that they remained in that zone; and
  - Daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level B harassment zone.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

NMFS has identified key qualitative and quantitative factors which may be employed to assess the level of analysis necessary to conclude whether potential impacts associated with a specified activity should be considered negligible. These include (but are not limited to) the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect to the species or stock, and the status of the species or stock. When an evaluation of key factors shows that the anticipated impacts of the specified activity would clearly result in no greater than a negligible impact on all affected species or stocks, additional evaluation is not required. In this case, the following factors are in place for all affected species or stocks:

- No takes by Level A harassment are anticipated or authorized;
- Takes by Level B harassment constitute less than 5 percent of the best available abundance estimates for all stocks;
- Take would not occur in places and/or times where take would be more likely to accrue to impacts on reproduction or survival, such as within ESA-designated or proposed critical habitat, biologically important areas (BIA), or other habitats critical to recruitment or survival (*e.g.,* rookery);
- Take would occur over a short timeframe (less than 30 days of active pile driving required during the IHA effective period);
- Take would occur over < 25 percent of species/stock range; and
- Stock is not known to be declining or suffering from known contributors to decline (*e.g.,* unusual mortality event (UME), oil spill effects).

Based on these factors, and taking into consideration the implementation of the prescribed monitoring and mitigation measures, NMFS finds that the total take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS has estimated that take for all species authorized is less than two percent of their respective stock abundance (Table 7). Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to WSDOT for the incidental take of marine mammals due to in-water construction work associated with the US 101/Chehalis River Bridge-Scour Repair Project for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 11, 2018.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–27199 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG628

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Railroad Dock Dolphin Installation Project, Skagway, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from White Pass & Yukon Route (WP&YR) for authorization to take marine mammals incidental to the Railroad Dock dolphin installation project in Skagway, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than January 16, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Piniak@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Wendy Piniak, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified

geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.'' The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On August 21, 2018, NMFS received a request from WP&YR for an IHA to take marine mammals incidental to the Railroad Dock dolphin installation project in Skagway, Alaska. WP&YR submitted a revised version of the application on November 9, 2018 which was deemed adequate and complete on November 15, 2018. WP&YR's request is for take of seven species of marine mammals by Level B harassment and Level A harassment incidental to impact pile driving, vibratory pile driving and removal, and down-the-hole drilling activities. Neither WP&YR nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. In-water activities (pile installation and extraction) associated with the project are scheduled to begin February 1, 2019, and be completed April 30, 2019.

Description of Proposed Activity

Overview

WP&YR requested the authorization of take of small numbers of marine mammals incidental to pile driving/removal and down-the-hole drilling associated with the installation of two new 200-ton pile supported mooring dolphins in Skagway Harbor, Alaska. The purpose of the project is to provide ample safe moorage when both Norwegian Breakaway and Royal Caribbean Quantum class cruise ship vessels are in port. The existing dolphin infrastructure does not allow for both cruise ships to be moored at the dock at the same time. The additional dolphins would allow for both ships to be docked simultaneously. To facilitate dual mooring, the proposed project includes the installation of two 200-ton dolphins, each comprised of six 42-inch steel permanent piles 300 feet in length. WP&YR would also install and subsequently remove 14 36-inch template (temporary) piles (200 feet in length) at the two dolphin locations which are approximately 100 feet and 200 feet, respectively, south of the existing southernmost mooring dolphin at the WP&YR Railroad Dock. The template and permanent piles are comprised of two to three 100-feet long segments which would be spliced (*i.e.,* welded) together as they are installed. All temporary and permanent piles would require a combination of three pile installation methods: Vibratory driving, impact driving, and down-the-hole drilling. Sounds produced by these activities may result in take, by Level A and Level B harassment, of marine mammals located in Taiya Inlet, Alaska.

Dates and Duration

In-water activities (pile installation and extraction) associated with the project are scheduled to begin February 1, 2019, and be completed April 30, 2019. Pile installation and removal would occur for 89 days over the course of the three months. WP&YR anticipates up to 10 hours of activity (vibratory driving, impact driving, and down-the-hole drilling) during daylight hours would occur per day.

Specific Geographic Region

The activities would occur at the south end of WP&YR's Railroad Dock located in Skagway Harbor, Alaska. Skagway Harbor is located at the southwestern end of the 2.5-mile (mi)-long Skagway River valley. Three anadromous rivers are located near the project site including Skagway River, Taiya River, and Pullen Creek. The Skagway and Taiya Rivers empty into Taiya Inlet at the head of Lynn Canal west and northwest of the project site respectively. Pullen Creek empties into the Taiya Inlet on the southeast side of the valley northeast of the project site. Taiya Inlet/Lynn Canal is the northernmost fjord on the Inside Passage of the south coast of Alaska. The project site is located south of ADL 108521 and seaward of upland Lot 8, U.S. Survey 5110; Latitude 59.44° North (N), Longitude 135.33° West (W) (see Figures 1–3 of WP&YR's application). Limited information is available on the benthic habitat beneath the Railroad Dock, however the basin is composed of glacial till sediments, consisting of mud, silty gravel, cobbles and boulders. The shoreline along Railroad dock is armored with riprap and contains little to no riparian vegetation. This armoring extends to below the mean higher high water (MHHW) mark to an unknown depth. At the project site, the Taiya Inlet is approximately 2 kilometers (km) wide and water depth ranges from approximately 100–200 feet (ft) (30–60 meters (m)); however water depth in Taiya Inlet reaches over 500 ft (152 m), within and south of the project area.

Skagway Harbor is frequently visited by cruise ship vessels during the summer and is a site of recreational and commercial activity. Vessels must travel up Taiya Inlet to enter the Skagway Harbor.

Detailed Description of Specific Activity

To facilitate dual mooring of large cruise ship vessels, the proposed Railroad Dock dolphin installation

project includes installation of two 200-ton dolphins. Two crane barges, one material barge, and three work boats (each under 25 feet) would be used to complete the project. Barges would be moored on-site for the duration of construction. Each dolphin would require the installation and removal of seven 36-inch steel pipe template piles (14 total) and the installation six 42-inch steel pipe permanent piles (12 total). The temporary template piles would be installed to aid in construction and would be removed after the permanent dolphin piles are installed. Each temporary template pile would be approximately 200 ft in length and would consist of up to two sections that would be spliced (*e.g.* welded) together as they are installed (for a total of up to 28 segments). Each permanent pile would be approximately 300 ft in length and would consist of up to three sections that would be spliced together as they installed (for a total of 36 segments).

Template and permanent piles would be installed in water depths up to 140-feet deep and into loose substrate that is intermixed with cobbles and boulder-sized rocks. Due to the nature of deep-water pile installation in loose sediment, each pile (consisting of two to three segments) would be installed using a combination of installation methods: Vibratory hammer, impact hammer, and drilling (Table 1). Removal of template piles would only require the use of a vibratory hammer. It may be necessary to switch between installation methods multiple times per day depending on encountered conditions. However, no activities would occur simultaneously (*e.g.,* only one installation method would occur on one pile at any time). Throughout the project, one crane would be dedicated to drilling only and the second crane would alternate between the vibratory and impact hammers (as noted, only one crane would be active at any given time). In addition to alternating between installation methods, the project would require the piles segments to be spliced together to make the piles longer before continuing installation. That is, the first segment of pile would be installed using one or more methods; the second segment would then be welded to the first segment and the process would be repeated until the entire pile is installed.

TABLE 1—PILE INSTALLATION AND REMOVAL EQUIPMENT

Pile installation equipment	Model/size	Description/purpose
Crane	200–250–ton barge with a 200–250–ft boom (up to 2 cranes).	Install piles, set dolphin caps, set catwalks, move material, etc.
Vibratory Hammer	APE 200 or equivalent	Advance pile through overburden to vibratory refusal.
Impact Hammer	Delmag D100 Diesel hammer or equivalent	Advance pile through overburden once vibratory refusal has been reached.
Drill	*Rock Anchor (8-inch hole):* ICE–HS–27 Top drive down-hole hammer PDQL–80 or equivalent. *Socket (42-inch hole):* PPV ring bit MF34 down hole hammer or equivalent.	A drill is inserted through the pile all the way down to bedrock. The drill breaks up rock into small flakes (tailings) which are removed from the drilled hole as the pile or casing advances.

The tips of all template piles would be embedded approximately 60 ft beneath the mudline using impact or vibratory hammering and drilling. The structural design of the dolphins requires the tips of all permanent piles to bear on and be socketed in bedrock located 100–200 ft beneath the mudline. During installation, some or all piles will encounter obstructions prior to reaching final tip depth and will require drilling through obstructions to meet project specifications. The first segment of each pile would be impact or vibratory driven to first refusal. First refusal occurs when the pile tip cannot be advanced any further with a vibratory or impact hammer. This will most likely occur when the pile tip is located on an obstruction (prior to reaching bedrock) or at bedrock. To determine whether the pile tip has reached bedrock, the contractor would then drill past the segment tip. If the drill advances up to 20 ft past the segment tip through rock, bedrock is encountered. If the drill ''punches through'' the obstruction and encounters soft overburden material, the pile would continue to be advanced using drilling, impact, or vibratory methods. Once second refusal is reached, bedrock would again need to be verified by drilling up to 20-ft past the pile tip into bedrock. This process is repeated until bedrock is confirmed (permanent piles) or the required depth has been achieved (template piles), however it is possible that template piles may be fully installed without encountering bedrock.

As each pile segment is installed, WP&YR would splice segments to increase the length of the pile and continue with the pile installation. Splicing pipe pile involves welding pipe pile end to end with a complete joint penetration weld. On average, splicing is anticipated to require three to five days to complete per pile. For permanent piles, once bedrock is confirmed and all segments are welded together, a smaller 8-inch drill would be used to drill a rock anchor hole into bedrock 50 ft past the pile tip. The 8-inch hole for the rock anchor is drilled beneath the pile tip from within the hollow pipe pile. A steel bar would be grouted into this hole. Once the grout sets, a jack would be applied to the top of the bar and the rock anchor would be locked off to plates at the top of the pile. After the permanent piles are installed, temporary piles would be removed.

WP&YR estimates drilling and vibratory hammering would occur for a maximum of 10 hours per day (although the amount of time within that 10 hour window dedicated to each method cannot be determined at this time as it is dependent upon substrate conditions) and total number of impact pile driving strikes would not exceed 2,000 per day. WP&YR estimates that it would take 8 hours to install and remove one template pile and 28.1 hours (over the course of multiple days) to install one permanent pile (additional details can be found in section 2 of WP&YR's application).

After all dolphin piles are installed, a prefabricated steel dolphin cap would be set on top of the piles and welded to the cap. The project also involves modifications to an existing dolphin cap and installation of two catwalks; however, this work does not include in-water work and is not anticipated to take marine mammals. All barges, cranes, equipment, personnel, temporary structures, unused materials, etc. would be removed from the site upon project completion.

WP&YR anticipates all in-water construction would occur between February 1, 2019 and April 30, 2019 (89 days) with mobilization occurring December through January, 2019 and above water work and demobilization occurring April through May, 2019. Multiple or all installation methods of template and permanent piles may occur on the same day, but would not occur at the same time. Work may occur seven days per week.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species with expected potential for occurrence in the Taiya Inlet and larger Lynn Canal and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2017). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Alaska SARs (*e.g.,* Muto *et al.* 2018). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 SARs (Muto *et al.* 2018) and draft 2018 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT WITHIN TAIYA INLET DURING THE SPECIFIED ACTIVITY

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	138
Family Balaenidae:						
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	-, -, Y	10,103 (0.3, 7,890, 2006)	83	25
Minke Whale	*Balaenoptera acutorostrata*	Alaska	-, -, N	N/A	UND	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	North Pacific	E, D, Y	N/A (N/A, N/A, 2015)	UND	4.4
Family Delphinidae:						
Killer whale	*Orcinus orca*	Alaska Resident	-, -, N	2,347 (N/A, 2,347, 2012) [4].	24	1
		Northern Resident	-, -, N	261 (N/A, 261, 2011) [4]	1.96	0
		Gulf of Alaska, Aleutian Islands, Bering Sea Transient	-, -, N	587 (N/A, 587, 2012) [4]	5.87	1
		West Coast Transient	-, -, N	243 (N/A, 243, 2009) [4]	2.4	0
Pacific White-Sided Dolphin	*Lagenorhynchus obliquidens*	North Pacific	-, -, N	26,880 (N/A, N/A, 1990)	UND	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Southeast Alaska	-, -, Y	975 (0.12–0.14, 897, 2012) [5].	8.9	34
Dall's porpoise	*Phocoenoides dalli*	Alaska	-, -, N	83,400 (0.097, N/A, 1991).	UND	38
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Western U.S	E, D, Y	54,267 (N/A, 54,267, 2017).	326	252
	Eastern U.S	T, D, Y	41,638 (N/A, 41,638, 2015)	2498	108	
Family Phocidae (earless seals):						

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT WITHIN TAIYA INLET DURING THE SPECIFIED ACTIVITY—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Harbor seal	*Phoca vitulina richardii*	Lynn Canal/Stephens Passage	-, -, N	9,478 (N/A, 8,605, 2011)	155	50

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (N/A).

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] N is based on counts of individual animals identified from photo-identification catalogs.

[5] In the SAR for harbor porpoise, NMFS identified population estimates and PBR for porpoises within inland southeast Alaska waters (these abundance estimates have not been corrected for g(0); therefore, they are likely conservative).

All species that could potentially occur in the proposed survey areas are included in Table 2. However, the temporal and/or spatial occurrence of the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), gray whale (*Eschrichtius robustus*), and sperm whale (*Physeter macrocephalus*) are such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. The range of Pacific white-sided dolphin is suggested to overlap with Lynn Canal (Muto *et al.* 2018), but no sightings have been documented in the project area (Dahlheim *et al.* 2009; K. Gross, Never Monday Charters, personal communication; R. Ford, Taiya Inlet Watershed Council, personal communication reported in MOS 2016). Gray whale sightings in this northern portion of Southeast Alaska are very rare; there have only been eight sightings since 1997 (J. Neilson, National Park Service, personal communication reported in MOS 2016). None of these observations occurred in the Taiya Inlet/Lynn Canal. Tagged sperm whales have been tracked within the Gulf of Alaska, with one whale tracked up Lynn Canal during October 2014 (SEASWAP 2017). Tagging studies primarily show that sperm whales use the deep water slope habitat extensively for foraging (Mathias *et al.* 2012). This species prefers deeper waters, and are unlikely to occur in Taiya Inlet.

WP&YR requested take for seven marine mammal species documented in the waters of the Taiya Inlet/Lynn Canal (Dahlheim *et al.* 2009; Muto *et al.* 2018). One of the species, the harbor seal, is known to regularly occur near the project site year round; however the closest seasonal haulout site is three miles (4.8 km) from the project area and not within the Level B harassment ensonified area (see Estimated Take). Moderate to high abundances of Steller sea lions are also known to seasonally occupy the inlet, with the closest seasonal haulout located 11 miles (18 km) from the project site. Several humpback whales have been observed within Taiya Inlet, sometimes close to Skagway, during non-winter months. The remaining four species (harbor porpoise, Dall's porpoise, killer whale, and minke whale) may occur in Taiya Inlet/Lynn Canal, but less frequently and farther from Skagway Harbor and the project site. Information on presence and distribution in the WP&YR project area can be found in the

Habitat

No Biologically Important Areas (BIAs) or ESA-designated critical habitat overlap with the project area, however there is seasonally important foraging habitat for some species of marine mammal which overlap spatially and temporally with proposed project activities. The annual eulachon run (which occurs for approximately three to four weeks during April through May) in Lynn Canal is important to all marine mammals (particularly Steller sea lions, and harbor seals, and humpback whales) for seasonal foraging and many species travel into Taiya Inlet to forage on this prey.

Cetaceans

Humpback Whale

The humpback whale is distributed worldwide in all ocean basins. In winter, most humpback whales are found in the subtropical and tropical waters of the Northern and Southern Hemispheres, and then migrate to high latitudes in the summer to feed. The historic summer feeding range of humpback whales in the North Pacific encompassed coastal and inland waters around the Pacific Rim from Point Conception, California, north to the Gulf of Alaska and the Bering Sea, and west along the Aleutian Islands to the Kamchatka Peninsula and into the Sea of Okhotsk and north of the Bering Strait (Johnson and Wolman 1984).

There are currently three MMPA-designated stocks of humpback whales in the North Pacific: (1) The California/Oregon/Washington stock, consisting of winter/spring populations in coastal Central America and coastal Mexico which migrate to the coast of California to southern British Columbia in summer/fall (Calambokidis *et al.* 1989; Steiger *et al.* 1991; Calambokidis *et al.* 1993); (2) the Central North Pacific stock, consisting of winter/spring populations of the Hawaiian Islands which migrate primarily to northern British Columbia/Southeast Alaska, the Gulf of Alaska, and the Bering Sea/Aleutian Islands (Perry *et al.* 1990; Calambokidis *et al.* 1997); and (3) the Western North Pacific stock, consisting of winter/spring populations off Asia which migrate primarily to Russia and the Bering Sea/Aleutian Islands. The Central North Pacific stock is the only stock that is found near the project area.

On September 8, 2016, NMFS published a final decision changing the status of humpback whales under the Endangered Species Act (ESA) (81 FR 62259), effective October 11, 2016. Previously, humpback whales were listed under the ESA as an endangered species worldwide. In the 2016 decision, NMFS recognized the existence of 14 distinct population segments (DPSs), classified four of those as endangered and one as threatened, and determined that the remaining nine DPSs do not warrant protection under the ESA. Whales occurring in the project area would primarily include individuals from the delisted Hawaii DPS (93.9 percent probability), but could also include individuals from the threatened Mexico DPS (6.1 percent probability) (Wade *et al.* 2016).

Humpback whales are found throughout southeast Alaska in a variety of marine environments, including

open-ocean, near-shore waters, and areas with strong tidal currents (Dahlheim *et al.* 2009). Humpback whales generally arrive in southeast Alaska in March and return to their wintering grounds in November. Some humpback whales depart late or arrive early to feeding grounds, and therefore the species occurs in southeast Alaska year-round (Straley 1990). Dahlheim *et al.* (2009) observed humpback whales throughout all major waterways in southeast Alaska with concentrations of whales consistently observed in Icy Strait, Lynn Canal, Stephens Passage, Chatham Strait, and Frederick Sound. Mean group size varied among season with group sizes of 1.38, 1.65, and 1.95 in spring, summer, and fall respectively.

Subsistence hunters in Alaska are not authorized to take Central North Pacific stock humpback whales and no takes were reported from 2012–2016 (Muto *et al.* 2018). Threats to the Central North Pacific stock include changes in prey distribution due to climate change, entanglement in fishing gear, ship strike, and anthropogenic sound, however the Central North Pacific stock is increasing (Muto *et al.* 2018).

Minke Whale

Minke whales are found throughout the northern hemisphere in polar, temperate, and tropical waters. In the North Pacific, minke whales occur from the Bering and Chukchi seas south to near the Equator (Leatherwood *et al.* 1982). Minke whales are generally found in coastal waters shallower than 200 m and are usually observed solitary or in small groups of two to three whales (Zerbini *et al.* 2006; Zerbini *et al.* 2006). In Alaska, there is only one stock of minke whales and seasonal movements are associated with feeding areas that are generally located at the edge of the pack ice (NMFS 2014).

Although no comprehensive abundance estimate is available for the Alaska stock of minke whales, recent surveys provide estimates for portions of the stock's range. A 2010 survey conducted on the eastern Bering Sea shelf produced a provisional abundance estimate of 2,020 (CV = 0.73) whales (Friday *et al.* 2013). This estimate is considered provisional because it has not been corrected for animals missed on the trackline, animals submerged when the ship passed, or responsive movement. Additionally, line-transect surveys were conducted in shelf and nearshore waters (within 30–45 nautical miles of land) in 2001–2003 between the Kenai Peninsula (150° W) and Amchitka Pass (178° W). Minke whale abundance was estimated to be 1,233 (CV = 0.34) for this area (also not corrected for animals missed on the trackline) (Zerbini *et al.* 2006). The majority of the sightings were in the Aleutian Islands, rather than in the Gulf of Alaska, and in water shallower than 200 m. These estimates cannot be used as an estimate of the entire Alaska stock of minke whales because only a portion of the stock's range was surveyed.

Surveys in southeast Alaska have consistently identified individuals throughout inland waters in low numbers, however none were observed in Taiya Inlet or Lynn Canal (Dahlheim *et al.* 2009). As few minke whales were observed during recent offshore Gulf of Alaska surveys for cetaceans in 2009, 2013, and 2015, a population estimate for minke whales in this area cannot be determined (Rone *et al.* 2017). There are no data available to determine trends in minke whale abundance in Alaska waters. Subsistence takes of minke whales in Alaska is rare, with the last known catch occurring in 1989. Although no incidents of human-related serious injury and mortality were recorded for Alaska stock minke whales between 2012 and 2016, threats to the population include entanglement in fishing gear, ship strikes, and anthropogenic sound, as well as changes in prey distribution due to climate change (Muto *et al.* 2018).

Killer Whale

Killer whales have been observed in all oceans and seas of the world, but the highest densities occur in colder and more productive waters found at high latitudes. Killer whales are found throughout the North Pacific, and occur along the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California (Muto *et al.* 2018). Based on data regarding association patterns, acoustics, movements, and genetic differences, eight killer whale stocks are now recognized in the Pacific Ocean: (1) The Alaska Resident stock; (2) the Northern Resident stock; (3) the Southern Resident stock; (4) the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock; (5) the AT1 Transient stock; (6) the West Coast Transient stock; and (7) the Offshore stock, and (8) the Hawaii stock. Only the Alaska Resident, Northern Resident, Gulf of Alaska, Aleutian Islands, and Bering Sea Transient, and West Coast Transient stocks are considered in this analysis because other stocks occur outside the geographic area under consideration. Any of these four stocks could be seen in the action area; however, the Alaska and Northern Resident stocks are most likely to overlap with the project area (Muto *et al.* 2018).

The Alaska Resident stock is found from southeastern Alaska to the Aleutian Islands and Bering Sea. Intermixing of Alaska Residents have been documented among the three areas, at least as far west as the eastern Aleutian Islands. The Northern Resident stock occurs from Washington State through part of southeastern Alaska. The Northern Resident stock is a transboundary stock, and includes killer whales that frequent British Columbia, Canada and southeastern Alaska (Dahlheim *et al.* 1997; Ford *et al.* 2000). The Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock occurs mainly from Prince William Sound through the Aleutian Islands and Bering Sea. The West Coast Transient stock includes animals that occur in California, Oregon, Washington, British Columbia and southeastern Alaska.

Transient killer whales occur in smaller, less matrilineal groupings than resident killer whales. They are also more likely to rely on stealth tactics when foraging, making fewer and less conspicuous calls, and edging along shorelines and around headlands in order to hunt their prey, including, Steller sea lions, harbor seals, and smaller cetaceans, in highly coordinated attacks (Barrett-Lennard *et al.* 2011). Residents often travel in much larger and closer knit groups within which they share any fish they catch.

Resident and transient killer whales have been documented in the middle to lower reaches of Lynn Canal, but not within the upper reaches or in Taiya Inlet (Dahlheim *et al.* 2009). Dahlheim *et al.* (2009) frequently observed two resident pods identified as AF and AG pods (Alaska Resident stock) throughout Icy Strait, Lynn Canal, Stephens Passage, Frederick Sound and upper Chatham Strait. The seasonality of resident killer whales could not be investigated statistically due to low encounter rates and mean group size of resident whales did not vary significantly among seasons and ranged from 19 to 33 individuals (Dahlheim *et al.* 2009).

Dahlheim *et al.* (2009) observed transient killer whales in all major waterways, including Lynn Canal, in open-strait environments, near-shore waters, protected bays and inlets, and in ice-laden waters near tidewater glaciers. The transient killer whale mean group size also did not vary with season and ranged from four to six individuals in Southeast Alaska (Dahlheim *et al.* 2009). Transient killer whale numbers were highest in summer, with lower numbers observed in spring and fall.

No reliable data on trends in population abundance for the entire Alaska Resident, Gulf of Alaska, Aleutian Islands, and Bering Sea Transient, and West Coast Transient stocks of killer whales are unavailable (Muto *et al.* 2018). The Northern Resident stock is increasing with an average 2.1 percent increase over a 36 year time period (Ellis *et al.* 2011). There are no reports of subsistence harvest of killer whales in Alaska, however other threats to the stocks include interactions with fisheries, vessel collisions, and decreases in prey abundance (Muto *et al.* 2018).

Harbor Porpoise

The harbor porpoise inhabits temporal, subarctic, and arctic waters. In the eastern North Pacific, harbor porpoises range from Point Barrow, Alaska, to Point Conception, California. While harbor porpoise primarily frequent coastal waters and occur most frequently in waters less than 100 m deep (Hobbs and Waite 2010), they may occasionally be found in deeper offshore waters. Within the inland waters of Southeast Alaska, harbor porpoise distribution is clumped, with greatest densities observed in the Glacier Bay/Icy Strait region, and near Zarembo and Wrangell Islands and the adjacent waters of Sumner Strait (Allen and Angliss 2014). Group sizes were on average between 1.37–1.59 animals (less than 2) (Dahlheim *et al.* 2009; 2015).

In Alaska, harbor porpoises are currently divided into three stocks, based primarily on geography. These are (1) the Southeast Alaska stock—occurring from the northern border of British Columbia to Cape Suckling, Alaska, (2) the Gulf of Alaska stock—occurring from Cape Suckling to Unimak Pass, and (3) the Bering Sea stock—occurring throughout the Aleutian Islands and all waters north of Unimak Pass (Allen and Angliss 2014). Only the Southeast Alaska stock is considered in this analysis because it is the only stock found in the project area.

No reports of subsistence harvest of harbor porpoises from the Southeast Alaska stock have been reported since the early 1900s (Shelden *et al.* 2014).The total estimated annual level of human-caused mortality and serious injury for Southeast Alaska stock (n = 34) exceeds the calculated PBR of 8.9 porpoises. However because the calculated PBR is based on surveys from 2010–2012 in only a portion of the stock's range (the inside water of southeast Alaska), PBR is likely biased low for the entire stock (Muto *et al.* 2018). Population trends and status of this stock relative to its Optimum Sustainable Population are currently unknown.

Dall's Porpoise

Dall's porpoise are widely distributed across the entire North Pacific Ocean. They are found over the continental shelf adjacent to the slope and over deep (greater than 2,500 m) oceanic waters and have been sighted throughout the North Pacific as far north as 65° N (Hall 1979; Buckland *et al.* 1993). The only apparent distribution gaps in Alaska waters are upper Cook Inlet and the shallow eastern flats of the Bering Sea. They are present during all months of the year in much of the eastern North Pacific, although they may make seasonal onshore-offshore movements along the west coast of the continental United States and winter movements out of areas with ice (Hall 1979; Leatherwood and Fielding 1974; Loeb 1972).

Currently one stock of Dall's porpoise is recognized in Alaskan waters (Muto *et al.* 2018). Dahlheim *et al.* (2009) observed Dall's porpoise throughout Southeast Alaska, but only observed Dall's porpoise in Lynn Canal as far north as Haines, Alaska, about 15 miles south of Skagway. Infrequent observations (three to six) of Dall's porpoise have been observed in Taiya Inlet during the early spring and late fall, however they have not been observed near the project site near the Skagway waterfront (K. Gross, Never Monday Charters, personal communication reported in MOS 2016). At present, there is no reliable information on trends in abundance for the Alaska stock of Dall's porpoise (Muto *et al.* 2018). There are no subsistence uses of this species (Muto *et al.* 2018), however Dall's porpoise are vulnerable to fisheries-related entanglement and injury and to physical modifications of nearshore habitats resulting from urban and industrial development (including waste management and nonpoint source runoff), and noise (Linnenschmidt *et al.* 2013).

Pinnipeds

Steller Sea Lion

The Steller sea lion is the largest of the eared seals (otariids), ranging along the North Pacific Rim from northern Japan to California, with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands. Steller sea lions use terrestrial haulout sites to rest and take refuge. They also gather on well-defined, traditionally used rookeries to pup and breed. These habitats are typically gravel, rocky, or sand beaches; ledges; or rocky reefs (Muto *et al.* 2018). Steller sea lion populations that primarily occur west of 144° W (Cape Suckling, Alaska) comprise the western Distinct Population Segment (wDPS) or Western U.S. stock, while all others comprise the eastern DPS (eDPS) or Eastern U.S. stock; however, there is regular movement of both DPSs across this boundary (Muto *et al.* 2018). Both of these populations may occur in the action area, however in Lynn Canal/Taiya Inlet Steller sea lions are most likely part of the eDPS/Eastern U.S. stock. Based on the percent of branded animals at Gran Point it is estimated that 2 percent of the sea lions in the project area are potentially from the wDPS/Eastern U.S. stock (personal communication, L. Jemison Alaska Department of Fish and Game, 2017). Steller sea lions were listed as threatened range-wide under the ESA on 26 November 1990 (55 FR 49204). Steller sea lions were subsequently partitioned into the western and eastern DPSs in 1997, with the wDPS being listed as endangered under the ESA and the eDPS remaining classified as threatened (62 FR 24345) until it was delisted in November 2013. In August 1993, NMFS published a final rule designating critical habitat for the Steller sea lion as a 20-nautical mile buffer around all major haul-outs and rookeries, as well as associated terrestrial, air and aquatic zones, and three large offshore foraging areas (50 CFR 226.202). There is no Steller sea lion critical habitat located in the action area.

Gran Point, which is located 24 mi (38 km) south of the project area, is the closest year-round Steller sea lion haulout. However, during the spring eulachon run, a seasonal haulout site is located on Taiya Point at the southern tip of Taiya Inlet, approximately 11 mi (18 km) from the project site. Twenty-five to 40 sea lions are estimated to use this haulout for about three weeks during spring run, during which they frequently are observed in the inlet. The eulachon run (which occurs for approximately three to four weeks during mid-March through May) in Lynn Canal is important to Steller sea lions for seasonal foraging. These spawning aggregations of forage fish provide densely aggregated, high-energy prey for Steller sea lions (and harbor seals) for brief time periods and influence haulout use (Sigler *et al.* 2004; Womble *et al.* 2005; Womble and Sigler 2006). The pre-spawning aggregations and spawning season for many forage fish species occur between March and

May in Southeast Alaska just prior to the breeding season of sea lions (Pitcher *et al.* 2001; Womble and Sigler 2006). After May, Steller sea lion presence in the project action area declines. During surveys conducted in 2002 and 2003, Womble *et al.* (2005) observed a maximum of approximately 400 Steller sea lions in the water at the mouth of the Taiya River feeding on eulachon in 2003, but observed very few in the same area in 2002. Steller sea lions have also been observed in Lutak Inlet, a foraging site closer to both Taiya Point and Gran Point haulouts.

Steller sea lions are included in Alaska subsistence harvests. The mean annual subsistence take of Western U.S. Steller sea lions was 203 from 2004–2016, and the mean annual take of Eastern U.S. Steller sea lions was 11 from 2005–2008 and 2012 (Muto *et al.* 2018). Entanglements in fishing gear and marine debris, and interactions with fishing gear are sources of mortality and serious injury for Steller sea lions. The Eastern U.S. stock is increasing with models indicating the rate of increase as 4.76 percent per year based on pup counts and 2.84 percent per year based on non-pup counts (Muto *et al.* 2018). Pup and non-pup counts of Western U.S. stock Steller sea lions in Alaska have increased 1.78 percent per year and 2.14 per year respectively between 2002 and 2017.

Harbor Seal

Harbor seals range from Baja California north along the west coasts of Washington, Oregon, California, British Columbia, and Southeast Alaska; west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands; and north in the Bering Sea to Cape Newenham and the Pribilof Islands (Muto *et al.* 2018). They haul out on rocks, reefs, beaches, and drifting glacial ice, and feed in marine, estuarine, and occasionally fresh waters. Harbor seals generally are nonmigratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Scheffer and Slipp 1944; Fisher 1952; Bigg 1969, 1981; Hastings *et al.* 2004).

Harbor seals in Alaska are partitioned into 12 separate stocks based largely on genetic structure: (1) The Aleutian Islands stock, (2) the Pribilof Islands stock, (3) the Bristol Bay stock, (4) the North Kodiak stock, (5) the South Kodiak stock, (6) the Prince William Sound stock, (7) the Cook Inlet/Shelikof stock, (8) the Glacier Bay/Icy Strait stock, (9) the Lynn Canal/Stephens Passage stock, (10) the Sitka/Chatham stock, (11) the Dixon/Cape Decision stock, and (12) the Clarence Strait stock. Only the Lynn Canal/Stephens Passage stock is considered in this analysis. The stock range includes north along the east and north coast of Admiralty Island from the north end of Kupreanof Island through Lynn Canal, including Taku Inlet, Tracy Arm, and Endicott Arm (Muto *et al.* 2018). The most current (2007–2011) estimate of the population trend for the stock is −176 seals per year, with a probability that the stock is decreasing of 0.71 (Muto *et al.* 2018).

Harbor seals are included in subsistence harvests. Annual harvests from the Lynn Canal/Stephens Passage in 2011 and 2012 were 50 animals each year, which is higher than previous estimates of 30 animals, on average, per year from 2004–2008 (Muto *et al.* 2018). Entanglement in fishing gear is also a large contributor to their annual human-caused serious injury/mortality.

Additional information on the biology and local distribution of these species can be found in the NMFS Marine Mammal Stock Assessment Reports, which may be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.* 1995; Wartzok and Ketten 1999; Au and Hastings 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- *Low-frequency cetaceans (mysticetes):* Generalized hearing is estimated to occur between approximately 7 Hz and 35 kHz;
- *Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids):* Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- *High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data):* Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz.
- *Pinnipeds in water; Phocidae (true seals):* Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz;
- *Pinnipeds in water; Otariidae (eared seals):* Generalized hearing is estimated to occur between 60 Hz and 39 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.* 2006; Kastelein *et al.* 2009; Reichmuth and Holt 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Seven marine mammal species (five cetacean and two pinniped (one otariid and one phocid) species) have the reasonable potential to co-occur with the proposed activities. Please refer to Table 2. Of the cetacean species that may be present, two are classified as low-frequency cetaceans (*i.e.,* all mysticete species), one is classified as a mid-frequency cetacean (*i.e.,* all delphinid and ziphiid species and the sperm whale), and two are classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Kogia spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative

analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI 1994). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving and removal, and drilling. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018). Non-impulsive sounds (*e.g.* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.* 2007).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.* 2005).

Drilling would be conducted using a down-the-hole drill inserted through the hollow steel piles. A down-the-hole drill is a drill bit that drills through the bedrock using a pulse mechanism that functions at the bottom of the hole. This pulsing bit breaks up rock to allow removal of debris and insertion of the pile. The head extends so that the drilling takes place below the pile. The pulsing sounds produced by the down-the-hole drilling method are continuous, however this method likely increases sound attenuation because the noise is primarily contained within the steel pile and below ground rather than impact hammer driving methods which occur at the top of the pile (R&M 2016).

The likely or possible impacts of WP&YR's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal and drilling.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal and down-the-hole drilling is the primary means by which marine mammals may be harassed from WP&YR's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.* 2007). In general, exposure to pile driving and drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.* 2004; Southall *et al.* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to

recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.* 2014b), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.* 1958, 1959; Ward 1960; Kryter *et al.* 1966; Miller 1974; Ahroon *et al.* 1996; Henderson *et al.* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.* 2000; Finneran *et al.* 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018). Installing piles requires a combination of impact pile driving, vibratory pile driving, and down-the-hole drilling. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal and drilling also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; NRC 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007; Weilgart 2007; Archer *et al.* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency,

duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.* 2001; Nowacek *et al.* 2004; Madsen *et al.* 2006; Yazvenko *et al.* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

In 2016, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.,* pile driving and down-hole drilling) at the Kodiak Ferry Dock (see 80 FR 60636 for Final IHA **Federal Register** notice). In the marine mammal monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the Level B disturbance zone during pile driving or drilling (*i.e.,* documented as Level B harassment take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 meters of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to the specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements). Monitoring reports from other recent pile driving and down-the-hole drilling projects in Alaska have observed similar behaviors (for example, the Biorka Island Dock Replacement Project).

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Skagway Harbor contains an active port of call for cruise ships and hosts numerous recreational and commercial vessels; therefore, background sound levels in the harbor are already elevated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal and down-the-hole drilling that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

WP&YR construction activities at the Railroad Dock could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact pile driving, elevated levels of underwater noise would ensonify Taiya Inlet where both fish and mammals occur and could affect foraging success.

Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound. These sounds would not be detectable at the nearest known Steller sea lion haulouts, and all known harbor seal haulouts are well beyond the maximum distance of predicted in-air acoustical disturbance.

In-water pile driving, pile removal, and drilling activities would also cause short-term effects on water quality due to increased turbidity. Local strong currents are anticipated to disburse suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. WP&YR would employ standard construction best management practices (BMPs; see section 11 and Appendix B in application), thereby reducing any impacts. Therefore, the impact from increased turbidity levels is expected to be discountable.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in Lynn Canal/Taiya Inlet (*e.g.,* most of the impacted area is limited to the northern and western portions of Taiya Inlet) and does not include any BIAs or ESA-designated critical habitat. Pile installation/removal and drilling may

temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. WP&YR must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds would be transiting the area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity in Lynn Canal/Taiya Inlet.

The duration of the construction activities is relatively short. The construction window is for a maximum of 89 days and during each day, construction activities would only occur during daylight hours. Impacts to habitat and prey are expected to be minimal based on the short duration of activities.

In-Water Construction Effects on Potential Prey (Fish)—Construction activities would produce continuous (*i.e.,* vibratory pile driving and down-the-hole drilling) and pulsed (*i.e.* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.* 1992; Skalski *et al.* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving and drilling activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish and juvenile salmonid outmigratory routes in the project area. Both herring and salmon form a significant prey base for Steller sea lions, herring is a primary prey species of humpback whales, and both herring and salmon are components of the diet of many other marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 feet or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish and salmon are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in the Lynn Canal/Taiya Inlet region are routinely exposed to substantial levels of suspended sediment from glacial sources.

In summary, given the short daily duration of sound associated with individual pile driving and drilling events and the relatively small areas being affected, pile driving and drilling activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the impact and vibratory hammers and down-the-hole drilling has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for low-frequency cetaceans, high-frequency cetaceans, and/or phocids because predicted auditory injury zones are larger than for mid-frequency cetaceans and otariids. Auditory injury is unlikely to occur for mid-frequency cetaceans and otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in

more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.;* 2007, Ellison *et al.* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. WP&YR's proposed activity includes the use of continuous (vibratory pile driving/removal and drilling) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). WP&YR's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving/removal and drilling) sources.

These thresholds are provided in Table 3. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{p,0\text{-pk,flat}}$: 219 dB; $L_{E,p,\ LF,24h}$: 183 dB	$L_{E,p,\ LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{p,0\text{-pk,flat}}$: 230 dB; $L_{E,p,\ MF,24h}$: 185 dB	$L_{E,p,\ MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{p,0\text{-pk,flat}}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	$L_{E,p,\ HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{p,0\text{-pk.flat}}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	$L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	$L_{p,0\text{-pk,flat}}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	$L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-pk}}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa^{2}s. In this table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal and down-the-hole drilling). The maximum (underwater) ensonification area of 17.9 km^2 due to project activities is governed by the topography of Taiya Inlet (see Figure 6 in the application). The eastern shoreline of the inlet is acoustically shadowed due to land located just south of the proposed project site. Similarly, Yakutania Point and Dyea Point would inhibit transmission of project sounds from reaching Nahku Bay and the upper inlet at the mouth of the Taiya River. Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

In order to calculate distances to the Level A and Level B harassment thresholds for piles of various sizes being used in this project, NMFS used acoustic monitoring data from other locations. Note that piles of differing sizes have different sound source levels.

Empirical data from recent sound source verification (SSV) studies in Anchorage and Kodiak, Alaska were used to estimate sound source levels (SSLs) for impact pile driving, vibratory pile driving/removal, and down-the-hole drilling installations of the 42-inch steel pipe permanent piles and the 36-inch steel pipe template piles (Austin *et al.* 2016; Denes *et al.* 2016). These Alaskan construction sites were generally assumed to best represent the environmental conditions found in Skagway and represent the nearest available source level data for 42-inch steel piles.

Tables 4 provides the sound source values used in calculating harassment isopleths for each source type. No data are currently available for 42-inch steel

pipe piles. For impact and vibratory hammer source levels WP&YR used the median levels measured by Austin *et al.* (2016) during installation of 48-inch piles at Port of Anchorage (197.9 and 166.8 dB re 1 μPa (rms at 11 m)). These 48-inch pile impact and vibratory levels are conservatively used for both the 42-inch permanent piles and the 36-inch template piles. Little SSL data are available for down-the-hole drilling. WP&YR used the 90th percentile source levels measured by Denes *et al.* (2016) during drilling down the center of 30-inch piles in Kodiak (171 dB re 1 μPa (rms at 10 m)).

TABLE 4—SOURCE LEVELS AND ANTICIPATED DAILY DURATIONS FOR UNDERWATER SOUND CALCULATIONS

[Hours or strikes per day represents the maximum duration of any single activity]

Source	Source type	SPL_{PK} (dB)	SPL_{RMS} (dB)	SEL_{S-S} (dB)	Hours or strikes per day
Template Piles					
Vibratory Installation/Removal	Non-impulsive, continuous	n/a	166.8	n/a	3 hours.
Impact Installation	Impulsive, intermittent	212.5	197.9	186.7	2,000 strikes.
Drilling Installation	Non-impulsive, continuous	n/a	171.0	n/a	6 hours.
Permanent Piles					
Vibratory Installation	Non-impulsive, continuous	n/a	166.8	n/a	8 hours.
Impact Installation	Impulsive, intermittent	212.5	197.9	186.7	2,000 strikes.
Drilling Installation	Non-impulsive, continuous	n/a	171.0	n/a	8 hours.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_1/R_2),$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

A practical spreading value of fifteen is often used under conditions, such as at the WP&YR Railroad Dock, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving and drilling, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance (or greater) the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet and the resulting isopleths are reported in Tables 5 and 6. As WP&YR plans to employ two continuous sound sources (vibratory pile driving and drilling) it is necessary to account for accumulation of sound caused by both activities during the full 10 hour work day when calculating Level A harassment isopleths. As drilling has the higher sound pressure level we propose to use drilling to calculate the Level A harassment isopleths for both drilling and vibratory pile driving activities (Table 5). For impact pile driving, isopleths calculated using the SEL_{CUM} metric will be used as it produces larger isopleths than SPL_{PK}. Isopleths for Level B harassment associated with impact pile driving (160 dB) and vibratory pile driving/removal and drilling (120 dB) were also calculated and are can be found in Table 6.

TABLE 5—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING HARASSMENT ISOPLETHS

Parameter	Impact pile driving	Vibratory pile driving and drilling
Spreadsheet Tab Used	E.1) Impact pile driving	A.1) Drilling/Vibratory pile driving.
Source Level	186.7 dB SEL	171 dB rms.
Weighting Factor Adjustment (kHz)	2	2.
Number of strikes per day	2,000	N/A.
Activity Duration (h) within 24-hour period	N/A	10 hours.
Propagation (xLogR)	15LogR	15LogR.
Distance of source level measurement (meters)	11	10.

TABLE 6—CALCULATED DISTANCES TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL AND DRILLING

Source	Level A harassment zone (meters)					Level B harassment zone (meters)
	Low-frequency cetacean	Mid-frequency cetacean	High-frequency cetacean	Phocid pinniped	Otariid pinniped	Cetaceans and pinnipeds
Drilling and Vibratory Installation	148	8.3	129.7	79.2	5.8	[1] 13,000
Impact Installation	3,077.2	109.4	3,665.4	1,646.8	119.9	3,698.8
Source	PTS Onset Isopleth—Peak (meters)					
Impact Installation	4.1	n/a	55.1	4.7	n/a	

[1] Based on maximum distance before landfall. Calculated distance was 25.1 km.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations, and how this information is brought together to produce a quantitative take estimate.

Density information is not available for marine mammals in the project area in Taiya Inlet. Potential exposures to impact and vibratory pile driving noise for each threshold for all other marine mammals were estimated using published reports of group sizes and population estimates, and anecdotal observational reports from local commercial entities. For several species, it is not currently possible to identify all observed individuals to stock.

Level B Harassment Calculations

The estimation of takes by Level B harassment uses the following calculation:

Level B harassment estimate = N (number of animals in the ensonified area) * Number of days of noise generating activities.

Humpback Whale

Humpback whales are the most commonly observed baleen whale in Southeast Alaska, particularly during spring and summer months. Humpback whales in Alaska, although not limited to these areas, return to specific feeding locations such as Frederick Sound, Chatham Strait, North Pass, Sitka Sound, Glacier Bay, Point Adolphus, and Prince William Sound, as well as other similar coastal areas (Wing and Krieger 1983). In Lynn Canal they have been observed in the spring and fall from Haines to Juneau, however scientific surveys have not documented the species within Taiya Inlet (Dahlheim *et al.* 2009).

Local observations indicate that humpback whales are not common in the project action area but, if they are sighted, are generally present during mid to late spring and vacate the area by July to follow large aggregations of forage fish in lower Lynn Canal. Local observers have reported humpback whales in Taiya Inlet, sometimes fairly close to the Skagway waterfront. Due to seasonal migration patterns, the low frequency of humpbacks in the area, and that no humpback whales have been reported during winter months it is anticipated that no humpback whales will be present in the project area in February. On average, four to five individuals may occur near Skagway during the spring eulachon run in April and May, after which, only a few individuals are observed throughout the summer. In 2015, only one whale was observed (for several) weeks close to Skagway (K. Gross, personal communication reported in MOS 2016). Based on humpback whale occurrence in the project area and local observations, it is estimated that four individuals may be present in the action area each day during April, coinciding with 30 days of project activity (120 exposures). As it is unclear whether humpback whales occur in the inlet in March (for example, should the eulachon run begin early), it is conservatively estimated that one whale might be found in the inlet during that month for five days (0.16 whales per day, 5 exposures), for an overall total of 125 exposures (Table 7).

TABLE 7—ESTIMATED TAKES OF HUMPBACK WHALES PER MONTH

Month	Animals in inlet per day	Days in month	Exposures
February	0	28	0
March	0.16	31	5
April	4	30	120
Total			125

Minke Whale

Minke whales are rarely observed in the project area, and scientific surveys have not documented the species within Taiya Inlet (Dahlheim *et al.* 2009). A single minke whale was observed in the inlet in 2015 (K. Gross, Never Monday Charters, personal communication; R. Ford, Taiya Inlet Watershed Council, both personal communications reported in MOS 2016), and is the only known record of a minke whale in Taiya Inlet. However one minke whale was reported by local observers in the action area in 2015. Based on the available information it is very unlikely minke whales will be present in the inlet, however, minke whale presence is possible based on a single sighting and presence of potential prey (eulachon) in the spring. Thus, we estimate a total of

two potential exposures of minke whales.

Killer Whale

Although killer whale stocks' ranges include southeast Alaska, they have only been documented as far north as Lynn Canal; therefore, while possible, occurrence north of Lynn Canal into Taiya Inlet is rare. According to local observations, pods of resident killer whales are occasionally seen in Taiya Inlet. Local observations indicate killer whales are observed four or five times a year (between spring and fall) usually in a group of 15 to 20 whales. In 2015 a resident pod was only observed in Taiya Inlet twice, remaining for one to four days per visit (K. Gross, personal communication reported in MOS 2016). There is no evidence of transient whales occurring within Taiya Inlet. While the resident pods remain in Alaska year-round there are no reports of sightings during winter months (January–February) in Taiya Inlet so it is assumed no killer whales will be present in the project area in February. Based on local observations in the project area in the spring, it is assumed that a group of 20 whales may enter the project area once in each of March and April and remain within the inlet for two days each time, for a total of 80 potential exposures.

Harbor Porpoise

Harbor porpoises are primarily found in coastal waters, and in the Gulf of Alaska and Southeast Alaska, they occur most frequently in waters less than 100 meters (Dahlheim *et al.* 2009). Dedicated research studies of harbor porpoise in the project area only occur as far north in Lynn Canal as Haines during the summer (Dahlheim *et al.* 2009; 2015), approximately 16 miles south of Skagway. Group sizes were, on average, between 1.37–1.59 animals (less than 2) (Dahlheim *et al.* 2009; 2015). In Lynn Canal, observations were less frequent, primarily in lower Lynn Canal from Chatham Strait to Juneau, though harbor porpoises have been observed as far north as Haines during the summer (Dahlheim *et al.* 2009; 2015).

Despite lack of observations during dedicated surveys, local charter captains indicate that harbor porpoises commonly occur in small groups of two or three in Taiya Inlet, although they are not encountered on a daily basis and are rarely seen in areas close to the waterfront (K. Gross, personal communication reported in MOS 2016). Therefore, it is conservatively estimated that one group of three individuals may be present in the inlet 75 percent of the days during each month (or 2.25 porpoises per day on average) for a total of 201 potential exposures (Table 8).

TABLE 8—ESTIMATED TAKES OF HARBOR PORPOISES PER MONTH

Month	Animals in inlet per day	Days in month	Exposures
February	2.25	28	63
March	2.25	31	70
April	2.25	30	68
Total			201

Dall's Porpoise

Dall's porpoises are widely distributed across the entire North Pacific Ocean. Throughout most of the eastern North Pacific they are present during all months of the year, although there may be seasonal onshore-offshore movements along the west coast of the continental United States and winter movements of populations out of Prince William Sound and areas in the Gulf of Alaska and Bering Sea (Muto *et al.* 2018). Dahlheim *et al.* (2009) observed Dall's porpoise throughout Southeast Alaska, with concentrations of animals consistently found in Lynn Canal, Stephens Passage, Icy Strait, upper Chatham Strait, Frederick Sound, and Clarence Strait. Dahlheim *et al.* (2009), documented Dall's porpoise in Lynn Canal as far north as Haines, Alaska, about 15 miles south of Skagway.

Local observation indicate that three to six Dall's porpoises may be present in Taiya Inlet during the early spring and late fall. Observations have been occasional to sporadic and do not occur on a daily basis. The species has not been observed during winter months and has not been observed near the waterfront (K. Gross, personal communication reported in MOS 2016). The mean group size of Dall's porpoise in Southeast Alaska is estimated to be 3.7 individuals (Dahlheim *et al.* 2009). Therefore, it is estimated that a group of four Dall's porpoises will be present in the project area every other day in March and April (2 per day), for a total of 122 potential exposures (Table 9).

TABLE 9—ESTIMATED TAKES OF DALL'S PORPOISES PER MONTH

Month	Animals in inlet per day	Days in month	Exposures
February	0	28	0
March	2	31	62
April	2	30	60
Total			122

Steller Sea Lion

Several long-term Steller sea lion haulouts are located in Lynn Canal, however none occur in Taiya Inlet. The nearest long-term Steller sea lion haulout is located at Gran Point, south of Haines and 24 mi (38 km) south of the project area. Other year-round haulouts in Lynn Canal are present at Met Point, Benjamin Island, and Little Island, closer to Juneau (Fritz *et al.* 2015). Observations from local charter boat captains and watershed stewards indicate Steller sea lions can be abundant in the action area, particularly in April and May during the eulachon run, but are rarely observed in the project area during the winter (K. Gross,

Never Monday Charters, personal communication; R. Ford, Taiya Inlet Watershed Council, personal communication reported in MOS 2016). This is consistent with the National Marine Mammal Laboratory database (Fritz *et al.* 2015), which has identified the largest number of Lynn Canal sea lions during the fall and winter months at Benjamin Island in the lower reaches of the canal. During surveys conducted in 2002 and 2003, Womble *et al.* (2005) observed a maximum of approximately 400 Steller sea lions in the water at the mouth of the Taiya River feeding on eulachon in 2003, but observed very few in the same area in 2002. Steller sea lions have also been observed in Lutak Inlet, a foraging site closer to both Taiya Point and Gran Point haulouts.

During the spring eulachon run, a seasonal haulout site is located on Taiya Point at the southern tip of Taiya Inlet, approximately 11 mi (18 km) from the project site. Twenty-five to 40 sea lions are estimated to use this haulout for about three weeks during spring run, during which they frequently are observed in the inlet (K. Gross, personal communication reported in MOS 2016). However, most animals leave the inlet shortly after the eulachon run and are rarely observed in the summer. Based on survey data and local observations in the project area, it is estimated that two animals may be present each day in February, 16 animals may be present on each day in March (half of the mean found on Taiya Rocks during the eulachon run), and 40 animals may be present each day in April for a total of 1,032 potential exposures (Table 10).

TABLE 10—ESTIMATED TAKES OF STELLER SEA LIONS PER MONTH

Month	Animals in inlet per day	Days in month	Exposures
February	2	28	56
March	16	31	496
April	40	30	1,200
Total			1,752

Harbor Seal

No long-term haulout sites have been documented for harbor seals in Taiya Inlet; however, seasonal haulouts are present within six miles of the project area at Seal Cove and at the mouth of the Taiya River. Based on reports from local observers, a few resident harbor seals are expected to occur within Taiya Inlet during the winter months, but during the April and May eulachon run numbers can range from 20 to over 100 (K. Gross and R. Ford, personal communication reported in MOS 2016). Before and after the spawning run, much lower numbers of harbor seals are present.

Based on survey data and local observations in the project area it is assumed that 20 seals (the lower estimate in the range) occur within the project area each day in February through March (560 takes in February and 620 takes in March) and 100 seals (the higher estimate in the range) during April (3,000 takes) for a total of 4,180 potential exposures (Table 11).

TABLE 11—ESTIMATED TAKES OF HARBOR SEALS PER MONTH

Month	Animals in inlet per day	Days in month	Takes
February	20	28	560
March	20	31	620
April	100	30	3,000
Total			4,180

Level A Harassment Calculations

WP&YR intends to avoid Level A harassment take by shutting down installation activities at approach of any marine mammal to the representative Level A harassment (PTS onset) ensonification zone up to a practical shutdown monitoring distance. As small/cryptic marine mammal species may enter the Level A harassment zone before shutdown mitigation procedures can be implemented, and some animals may occur between the maximum Level A harassment ensonification zone and the maximum shutdown safety zone, we conservatively estimate that 20 percent of the Level B harassment takes calculated above for humpback whales, harbor porpoises, Dall's porpoises, and harbor seals, have the potential to be takes by Level A harassment (Table 12). Minke whale occurrence in Taiya Inlet is rare. Because vessel-based PSO are able to monitoring the entire Level A harassment zone (whales entering the inlet), WP&YR did not request, and NMFS is not proposing, to authorize Level A harassment take of minke whales.

TABLE 12—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK, RESULTING FROM PROPOSED WP&YR PROJECT ACTIVITIES

Common name	Stock	Stock abundance [1]	Level A	Level B	Total proposed take	Proposed take as percentage of stock
Humpback whale	Central North Pacific	[2]10,103	25	100	125	1.23
Minke Whale	Alaska	N/A	0	2	2	N/A

TABLE 12—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK, RESULTING FROM PROPOSED WP&YR PROJECT ACTIVITIES—Continued

Common name	Stock	Stock abundance [1]	Level A	Level B	Total proposed take	Proposed take as percentage of stock
Killer whale	Alaska Resident	2,347	0	80	80	3.4
	Northern Resident	261				30.6
	Gulf of Alaska, Aleutian Islands, Bering Sea Transient.	587				13.6
	West Coast Transient	243				32.9
Harbor porpoise	Southeast Alaska	975	40	161	201	20.6
Dall's porpoise	Alaska	83,400	24	98	122	0.01
Steller sea lion	Western U.S	54,267	0	[3]35	35	0.06
	Eastern U.S	41,638	0	1,717	1,717	4.1
Harbor seal	Lynn Canal/Stephens Passage.	9,478	836	3,344	4,180	44.1

[1] Stock or DPS size is N_{best} according to NMFS 2018 Draft Stock Assessment Reports.
[2] For ESA section 7 consultation purposes, 6.1 percent are designated to the Mexico DPS and the remaining are designated to the Hawaii DPS; therefore, we assigned 2 Level B takes to the Mexico DPS.
[3] Based on the percent of branded animals at Gran Point and in consultation with the Alaska Regional Office, we used a 2 percent distinction factor to determine the number of animals potentially from the western DPS.

There are a number of reasons why the estimates of potential incidents of take are likely to be conservative. Given the lack of density information, we use conservative estimates of marine mammal presence to calculate takes for each species. Additionally, in the context of stationary activities such as pile driving, and in areas where resident animals may be present, this number represents the number of instances of take that may occur to a small number of individuals, with a notably smaller number of animals being exposed more than once per individual. While pile driving or drilling can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is also not quantified in the take estimation process. For these reasons, these take estimates may be conservative, especially if each take is considered a separate individual animal, and especially for pinnipeds.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

In addition to the measures described later in this section, WP&YR will employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, etc.), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal and drilling will shut down immediately if such species are observed within or on a path towards the monitoring zone (*i.e.,* Level B harassment zone); and
- If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following measures would apply to WP&YR's mitigation requirements:

Establishment of Shutdown Zone for Level A Harassment—For all pile

driving/removal and drilling activities, WP&YR would establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Conservative shutdown zones of 150 m for low- and high- frequency cetaceans, 80 m for phocid pinnipeds, and 10 m for mid-frequency cetaceans and otariid pinnipeds would be used during all drilling and vibratory pile driving/removal activities to prevent incidental Level A harassment exposure for these activities (Table 13). During impact pile driving a 150 m zone would be used for all species except for low-frequency cetacean for which a 2,000 m zone will be used. These shutdown zones would be used to prevent incidental Level A exposures from impact pile driving for mid-frequency cetaceans and otariid pinnipeds, and to reduce the potential for such take for other species (Table 13). The placement of Protected Species Observers (PSOs) during all pile driving and drilling activities (described in detail in the *Monitoring and Reporting Section*) will ensure shutdown zones are visible. The 150 m zone is the practical distance WP&YR anticipates phocid pinnipeds and high-frequency cetaceans can be effectively observed in the project area. The 2,000 m zone for low-frequency cetaceans is determined by the width of Taiya Inlet at Skagway Harbor. Observers will be present on vessels in the Taiya Inlet and able to observe large whales traveling north into the inlet and project area.

TABLE 13—MONITORING AND SHUTDOWN ZONES FOR EACH PROJECT ACTIVITY

Source	Monitoring zone (m)	Shutdown zone (m)
Drilling and Vibratory Installation/Removal	13,000	Low- and high- frequency cetaceans: 150. Phocid pinnipeds: 80. Mid-frequency cetaceans and otariid pinnipeds: 10.
Impact Installation	3,400	Low-frequency cetaceans: 2,000. All other species: 150.

Establishment of Monitoring Zones for Level B Harassment—WP&YR would establish monitoring zones to correlate with Level B disturbance zones or zones of influence which are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving and drilling. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. The proposed monitoring zones are described in Table 13. The monitoring zone for drilling and vibratory pile driving/removal activities is 13,000 m, corresponding to the maximum distance before landfall. Placement of PSOs on vessels in the Taiya Inlet allow PSOs to observe marine mammals traveling north into the inlet and Skagway Harbor. Should PSOs determine the monitoring zone cannot be effectively observed in its entirety, Level B harassment exposures will be recorded and extrapolated based upon the number of observed take and the percentage of the Level B zone that was not visible.

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or drilling of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and non-permitted species are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B monitoring zone. When a marine mammal permitted for Level B take is present in the Level B harassment zone, activities may begin and Level B take will be recorded. As stated above, if the entire Level B zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B and shutdown zone will commence.

Due to the depth of the water column and strong currents present at the project site, bubble curtains would not be implemented as they would not be effective in this environment.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as to ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Marine Mammal Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal and drilling activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

A total of five PSOs would be based on land and vessels. During all pile driving/removal and drilling activities observers will be stationed at the Railroad Dock, Yakutania Point, and Dyea Point. These stations will allow full monitoring of the impact hammer monitoring zone and the Level A shutdown zones. The vibratory and drilling monitoring zone will be additionally monitored using two PSOs stationed on boats anchored near the shoreline, with each team (vessel operator and observer) stationed approximately 2 km apart in the inlet south of the project site (Figure 2 in the WP&YR Marine Mammal Mitigation and Monitoring Plan).

PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. WP&YR would adhere to the following observer qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience.

(iv) Where a team of three or more observers are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.

(v) WP&YR shall submit observer CVs for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal and drilling activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, WP&YR would immediately cease the

specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with WP&YR to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WP&YR would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that WP&YR discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), WP&YR would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with WP&YR to determine whether modifications in the activities are appropriate.

In the event that WP&YR discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), WP&YR would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. WP&YR would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Acoustic Monitoring

WP&YR will conduct acoustic monitoring for the purposes of SSV. WP&YR will collect acoustic data for at least one 42-inch permanent pile, using all three installation methods (impact pile driving, vibratory pile driving, and down-the-hole drilling) from at least two distances from the pile (one approximately 10 meters from the pile and at least one additional measurement in the far field). The following data, at minimum, shall be collected during acoustic monitoring and reported:

- Hydrophone equipment and methods: recording device, sampling rate, distance from the pile where recordings were made; depth of recording device(s);
- Type of pile (42-inch), and segment of pile (1, 2, or 3), being driven and method of driving/removal or drilling during recordings; and
- Mean, median, maximum (or 90th percentile), and range sound levels (dB re 1μPa): cumulative sound exposure level (SEL_{CUM}), peak sound pressure level (SPL_{PK}), root mean square sound pressure level (SPL_{RMS}), and single-strike sound exposure level (SEL_{S-S}) as appropriate for the sound source.

For more details please see WP&YR's acoustic monitoring plan, available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving/removal and drilling activities associated with the Railroad Dock installation project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal and down-the-hole drilling. Potential takes could occur if individuals of these species are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Level A harassment is only anticipated for humpback whales, Dall's porpoise, harbor porpoise, and harbor seal. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see *Proposed Mitigation* section).

As described previously, minke whales are considered rare in the proposed project area and we have proposed to authorize only nominal and precautionary take of two individuals. Therefore, we do not expect meaningful impacts to minke whales and preliminarily find that the total minke whale take from each of the specified activities will have a negligible impact on this species.

For remaining species, we discuss the likely effects of the specified activities in greater detail. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely, individuals will simply move away from the sound source and be temporarily displaced

from the areas of pile driving and drilling, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in southeast Alaska, which have taken place with no known long-term adverse consequences from behavioral harassment. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving and drilling associated with the proposed project may produce sound at distances of many kilometers from the project site, thus intruding on some habitat, the project site itself is located in a busy harbor and the majority of sound fields produced by the specified activities are close to the harbor. Therefore, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that humpback whales, harbor porpoises, Dall's porpoises, and harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals in these locations that experience PTS would likely only receive slight PTS, *i.e.* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving, *i.e.* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- Conduct the majority of pile driving/removal and drilling work outside of the eulachon run, minimizing harassment of marine mammals during important foraging times;
- The Level A harassment exposures are anticipated to result only in slight PTS, within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The specified activity and ensonification area is very small relative to the overall habitat ranges of all species and does not include habitat areas of special significance (BIAs or ESA-designated critical habitat); and
- The presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

In addition, although affected humpback whales and Steller sea lions may be from a DPS that is listed under the ESA, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 12 demonstrates the number of animals that could be exposed to received noise levels that could cause Level A harassment and Level B harassment for the proposed work in the WP&YR project area. With the exception of the Northern Resident and West Coast Transient killer whale stocks and harbor seals, our analysis shows that less than 25 percent of each affected stock could be taken by harassment. The numbers of animals proposed to be taken for these stocks would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

The total proposed authorized take for killer whales as compared to each potentially affected stock ranges from 3.4 percent to 32.9 percent of each stock abundance. In reality, it is highly unlikely that 80 individuals of any one killer whale stock will be temporarily harassed. Instead, it is assumed that there will be a relatively brief period of takes of a smaller number of the same individuals from any stock (20, which is representative of the estimated group size, or 40, if individuals from the same stock are taken), which would result in smaller percentages of stocks (ranging from 0.9 percent to 8.2 percent if 20 whales from the same stock, or 1.7 percent to 16.5 percent if 40 whales from the same stock). We make this assumption because the Alaska and Northern resident stocks are known to occasionally occur in Taiya Inlet, but other stocks' (*e.g.,* transients) range extends into the project area, and therefore they may occur in the upper reaches of Lynn Canal into Taiya Inlet towards Skagway, albeit infrequently. Takes are not assumed to include multiple harassments of the same individual(s), resulting in estimates of

proposed take as a percentage of stock abundance that are high compared to actual take that will occur. This is the case with the resident stocks of killer whale and harbor seal (Lynn Canal/Stephens Passage stock).

As reported, a small number of harbor seals, most of which reside in Taiya Inlet year-round, will be exposed to construction activities for three months. The total population estimate in the Lynn Canal/Stephens Passage stock is 9,478 animals over 1.37 million acres (5,500 km^2) of area in their range, which results in an estimated density of 36 animals within Taiya Inlet. The largest Level B harassment zone within the inlet occupies 17.9 km^2, which represents less than 0.4 percent of the total geographical area occupied by the stock. The great majority of these exposures will be to the same animals given their residency patterns.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. The proposed project will occur near but not overlap with the subsistence area used by the villages of Hoonah and Angoon (Wolfe *et al.* 2013; N. Kovaces, Skagway Traditional Council, personal communication). Harbor seals and Steller sea lions are available for subsistence harvest in this area (Wolfe *et al.* 2013). Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of the Steller sea lion western DPS and humpback whale Mexico DPS, which are listed under the ESA. On November 29, 2018, the NMFS Office of Protected Resources has requested initiation of section 7 consultation with the Alaska Regional Office for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to WP&YR for conducting the Railroad Dock dolphin installation project in Skagway, Alaska from February 1, 2019 through April 30, 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the IHA itself is available for review in conjunction with this notice at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed action. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a second one-year IHA without additional notice when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements.

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: December 12, 2018.

Donna S. Weiting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–27258 Filed 12–14–18; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Request for Input on Crypto-Asset Mechanics and Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for input.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') in furtherance of the LabCFTC initiative is seeking public comment and feedback on this Request for Input (''RFI'') in order to better inform the Commission's understanding of the technology, mechanics, and markets for virtual currencies beyond Bitcoin, namely here Ether and its use on the Ethereum Network. The Commodity Exchange Act (''CEA'') grants the Commission regulatory authority over the commodity futures markets. The Commission is seeking public feedback in furtherance of oversight of these markets and regulatory policy development. The input from this request will advance the CFTC's mission of ensuring the integrity of the derivatives markets as well as monitoring and reducing systemic risk by enhancing legal certainty in the markets. The RFI seeks to understand similarities and distinctions between certain virtual currencies, including here Ether and Bitcoin, as well as Ether-specific opportunities, challenges, and risks. The Commission welcomes all public comments on these and related issues.

DATES: Comments must be received on or before February 15, 2019.

ADDRESSES: You may submit comments, identified by the title, ''Virtual Currency RFI,'' by any of the following methods:

- *CFTC website: https://comments.cftc.gov.* Follow the instructions to Submit Comments through the website.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

Please submit comments by only one of these methods.

All comments should be submitted in English or accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in the Commission's regulations at 17 CFR 145.9.[1] The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse, or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the RFI will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Daniel Gorfine, Director of LabCFTC and Chief Innovation Officer, (202) 418–5625; Bianca M. Gomez, Counsel on FinTech and Innovation, Office of General Counsel, (202) 418–5627; or *LabCFTC@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The CEA grants the Commission regulatory authority over the commodity futures markets.[2] LabCFTC was launched by the Commission in order to further the CFTC's goal of evolving as a 21st century regulator and keeping pace with technological innovation. LabCFTC is dedicated to facilitating market-enhancing financial technology (''FinTech'') innovation, informing policy, and ensuring that we have the regulatory and technological tools and understanding to keep pace with changing markets. LabCFTC is designed to make the CFTC more accessible to all innovators and to inform the Commission's understanding of emerging technologies and their regulatory implications. One such area of emerging innovation involves virtual currencies.

In further advancing its mission, LabCFTC published a primer on the topic of virtual currencies in October 2017 (the ''Primer'') in order to help educate the public on potential applications and use-cases, the CFTC's role and jurisdictional oversight, and potential risks and challenges that investors and users may face involving virtual currencies.[3]

In December 2017, the Chicago Mercantile Exchange Inc. (''CME'') and the CBOE Futures Exchange (''CFE'') self-certified and began offering new contracts for bitcoin futures products following discussions with Commission staff regarding compliance with the CEA and Commission rules and regulations. In line with Chairman Giancarlo's repeated statements[4] regarding the unique nature and risks of virtual currency-related products, the CFTC's Division of Market Oversight (''DMO'') and Division of Clearing and Risk (''DCR'') issued on May 21, 2018 a joint staff advisory[5] that gives exchanges and clearinghouses registered with the CFTC guidance on certain enhancements when listing a derivative contract based on virtual currency pursuant to Commission regulations. The input being sought here will better inform the Commission and its operating divisions as the market evolves and potentially seeks to list new virtual currency based futures and derivatives products.

B. Bitcoin as a Virtual Currency

In its October 2017 Primer, LabCFTC cited the IRS to define a virtual currency as ''a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value . . . [but that] does not have legal tender status.''[6] The Primer further noted key characteristics of Bitcoin, including that it:

- Is ''pseudonymous'' (or partially anonymous) in that an individual is identified by an alpha-numeric public key/address;
- Relies on cryptography (and unique digital signatures) for security based on public and private keys and complex mathematical algorithms;
- Runs on a decentralized peer-to-peer network of computers and ''miners'' that operate on open-source software and do ''work'' to validate and irrevocably log transactions on a permanent public distributed ledger visible to the entire network;
- Solves the lack of trust between participants who may be strangers to each other on a public ledger through the transaction validation work noted in the bullet above; and
- Enables the transfer of ownership without the need for a trusted, central intermediary.

The Primer noted potential applications or use cases of a virtual currency like Bitcoin, including that it may serve as a store of value, be used for trading, enable payments and value transfers, power applications built upon the virtual currency network, and facilitate money transfers or international remittances. The Primer further highlighted a range of potential risks around virtual currencies, including technology, operational, cybersecurity, speculative, and fraud and manipulation risks.

C. Ether as a Virtual Currency

In June 2018, the Director of the Securities and Exchange Commission's (''SEC'') Division of Corporation Finance, Bill Hinman, delivered a speech which conveyed Mr. Hinman's personal views. In the speech, he addressed the question of whether ''a digital asset that was originally offered in a securities offering [could] ever be later sold in a manner that does not constitute an offering of a security.'' He explained among other factors that since the network on which Bitcoin operates appears to be decentralized and there is no central third party whose efforts are

[1] 17 CFR 145.9. All Commission regulations cited herein are set forth in chapter I of Title 17 of the Code of Federal Regulations.

[2] *See, e.g.,* 7 U.S.C. 5(b).

[3] ''A CFTC Primer on Virtual Currencies,'' (Oct. 17, 2017), *https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf.*

[4] *See, e.g.,* Testimony of Chairman J. Christopher Giancarlo before the Senate Committee On Appropriations Subcommittee on Financial Services and General Government (June 5, 2018), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo47.*

[5] CFTC Staff Advisory No. 18–14 (May 21, 2018), *https://www.cftc.gov/sites/default/files/idc/groups/public/%40lrlettergeneral/documents/letter/2018-05/18-14_0.pdf.*

[6] *See* Primer, *supra* note 3, at 4 (citing IRS Notice 2014–21, available at *https://www.irs.gov/businesses/small-businesses-self-employed/virtual-currencies*). *See also* Proposed Interpretation on Virtual Currency ''Actual Delivery'' in Retail Transactions (Dec. 15, 2017), 82 FR 60335 (Dec. 20, 2017), *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2017-27421a.pdf.*

a key determining factor in the success of Bitcoin, ''[a]pplying the disclosure regime of the federal securities laws to the offer and resale of Bitcoin would seem to add little value.'' He further stated that, in addition to Bitcoin, ''based on my understanding of the present state of Ether, the Ethereum network and its decentralized structure, current offers and sales of Ether are not securities transactions.'' Finally, he stated that ''[o]ver time, there may be other sufficiently decentralized networks and systems where regulating the tokens or coins that function on them as securities may not be required.'' [7]

Ether is a virtual currency that was launched on the Ethereum Network in 2015. It is an open network that currently relies on a proof of work consensus mechanism, but developers, including through the Ethereum Foundation, have plans to shift the protocol to a proof of stake consensus model in order, at least in part, to reduce energy consumption required to validate the ledger.[8] The Ethereum Network is often viewed as a platform that permits ready creation and use of smart contracts that can power decentralized applications or organizations. In this way, Ether is used as ''fuel'' to compensate miners for maintaining a public ledger for such networks.[9] To date, Ether has typically been one of the top three virtual currencies by market capitalization.

II. Request for Input

The Commission is seeking public feedback namely on Ether and the Ethereum Network in order to better understand these technologies given Ether's size in the market and potentially unique attributes relative to Bitcoin. The Commission is issuing this RFI in order to gather public feedback on a range of questions related to the underlying technology, opportunities, risks, mechanics, use cases, and markets, related to Ether and the Ethereum Network. The requested information will inform the work of LabCFTC and the Commission as a whole. The Commission welcomes any relevant comments, including related topics that may not be specifically mentioned but which a commenter believes should be considered.

Specific Questions for Input

In addition to any general input, the Commission is interested in responses to the following questions:

Purpose and Functionality

1. What was the impetus for developing Ether and the Ethereum Network, especially relative to Bitcoin?
2. What are the current functionalities and capabilities of Ether and the Ethereum Network as compared to the functionalities and capabilities of Bitcoin?
3. How is the developer community currently utilizing the Ethereum Network? More specifically, what are prominent use cases or examples that demonstrate the functionalities and capabilities of the Ethereum Network?
4. Are there any existing or developing commercial enterprises that are using Ether to power economic transactions? If so, how is Ether recorded for accounting purposes in a comprehensive set of financial statements?
5. What data sources, analyses, calculations, variables, or other factors could be used to determine Ether's market size, liquidity, trade volume, types of traders, ownership concentration, and/or principal ways in which the Ethereum Network is currently being used by market participants?
6. How many confirmations on the Ethereum blockchain are sufficient to wait to ensure that the transaction will not end up on an invalid block?

Technology

7. How is the technology underlying Ethereum similar to and different from the technology underlying Bitcoin?
8. Does the Ethereum Network face scalability challenges? If so, please describe such challenges and any potential solutions. What analyses or data sources could be used to assess concerns regarding the scalability of the underlying Ethereum Network, and in particular, concerns about the network's ability to support the growth and adoption of additional smart contracts?
9. Has a proof of stake consensus mechanism been tested or validated at scale? If so, what lessons or insights can be learned from the experience?
10. Relative to a proof of work consensus mechanism does proof of stake have particular vulnerabilities, challenges, or features that make it prone to manipulation? In responding consider, for example, that under a proof of stake consensus mechanism, the chance of validating a block may be proportional to staked wealth.
11. There are reports of disagreements within the Ether community over the proposed transition to a proof of stake consensus model. Could this transition from a proof of work to a proof of stake verification process result in a fragmented or diminished Ether market if the disagreements are not resolved?
12. What capability does the Ethereum Network have to support the continued development and increasing use of smart contracts?

Governance

13. How is the governance of the Ethereum Network similar to and different from the governance of the Bitcoin network?
14. In light of Ether's origins as an outgrowth from the Ethereum Classic blockchain, are there potential issues that could make Ether's underlying blockchain vulnerable to future hard forks or splintering?

Markets, Oversight and Regulation

15. Are there protections or impediments that would prevent market participants or other actors from intentionally disrupting the normal function of the Ethereum Network in an attempt to distort or disrupt the Ether market?
16. What impediments or risks exist to the reliable conversion of Ether to legal tender? How do these impediments or risks impact regulatory considerations for Commission registrants with respect to participating in any transactions in Ether, including the ability to obtain or demonstrate possession or control or otherwise hold Ether as collateral or on behalf of customers?
17. How would the introduction of derivative contracts on Ether potentially change or modify the incentive structures that underlie a proof of stake consensus model?
18. Given the evolving nature of the Ether cash markets underlying potential Ether derivative contracts, what are the commercial risk management needs for a derivative contract on Ether?
19. Please list any potential impacts on Ether and the Ethereum Network that may arise from the listing or trading of derivative contracts on Ether.
20. Are there any types of trader or intermediary conduct that has occurred in the international Ether derivative markets that raise market risks or challenges and should be monitored closely by trading venues or regulators?
21. What other factors could impact the Commission's ability to properly oversee or monitor trading in derivative

[7] ''Digital Asset Transactions: When Howey Met Gary (Plastic),'' Remarks of William Hinman, Director, Division of Corporation Finance, SEC at the Yahoo Finance All Markets Summit: Crypto (June 14, 2018), *https://www.sec.gov/news/speech/speech-hinman-061418.*

[8] *See* Ethereum Foundation, Frequently Asked Questions, available at *https://www.ethereum.org/ether* (last visited Aug. 22, 2018).

[9] *See id.*

contracts on Ether as well as the underlying Ether cash markets?

22. Are there any emerging best practices for monitoring the Ethereum Network and public blockchains more broadly?

Cyber Security and Custody

23. Are there security issues peculiar to the Ethereum Network or Ethereum-supported smart contracts that need to be addressed?

24. Are there any best practices for the construction and security of Ethereum wallets, including, but not limited to, the number of keys required to sign a transaction and how access to the keys should be segregated?

25. Are there any best practices for conducting an independent audit of Ether deposits?

In providing your responses, please be as specific as possible, and offer concrete examples where appropriate. Please provide any relevant data to support your answers where appropriate. The Commission encourages all relevant comments on related items or issues; commenters need not address every question.

III. Conclusion

The Commission appreciates your time and effort responding to this RFI on Crypto-asset Mechanics and Markets. The information provided by stakeholders will help us refine our understanding of this area of innovation and better inform the work of the Commission, including the evaluation of potential derivatives contracts. More broadly, the input from this request will further aid the Commission in identifying FinTech trends and related opportunities, challenges, and risks. In that respect, we look forward to continuing to engage proactively with the innovator community and market participants in order to help facilitate market-enhancing innovation and ensure market integrity.

Issued in Washington, DC, on December 11, 2018, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Appendix to Request for Input on Crypto-asset Mechanics and Markets—Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2018–27167 Filed 12–14–18; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2018–0041]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection, titled Interstate Land Sales Full Disclosure Act (Regulations J, K & L) 12 CFR 1010, 1011, 1012.

DATES: Written comments are encouraged and must be received on or before February 15, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2018–0041 in the subject line of the message.
- *Mail:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Interstate Land Sales Full Disclosure Act (Regulations J, K & L) 12 CFR 1010, 1011, 1012.

OMB Control Number: 3170–0012.

Type of Review: Renewal without change of an existing information collection.

Affected Public: Businesses and other for-profit entities.

Estimated Number of Respondents: 197.

Estimated Total Annual Burden Hours: 3,411.

Abstract: The Interstate Land Sales Full Disclosure Act (ILSA) requires land developers to register subdivisions of 100 or more non-exempt lots or units and to provide each purchaser with a disclosure document designated as a property report, 15 U.S.C. 1703–1704. ILSA was enacted in response to a nation-wide proliferation of developers of unimproved subdivisions who made elaborate and often fraudulent, claims about their land to unsuspecting lot purchasers. Information is submitted to the Bureau of Consumer Financial Protection (Bureau) to assure compliance with ILSA and the implementing regulations. The Bureau also investigates developers who are not in compliance with the regulations.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 11, 2018.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2018–27262 Filed 12–14–18; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2018–0040]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, ''Consumer Response Government and Congressional Portal Boarding Forms.''

DATES: Written comments are encouraged and must be received on or before February 15, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2018–0040 in the subject line of the message.
- *Mail:* Comment intake, Bureau of Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Response Government and Congressional Portal Boarding Forms.

OMB Control Number: 3170–0057.

Type of Review: Extension with revision of a currently approved collection.

Affected Public: State, Local, and Tribal Governments; Federal Government.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden Hours: 14.

Abstract: Section 1013(b)(3)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) requires the Bureau of Consumer Financial Protection (''the Bureau'') to ''facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.'' [1] The Act also requires the Bureau to ''share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies.'' [2] To facilitate the collection of complaints, the Bureau accepts consumer complaints submitted by members of Congress on behalf of their constituents with the consumer's express written authorization for the release of their personal information.

In furtherance of its statutory mandates related to consumer complaints, the Bureau uses Government and Congressional Portal Boarding Forms (Boarding Forms) to register users for access to secure, web-based portals. The Bureau has developed separate portals for congressional users and other government users as part of its secure web portal offerings (the ''Congressional Portal'' and the ''Government Portal,'' respectively).[3]

Through the Government Portal, government users can view consumer complaint information in a user-friendly format that allows easy review of complaints currently active in the Bureau process, complaints referred to a prudential federal regulator, and other closed/archived complaints.

Through the Congressional Portal, members of Congress and authorized congressional office staff can view data associated with consumer complaints they submit on behalf of their constituents with the consumer's express written authorization for the release of their personal information. The Congressional Portal only displays information about complaints submitted by the individual congressional office.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 11, 2018.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2018–27260 Filed 12–14–18; 8:45 am]

BILLING CODE 4810–AM–P

[1] Codified at 12 U.S.C. 5493(b)(3)(A).

[2] Dodd-Frank Act section 1013(b)(3)(D), codified at 12 U.S.C. 5493(b)(3)(D).

[3] In addition to the boarding forms for congressional and government users, the Bureau utilizes a separate OMB-approved form to board companies onto their own distinct portal to access complaints submitted against them, through OMB Control No. 3170–0054 (Consumer Complaint Intake System Company Portal Boarding Form Information Collection System; expires July 31, 2018).

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0103]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; William D. Ford Federal Direct Loan Program General Forbearance Request

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 16, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0103. 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 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ian Foss, 202–377–3681.

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: William D. Ford Federal Direct Loan Program General Forbearance Request.

OMB Control Number: 1845–0031.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 2,188,770.

Total Estimated Number of Annual Burden Hours: 175,102.

Abstract: The Department of Education is requesting an extension without change of the currently approved Direct Loan General Forbearance Request form information collection. The current form includes the Direct Loan, FFEL, and Perkins Loan programs making it easier for borrowers to request this action. There has been no change to the form, the underlying regulations, or anticipated usage.

Dated: December 12, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–27212 Filed 12–14–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0132]

Agency Information Collection Activities; Comment Request; Streamlined Clearance Process for Discretionary Grants

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 15, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0132. 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 Alfreida Pettiford, 202–245–6110.

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: Streamlined Clearance Process for Discretionary Grants.

OMB Control Number: 1894–0001.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 1.

Total Estimated Number of Annual Burden Hours: 3.

Abstract: Section 3505(a)(2) of the PRA of 1995 provides the OMB Director authority to approve the streamlined clearance process proposed in this information collection request. This information collection request was originally approved by OMB in January of 1997. This information collection streamlines the clearance process for all discretionary grant information collections which do not fit the generic application process. The streamlined clearance process continues to reduce the clearance time for the U.S. Department of Education's (ED's) discretionary grant information collections by two months or 60 days. This is desirable for two major reasons: It would allow ED to provide better customer service to grant applicants and help meet ED's goal for timely awards of discretionary grants. § 3474.20(d) adds the requirement for grantees to

develop a dissemination plan for copyrighted work under open licensing. Information contained in the narrative of an application will be captured in the Evidence of Effectiveness Form.

Dated: December 12, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–27233 Filed 12–14–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–33–000.
Applicants: West Penn Power Company.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of West Penn Power Company.
Filed Date: 12/7/18.
Accession Number: 20181207–5234.
Comments Due: 5 p.m. ET 12/28/18.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–32–000.
Applicants: Coolidge Power LLC.
Description: Coolidge Power LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/10/18.
Accession Number: 20181210–5095.
Comments Due: 5 p.m. ET 12/31/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1804–002.
Applicants: Deepwater Wind Block Island, LLC.
Description: Notice of Non-Material Change in Status of Deepwater Wind Block Island, LLC.
Filed Date: 12/7/18.
Accession Number: 20181207–5247.
Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER17–2415–002.
Applicants: Pilesgrove Solar, LLC.
Description: Compliance filing: Tariff Records to Reflect Settlement to be effective 10/1/2018.
Filed Date: 12/10/18.
Accession Number: 20181210–5158.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER18–89–002.
Applicants: Frenchtown I Solar, LLC.
Description: Compliance filing: Tariff Records to Reflect Settlement to be effective 10/1/2018.
Filed Date: 12/10/18.
Accession Number: 20181210–5155.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER18–90–002.
Applicants: Frenchtown II Solar, LLC.
Description: Compliance filing: Tariff Records to Reflect Settlement to be effective 10/1/2018.
Filed Date: 12/10/18.
Accession Number: 20181210–5156.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER18–1899–003.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2018–12–10_Compliance re Pro Forma Pseudo-Tie Agreement to be effective 8/29/2018.
Filed Date: 12/10/18.
Accession Number: 20181210–5177.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER18–2397–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2018–12–10_Deficiency response to Order 844 compliance to be effective 1/1/2019.
Filed Date: 12/10/18.
Accession Number: 20181210–5109.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER19–503–001.
Applicants: Pacific Gas and Electric Company.
Description: Tariff Amendment: Errata Filing to Notice of Termination of Proxima Solar E&P Agreement to be effective 12/3/2018.
Filed Date: 12/7/18.
Accession Number: 20181207–5222.
Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19–520–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Balancing Accounts Update 2019 (TRBA, RSBA, ECRBA, TACBA) to be effective 3/1/2019.
Filed Date: 12/7/18.
Accession Number: 20181207–5221.
Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19–521–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Clean-up to OATT, Schedule 12-Appendix (BGE) re: cost allocation for b1016 to be effective 6/1/2017.
Filed Date: 12/10/18.
Accession Number: 20181210–5046.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER19–522–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3392; Queue No. Y1–045 to be effective 10/15/2018.
Filed Date: 12/10/18.
Accession Number: 20181210–5056.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER19–523–000.
Applicants: Essential Power Rock Springs, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Essential Power submits revisions to Att. H–23 re: Transmission Rate Update to be effective 2/8/2019.
Filed Date: 12/10/18.
Accession Number: 20181210–5124.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER19–524–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to Att Q. re RPM Credit Reduction for Planned GCR and QTU to be effective 2/8/2019.
Filed Date: 12/10/18.
Accession Number: 20181210–5150.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER19–525–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA, SA No. 2132; Queue No. AC2–130 to be effective 11/20/2018.
Filed Date: 12/10/18.
Accession Number: 20181210–5154.
Comments Due: 5 p.m. ET 12/31/18.

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: December 10, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27173 Filed 12–14–18; 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. CP17–80–000	11–26–2018	Rabbu Raub Zohav.
2. CP17–80–000	11–26–2018	Terri Raeder.
3. CP17–80–000	11–26–2018	Heather Graham.
4. CP17–80–000	11–26–2018	Kirtley P. Stanfield.
5. CP17–80–000	11–26–2018	Dolores H. Barnes.
6. CP17–80–000	11–26–2018	Roberta Black.
7. CP17–80–000	11–26–2018	Julie A. Taylor.
8. CP17–80–000	11–26–2018	Michael Auger.
9. CP17–80–000	11–26–2018	James R. Ball II.
10. CP17–80–000	11–26–2018	J. Brau.
11. CP17–80–000	11–26–2018	George Opryszko.
12. CP17–80–000	11–26–2018	Diana Marmestein.
13. CP16–454–000 CP16–455–000	12–3–2018	Port of Brownsville.
14. EC18–116–000	12–7–2018	Joe Citizen.
Exempt:		
1. CP17–101–000	11–14–2018	FERC Staff.[1]
2. CP16–361–000	11–29–2018	U.S. Congressman Jim Cooper.
3. CP16–454–000 CP16–455–000	12–3–2018	U.S. Congressman Kevin Brady.
4. CP16–454–000 CP16–455–000	12–4–2018	U.S. Congressman Bill Johnson.
5. CP16–10–000	12–4–2018	U.S. Congressman H. Morgan Griffith.
6. CP16–454–000 CP16–455–000	12–4–2018	U.S. Senator John Cornyn.

Dated: December 11, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27228 Filed 12–14–18; 8:45 am]

BILLING CODE 6717–01–P

[1] Conference Call notes for call on November 14, 2018 with Merjent, Shoel's Edge Consulting, Transco, ERM, and E&E.

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 Procedures

Docket Number: PR19–22–000.

Applicants: Boston Gas Company.

Description: Tariff filing per 284.123(b),(e)/: Revised Statement of Operating Conditions to be effective 1/1/2019.

Filed Date: 11/30/18.

Accession Number: 20181130–5308.

Comments/Protests Due: 5 p.m. ET 12/21/18.

Docket Number: PR19–23–000.

Applicants: Columbia Gas of Maryland, Inc.

Description: Tariff filing per 284.123(b),(e)/: CMD Rates effective 11–26–2018 to be effective 11/26/2018.

Filed Date: 12/4/18.
Accession Number: 20181204–5034.
Comments/Protests Due: 5 p.m. ET 12/26/18.

Docket Numbers: RP19–451–000.
Applicants: Portland Natural Gas Transmission System.
Description: § 4(d) Rate Filing: Housekeeping 2018 to be effective 1/10/2019.
Filed Date: 12/10/18.
Accession Number: 20181210–5113.
Comments Due: 5 p.m. ET 12/24/18.

Docket Numbers: RP19–452–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—Colonial 911571 eff 12–11–18 to be effective 12/11/2018.
Filed Date: 12/10/18.
Accession Number: 20181210–5123.
Comments Due: 5 p.m. ET 12/24/18.

Docket Numbers: RP19–453–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing on 12–10–18 to be effective 12/11/2018.
Filed Date: 12/10/18.
Accession Number: 20181210–5130.
Comments Due: 5 p.m. ET 12/24/18.

Docket Numbers: RP19–454–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2018–12–10 BHS (3) to be effective 12/8/2018.
Filed Date: 12/10/18.
Accession Number: 20181210–5157.
Comments Due: 5 p.m. ET 12/24/18.

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: December 11, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27231 Filed 12–14–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–343–001.
Applicants: Texas Eastern Transmission, LP.
Description: Tariff Amendment: Amendment to TETLP 2018 Rate Case Filing—RP19–343–000 to be effective 1/1/2019.
Filed Date: 12/7/18.
Accession Number: 20181207–5177.
Comments Due: 5 p.m. ET 12/13/18.

Docket Numbers: RP19–446–000.
Applicants: Big Sandy Pipeline, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Dec2018 Cleanup Filing to be effective 1/7/2019.
Filed Date: 12/7/18.
Accession Number: 20181207–5001.
Comments Due: 5 p.m. ET 12/19/18.

Docket Numbers: RP19–447–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Dec2018 Cleanup Filing to be effective 1/7/2019.
Filed Date: 12/7/18.
Accession Number: 20181207–5004.
Comments Due: 5 p.m. ET 12/19/18.

Docket Numbers: RP19–448–000.
Applicants: Sabine Pipe Line LLC.
Description: eTariff filing per 1430: 501–G Report Filing to be effective N/A.
Filed Date: 12/7/18.
Accession Number: 20181207–5026.
Comments Due: 5 p.m. ET 12/19/18.

Docket Numbers: RP19–449–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20181207 Negotiated Rate to be effective 12/8/2018.
Filed Date: 12/7/18.
Accession Number: 20181207–5172.
Comments Due: 5 p.m. ET 12/19/18.

Docket Numbers: RP19–450–000.
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: eTariff filing per 1430: Trans-Union Form 501–G Refiling to be effective N/A.
Filed Date: 12/7/18.
Accession Number: 20181207–5217.
Comments Due: 5 p.m. ET 12/19/18.

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: December 10, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27174 Filed 12–14–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–526–000]

AC Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of AC Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 31, 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: December 11, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27230 Filed 12–14–18; 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 rate filings:

Docket Numbers: ER10–2633–035; ER10–2570–035; ER10–2717–035; ER10–3140–034; ER13–55–024.

Applicants: Birchwood Power Partners, L.P., Shady Hills Power Company, L.L.C., EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC, Homer City Generation, L.P.

Description: Notice of Non-Material Change in Status of the GE MBR Affiliates.

Filed Date: 12/10/18.

Accession Number: 20181210–5235.

Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER10–2641–031; ER10–1874–007; ER10–2663–032; ER10–2881–032; ER10–2882–034; ER10–2883–032; ER10–2884–032; ER10–2885–032; ER16–2509–003; ER17–2400–003; ER17–2401–003; ER17–2403–003; ER17–2404–003.

Applicants: Oleander Power Project, Limited Partnership, Southern Company—Florida LLC, Mankato Energy Center, LLC, Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Rutherford Farm, LLC, SP Butler Solar, LLC, SP Decatur Parkway Solar, LLC, SP Pawpaw Solar, LLC, SP Sandhills Solar, LLC.

Description: Errata to May 3, 2018 Notification of Change in Status [Format Corrected Asset Appendix] of Oleander Power Project, Limited Partnership, et al. under ER10–2641, et al.

Filed Date: 12/6/18.

Accession Number: 20181206–5366.

Comments Due: 5 p.m. ET 12/27/18.

Docket Numbers: ER15–794–008.

Applicants: ND Paper, Inc.

Description: Amendment to July 30, 2018 Notification of Change in Status of ND Paper, Inc.

Filed Date: 12/11/18.

Accession Number: 20181211–5086.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER18–296–001.

Applicants: Phibro Americas LLC.

Description: Notice of Non-Material Change in Status of Phibro Americas LLC.

Filed Date: 12/10/18.

Accession Number: 20181210–5224.

Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER18–2318–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Deficiency Response in ER18–2318—Order No. 844 Compliance Filing to be effective N/A.

Filed Date: 12/10/18.

Accession Number: 20181210–5202.

Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER19–526–000.

Applicants: AC Energy, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 1/1/2019.

Filed Date: 12/10/18.

Accession Number: 20181210–5179.

Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER19–527–000.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: § 205(d) Rate Filing: 2018–12–10_SA 3221 MP–GRE T–L IA (Pepin Lake) to be effective 12/11/2018.

Filed Date: 12/10/18.

Accession Number: 20181210–5185.

Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: ER19–528–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 205 filing re: Public Policy Transmission Planning Process revisions to be effective 2/10/2019.

Filed Date: 12/11/18.

Accession Number: 20181211–5052.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–529–000.

Applicants: Brookfield Renewable Trading and Marketing LP.

Description: Baseline eTariff Filing: Application for MBR, Waivers, Blanket Authority, Confidential & Expedited Action to be effective 1/15/2019.

Filed Date: 12/11/18.

Accession Number: 20181211–5111.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–530–000.

Applicants: San Diego Gas & Electric Company.

Description: § 205(d) Rate Filing: SDGE NEET West AGMT 60 V 11 IA to be effective 12/12/2018.

Filed Date: 12/11/18.

Accession Number: 20181211–5113.

Comments Due: 5 p.m. ET 1/2/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 11, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27232 Filed 12–14–18; 8:45 am]

BILLING CODE 6717–01–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 January 11, 2019.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *The McGehee Bank Employee Stock Ownership Plan, McGehee, Arkansas;* to acquire additional voting shares of Southeast Financial Bankstock Corp., McGehee, Arkansas, and thereby acquire shares of McGehee Bank, McGehee, Arkansas.

Board of Governors of the Federal Reserve System, December 12, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–27249 Filed 12–14–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 31, 2018.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Rabun Beasley, Zachary Johnson, and Deborah Beasley Johnson, acting in concert with the R. Darrell Beasley group, all of Hazlehurst, Georgia;* to retain voting shares of Hazlehurst Investors, Inc., and thereby retain shares of Bank of Hazlehurst both of Hazlehurst, Georgia.

Board of Governors of the Federal Reserve System, December 12, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–27247 Filed 12–14–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to implement the New Hire Information Collection (FR 27; OMB No. 7100–new).

DATES: Comments must be submitted on or before February 15, 2019.

ADDRESSES: You may submit comments, identified by *FR 27* by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number 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 are available from the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under

authority delegated by the OMB under the PRA. Comments are invited on the following:

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

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

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

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

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

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

Proposal Under OMB Delegated Authority To Implement the Following Information Collection

Report title: New Hire Information Collection.

Agency form number: FR 27.

OMB control number: 7100–new.

Frequency: As needed.

Respondents: Individuals.

Estimated number of respondents: Regular Hires: 312; Intern Hires: 122; Federal Transfers: 10.

Estimated average hours per response: Regular Hires: 1; Intern Hires: 0.75; Federal Transfers: 1.08.

Estimated annual burden hours: 414.3.

General description of report: This information collection would provide for the electronic collection of certain personnel information from new hires using a secure web-based portal, the ''New Hire Portal,'' before the first day of employment of a new hire. In this way, the Board is proposing to streamline the collection of personnel information from new hires so that much of the information previously collected in hardcopy format from new employees on their first day of employment would be submitted electronically by new hires through the secure web-based New Hire Portal before they become employees of the Board.

Currently, information is collected from new employees during the Board's New Employee Orientation (''NEO'') in order to complete certain employee on-boarding tasks, such as compensation, conduct security/background checks, set-up computer log-in profiles, establish applicable tax withholdings, determine benefits, identify dependents, and related purposes. Such personnel information currently is submitted by new employees on hardcopy forms during or after NEO. Accordingly, the information collected under the Board's current process is not subject to the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.,* because information is only provided to the Board after the respondent has become a Board employee. However, under the proposal, such personnel information predominantly would be collected electronically from new hires through the New Hire Portal before the new hire becomes an employee of the Board. Therefore, the requirements of the PRA would apply to the information collection.

As part of the onboarding process for new hires, a Human Resources (''HR'') professional at the Board would identify the necessary information that must be collected from the new hire, which is dependent upon whether the person will be starting as an Intern or starting as a full- or part-time employee, including as a Governor or Board officer (hereinafter, ''Regular Employee''), and whether the Regular Employee is transferring from another federal agency (''Federal Transfer''). The new hire would then be sent an email asking him or her to provide the personnel information, described below, through the New Hire Portal prior to their official start date.

Legal authorization and confidentiality: The information collected as part of the New Hire Information Collection is authorized pursuant to sections 10(3), 10(4), 11(l), and 11(q) of the Federal Reserve Act, which provides the Board broad authority over employment of staff and security of its building, as well as the authority to determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid (12 U.S.C. 243, 244, 248(l), and 248(q)). In addition, Executive Order 9397 (November 22, 1943) authorizes Federal agencies to use an individual's social security number to identify individuals in agency records.

Providing the information collected as part of the New Hire Information Collection is voluntary. However, if certain information requested as part of the New Hire Information Collection is not provided, then the Board cannot complete the hiring process.

Generally, information collected as part of the New Hire Information Collection will be kept confidential from the public under exemption 6 of the Freedom of Information Act (FOIA) to the extent that the disclosure of the information ''would constitute a clearly unwarranted invasion of personal privacy'' (5 U.S.C. 552(b)(6)). For example, the release of information such as the new hire's date of birth, home address, home telephone number, or social security numbers to the public would likely constitute a clearly unwarranted invasion of personal privacy and be kept confidential. However, the release of information such as the educational history of the new hire or the start date of employment would not likely constitute a clearly unwarranted invasion of personal privacy and may be disclosed under the FOIA.

Determinations regarding disclosure to third parties of any confidential portions of the information collection that are considered exempt under the FOIA will be made in accordance with the Privacy Act, 5 U.S.C. 552a(b). Relevant Privacy Act statements are provided when a respondent logs in to the portal and before the respondent is asked to provide any information. The Board may make disclosures in accordance with the Privacy Act's routine use disclosure provision, 5 U.S.C. 552a(a)(7) and (b)(3)), which permits the disclosure of a record for a purpose which is compatible with the purpose for which the record was collected. Such routine uses are listed in the specific systems of records notices, which apply to this information collection and which can be found in: (1) The System of Records Notice for BGFRS–1, FRB–Recruiting and Placement Records, located here: *https://www.federalreserve.gov/files/BGFRS-1-recruiting-and-placement-records.pdf;* (2) the System of Records Notice for BGFRS–4, FRB–General Personnel Records, located here: *https://www.federalreserve.gov/files/BGFRS-4-general-personnel-records.pdf;* (3) the System of Records Notice for BGFRS–7, FRB—Payroll and Leave Records, located here: *https://www.federalreserve.gov/files/BGFRS-7-payroll-and-leave-records.pdf;* (4) the System of Records Notice for BGFRS–24, FRB—EEO General Files, located here: *https://www.federalreserve.gov/files/BGFRS-24-eeo-general-files.pdf;* and/or (5) the System of Records Notice for BGFRS–34, FRB–ESS Staff Identification Card File, located here: *https://www.federalreserve.gov/files/*

BGFRS-34-ess-staff-identification-card-file.pdf.

Board of Governors of the Federal Reserve System, December 12, 2018.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2018–27226 Filed 12–14–18; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–WWICC–2018–04; Docket No. 2018–0003; Sequence No. 4]

World War One Centennial Commission; Notification of Upcoming Public Advisory Meeting

AGENCY: World War One Centennial Commission, GSA.

ACTION: Meeting notice.

SUMMARY: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act. This notice provides the schedule and agenda for the January 22, 2019 meeting of the World War One Centennial Commission (the Commission). The meeting is open to the public.

DATES:

Applicable: December 10, 2018.

Meeting date: The meeting will be held on Tuesday, January 22, 2019, starting at 10:00 a.m. Eastern Standard Time (EST), and ending no later than 12:00 p.m. EST.

ADDRESSES: The meeting will be held telephonically. The call will be convened at the Offices of the World War 1 Centennial Commission at 1800 G Street NW, Washington, DC 20006, Street Level.

This location is handicapped accessible. The meeting will be open to the public. Persons attending in person are requested to refrain from using perfume, cologne, and other fragrances.

Written Comments may be submitted to the Commission and will be made part of the permanent record of the Commission. Comments must be received by 5:00 p.m. EST, on January 18, 2019, and may be provided by email to *daniel.dayton@worldwar1centennial.gov.*

Contact Mr. Daniel S. Dayton at *daniel.dayton@worldwar1centennial.org* to register to comment during the meeting's 30-minute public comment period. Registered speakers/organizations will be allowed five (5) minutes, and will need to provide written copies of their presentations. Requests to comment, together with presentations for the meeting must be received by 5:00 p.m. EST, on Friday January 18, 2019. Please contact Mr. Dayton at the email address above to obtain meeting materials.

FOR FURTHER INFORMATION CONTACT: Daniel S. Dayton, Designated Federal Officer, World War 1 Centennial Commission, 701 Pennsylvania Avenue NW, 123, Washington, DC 20004–2608, 202–380–0725 (note: this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The World War One Centennial Commission was established by Public Law 112–272 (as amended), as a commission to ensure a suitable observance of the centennial of World War I, to provide for the designation of memorials to the service of members of the United States Armed Forces in World War I, and for other purposes. Under this authority, the Committee will plan, develop, and execute programs, projects, and activities to commemorate the centennial of World War I, encourage private organizations and State and local governments to organize and participate in activities commemorating the centennial of World War I, facilitate and coordinate activities throughout the United States relating to the centennial of World War I, serve as a clearinghouse for the collection and dissemination of information about events and plans for the centennial of World War I, and develop recommendations for Congress and the President for commemorating the centennial of World War I. The Commission does not have an appropriation and operates on donated funds.

Agenda: Wednesday, January 22, 2019

Old Business

- Acceptance of minutes of last meeting.
- Public Comment Period.

New Business

- Executive Director's Report—Executive Director Dayton.
- Executive Committee Report—Commissioner Hamby.
- Financial Committee Report—Vice Chair Fountain.
- Memorial Report—Vice Chair Fountain.
- Fundraising Report—Commissioner Sedgwick.
- Education Report—Dr. O'Connell.

Other Business

- Chairman's Report.
- Set Next Meeting.
- Motion to Adjourn.

Dated: December 10, 2018.

Daniel S. Dayton,

Designated Federal Official, World War I Centennial Commission.

[FR Doc. 2018–27240 Filed 12–14–18; 8:45 am]

BILLING CODE 6820–95–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–1112]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled FoodNet Population Survey to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 10, 2018 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) 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;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and

instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

FoodNet Population Survey (0920–1112, Expiration Date 4/30/2019)—Extension—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Foodborne illnesses represent a significant public health burden in the United States. It is estimated that each year, 48 million Americans (one in six) become ill, 128,000 are hospitalized, and 3,000 die as the result of a foodborne illness. Since 1996, the Foodborne Diseases Active Surveillance Network (FoodNet) has conducted active population-based surveillance for Campylobacter, Cryptosporidium, Cyclospora, Listeria, Salmonella, Shiga toxin-producing Escherichia coli O157 and non-O157, Shigella, Vibrio, and Yersinia infections. Data from FoodNet serves as the nation's ''report card'' on food safety by monitoring progress toward CDC Healthy People 2020 objectives.

Since the previous OMB approval, pilot testing has been completed and data collection began in all states. As of July 10, 2018 a total of 11,657 surveys have been completed between all survey modes including landline, cell phone, web, and mail. CDC is seeking three years of OMB clearance for an extension of control number 0920–1112.

Evaluation of efforts to control foodborne illnesses can only be done effectively if there is an accurate estimate of the total number of illness that occur, and if these estimates are recalculated and monitored over time. Estimates of the total burden start with accurate and reliable estimates of the number of acute gastrointestinal illness episodes that occur in the general community. To more precisely estimate this, and to describe the frequency of important exposures associated with illness, FoodNet created the Population Survey.

The FoodNet Population Survey is a survey of persons residing in the surveillance area. Data are collected on the prevalence and severity of acute gastrointestinal illness in the general population, describe common symptoms associated with diarrhea, and determine the proportion of persons with diarrhea who seek medical care. The survey also collects data on exposures (*e.g.* food, water, animal contact) commonly associated with foodborne illness. Information about food exposures in the general public has proved invaluable during outbreak investigations. The ability to compare exposures reported by outbreak cases to the 'background' exposure in the general population allows investigators to more quickly pinpoint a source and enact control measures.

CDC seeks OMB approval for a three year extension to continue this work. There is no cost to the respondents other than their time. Total estimated annual burden is 6,000 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
U.S. General Population	FoodNet Population Survey	18,000	1	20/60

Jeffrey M. Zirger,

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2018–27223 Filed 12–14–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–0960]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Epidemiologic Study of Health Effects Associated With Low Pressure Events in Drinking Water Distribution Systems to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 29, 2018 to obtain comments from the public and affected agencies. CDC received five comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) 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;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Epidemiologic Study of Health Effects Associated With Low Pressure Events in Drinking Water Distribution Systems

(0920–0960, Expiration Date 08/31/2018)—Reinstatement with Change—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is seeking a three year reinstatement of OMB Control No. 0920–0960, Epidemiologic Study of Health Effects Associated With Low Pressure Events in Drinking Water Distribution Systems.

In the United States (U.S.), drinking water distribution systems are designed to deliver safe, pressurized drinking water to our homes, hospitals, schools and businesses. However, the water distribution infrastructure is 50–100 years old in much of the U.S. and an estimated 240,000 water main breaks occur each year. Failures in the distribution system such as water main breaks, cross-connections, back-flow, and pressure fluctuations can result in potential intrusion of microbes and other contaminants that can cause health effects, including acute gastrointestinal and respiratory illness.

Approximately 200 million cases of acute gastrointestinal illness occur in the U.S. each year, but we lack reliable data to assess how many of these cases are associated with drinking water. Further, data are even more limited on the human health risks associated with exposure to drinking water during and after the occurrence of low pressure events (such as water main breaks) in drinking water distribution systems. Studies in both Norway and Sweden found that people exposed to low pressure events in the water distribution system had a higher risk for gastrointestinal illness. A similar study is needed in the United States.

The purpose of this data collection is to conduct an epidemiologic study in the U.S. to assess whether individuals exposed to low pressure events in the water distribution system are at an increased risk for acute gastrointestinal or respiratory illness. This study would be, to our knowledge, the first U.S. study to systematically examine the association between low pressure events and acute gastrointestinal and respiratory illnesses. Study findings will inform the Environmental Protection Agency (EPA), CDC, and other drinking water stakeholders of the potential health risks associated with low pressure events in drinking water distribution systems and whether additional measures (*e.g.,* new standards, additional research, or policy development) are needed to reduce the risk for health effects associated with low pressure events in the drinking water distribution system.

We will conduct a cohort study among households that receive water from seven water utilities across the U.S. The water systems will be geographically diverse and will include both chlorinated and chloraminated systems. These water utilities will provide information about low pressure events that occur during the study period using a standardized form (approximately 13 events per utility). Utilities will provide address listings of households in areas exposed to the low pressure event and comparable households in an unexposed area to CDC staff, who will randomly select participants and send them a questionnaire. Consenting household respondents will be asked about symptoms and duration of any recent gastrointestinal or respiratory illness, tap water consumption, and other exposures including international travel, daycare attendance or employment, animal contacts, and recreational water exposures. Study participants may choose between two methods of survey response: A mail-in paper survey and a web-based survey.

Participation in this study will be voluntary. No financial compensation will be provided to study participants. The study duration is anticipated to last 36 months. The annualized burden is estimated to be 199 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Water Utility customer	Paper-based questionnaire	240	1	12/60
	Web-based questionnaire	160	1	12/60
Water Utility maintenance worker	LPE form, ultrafilter and grab samples	5	3	145/60
	LPE form, grab samples	5	2	45/60
Water Utility Environmental Engineer	Line listings	5	5	2
Water Utility Billing clerk	Line listings	5	5	1

Jeffrey M. Zirger,

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2018–27222 Filed 12–14–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–18AJJ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Knowledge, Attitudes, and Practices of U.S. Large Animal Veterinarians Concerning Common Veterinary Infection Control Measures When Working with Animal Obstetric Cases to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 20, 2018 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget

is particularly interested in comments that:

(a) 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;

(b) 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;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Knowledge, Attitudes, and Practices of U.S. Large Animal Veterinarians Concerning Common Veterinary Infection Control Measures When Working with Animal Obstetric Cases—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Veterinarians are particularly at risk of contracting zoonotic infectious diseases due to their close proximity to animals, especially during times of injury or illness. Some veterinarians may be unaware of recommended personal protection measures or opt not to participate in measures that would decrease their risk of contracting a zoonotic disease. In 1977, a survey conducted of 1182 veterinarians showed that approximately 43% of the respondents had contracted an infectious zoonotic disease. Today, this elevated zoonotic disease risk persists; the seroprevalence of Q fever in U.S. veterinarians is 22% and the seroprevalence of leptospirosis is 2.5%. Within the veterinary profession, large animal practitioners might have an increased risk of occupational exposure to infectious zoonotic diseases for many reasons, including decreased biosecurity measures available in the field and the limited space available on a mobile practice for personal protective equipment (PPE).

The goals of this study are to describe veterinarians' knowledge of zoonotic infectious disease, identify veterinarians' attitudes towards zoonotic infectious disease and personal risk, and determine practices to decrease personal risk of infection. By identifying knowledge gaps in personal protective equipment (PPE) use, transmission risk factors, and disease identification/diagnosis, we aim to determine the best methods for education of veterinarians on relevant abortion-associated zoonotic infectious diseases.

The purpose of this study is to better describe veterinarians' current knowledge of zoonotic diseases that cause abortion in large animals, determine common veterinary infection control practices when working up obstetric cases, and identify common barriers to PPE use. In order to develop effective messaging strategies, a deeper understanding of the attitudes and barriers to PPE use is needed.

Information will be collected through a web-based ''Livestock abortion-associated zoonoses'' survey. The estimated burden per response is 15 minutes. Respondents will be veterinarians interested in bovine, small ruminant, or swine medicine. Collaborating veterinary specialty organizations will distribute announcements about the survey to their memberships along with a link to the electronic survey. CDC anticipates that data analysis will be conducted on approximately 500 de-identified survey responses.

Findings will be used to improve and enhance zoonotic disease education and PPE guidance targeted to veterinarians. OMB approval is requested for one year. Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 125.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Veterinarian	Livestock abortion-associated zoonoses	500	1	15/60

Jeffrey M. Zirger,

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2018–27221 Filed 12–14–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7056–N]

Medicare and Medicaid Programs, and Other Program Initiatives, and Priorities; Request for Nominations to the Advisory Panel on Outreach and Education (APOE)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations for individuals to serve on the Advisory Panel on Outreach and Education (APOE).

DATES: Nominations will be considered if we receive them at the appropriate address, provided in the **ADDRESSES** section of this notice, no later than 5 p.m., Eastern Savings Time (e.s.t.) on January 16, 2019.

ADDRESSES: Mail or deliver nominations to the following address: Lynne Johnson, Acting Designated Federal Official, Office of Communications, CMS, 7500 Security Boulevard, Mail Stop S1–05–06, Baltimore, MD 21244–

1850 or email to *Lynne.Johnson@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Acting Designated Federal Official, Office of Communications, CMS, 7500 Security Boulevard, Mail Stop S1–05–06, Baltimore, MD 21244, 410–786–0897, email *Lynne.Johnson@cms.hhs.gov* or visit the website at *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.html.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Advisory Panel on Medicare Education (the predecessor to the APOE) was created in 1999 to advise and make recommendations to the Secretary of Health and Human Services, and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105–33).

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. CMS has had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. Successful MA program implementation required CMS to consider the views and policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, Title I of MMA authorized the Secretary and the Administrator of CMS, by delegation, to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, CMS has substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Affordable Care Act (Patient Protection and Affordable Care Act, Pub. L. 111–148, and Health Care and Education Reconciliation Act of 2010, Pub. L. 111–152) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and the Children's Health Insurance Program (CHIP). Qualified individuals and qualified employers are now able to purchase private health insurance coverage through a competitive marketplace, called an Affordable Insurance Exchange (also called Health Insurance Marketplace℠, or Marketplace℠). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through the Marketplace℠. The APOE allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this Panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 19, 2017, and will terminate on January 19, 2019 unless renewed by appropriate action.

II. Provisions of This Notice

A. Renewal of the APOE

On January 19, 2017, the APOE charter was renewed. The APOE will advise the Department of Health and Human Services and CMS on developing and implementing education programs that support individuals with or who are eligible for coverage through the Health Insurance Marketplace, Medicare, Medicaid, and the CHIP about options for selecting health care coverage under these and other programs envisioned under health care reform to ensure improved access to quality care, including prevention services. The scope of this FACA group also includes advising on education of providers and stakeholders with respect to health care reform and certain provisions of the HITECH Act enacted as part of the ARRA.

The charter will terminate on January 19, 2019, unless renewed by appropriate action. The APOE was chartered under 42 U.S.C. 222 of the Public Health Service Act, as amended. The APOE is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

In accordance with the renewed charter, the APOE will advise the Secretary of Health and Human Services and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, and the CHIP, or coverage available through the Health Insurance Marketplace℠, and other CMS programs.
- Enhancing the federal government's effectiveness in informing Health Insurance Marketplace℠, Medicare, Medicaid, and CHIP consumers, issuers, providers, and stakeholders, through education and outreach programs, on issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Health Insurance Marketplace℠, Medicare, Medicaid, and CHIP education programs, and other CMS programs.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care,

including prevention services, envisioned under the Affordable Care Act.

B. Requests for Nominations

The APOE shall consist of no more than 20 members. The Chair shall either be appointed from among the 20 members, or a Federal official will be designated to serve as the Chair. The charter requires that meetings shall be held up to four times per year. Members will be expected to attend all meetings. The members and the Chair shall be selected from authorities knowledgeable in one or more of the following fields:

- Senior citizen advocacy.
- Outreach to minority and underserved communities.
- Health communications.
- Disease-related advocacy.
- Disability policy and access.
- Health economics research.
- Behavioral health.
- Health insurers and plans.
- Health IT.
- Social Media.
- Direct patient care.
- Matters of labor and retirement.

Representatives of the general public may also serve on the APOE.

This notice also requests nominations for 10 individuals to serve on the APOE to fill current vacancies and 10 vacancies that will become available in 2019. This notice is an invitation to interested organizations or individuals to submit their nominations for membership (no self-nominations will be accepted). The CMS Administrator will appoint new members to the APOE from among those candidates determined to have the expertise required to meet specific agency needs, and in a manner to ensure an appropriate balance of membership. We have an interest in ensuring that the interests of both women and men, members of all racial and ethnic groups, and disabled individuals are adequately represented on the APOE. Therefore, we encourage nominations of qualified candidates who can represent these interests. Any interested organization or person may nominate one or more qualified persons.

Each nomination must include a letter stating that the nominee has expressed a willingness to serve as a Panel member and must be accompanied by a curricula vitae and a brief biographical summary of the nominee's experience.

While we are looking for experts in a number of fields, our most specific needs are for experts in outreach to minority and underserved communities, health communications, disease-related advocacy, disability policy and access, health economics research, behavioral health, health insurers and plans, Health IT, social media, direct patient care, and matters of labor and retirement.

We are requesting that all submitted curricula vitae include the following:

- Date of birth.
- Place of birth.
- Title and current position.
- Professional affiliation.
- Home and business address.
- Telephone and fax numbers.
- Email address.
- Areas of expertise.

Phone interviews of nominees may also be requested after review of the nominations.

In order to permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts.

Members are invited to serve for 2-year terms, contingent upon the renewal of the APOE by appropriate action prior to its termination. A member may serve after the expiration of that member's term until a successor takes office. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of that term.

III. Copies of the Charter

The Secretary's Charter for the APOE is available on the CMS website at: *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzsCAAQ,* or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION** section of this notice.

Dated: December 3, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–27198 Filed 12–14–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects: Trafficking Victim Assistance Program Data Collection.

Title: Trafficking Victim Assistance Program Data Collection.

OMB No.: 0970–0467.

Description: The Trafficking Victims Protection Act of 2000 (TVPA), as amended, authorizes the Secretary of Health and Human Services to expand benefits and services to foreign nationals in the United States who are victims of severe forms of trafficking in persons. Such benefits and services may include services to assist potential victims of trafficking (Section 107(b)(1)(B) of the TVPA, 22 U.S.C. 7105(b)(1)(B)). The Office on Trafficking in Persons (OTIP) awards cooperative agreements to organizations to provide case management services to foreign national victims of human trafficking pursuing HHS Certification and their qualified family members. The awarded organizations must provide comprehensive case management and referrals to qualified persons, either directly through its own organization or by partnering with other organizations through subcontracts or both.

Persons qualified for services under this grant are victims of a severe form of trafficking in persons who have received HHS Certification or Eligibility, potential victims of a severe form of trafficking who are actively seeking to achieve HHS Certification or Eligibility, family members with derivative T visas, and minor dependent children of foreign victims of severe forms of trafficking in persons or potential victims of trafficking.

To help measure each grant project's performance and the success of the program in assisting the target population, to assist grantees to assess and improve their projects over the course of the project period, and to fulfill instructions for a consolidated report to several committees of the House of Representatives, OTIP proposes to collect information from TVAP grantees on a monthly, quarterly, or annual basis, including participant demographics (*e.g.,* age, sex, and country of origin), types of trafficking experienced (sex, labor, or both), types of enrollment, types of services provided, types of health screening and medical services received, the names of the entities providing medical services, the amount of money expended on each type of service provided, the amount of money expended on each type of client enrollment, types of partnerships developed through the grant, and the types of training and technical assistance provided to subrecipient organizations or other partners.

This information will help OTIP assess the project's performance in assisting foreign national victims of trafficking and will better enable TVAP grantees to meet the program objectives and to monitor and evaluate the quality of case management services provided by any subcontractors. OTIP will also include aggregate information in reports

to Congress to help inform strategies and policies to assist foreign national victims of human trafficking.

Respondents: Trafficking Victim Assistance Program Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Client Characteristics and Enrollment Form	1100	1	.3	330
Client Service Use and Delivery Form	1100	1	.25	275
Client Case Closure Form	1100	1	.167	183.7
Barriers to Service Delivery and Monitoring Form	91	5	.167	75.985
TVAP Spending Form	261	1	.75	195.75
Partnership Development Enrollment Form	261	1	.25	65.25
Partnership Development Exit Form	261	1	.083	21.663
Training Form	261	4	.5	522
Technical Assistance Form	261	4	.5	522

Estimated Total Annual Burden Hours: 2,191.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–27185 Filed 12–14–18; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Annual Survey of Refugees (OMB #0907–0033)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) seeks to continue data collection for the Annual Survey of Refugees with minor updates to improve survey administration procedures. The Annual Survey of Refugees is a yearly sample survey of refugees entering the U.S. in the previous five fiscal years. No changes to the survey instrument or estimated response burden are proposed.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Description: Data from the Annual Survey of Refugees are used to meet the Office of Refugee Resettlement's Congressional reporting requirements, as set forth in the Refugee Act of 1980 (Section 413(a) of the Immigration and Nationality Act). The Office of Refugee Resettlement makes aggregated survey findings available to the general public and uses findings for the purposes of program planning, policy-making, and budgeting.

Respondents: The Annual Survey of Refugees secures a nationally-representative sample of refugee households arriving in the United States in the previous five fiscal years.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
ORR–9 (Annual Survey of Refugees)	6000	2000	1	0.5	1000
Pre-survey information form	6000	2000	1	0.05	100

Estimated Total Annual Burden Hours: 1,100.

Authority: Sec. 413.[8 U.S.C. 1523].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2018–27235 Filed 12–14–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3454]

Manufacturing Site Change Supplements: Content and Submission; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Manufacturing Site Change Supplements: Content and Submissions; Guidance for Industry and Food and Drug Administration Staff.'' This guidance describes the decision-making steps that FDA recommends to determine whether a premarket approval application (PMA) supplement should be submitted when a manufacturer intends to change the manufacturing site (including a change to the processing, packaging, or sterilization site) of its legally marketed PMA-approved device. This guidance also discusses the general factors FDA intends to consider when determining whether to conduct an establishment inspection prior to approval of a site change supplement.

DATES: The announcement of the guidance is published in the **Federal Register** on December 17, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–N–3454 for ''Manufacturing Site Change Supplements: Content and Submission; Guidance for Industry and Food and Drug Administration Staff.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Manufacturing Site

Change Supplements: Content and Submissions: Guidance for Industry and Food and Drug Administration Staff'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Bleta Vuniqi, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3463, Silver Spring, MD 20993–0002, 301–796–5497.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 515(d)(6) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360e(d)(6)), a PMA supplement must be submitted for review and approval by FDA before making a change that affects the device's safety or effectiveness, unless such change is a modification in a manufacturing procedure or method of manufacture, which would be eligible for a 30-day notice. The PMA regulations provide general criteria in 21 CFR 814.39 for determining when PMA holders are required to submit a PMA supplement or are eligible to submit a 30-day notice.

This guidance document explains: (1) What constitutes a manufacturing site change and when a manufacturer should submit a PMA supplement for a site change; (2) what documentation a manufacturer should submit in the site change supplement; and (3) the general factors that FDA intends to consider when determining whether to conduct an establishment inspection prior to the approval of a site change supplement. This guidance is intended to help industry decide when a change in manufacturing site should be submitted in a PMA site change supplement. This guidance is also intended to help industry predict when a preapproval inspection in connection with a PMA supplement for a manufacturing site change will likely be needed to evaluate the firm's implementation of Quality System regulation requirements, 21 CFR part 820. As a result, this guidance should help manufacturers manage the timeframes associated with implementing the changes in the manufacturing site and any processes, methods, procedures, qualifications, and validations.

Please note that this guidance only applies to a manufacturer of a device with an approved PMA, a product development protocol, or a humanitarian device exemption. This guidance does not address manufacturing site changes for devices cleared under the premarket notification (510(k)) submissions, granted premarket authorization through the De Novo pathway, or approved and distributed as part of an investigational device exemption.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of October 21, 2015. FDA revised the guidance as appropriate in response to the comments.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Manufacturing Site Change Supplements: Content and Submission; Guidance for Industry and Food and Drug Administration Staff.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Manufacturing Site Change Supplements: Content and Submissions; Guidance for Industry and Food and Drug Administration Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1269 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations or guidance have been approved by OMB as listed in the following table.

21 CFR part or guidance	Topic	OMB control No.
814, subparts A through E	Premarket Approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-Submissions	0910–0756
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073
807, subparts A through D	Electronic Submission of Medical Device Registration and Listing.	0910–0625

Dated: December 11, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27237 Filed 12–14–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4115]

Clarification of Radiation Control Regulations for Manufacturers of Diagnostic X-Ray Equipment; Draft Guidance for Industry and Food and Drug Administration Staff; 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 draft guidance entitled ''Clarification of Radiation Control Regulations for Manufacturers of Diagnostic X-Ray Equipment.'' This draft guidance provides clarification to industry and FDA staff of the Federal regulations that relate to diagnostic x-ray systems and their major components. These regulations pertain to the recordkeeping, reporting, manufacturing, importing, and installation of ''electronic products,'' as defined in FDA regulations. This draft guidance, when finalized, will supersede FDA's guidance entitled ''Clarification of Radiation Control Regulations for Diagnostic X-Ray Equipment.'' This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by February 15, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–4115 for ''Clarification of Radiation Control Regulations for Manufacturers of Diagnostic X-Ray Equipment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Clarification of Radiation Control Regulations for Manufacturers of Diagnostic X-Ray Equipment'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Scott Gonzalez, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4276, Silver Spring, MD 20993–0002, 301–796–5889.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance provides clarification to industry and FDA staff of the Federal regulations that relate to diagnostic x-ray systems and their major components. The Federal Food, Drug, and Cosmetic Act (FD&C Act) defines diagnostic x-ray systems as both a medical device, under section 201(h) of the FD&C Act (21 U.S.C. 321(h)), and an electronic product, under section 531 of the FD&C Act (21 U.S.C. 360hh). As such, these devices are subject to the provisions of the FD&C Act that apply to medical devices (*e.g.,* sections 510

and 520 of the FD&C Act (21 U.S.C. 360 and 360j)), and their implementing regulations as well as the provisions of the FD&C Act (sections 531 through 542 of the FD&C Act (21 U.S.C. 360hh through 360ss)) that apply to electronic products, known as the Electronic Product Radiation Control (EPRC) and their implementing regulations. These regulations pertain to the recordkeeping, reporting, manufacturing, importing, and installation of ''electronic products'' as defined under 21 CFR 1000.3(j). This draft guidance, when finalized, will supersede FDA's guidance entitled ''Clarification of Radiation Control Regulations for Diagnostic X-Ray Equipment'' (HHS Publication FDA 89–8221 issued in March 1989).

This draft guidance addresses only the requirements that apply to diagnostic x-ray equipment under the EPRC provisions of the FD&C Act and the regulations implementing those provisions. This draft guidance does not address requirements that may apply to such equipment as medical devices under provisions of the FD&C Act and its implementing regulations.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Clarification of Radiation Control Regulations for Manufacturers of Diagnostic X-Ray Equipment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Clarification of Radiation Control Regulations for Manufacturers of Diagnostic X-Ray Equipment'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500029 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB control No.
1002, 1005, 1010, 1020, 1030, 1040, and 1050	Reporting and Recordkeeping for Electronic Products—General Requirements.	0910–0025

Dated: December 11, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27236 Filed 12–14–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Training in Primary Care Medicine and Dentistry

AGENCY: Health Resources and Service Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD) has scheduled a public meeting. Information about ACTPCMD and the agenda for this meeting can be found on the ACTPCMD website at: *https://www.hrsa.gov/advisory-committees/primarycare-dentist/index.html.*

DATES: January 9, 2019, 9 a.m.–5 p.m. ET, and January 10, 2019, 8:30 a.m.–2:30 p.m. ET.

ADDRESSES: This meeting will be held in person and will offer virtual access through teleconference and webinar. The address for the meeting is 5600 Fishers Lane, Rockville, Maryland 20857.

- Conference call-in number is: 1–888–455–0640.
- Passcode is: HRSA COUNCIL.
- Webinar link is: *https://hrsa.connectsolutions.com/actpcmd.*

FOR FURTHER INFORMATION CONTACT: Kennita Carter, MD, Designated Federal Official (DFO), Division of Medicine and Dentistry, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, 15N–116, Rockville, Maryland 20857; 301–945–3505; or *KCarter@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACTPCMD provides advice and recommendations to the Secretary of HHS (Secretary) on policy, program development, and other matters of significance concerning the activities under section 747 of Title VII of the Public Health Service (PHS) Act, as it existed upon the enactment of Section 749 of the PHS Act in 1998. ACTPCMD prepares an annual report describing the activities of the Committee, including findings and recommendations made by the Committee concerning the activities under section 747, as well as training programs in oral health and dentistry. The annual report is submitted to the Secretary and Chairman and ranking members of the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce. The Committee is also charged with developing, publishing, and implementing performance measures and guidelines for longitudinal evaluations of programs authorized under Title VII, part C of the PHS Act, and recommending appropriation levels for programs under this part. During the January 9–10, 2019, meeting, ACTPCMD will discuss innovations in primary care and oral health training. Agenda items are subject to change as priorities dictate. Refer to the ACTPCMD website for any updated information concerning the meeting. The meeting agenda will be available on the ACTPCMD website at least 14 days prior to the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to make oral comments or submit a written statement to ACTPCMD should be sent to Kennita

Carter, DFO, using the contact information above at least 3 business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Kennita Carter at the address and phone number listed above at least 10 business 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. 2018–27165 Filed 12–14–18; 8:45 am]

BILLING CODE 4165–15–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 the Center for Inherited Disease Research Access Committee.

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 Inherited Disease Research Access Committee.

Date: January 11, 2019.

Time: 11:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, Suite 3100, Room 3185, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Ste. 4076, MSC 9306, Bethesda, MD 20892–9306, 301–402–0838, *barbara.thomas@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 11, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–27179 Filed 12–14–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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: National Institute on Aging Special Emphasis Panel; ''2019 Beeson Review''.

Date: January 17–18, 2019.

Time: 4:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 7301 Waverly St., Bethesda, MD 20892.

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2c/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 11, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–27180 Filed 12–14–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–60]

30-Day Notice of Proposed Information Collection: Builder's Certification of Plans, Specifications and Site

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* January 16, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 21, 2018 at 83 FR 42312.

A. Overview of Information Collection

Title of Information Collection: Builder's Certification of Plans, Specifications, and Site.

OMB Approved Number: 2502–0496.

Type of Request: Revision.

Form Number: HUD–92541.

Description of the need for the information and proposed use: Builders use the form to certify that a property does not have adverse conditions and is not located in a special flood hazard

area. The certification is necessary so that HUD does not insure a mortgage on property that poses a risk to the health and safety of the occupant.

Respondents (*i.e.* affected public): Business or other for-profit.

Estimated Number of Respondents: 37,579.

Estimated Number of Responses: 90,000.

Frequency of Response: 0.083333.

Average Hours per Response: 2.39495.

Total Estimated Annual Burden and Cost: 7,500 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Date: November 28, 2018.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–27250 Filed 12–14–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-27103; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before December 1, 2018, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by January 2, 2019.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before December 1, 2018. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

NEW JERSEY

Burlington County

Ridgeway, William, House, 149 Juliustown Road, Springfield Township, SG100003304

NORTH CAROLINA

Cleveland County

Stamey Company Store, 4726 Fallston Rd., Fallston, SG100003294

Durham County

College Heights Historic District, Roughly bounded by Masondale & Formosa Aves., Fayetteville, Cecil & Nelson Sts., Durham, SG100003295

Haywood County

West Fork Pigeon River Pratt Truss Bridge, Spans W Fork of Pigeon R. between L. Logan Rd. & Heavenly Dr., .6 mi. S of US 276, Bethel vicinity, SG100003296

Henderson County

Meadows, The (Boundary Decrease), 31 Meadows Blake House Ln., Fletcher, BC100003297

Hertford County

Bethlehem Baptist Church, 1024 NC 561 E, Bethlehem vicinity, SG100003298

Lincoln County

Madison—Derr Iron Furnace, Address Restricted, Pumpkin Center vicinity, SG100003299

Rowan County

Cleveland School, (Rosenwald School Building Program in North Carolina MPS), 216 Krider St., Cleveland, MP100003300

SOUTH CAROLINA

Richland County

Cornell Arms, 1230 Pendleton St., Columbia, SG100003305

Union National Bank Building, 1200 Main St., Columbia, SG100003307

TEXAS

Potter County

Oliver—Eakle—Barfield Building, 600 S Polk St., Amarillo, SG100003302

VIRGINIA

Albemarle County

St. John School, (Rosenwald Schools in Virginia MPS), 1569 St. John Rd., Gordonsville vicinity, MP100003312

Campbell County

Campbell County Training School, (Rosenwald Schools in Virginia MPS), 1470 Village Hwy., Rustburg, MP100003311

Caroline County

Grace Episcopal Church, 4565 Fredericksburg Tpk., Corbin, SG100003313

Fauquier County

Deerfield, 9009 John S. Mosby Hwy., Upperville, SG100003309

King William County

Lanesville Christadelphian Church, 7442 Mount Olive Cohoke Rd., King William vicinity, SG100003314

Nelson County

Mill Hill, 524 Winery Rd., Roseland vicinity, SG100003310

WISCONSIN

Fond Du Lac County

Northern Casket Company Building, 16 N Brooke St., Fond du Lac, SG100003303

In the interest of preservation, a SHORTENED comment period has been requested for the following resource:

VIRGINIA

Richmond Independent city

Manchester Residential and Commercial Historic District (Boundary Increase), Along Semmes Ave., Cowardin St. & Jefferson Davis Hwy., Richmond (Independent City), BC100003308, *Comment period:* 3 days

A request for removal has been made for the following resource:

IOWA

Van Buren County

Midway Stock Farm Barn, (Louden Machinery Company, Fairfield Iowa MPS), 0.3 mi. S of jct. of IA 1 and IA16, Keosauqua vicinity, OT99000126

Additional documentation has been received for the following resources:

NORTH CAROLINA

Buncombe County

Asheville School, Roughly bounded by Patton Ave., Southern RR line, US 40, Sand Hill Rd., and Malvern Hills subdivision, Asheville, AD96000614

Sampson County

Clinton Commercial Historic District, Roughly bounded by Vance, Elizabeth, Wall, and Sampson Sts., Clinton, AD02000568

Authority: Section 60.13 of 36 CFR part 60

Dated: December 4, 2018.

Christopher Hetzel,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2018–27208 Filed 12–14–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0021; DS63644200 DRT000000.CH7000 190D1113RT; OMB Control Number 1012–0002]

Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Indian Oil & Gas Valuation

AGENCY: Office of the Secretary; Office of Natural Resources Revenue, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Office of Natural Resources Revenue (ONRR), is proposing to renew an information collection with revisions. ONRR seeks renewed authority to collect information from lessees using five forms necessary to determine the correct royalties to be collected on behalf of Indian Tribes and individual Indian mineral owners. Revisions from the prior approval to collect this information are necessary because the information collection requirements on form ONRR–4410 were reduced by a rule in 2015.

DATES: Interested persons are invited to submit written comments on or before January 16, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email to *OIRA_Submission@omb.eop.gov;* or by facsimile to (202) 395–5806. Please provide a copy of your comments to Mr. Armand Southall, Regulatory Specialist, ONRR, P.O. Box 25165, MS 64400B, Denver, Colorado 80225–0165; or by email to *Armand.Southall@onrr.gov.* Please reference ''OMB Control Number 1012–0002'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Lee-Ann Martin, telephone at (303) 231–3313, or email to *LeeAnn.Martin@onrr.gov.* You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We published a notice, with a 60-day public comment period soliciting comments for this collection of information, in the **Federal Register** on July 11, 2018 (83 FR 32141). During the 60-day period, we specifically reached out to five companies impacted by this ICR to request input. In response to the outreach, we received three responsive comments.

The first comment we received stated the following:

''We do not have an update to provide on the estimate burden. We can offer comment in regards to the industry submission process of the related forms referenced in the ICR (ONRR–4109, ONRR–4110, ONRR–4295, ONRR–4393, ONRR–4410 and ONRR–4411) with regard to the use of technology. Value can be added to both industry and ONRR by eliminating the paper submission form and having the company submit the form via the ONRR online system. When the request is submitted, ONRR staff should review and approve that will notate the date and name of approver. This submission should also be available to pull and view online through the *dwportal.onrr.gov* website History Database/Report tool. Currently, if a company wanted to verify the forms submitted to ONRR, they would have to contact them directly and they would pull a report and send to the company.''

The second comment we received stated the following:

''I'm sorry I haven't gotten back to you on this. I read through the document and I didn't see any burden estimates that I thought were far enough off to make official comment on. The burden estimates for each case probably run high when things are running smoothly, and run low when a big problem presents itself. I'm sorry I can't be of more help.''

The third comment we received stated the following:

''We do not have comments to submit at this time.''

Once again, we are soliciting comments on this 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 ONRR; (2) will this information be processed and used in a timely manner; (3) is the estimate of the burden accurate; (4) how might ONRR enhance the quality, usefulness, and clarity of the information collected; and (5) how might ONRR 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 Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal identifying information in your comment(s), you should be aware that your entire comment, including PII, may be made available to the public at any time. While you may ask us, in your comment, to withhold your PII from public view, we cannot guarantee that we will be able to do so.

Abstract: The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary's responsibility is to manage mineral resources production on Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected. The Secretary also has trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. By collecting information from the records of the lessee or others

involved in developing, transporting, processing, purchasing, or selling of such minerals, we ensure that lessees accurately value production and appropriately pay royalties. Public laws pertaining to mineral leases on Federal and Indian lands and the OCS are available at *https://www.onrr.gov/Laws_R_D/PubLaws/index.htm.*

The information collections that we cover in this ICR involve five forms, forms ONRR–4109, ONRR–4110, ONRR–4295, ONRR–4410, and ONRR–4411. References to these forms, and form ONRR–4393, which is approved under OMB Control Number 1012–0005, are identified in: 30 CFR part 1202, subparts C and J, which pertain to Indian oil and gas royalties; part 1206, subparts B and E, which govern the valuation of oil and gas produced from leases on Indian lands; and part 1207, which pertains to recordkeeping. Indian Tribes and individual Indian mineral owners receive all royalties generated from their lands. Determining product valuation is essential to ensure that Indian Tribes and individual Indian mineral owners receive payment on the full value of the minerals removed from their lands. Failure to collect the data that we describe in this ICR could result in the undervaluation of leased minerals on Indian lands. All data reported is subject to subsequent audit and adjustment.

Indian Oil Valuation

Regulations at title 30 CFR part 1206, subpart B, govern the valuation for royalty purposes of oil produced from Indian oil and gas leases (Tribal and allotted), and are consistent with mineral leasing laws, other applicable laws, and lease terms. Generally, these regulations provide that lessees determine the value of oil based upon the higher of (1) the gross proceeds under an arm's-length contract; or (2) major portion analysis. Transportation allowances may also be available to the lessee.

From information collected on form ONRR–4110, Oil Transportation Allowance Report, ONRR and Tribal audit personnel evaluate (1) whether lessee-reported transportation allowances are within regulatory allowance limitations and calculated under applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalties. Lessees must use form ONRR–4110 for both non-arm's-length contract or no contract situations.

Indian Gas Valuation

Regulations at 30 CFR part 1206, subpart E, govern the valuation for royalty purposes of natural gas produced from Indian oil and gas leases (Tribal and allotted). These regulations require reporting on the four forms that are the subject of this ICR, forms ONRR–4109, ONRR–4295, ONRR–4410, and ONRR–4411:

- From information collected on form ONRR–4109, Gas Processing Allowance Summary Report, ONRR and Tribal audit personnel evaluate (1) whether lessee-reported processing allowances are within regulatory allowance limitations and calculated under applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalties.
- From information collected on form ONRR–4295, Gas Transportation Allowance Report, ONRR and Tribal audit personnel evaluate (1) whether lessee-reported transportation allowances are within regulatory allowance limitations and calculated under applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalties.
- Lessees use form ONRR–4410, Accounting for Comparison (Dual Accounting), to certify that dual accounting is not required on an Indian lease or to make an election for actual or alternative dual accounting for Indian leases. Most Indian leases contain the requirement to perform accounting for comparison (dual accounting) for gas produced from the lease. Therefore, lessees must elect to perform actual dual accounting as defined in 30 CFR 1206.176, or alternative dual accounting, as defined in 30 CFR 1206.173.
- The regulations require that lessees submit form ONRR–4411, Safety Net Report, when they sell gas production from an Indian oil or gas lease beyond the first index pricing point. The safety net calculation establishes the minimum value, for royalty purposes, of natural gas production from Indian oil and gas leases. This reporting requirement ensures that Indian lessors receive all royalties due and aids ONRR compliance efforts.

This ICR also allows ONRR to collect information to support a lessee's request for exclusion or the termination of exclusion under 30 CFR 1206.174. An Indian Tribe may ask ONRR to exclude some or all of its leases from valuation under this section. ONRR will consult with Bureau of Indian Affairs regarding the Tribe's request. If ONRR approves the request for the Tribal lease, the lessee must value the production as specified in § 1206.174. The lessee may ask ONRR for guidance in determining value and may propose a valuation method to ONRR. The lessee must submit all available data related to the proposal and any additional information that ONRR deems necessary.

In addition, this ICR allows ONRR, under 30 CFR 1206.175, to collect information to support a lessee's request to report royalties based on the volumes allocable to its lease acreage under the terms of an approved Federal agreement. Under this section, a lessee may also submit information to support a request for ONRR to approve other methods for determining the quantity of residue gas and gas plant products allocable to each lease.

Indian Oil and Gas

Regulations at 30 CFR 1206.56(b)(2) and 1206.177(c)(2) and (c)(3) govern the valuation for royalty purposes of oil and gas produced from Indian oil and gas leases (Tribal and allotted), and are consistent with mineral leasing laws, other applicable laws, and lease terms. These regulations require reporting on one form—that is also the subject of this ICR—form ONRR–4393.

Lessees must submit form ONRR–4393, Request to Exceed Regulatory Allowance Limitation, for both Federal and Indian leases to request to exceed the regulatory allowance limitation. Most of the burden hours for this form are incurred on Federal leases; therefore, OMB approved this form under OMB Control Number 1012–0005 titled *Federal Oil and Gas Valuation,* which pertains to Federal oil and gas leases. However, we include a discussion of this form in this ICR, as well as the burden hours for Indian leases. To request permission to exceed a regulatory allowance limit, lessees must (1) submit a letter to ONRR explaining why a higher allowance limit is necessary; and (2) provide supporting documentation, including a completed form ONRR–4393. This form provides ONRR with the data necessary to make a decision whether to approve or deny the request and track deductions on subsequent royalty reports.

Revisions to ICR

This is an ICR with revisions because it takes into account the final rule published May 1, 2015, which amended ONRR's Indian oil valuation regulations (80 FR 24794). This ICR requires minor revisions to note changes to its authority when the final rule amended 30 CFR part 1206, subpart B. The two changes relevant to this ICR are that the amendment eliminated: (1) The form ONRR–4110 filing requirements for arm's-length transportation allowance; and (2) the pre-filing of form ONRR–4110 prior to claiming a non-arm's-length transportation allowance. The final rule noted that OMB approved a total of 220 burden hours for lessees to submit their respective form ONRR–4110 under this ICR—OMB Control Number 1012–0002. It also noted that ''there will be no additional burden hours because this rule will insignificantly reduce the burden hours

associated with the Oil Transportation Allowance Report.'' Under the revised Indian oil valuation regulations, rather than submitting estimated transportation cost information on the form and then following up with actual cost information at the end of the reporting cycle, lessees need only to provide actual cost information. Also, lessees that have arm's-length transportation costs are no longer required to submit form ONRR–4110 to report these costs, but will, instead, submit copies of the actual contracts to ONRR.

OMB Approval

We are requesting OMB's approval to continue to collect this information, with revisions. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and may also result in the inability to confirm the accurate royalty value to Indian Tribes and individual Indian mineral owners. ONRR protects the proprietary information that it receives and does not collect items of a sensitive nature. The requirement to report is mandatory for form ONRR–4410, Accounting for Comparison [Dual Accounting], and for form ONRR–4411, Safety Net Report, under certain circumstances. The lessees are required to report on forms ONRR–4109, ONRR–4110, ONRR–4295, and ONRR–4393 in order to obtain a benefit.

Title of Collection: Indian Oil and Gas Valuation, 30 CFR parts 1202, 1206, and 1207.

OMB Control Number: 1012–0002.

Form Numbers: ONRR–4109, ONRR–4110, ONRR–4295, ONRR–4410, and ONRR–4411.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 146 lessees of Indian leases.

Total Estimated Number of Annual Responses: 146.

Estimated Completion Time per Response: 8.9 hours.

Total Estimated Number of Annual Burden Hours: 1,299 hours.

Respondent's Obligation: Mandatory, or Required to Obtain or Retain a Benefit.

Frequency of Collection: Annually and on occasion.

Total Estimated Annual Nonhour Burden Cost: None.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Part 1202—ROYALTIES Subpart C—Federal and Indian Oil				
1202.101	Standards for reporting and paying royalties. Report oil volumes in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
Subpart J—Gas Production From Indian Leases				
1202.551(b)	How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)? * * * (b) You and all other persons paying royalties on the lease must report and pay royalties based on your takes * * *.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
1202.551(c)	You and all other persons paying royalties on the lease may ask ONRR for permission to report and pay royalties based on your entitlements * * *.	1	1	1
1202.558(a) and (b)	What standards do I use to report and pay royalties on gas? (a) You must report gas volumes * * * (b) You must report residue gas and gas plant product volumes * * *.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
Part 1206—PRODUCT VALUATION Subpart B—Indian Oil				
1206.56(b)(2)	What general transportation allowance requirements apply to me? * * * (2) Upon your request, ONRR may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. * * * An application for exception (using form ONRR–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination * * *.	4	1	4

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.57(a)(1), (2), and (3).	How do I determine a transportation allowance if I have an arm's-length transportation contract? *Arm's-length transportation.* (a)(1) * * * You have the burden of demonstrating that your contract is arm's-length. (2) You must submit to ONRR a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date that ONRR receives your report, which claims the allowance on form ONRR–2014. (3) * * * When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.	AUDIT PROCESS. See note.		
1206.57(a)(4)(i)	* * * Except as provided in this paragraph, you may not take an allowance for the costs of transporting lease production, which is not royalty-bearing, without ONRR's approval.	Burden covered under § 1206.57(a)(5).		
1206.57(a)(4)(ii)	Notwithstanding the requirements of paragraph (a)(4)(i) of this section, you may propose to ONRR a cost allocation method on the basis of the values of the products transported * * *.	20	1	20
1206.57(a)(5)	If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to ONRR * * *.	40	1	40
1206.57(a)(5)(ii)	You must submit to ONRR all available data to support your proposal.	AUDIT PROCESS. See note.		
1206.57(a)(5)(iii)	You must submit your initial proposal within 3 months after the last day of the month for which you request a transportation allowance, whichever is later (unless ONRR approves a longer period).	4	1	4
1206.57(b)(1)	*Reporting requirements.* If ONRR requests, you must submit all data used to determine your transportation allowance * * *.	AUDIT PROCESS. See note.		
1206.57(b)(2)	You must report transportation allowances as a separate entry on form ONRR–2014 * * *.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
1206.58(a)(1)	How do I determine a transportation allowance if I have a non-arm's-length transportation contract or have no contract? *Non-arm's-length or no contract.* If you have a non-arm's-length transportation contract or no contract, including those situations where you or your affiliate perform(s) transportation services for you, the transportation allowance is based on your reasonable, actual costs.	AUDIT PROCESS. See note.		
1206.58(a)(2)	You must submit the actual cost information to support the allowance to ONRR on form ONRR–4110, Oil Transportation Allowance Report, within 3 months after the end of the calendar year to which the allowance applies * * *.	6	1	6
1206.58(a)(3)(iv)	* * * After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without approval of ONRR.	20	1	20
1206.58(a)(3)(iv)(A)	* * * After you make an election, you may not change methods without ONRR's approval * * *.	20	1	20
1206.58(a)(4)(i)	* * * Except as provided in this paragraph (a)(4)(i), you may not take an allowance for transporting lease production that is not royalty bearing without ONRR's approval.	40	1	40
1206.58(a)(4)(ii)	Notwithstanding the requirements of paragraph (a)(4)(i) of this section, you may propose to ONRR a cost allocation method on the basis of the values of the products transported * * *.	20	1	20

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.58(a)(5)(ii) and (iii).	Where both gaseous and liquid products are transported through the same transportation system, you must propose a cost allocation procedure to ONRR * * * (ii) You must submit to ONRR all available data to support your proposal. * * * (iii) You must submit your initial proposal within 3 months after the last day of the month for which you request a transportation allowance (unless ONRR approves a longer period).	20	1	20
1206.58(a)(6)	You may apply to ONRR for an exception from the requirement that you compute actual costs under paragraphs (a)(1) through (5) of this section.	20	1	20
1206.58(b)(1)	*Reporting requirements.* If ONRR requests, you must submit all data used to determine your transportation allowance, You must provide the data within a reasonable period of time that ONRR will determine.	AUDIT PROCESS. See note.		
1206.58(b)(2)	You must report transportation allowances as a separate entry on form ONRR–2014 * * *.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
1206.58(b)(3)	ONRR may require you to submit all of the data that you used to prepare your form ONRR–4110. You must submit the data within a reasonable period of time that ONRR determines.	AUDIT PROCESS. See note.		
1206.59(a)	What interest applies if I improperly report a transportation allowance? If you deduct a transportation allowance on form ONRR–2014 without complying with the requirements of §§ 1206.56 and 1206.57 or § 1206.58, you must pay additional royalties due plus late payment interest calculated under § 1218.54 of this chapter.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
1206.60(a)	What reporting adjustments must I make for transportation allowances? If your actual transportation allowance is less than the amount that you claimed on form ONRR–2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.54 of this chapter.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
1206.60(c)	If you make an adjustment under paragraph (a) or (b) of this section, then you must submit a corrected form ONRR–2014 to reflect actual costs, together with any payment, using instructions that ONRR provides.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
1206.61(a)(2)	How will ONRR determine if my royalty payments are correct? * * * If ONRR directs you to use a different royalty value, you must pay any additional royalties due plus late payment interest calculated under § 1218.54 of this chapter.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
1206.62(a)	How do I request a value determination? You may request a value determination from ONRR regarding any oil produced. Your request must include: (1) Be in writing. (2) Identify specifically all leases involved, all interest owners of those leases, the designee(s), and the operator(s) for those leases. (3) Completely explain all relevant facts. * * * (4) Include copies of all relevant documents. (5) Provide your analysis of the issue(s) * * * (6) Suggest your proposed valuation method.	20	1	20
1206.62(c)(2)	After the Assistant Secretary [for Indian Affairs] issues a value determination, you must make any adjustments to royalty payments that follow from the determination, and, if you owe additional royalties, you must pay the additional royalties due plus late payment interest calculated under § 1218.54 of this chapter.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
1206.64	What records must I keep to support my calculations of value under this subpart? If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value * * *.	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	Part 1206—PRODUCT VALUATION **Subpart E—Indian Gas**			
1206.172(b)(1)(ii)	How do I value gas produced from leases in an index zone? (b) *Valuing residue gas and gas before processing.* (1)(ii) Gas production that you certify on form ONRR–4410, Certification for Not Performing Accounting for comparison (Dual Accounting), is not processed before it flows into a pipeline with an index but which may be processed later; * * *.	4	58	232
1206.172(e)(6)(i) and (iii).	(e) *Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.** * * (6)(i) You must report the safety net price for each index zone to ONRR on form ONRR–4411, Safety Net Report, no later than June 30 following each calendar year; * * * (iii) ONRR may order you to amend your safety net price within one year from the date your form ONRR–4411 is due or is filed, whichever is later * * *.	3	11	33
1206.172(e)(6)(ii)	You must pay and report on form ONRR–2014 additional royalties due no later than June 30 following each calendar year * * *.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
1206.172(f)(1)(ii), (f)(2), and (f)(3).	(f) *Excluding some or all tribal leases from valuation under this section.* (1) An Indian tribe may ask ONRR to exclude some or all of its leases from valuation under this section. * * * (ii) If an Indian Tribe requests exclusion from an index zone for less than all of its leases, ONRR will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation. (2) An Indian Tribe may ask ONRR to terminate exclusion of its leases from valuation under this section. * * * (3) The Indian Tribe's request to ONRR under either paragraph (f)(1) or (2) of this section must be in the form of a Tribal resolution * * *.	40	1	40
1206.173(a)(1)	How do I calculate the alternative methodology for dual accounting? (a) *Electing a dual accounting method.* (1) * * * You may elect to perform the dual accounting calculation according to either § 1206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting).	2	12	24
1206.173(a)(2)	You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each ONRR-designated area * * *.	Burden covered under § 1206.173(a)(1).		
1206.174(a)(4)(ii)	How do I value gas production when an index-based method cannot be used? (a) *Situations in which an index-based method cannot be used.* (4)(ii) If the major portion value is higher, you must submit an amended form ONRR–2014 to ONRR by the due date specified in the written notice from ONRR of the major portion value * * *..	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
1206.174(b)(1)(i) and (iii); (b)(2); (d)(2).	(b) *Arm's-length contracts.* * * * ..... (1) The value of gas, residue gas, or any gas plant product you sell under an arm's-length contract is the gross proceeds accruing to you or your affiliates * * *. (i) You have the burden of demonstrating that your contract is arm's-length * * *. (iii) * * * In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your value * * *. (2) ONRR may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant product * * *. (d) *Supporting data* * * *	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(2) You must make all such data available upon request to the authorized ONRR or Indian representatives, to the Office of the Inspector General of the Department, or other authorized persons * * *.			
1206.174(d)	*Supporting data.* If you determine the value of production under paragraph (c) of this section, you must retain all data relevant to determination of royalty value.	AUDIT PROCESS. See note.		
1206.174(f)	*Value guidance.* You may ask ONRR for guidance in determining value. You may propose a valuation method to ONRR. Submit all available data related to your proposal and any additional information ONRR deems necessary * * *.	40	1	40
1206.175(d)(4)	How do I determine quantities and qualities of production for computing royalties? (d)(4) * * * You may request ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease * * *.	20	1	20
1206.176(b)	How do I perform accounting for comparison? * * * If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 1206.173 instead of the provisions in paragraph (a) of this section * * *.	Burden covered under § 1206.173(a)(1).		
1206.176(c)	* * * If you do not perform dual accounting, you must certify to ONRR that gas flows into such a pipeline before it is processed * * *.	Burden covered under § 1206.172(b)(1)(ii).		
	Transportation Allowances			
1206.177(c)(2) and (c)(3).	What general requirements regarding transportation allowances apply to me? (c) * * * (2) If you ask ONRR, ONRR may approve a transportation allowance deduction in excess of the limitation in paragraph (c)(1) of this section. * * * (3) Your application for exception (using form ONRR–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination.	Burden covered under § 1206.56(b)(2).		
1206.178(a)(1)(i)	How do I determine a transportation allowance? (a) *Determining a transportation allowance under an arm's-length contract.* (1) This paragraph explains how to determine your allowance if you have an arm's-length transportation contract. (i) * * * You are required to submit to ONRR a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your report which claims the allowance on the form ONRR–2014.	1	18	18
1206.178(a)(1)(iii)	If ONRR determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties * * * In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your transportation costs * * *.	AUDIT PROCESS. See note.		
1206.178(a)(2)(i) and (ii).	(a)(2)(i) * * * [Y]ou cannot take an allowance for the costs of transporting lease production that is not royalty bearing without ONRR approval, or without lessor approval on tribal leases. (ii) As an alternative to paragraph (a)(2)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported * * *.	20	1	20
1206.178(a)(3)(i) and (ii).	(3)(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to ONRR. * * * (ii) You are required to submit all relevant data to support your allocation proposal * * *.	40	1	40

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.178(b)(1)(ii)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (1)(ii) You must submit the actual cost information to support the allowance to ONRR on form ONRR–4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies * * *.	15	5	75
1206.178(b)(2)(iv)	You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR approval.	20	1	20
1206.178(b)(2)(iv)(A) ..	* * * Once you make an election, you may not change methods without ONRR approval.	20	1	20
1206.178(b)(3)(i)	* * * Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without ONRR approval.	40	1	40
1206.178(b)(3)(ii)	As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported * * *.	20	1	20
1206.178(b)(5)	If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR. * * * You are required to submit all relevant data to support your proposal * * *.	40	1	40
1206.178(d)(1)	(d) *Reporting your transportation allowance.* (1) If ONRR requests, you must submit all data used to determine your transportation allowance * * *.	AUDIT PROCESS. See note.		
1206.178(d)(2), (e), and (f)(1).	(d) *Reporting your transportation allowance.* (2) You must report transportation allowances as a separate entry on form ONRR–2014 * * *. (e) *Adjusting incorrect allowances.* If for any month the transportation allowance you are entitled to is less than the amount you took on form ONRR–2014, you are required to report and pay additional royalties due, plus interest computed under § 1218.54 of this chapter from the first day of the first month you deducted the improper transportation allowance until the date you pay the royalties due * * *. (f) *Determining allowable costs for transportation allowances* * * *. (1) *Firm demand charges paid to pipelines.* * * * You must modify the form ONRR–2014 by the amount received or credited for the affected reporting period * * *.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
Processing Allowances				
1206.180(a)(1)(i)	How do I determine an actual processing allowance? (a) *Determining a processing allowance if you have an arm's-length processing contract.* (1)(i) * * * You have the burden of demonstrating that your contract is arm's-length. You are required to submit to ONRR a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your first report that deducts the allowance on the form ONRR–2014.	1	2	2
1206.180(a)(1)(iii)	If ONRR determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties * * * In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your processing costs.	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.180(a)(3)	If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to ONRR. * * * You are required to submit all relevant data to support your proposal * * *.	40	1	40
1206.180(b)(1)(ii)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (1)(ii) * * * You must submit the actual cost information to support the allowance to ONRR on form ONRR–4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies * * *.	20	12	240
1206.180(b)(2)(iv)	You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment. After you elect to use either method for a processing plant, you may not later elect to change to the other alternative without ONRR approval * * *.	20	1	20
1206.180(b)(2)(iv)(A)	* * * Once you make an election, you may not change methods without ONRR approval * * *.	20	1	20
1206.180(b)(3)	Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and ONRR agree to an alternative.	20	1	20
1206.180(c)(1)	(c) *Reporting your processing allowance.* (1) If ONRR requests, you must submit all data used to determine your processing allowance * * *.	AUDIT PROCESS. See note.		
1206.180(c)(2) and (d)	(c)(2) You must report gas processing allowances as a separate entry on the form ONRR–2014. * * * (d) *Adjusting incorrect processing allowances.* If for any month the gas processing allowance you are entitled to is less than the amount you took on form ONRR–2014, you are required to pay additional royalties, plus interest computed under § 1218.54 of this chapter from the first day of the first month you deducted a processing allowance until the date you pay the royalties due * * *.	Burden covered under § 1210.52 in OMB Control Number 1012–0004.		
1206.181(c)	How do I establish processing costs for dual accounting purposes when I do not process the gas? * * * A proposed comparable processing fee submitted to either the Tribe and ONRR (for Tribal leases) or ONRR (for allotted leases) with your supporting documentation submitted to ONRR. If ONRR does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the ONRR Director under 30 CFR part 1290.	40	1	40
PART 1207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS Subpart A—General Provisions				
1207.4(b)	Contracts made pursuant to old form leases. * * * The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows * * *.	AUDIT PROCESS. See note.		
1207.5	Contract and sales agreement retention. Copies of all sales contracts, posted price bulletins, etc., and copies of all agreements, other contracts, or other documents which are relevant to the valuation of production are to be maintained by the lessee and made available upon request during normal working hours to authorized ONRR, State or Indian representatives, other ONRR or BLM officials, auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to ONRR within a reasonable period of time, as determined by ONRR. Any oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR part 1212.	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Total Burden	.....	.....	146	1,299

Note: AUDIT PROCESS—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because ONRR staff asks non-standard questions to resolve exceptions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Gregory J. Gould,

Director for Office of Natural Resources Revenue.

[FR Doc. 2018–27259 Filed 12–14–18; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–606 and 731–TA–1416 (Final)]

Quartz Surface Products From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–606 and 731–TA–1416 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of quartz surface products from China, provided for in subheading 6810.99 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: November 20, 2018.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Scope.— For purposes of these investigations, Commerce has defined the subject merchandise as certain quartz surface products.[1] Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.,* quartz, quartz powder, cristobalite) as well as a resin binder (*e.g.,* an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the investigations. However, the scope of the investigations only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of these investigations includes surface products of all other sizes, thicknesses, and shapes.

In addition to slabs, the scope of these investigations includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the investigations whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish. In addition, quartz surface products are covered by the investigations whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the quartz surface products.

The scope of the investigations does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the investigations are crushed glass surface products. Crushed glass surface products are surface products in which the crushed glass content is greater than any other single material, by actual weight.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following statistical reporting numbers: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

[1] Quartz surface products may also generally be referred to as engineered stone or quartz, artificial stone or quartz, agglomerated stone or quartz, synthetic stone or quartz, processed stone or quartz, manufactured stone or quartz, and Bretonstone.

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of quartz surface products, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on April 17, 2018 by Cambria Company LLC, Eden Prairie, Minnesota.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 14, 2019, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on April 4, 2019, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 29, 2019. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on April 1, 2019, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 21, 2019. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 11, 2019. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before April 11, 2019. On May 1, 2019, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 3, 2019, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 11, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–27196 Filed 12–14–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–614 and 731–TA–1431 (Preliminary)]

Magnesium From Israel

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of magnesium from Israel, provided for in subheadings 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of Israel.[2] [3]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On October 24, 2018, US Magnesium LLC, Salt Lake City, Utah, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of magnesium from Israel and LTFV imports of magnesium from Israel. Accordingly, effective October 24, 2018, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–614 (Preliminary) and antidumping duty investigation No. 731–TA–1431 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 31, 2018 (83 FR 54778).[4] The conference was held in Washington, DC, on November 14, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on December 11, 2018. The views of the Commission are contained in USITC Publication 4860 (December 2018), entitled *Magnesium from Israel: Investigation Nos. 701–TA–614 and 731–TA–1431 (Preliminary).*

By order of the Commission.

Issued: December 11, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–27184 Filed 12–14–18; 8:45 am]

BILLING CODE 7020–02–P

[2] Magnesium from Israel: Initiation of Less-Than-Fair-Value Investigation 83 FR 58533, (November 20, 2018); and Magnesium from Israel: Initiation of Countervailing Duty Investigation 83 FR 58529 (November 20, 2018).

[3] Commissioner Meredith M. Broadbent dissenting.

[4] Due to the federal government's closure on December 5, 2018 as a mark of respect for George Herbert Walker Bush, these investigations conducted under authority of Title VII of the Tariff Act of 1930 accordingly have been tolled pursuant to 19 U.S.C. 1671a(b)(2), 1673d(b)(2).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–989 (Rescission Proceeding)]

Certain Automated Teller Machines, ATM Modules, Components Thereof, and Products Containing the Same; Commission Determination To Institute a Rescission Proceeding, To Rescind the Remedial Orders, and To Terminate the Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined to institute a rescission proceeding, to rescind a limited exclusion order and two cease-and-desist orders, and to terminate the rescission proceeding.

FOR FURTHER INFORMATION CONTACT: Robert J. Needham, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2382. 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, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: On March 14, 2016, the Commission instituted the original investigation based on a Complaint filed by Nautilus Hyosung Inc. (now Hyosung TNS Inc.) of Seoul, Republic of Korea, and Nautilus Hyosung America Inc. of Irving, Texas (collectively, ''Complainants''). The Notice of Investigation named Diebold Nixdorf, Incorporated, and Diebold Self-Service Systems, both of North Canton, Ohio (collectively, ''Respondents'') as Respondents. The Complaint alleged Respondents were violating section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by importing into the United States, selling for importation, or selling within the United States after importation certain automated teller machines, ATM modules, components thereof, and products containing same that infringe one or more of claims 1–3, 6, 8, and 9 (''the asserted claims'') of U.S. Patent No. 8,523,235 (''the '235 patent''). The Office of Unfair Import Investigations (''OUII'') was not named as a party.

On July 14, 2017, the Commission found Respondents in violation of section 337 with respect to the asserted claims of the '235 patent, and issued a limited exclusion order and two cease-and-desist orders with respect to the asserted claims (''the remedial orders''). Respondents appealed the Commission's determination to the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'').

On August 15, 2018, the Federal Circuit issued an opinion finding the asserted claims of the '235 patent invalid for indefiniteness pursuant to 35 U.S.C. 112(6), and reversing the Commission's determination that Respondents violated section 337. *Diebold Nixdorf, Inc.* v. *International Trade Comm'n,* Appeal No. 2017–2553, 899 F.3d 1291 (Fed. Cir. 2018). The mandate issued on November 9, 2018.

On November 13, 2018, Respondents petitioned the Commission to rescind the remedial orders based on the Federal Circuit ruling that the asserted claims are invalid. On November 23, 2018, Complainants opposed the petition, and argued that the Commission should instead reopen the record for further evidence on indefiniteness.

Also on November 13, 2018, Complainants moved to reopen the record for the limited purpose of admitting evidence relating to indefiniteness. On November 23, 2018, Respondents opposed the motion, arguing that the Federal Circuit invalidity ruling is binding on the Commission. Respondents also argued Complainants should have to show cause why they should not be sanctioned for a frivolous filing. On November 29, 2018, Complainants moved for leave to file a reply in support of their motion.

Having considered the petition and response, the Commission has determined to institute a rescission proceeding, and finds that the Federal Circuit's ruling that the asserted claims are invalid is a changed circumstance that warrants rescinding the remedial orders. The Commission therefore has determined to rescind the remedial orders.

In light of the Commission's determination to rescind the remedial orders, the Commission has also determined to deny as moot Complainants' motion to reopen the record. The Commission also denies Respondents' request for sanctions, and denies Complainants' motion for leave to file a reply. The rescission proceeding is hereby terminated.

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: December 11, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–27193 Filed 12–14–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0030]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of and Renewal of Previously Approved Collection; Comments Requested; Electronic Applications for the Attorney General's Honors Program and the Summer Law Intern Program

AGENCY: Office of Attorney Recruitment and Management, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting 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 Department of Justice encourages public comment and will accept input until February 15, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Deana Willis, Assistant Director, Office of Attorney Recruitment and Management, 450 5th Street NW, Suite 10200, Washington, DC 20530; *Deana.Willis@usdoj.gov;* (202) 514–8902.

SUPPLEMENTARY INFORMATION: Written comments and/or 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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office of Attorney Recruitment and Management, 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) Evaluate whether, and if so, how, the quality, utility, and clarity of the information to be collected can be enhanced; 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: Revision and Renewal of a Currently Approved Collection.

2. The title of the form/collection: Electronic Applications for the Attorney General's Honors Program and Summer Law Intern Program.

3. The agency form number, if any, and the applicable component of the department sponsoring the collection: There is no agency form number for this collection. The applicable component within the Department of Justice is the Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

4. Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Other: None. The application form is submitted voluntarily, once a year, by law students and recent law school graduates (*e.g.,* judicial law clerks) who will be in this applicant pool only once.

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 3500 respondents will complete the application in approximately 1 hour per application. It is further estimated that it takes an average of an additional 45 minutes to review the instructions, search existing data sources, gather the data needed, and complete and review the application. In addition, an estimated 600 respondents (Honors Program candidates selected for interviews) will complete a Travel Survey used to schedule interviews and prepare official travel authorizations prior to the interviewees' performing pre-employment interview travel (as defined by 41 CFR Sec. 301–1.3), as needed, in approximately 10 minutes per form, plus an estimated 400 respondents who will complete a Reimbursement Form (if applicable) in order for the Department to prepare the travel vouchers required to reimburse candidates for authorized costs they incurred during pre-employment interview travel at approximately 10 minutes per form.

6. An estimate of the total public burden (in hours) associated with the collection: The estimated revised total annual public burden associated with this application is 6292 hours.

If additional information is required, please contact: Melody Braswell, Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Room 3E.405B, Washington, DC 20530.

Dated: December 11, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–27172 Filed 12–14–18; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 007–2018]

Privacy Act of 1974; System of Records

AGENCY: United States Department of Justice, Federal Bureau of Investigation.

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the Federal Bureau of Investigation (FBI), a component within the United States Department of Justice (DOJ), proposes to modify a system of records titled ''Law Enforcement National Data Exchange'' (N–DEx), JUSTICE/FBI–020, as to which notice was last published in the **Federal Register** on October 4, 2007 (Notice). The N–DEx System is a scalable information-sharing network that provides the capability for local, state, tribal, territorial, regional, federal, and foreign criminal justice agencies to make potential linkages between criminal justice incidents, investigations, arrests, bookings, incarcerations, parole and/or probation information, and criminal intelligence information, in order to help solve, deter, and prevent crimes, and, in the process, to enhance national security.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is applicable upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by January 16, 2019.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments: by mail to DOJ, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, National Place Building, 1331 Pennsylvania Ave. NW, Suite 1000, Washington, DC 20530–0001; by facsimile at 202–307–0693; or by email at *privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Katherine Bond, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, 935 Pennsylvania Avenue NW, Washington, DC 20535–0001; telephone 202–324–3000.

SUPPLEMENTARY INFORMATION: The FBI has revised this system of records to update the purpose and uses of the system, the type of information maintained by the system, the sources of information, and the retrieval capabilities of information from the system.

The FBI is modifying the name of this system of records from ''Law Enforcement National Data Exchange'' to ''National Data Exchange System'' (N–DEx System). This name change reflects a previously implemented FBI policy decision to remove ''law enforcement'' from the title of the system to reflect more accurately the use of the N–DEx System by all criminal justice agencies. Similarly, to provide greater transparency on the use of the system of records, the term ''law enforcement'' within the existing notice is being changed to ''criminal justice'' generally. ''Administration of criminal justice,'' as defined by federal regulation, encompasses the performance of a broader array of activities than those performed only by sworn law enforcement officers, and include probation/parole, correctional supervision, prosecution, and rehabilitation of accused persons or criminal offenders. Criminal justice agencies also include courts and government agencies performing the administration of criminal justice functions. *See* 28 CFR 20.3(b) and (g).

Despite changes to the system as described in this notice, the FBI continues to assert, and is not changing the Privacy Act exemptions for the system promulgated by Final Rule at 73 FR 9947 (Feb. 25, 2008). As stated in that Final Rule, these Privacy Act exemptions apply only to the extent that information in the system is within the scope of 5 U.S.C. 552a(j)(2), and to the extent it is, the rationale for asserting the exemptions has not changed. Although the name of this system of records is changing slightly pursuant to this Notice, the exemptions as stated in 73 FR 9947 (Feb. 25, 2008) under the prior name of this system continue to apply under the new name. When changes to the exemptions for this system become necessary, FBI will at that time indicate as part of the rule change that the name of the system has changed slightly.

The FBI is also updating the purpose and routine uses of the Notice to reflect the expanded purpose of the N–DEx System to provide records to criminal justice agencies for criminal justice employment background checks; firearms, explosive, and associated license/permit-related background checks; and security risk assessments conducted on individuals seeking access to select biological agents or toxins pursuant to 42 U.S.C. 262a and 42 CFR 73.10. In addition, the updated purpose reflects the use of the N–DEx System for federal suitability and fitness determinations as contemplated in Executive Order 13467, as amended by Executive Order 13764. These expanded uses of the N–DEx System promote public safety by ensuring that a prospective employee's involvement in the criminal justice system is known before a criminal justice employee or federal employee is hired. Likewise, expanding the use of the N–DEx System for firearm, explosive, and associated license/permit-related checks and security risk assessments provides access to additional criminal justice information relevant to determining if a potential purchaser is prohibited by state or federal law from receiving a firearm, explosive, or associated permit or if an applicant is legally restricted from accessing select biological agents or toxins. For consolidation purposes, the routine uses applicable to the N–DEx System under the FBI's Blanket Routine Uses (FBI–BRU, 66 FR 33558 (June 22, 2001), as amended by 70 FR 7513, 517 (Feb. 14, 2005) and 82 FR 24147 (May 25, 2017)), are also being included in the routine use portion of this notice.

Additional changes are being made to this Notice to provide greater clarity about the information contained in the N–DEx System and the types of information that can be retrieved for criminal justice purposes by the N–DEx System. Expanding the N–DEx System to include records retrieved via a federated search of additional criminal justice information and criminal intelligence databases increases criminal justice agencies' access to information necessary for them to perform their legally authorized, required functions.

In accordance with 5 U.S.C. 552a(r), the DOJ has provided a report to OMB and the Congress on this revised system of records.

Dated: December 11, 2018.

Peter A. Winn

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

SYSTEM NAME AND NUMBER:

National Data Exchange System (N–DEx System), JUSTICE/FBI–020.

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION:

Records will be located at the Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Road, Clarksburg, WV 26306, and at appropriate locations for system backup and continuity of operations purposes. Records may also be maintained in secure cloud computing environments. The cloud computing service provider on the date of this publication is Amazon Web Services, located at 12900 Worldgate Drive, Herndon, VA 20170. Cloud computing service providers may change. For information about the current cloud computing service provider, please contact the Unit Chief, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, 935 Pennsylvania Avenue NW, Washington, DC 20535–0001; telephone 202–324–3000.

SYSTEM MANAGER(S):

Director, Federal Bureau of Investigation, 935 Pennsylvania Avenue NW, Washington, DC 20535–0001; telephone 202–324–3000.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 28 U.S.C. 533, 534; 28 CFR 0.85 and 28 CFR part 20.

PURPOSE(S) OF THE SYSTEM:

The purpose of the N–DEx System is to enhance the interconnectivity of criminal justice databases in various agencies and jurisdictions in order to improve the sharing of multiple levels of criminal justice data to further objectives for crime analysis, criminal justice administration (''administration of criminal justice'' is defined at 28 CFR 20.3(b)), and strategic/tactical operations in investigating, reporting, solving, and preventing crime, and, thereby, improving national security. The N–DEx System provides local, state, tribal, territorial, regional, federal, foreign criminal justice, and limited authorized noncriminal justice agencies with a powerful investigative tool to link, share, search, and analyze criminal justice information, including incident/case reports, incarceration data, and parole/probation data. In addition to containing information submitted by criminal justice agencies and jurisdictions nationwide (as will be detailed below in this Notice), the N–DEx System facilitates the sharing of criminal justice and criminal intelligence information (''criminal intelligence information'' is defined at 28 CFR 23.3(b)(3)) controlled and maintained by many different agencies and jurisdictions nationwide. As well as facilitating information sharing for investigative purposes, the N–DEx System also facilitates such sharing for criminal justice employment background checks; federal suitability and fitness determinations for covered individuals as defined in Executive Order 13467, as amended by Executive Order 13764; security risk assessments on individuals applying for access to select biological agents and toxins as set forth in 42 U.S.C. 262a and 42 CFR 73.10; and firearms, explosives, and associated license/permit-related background checks conducted by criminal justice agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The N–DEx System contains information maintained by the FBI about the following types of individuals:

A. Any individual who is identified in a criminal justice report concerning a criminal justice incident or investigation. These individuals include, but are not limited to: Subjects; suspects; associates; victims; persons of interest; witnesses; and/or any individual named in pre-trial investigations and arrest, booking, incident, incarceration, parole, and probation reports.

B. N–DEx System users and individuals listed as the point of contact for records in the N–DEx System.

C. Individuals who have been queried through the N–DEx System. In addition to information about the above individuals that is actually maintained by the system, the N–DEx System also facilitates access to information not maintained by the FBI, but that is contained in non-FBI databases (controlled by local, state, tribal, territorial, regional, and other federal agencies) that can be searched via functionality of the N–DEx System. The information in systems controlled or maintained by other agencies or jurisdictions will include information about the categories of individuals described in (A) above, but will also include information about individuals identified in criminal intelligence information (defined at 28 CFR 23.3(b)(3)). These individuals may include, but are not limited to, subjects, suspects, associates, victims, persons of interest, witnesses, and/or any individual named in a criminal intelligence product or report.

Information about individuals maintained in local, state, tribal, territorial, regional, federal (non-Department of Justice), and foreign criminal justice databases, and merely accessed via N–DEx System search are not part of the N–DEx System system of records because they are not ''under the control of'' the Department as stated in the Privacy Act definition of ''system of records.'' 5 U.S.C. 552a(a)(5).

CATEGORIES OF RECORDS IN THE SYSTEM:

The N–DEx System contains information collected by criminal justice agencies that is needed for the performance of their legally authorized, required functions. The records in the N–DEx System span the entire criminal justice lifecycle and consist of arrest, holding, incident, supervised release, booking, incarceration, service call, case and warrant reports; pre-trial investigation reports; missing persons reports; parole and/or probation information; other information collected by criminal justice agencies; and information shared for collaboration purposes from local, state, tribal, territorial, regional, federal, and foreign criminal justice entities. Identifying information in the N–DEx System includes, but is not limited to: Name(s); sex; race; citizenship; date and place of birth; address(es); telephone number(s); social security number(s) or other unique identifiers; physical description, including height, weight, hair color, eye color, gender; occupation and vehicle identifiers; and photographs. Records from the FBI's CJIS Division systems, including the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the Next Generation Identification (NGI) Systems, will be made available to the N–DEx System for queries, but the N–DEx System will not contain copies of these databases. Additionally, records from other criminal justice and criminal intelligence databases controlled and updated by local, state, tribal, territorial, regional, federal, and foreign criminal justice entities or non-governmental agencies will be made accessible for queries via the N–DEx System, but because the FBI and DOJ will not control or update the records from these databases, this information will not be considered part of the N–DEx System system of records.

Records maintained in the N–DEx System about individuals described in category ''B'' of INDIVIDUALS

COVERED BY THE SYSTEM above include name, userID, phone number, email address, associated identity provider, employing agency, and information users voluntarily provide for collaboration purposes.

The N–DEx System also maintains an audit log of searches conducted in the N–DEx System and records viewed as a result of each search. The audit log includes search criteria that may include identifying information (*e.g.* name, date of birth, social security number) about individuals described in category ''C'' of INDIVIDUALS COVERED BY THE SYSTEM above.

RECORD SOURCE CATEGORIES:

Information contained in the N–DEx System is obtained from local, state, tribal, territorial, regional, federal, and foreign criminal justice agencies and non-governmental agencies that compile information for criminal justice purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As part of those disclosures generally permitted under 5 U.S.C. 552a(b), the records in this system may be disclosed as a routine use, under 5 U.S.C. 552a(b)(3) to the following persons or entities and under the circumstances or for the purposes described below:

A. To any criminal, civil, or regulatory authority (whether local, state, tribal, territorial, regional, federal, or foreign) where the information is relevant to the recipient entity's criminal justice responsibilities.

B. To a local, state, tribal, territorial, regional, federal, foreign, international, or other public agency/organization, or to any person or entity in either the public or private sector, domestic or foreign, where such disclosure may facilitate the apprehension of fugitives, the location of missing persons, the location and/or return of stolen property or similar criminal justice objectives.

C. To local, state, tribal, territorial, regional, or federal criminal justice agencies for the performance of firearms, explosives, or associated license/permit-related background checks.

D. To federal agencies for the performance of federal suitability or fitness determinations under the authority of Executive Order 13467 as amended by Executive Order 13764.

E. To federal agencies in connection with a security risk assessment conducted, pursuant to 42 U.S.C. 262a and 42 CFR 73.10, on an individual applying for access to select biological agents or toxins.

F. To a local, state, tribal, territorial, regional, federal, or foreign governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, national security information, homeland security information, national intelligence, possible national security threat information, or terrorism information for law enforcement, intelligence, national security, homeland security, or counterterrorism purposes.

G. To any person or entity in either the public or private sector, domestic or foreign, if deemed by the FBI to be reasonably necessary to elicit information or cooperation from the recipient for use in furthering the purposes of the system.

H. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOJ (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

I. To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

J. To those agencies, entities, and persons the FBI may consider necessary or appropriate in ensuring the continuity of government functions in the event of any actual or potential significant disruption of normal government operations. This also includes all related pre-event planning, preparation, backup/redundancy, training and exercises, and post-event operations, mitigation, and recovery.

K. If any system record, on its face or in conjunction with other information, indicates a violation or potential violation of law (whether civil or criminal), regulation, rule, order, or contract, the pertinent record may be disclosed to the appropriate entity (whether federal, state, local, joint, tribal, foreign, or international), that is charged with the responsibility of investigating, prosecuting, and/or enforcing such law, regulation, rule, order, or contract.

L. To contractors, grantees, experts, consultants, students, or others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function.

M. To the news media or members of the general public in furtherance of a legitimate law enforcement or public safety function as determined by the FBI, *e.g.,* to assist in locating fugitives; to provide notifications of arrests; to provide alerts, assessments, or similar information on potential threats to life, health, or property; or to keep the public appropriately informed of other law enforcement or FBI matters or other matters of legitimate public interest where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy. (The availability of information in pending criminal or civil cases will be governed by the provisions of 28 CFR 50.2.)

N. To a court or adjudicative body, in matters in which (a) the FBI or any FBI employee in his or her official capacity, (b) any FBI employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, is or could be a party to the litigation, is likely to be affected by the litigation, or has an official interest in the litigation, and disclosure of system records has been determined by the FBI to be arguably relevant to the litigation. Similar disclosures may be made in analogous situations related to assistance provided to the Federal Government by non-FBI employees (see Routine Use L).

O. To an actual or potential party or his or her attorney for the purpose of negotiating or discussing such matters as settlement of the case or matter, or informal discovery proceedings, in matters in which the FBI has an official interest and in which the FBI determines records in the system to be arguably relevant.

P. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

Q. To a Member of Congress or a person on his or her staff acting on the Member's behalf when the request is made on behalf and at the request of the individual who is the subject of the record.

R. National Archives and Records Administration (NARA) Records

Management. To the National Archives and Records Administration (NARA) for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

S. To any agency, organization, or individual for the purposes of performing authorized audit or oversight operations of the FBI and meeting related reporting requirements.

T. The DOJ may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility. (Such disclosures will be effected under procedures established in title 28, Code of Federal Regulations, sections 16.300–301 and DOJ Order 2710.8C, including any future revisions.)

U. To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)), and, during Presidential transitions, the President-Elect and Vice-President Elect and their designees for appointment, employment, security, and access purposes compatible with the purposes for which the records were collected by the FBI, *e.g.,* disclosure of information to assist the White House in making a determination whether an individual should be: (1) Granted, denied, or permitted to continue in employment on the White House Staff; (2) given a Presidential appointment or Presidential recognition; (3) provided access, or continued access, to classified or sensitive information; or (4) permitted access, or continued access, to personnel or facilities of the White House/EOP complex. System records may be disclosed also to the White House and, during Presidential transitions, to the President Elect and Vice-President Elect and their designees, for Executive Branch coordination of activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President, President Elect, Vice-President or Vice-President Elect.

V. To complainants and/or victims to the extent deemed appropriate by the FBI to provide such persons with information and explanations concerning the progress and/or results of the investigations or cases arising from the matters of which they complained and/or of which they were victims.

W. To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

X. To designated officers and employees of local, state, (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Most information is maintained in electronic form and stored in computer memory, on disk storage, on computer tape, in a government approved cloud computing infrastructure (*e.g.,* FedRAMP approved) offered by a cloud service provider (*e.g.* Amazon Web Services), or on other computer media. However, some information may also be maintained by the contributing agency in hard copy (paper) or other form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information will be retrieved from the N–DEx System by keyword search and linkages based on identifying data collected on involved persons, places and things, and other non-specific descriptions of circumstances to identify common or similar events. This could include individual names or other personal identifiers. In addition to returning records based upon a direct query of the N–DEx System, N–DEx System records may also be retrieved by a query made to other authorized interoperable systems when the users of the other systems would also be authorized to access the N–DEx System.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The information within the N–DEx System will be contributed by local, state, tribal, territorial, regional, federal, and foreign criminal justice entities. Records in the N–DEx System are restricted to information obtained by criminal justice agencies in connection with their official duties administering criminal justice. All entities are responsible for ensuring the relevance and currency of the information they contribute to the N–DEx System and will have control and responsibility for the disposition of their own records through a process that is documented by the N–DEx Policy and Operating Manual, or based upon federal law. The N–DEx Policy and Operating Manual requires that before taking action on an N–DEx System record, agencies verify the accuracy and completeness of the record with the record owner. Policy also dictates that record contributors update their records at least monthly. Those portions of the N–DEx System that constitute federal records are subject to applicable retention schedules approved by the National Archives and Records Administration (NARA). In addition, the N–DEx System itself will result in the creation of metadata or an audit log that reflects any correlation between any of the submitted records, as well as information about user activity. The N–DEx System metadata or audit logs will be retained for 25 years, or as otherwise specified in the NARA schedule, Job No. N1–065–11–2.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

N–DEx System records are maintained in limited access space in FBI controlled facilities and offices or in secure cloud-computing environments. Computerized data is password protected. Information in the cloud is stored in a government approved cloud computing infrastructure (*e.g.,* FedRAMP approved) offered by a cloud service provider. All communications between the FBI infrastructure and the cloud service provider are encrypted both in transit and at rest to comply with Trusted Internet Connection (TIC) requirements and security best practices. All FBI personnel are required to pass extensive background investigations. N–DEx System information is accessed only by authorized DOJ personnel, or by non-DOJ personnel properly authorized to assist in the conduct of an agency function related to these records. The N–DEx System has adequate physical security and built in controls to protect against unauthorized personnel gaining access to the equipment and/or the information stored in it.

RECORD ACCESS PROCEDURES:

Because the N–DEx System contains records compiled to assist with the enforcement of criminal laws, the records in this system have been exempted from notification, access, and amendment to the extent permitted by subsection (j) of the Privacy Act. An individual who is the subject of one or more records in this system may be notified of records that are not exempt from notification and, accordingly, may access those records that are not exempt from disclosure. All requests for access should follow the guidance provided on the FBI's website at *https://www.fbi.gov/services/records-management/foipa.* A request for access to a record from this system of records must be submitted in writing and comply with 28 CFR part 16. Individuals may mail, fax, or electronically submit a request, clearly marked ''Privacy Act Access Request,'' to the FBI, ATTN: FOI/PA Request, Record/Information Dissemination Section, 170 Marcel Drive, Winchester, VA 22602–4843; facsimile: 540–868–4995/6/7; electronically: *https://www.fbi.gov/services/records-management/foipa/requesting-fbi-records.* The request should include a general description of the records sought, and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury. While no specific form is required, requesters may obtain a form (Form DOJ–361) for use in certification of identity, which can be located at the above link. In the initial request, the requester may also include any other identifying data that the requester may wish to furnish to assist the FBI in making a reasonable search. The request should include a return address for use by the FBI in responding; requesters are also encouraged to include a telephone number to facilitate FBI contacts related to processing the request. A determination of whether a record may be accessed will be made after a request is received.

CONTESTING RECORD PROCEDURES:

To contest or amend information maintained in the N–DEx System, an individual should direct his/her request to the address provided above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

Some information may be exempt from contesting record procedures as described in the section titled ''Exemptions Claimed for the System.'' An individual who is the subject of one or more records in this system may contest and pursue amendment of those records that are not exempt. A determination whether a record may be subject to amendment will be made at the time a request is received.

NOTIFICATION PROCEDURES:

Same as RECORD ACCESS PROCEDURES paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Attorney General has exempted the N–DEx System from subsection (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e). *See* 28 CFR 16.96(t) and (u).

HISTORY:

Law Enforcement National Data Exchange System (N–DEx), JUSTICE/FBI–020, 77 FR 56793 (Oct. 4, 2007), as amended by 82 FR 24151, 157 (May 25, 2017).

[FR Doc. 2018–27265 Filed 12–14–18; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL CAPITAL PLANNING COMMISSION

Notice of Final Adoption and Effective Date

AGENCY: National Capital Planning Commission.

ACTION: Notice of final adoption of and effective date for a revised Parks and Open Space Element for the Federal Elements of the Comprehensive Plan for the National Capital.

SUMMARY: The National Capital Planning Commission adopted the Parks and Open Space Element (Element) of the ''Comprehensive Plan for the National Capital: Federal Elements'' on December 6, 2018. The Element guides planning and development, and addresses matters related to Federal parks and open space in the National Capital Region, which includes the District of Columbia; Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities within the boundaries of these counties. The Element provides the policy framework for Commission actions on plans and projects subject to Commission review. The Element is available online for review at *https://www.ncpc.gov/plans/compplan/.*

DATES: The revised Element will become effective February 15, 2019.

FOR FURTHER INFORMATION CONTACT: Contact Surina Singh at *compplan@ncpc.gov* or by phone at (202) 482–7233.

Authority: 40 U.S.C. 8721(a).

Dated: December 6, 2018.

Anne R. Schuyler,

General Counsel.

[FR Doc. 2018–26990 Filed 12–14–18; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act: Notice of a Matter To Be Added to the Agenda for Consideration at an Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: December 10, 2018 (83 FR 63540).

TIME AND DATE: 10:00 a.m., Thursday, December 13, 2018.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

Pursuant to the provisions of the ''Government in Sunshine Act'' notice is hereby given that the NCUA Board gave notice on December 6, 2018 of the open meeting of the NCUA Board scheduled for December 13, 2018. Prior to the meeting, on December 13, 2018, the NCUA Board unanimously determined that agency business required the addition of a fourth item on the agenda with less than seven days' notice to the public, and that no earlier notice of the addition was possible.

MATTER TO BE ADDED: 4. 2019 Share Insurance Fund Normal Operating Level.

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2018–27355 Filed 12–13–18; 4:15 pm]

BILLING CODE 7535–01–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 January 16, 2019 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: 3133–0149.

Type of Review: Revision of a currently approved collection.

Title: Credit Union Service Organizations (CUSOs), 12 CFR 712.

Abstract: Part 712 of NCUA's rules and regulations regulates the relationship between federally insured credit unions (FICUs) and credit union service organizations (CUSOs). The rule requires that FICUs enter into a written agreement with a CUSO (prior to investing in or loaning money to) which stipulates the CUSO will follow general accepted accounting principles (GAAP); prepare quarterly financial statements; grant NCUA access to the CUSO books and records, and annually report directly to NCUA via a CUSO registry.

Affected Public: Private Sector: Not-for-profit institutions; Businesses or other for-profits; State and local governments.

Estimated Total Annual Burden Hours: 2,666.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on December 12, 2018.

Dated: December 12, 2018.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2018–27209 Filed 12–14–18; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281; NRC–2018–0247]

Virginia Electric and Power Company; Dominion Energy Virginia; Surry Power Station, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; opportunity to request a hearing and to petition for leave to intervene; correction and extension of date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on December 10, 2018, considering an application for the subsequent license renewal of Renewed Facility Operating License Nos. DPR–32 and DPR–37, which authorize Virginia Electric and Power Company (Dominion Energy Virginia or the applicant) to operate Surry Power Station (SPS), Unit Nos. 1 and 2. This action is necessary to correct the February 5, 2019, date to request a hearing and to petition for leave to intervene.

DATES: The date to request a hearing, and petition for leave to intervene in the document published on December 10, 2018 (83 FR 63541) is corrected and extended. Requests for a hearing or petition for leave to intervene must be filed by February 15, 2019. The correction is effective December 17, 2018.

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

- Federal Rulemaking website: Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0247. Address questions about Docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Emmanuel Sayoc, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–4084, email: *Emmanuel.Sayoc@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the FR published December 10, 2018 (83 FR 63541), the date to request a hearing, and petition for leave to intervene of February 5, 2019, is corrected and extended.

Dated at Rockville, Maryland, this 12th day of December, 2018.

For the Nuclear Regulatory Commission.

Eric R. Oesterle,

Chief, License Renewal Project Branch, Division of Materials and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–27215 Filed 12–14–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of 17, 24, 31, 2018, January 7, 14, 21, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 17, 2018

There are no meetings scheduled for the week of December 17, 2018.

Week of December 24, 2018—Tentative

There are no meetings scheduled for the week of December 24, 2018.

Week of December 31, 2018—Tentative

There are no meetings scheduled for the week of December 31, 2018.

Week of January 7, 2019—Tentative

There are no meetings scheduled for the week of January 7, 2019.

Week of January 14, 2019—Tentative

There are no meetings scheduled for the week of January 14, 2019.

Week of January 21, 2019—Tentative

Thursday, January 24, 2019

10:00 a.m. Strategic Programmatic Overview of the New Reactors

Business Line (Public Meeting); (Contact: Donna Williams: 301–415–1322).

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Diane.Garvin@nrc.gov.*

Dated at Rockville, Maryland, this 13th day of December, 2018.

For the Nuclear Regulatory Commission.

Denise L. McGovern.

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–27400 Filed 12–13–18; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–41 and CP2019–44; MC2019–42 and CP2019–45; MC2019–43 and CP2019–46; MC2019–44 and CP2019–47; MC2019–45 and CP2019–48; MC2019–46 and CP2019–49]

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:* December 19, 2018 and December 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: The December 19, 2018 comment due date applies to Docket Nos. MC2019–41 and CP2019–44; MC2019–42 and CP2019–45; MC2019–43 and CP2019–46; MC2019–44 and CP2019–47; MC2019–45 and CP2019–48.

The December 20, 2018 comment due date applies to Docket Nos. MC2019–46 and CP2019–49.

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]

[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).

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).:* MC2019–41 and CP2019–44; *Filing Title:* USPS Request to Add Priority Mail Contract 490 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 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:* December 19, 2018.

2. *Docket No(s).:* MC2019–42 and CP2019–45; *Filing Title:* USPS Request to Add Priority Mail Contract 491 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 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:* December 19, 2018.

3. *Docket No(s).:* MC2019–43 and CP2019–46; *Filing Title:* USPS Request to Add Priority Mail Contract 492 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 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:* December 19, 2018.

4. *Docket No(s).:* MC2019–44 and CP2019–47; *Filing Title:* USPS Request to Add Priority Mail Contract 493 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 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:* December 19, 2018.

5. *Docket No(s).:* MC2019–45 and CP2019–48; *Filing Title:* USPS Request to Add Priority Mail Contract 494 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 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:* December 19, 2018.

6. *Docket No(s).:* MC2019–46 and CP2019–49; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 91 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 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:* December 20, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–27264 Filed 12–14–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 11, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 491 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–42, CP2019–45.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27188 Filed 12–14–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 11, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 490 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–41, CP2019–44.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27187 Filed 12–14–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 11, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 493 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–44, CP2019–47.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27190 Filed 12–14–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 11, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 91 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–46, CP2019–49.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27192 Filed 12–14–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 11, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 494 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–45, CP2019–48.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27191 Filed 12–14–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 11, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 492 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–43, CP2019–46.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27189 Filed 12–14–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84788; File No. SR–FINRA–2018–040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to FINRA Rule 4512 (Customer Account Information)

December 11, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''SEA,'' ''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2018, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend paragraph (a)(3) of FINRA Rule 4512 (Customer Account Information) to permit the use of electronic signatures and to clarify the scope of the rule.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

With respect to a discretionary customer account maintained by a member, FINRA Rule 4512(a)(3) requires the firm to obtain the manual dated signature of each named, natural person authorized to exercise discretion in the account. Because the rule only applies to discretionary accounts maintained by a member, the named natural person would inevitably be an associated person of the firm.[3] Currently, to comply with the rule, members must obtain the associated person's ''wet'' signature or a copy of his or her wet signature, such as a scanned or faxed copy of the wet signature.[4] The rule also requires members to maintain and preserve a record of the signature for at least six years after the date the account is closed.[5] The purpose of the signature is to validate that the authorized associated person is who he or she purports to be. In light of the industry's shift towards automated and electronic processes, members have requested that FINRA reevaluate the need for wet signatures under the rule.

In general, members have stated that the requirement to obtain wet signatures raises operational and cost concerns without providing meaningful investor protection benefits. In addition, some members have noted that the requirement puts them at a competitive disadvantage over investment advisers because investment advisers are allowed to obtain electronic signatures. Finally, members that have adopted automated and electronic processes have stated that the current requirement results in significant administrative inefficiencies, particularly because all other account documentation, including the customer authorization form, and related recordkeeping may be completed electronically through a streamlined process.[6]

Given technological advances relating to electronic signatures, including with respect to authentication and security, FINRA believes that the requirement under Rule 4512(a)(3) that members obtain an associated person's wet signature has become obsolete. Therefore, FINRA is proposing to amend the rule to permit the use of electronic signatures. The proposed rule change is consistent with the Electronic Signatures in Global and National Commerce Act (''E-Sign Act''), which facilitates the use of electronic signatures. The proposed rule change is also consistent with the requirements of SEA Rule 17a–3(a)(17)(ii),[7] which does not prescribe the type of signature that must be obtained from an authorized individual. While FINRA Rule 4512(a)(3) would continue to require members to obtain the signature of an associated person, it would provide

[3] There is a corresponding requirement under NASD Rule 2510 (Discretionary Accounts) prohibiting members and their registered representatives from exercising any discretionary power in a customer's account unless the customer has given prior written authorization to a stated individual or individuals, and the account has been accepted by the firm as evidenced in writing by the firm or a designated partner, officer or manager of the firm. These signatures need not be manual. In addition, SEA Rule 17a–3(a)(17)(ii) requires that, for discretionary accounts with a natural person, broker-dealers maintain a record containing the dated signature of each natural person to whom discretionary authority was granted. This signature also need not be manual.

[4] The terms ''manual'' and ''wet'' are used interchangeably in this proposed rule change.

[5] For retention purposes, members may choose to maintain and preserve the signature record on any of the acceptable media specified in SEA Rule 17a–4, including electronic storage media consistent with SEA Rule 17a–4(f).

[6] To comply with FINRA Rule 4512(a)(3), most of these firms currently print a paper copy of the account record and require that the authorized associated person physically sign it. They then convert the paper record to an electronic record for retention on electronic storage media. These firms have stated that this two-step process creates unnecessary inefficiencies and administrative burdens.

[7] 17 CFR 240.17a–3(a)(17)(ii).

firms the option of obtaining either a manual or an electronic signature.

For purposes of compliance with FINRA Rule 4512(a)(3), a valid electronic signature would be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the E-Sign Act, the guidance issued by the Securities and Exchange Commission relating to the E-Sign Act,[8] and the guidance provided by FINRA staff through interpretive letters.[9]

In addition, FINRA is proposing to amend Rule 4512(a)(3) to clarify that the rule is limited to discretionary customer accounts maintained by a member for which associated persons of the member are authorized to exercise discretion. Specifically, FINRA is proposing to amend the rule to state that for a discretionary customer account maintained by a member, the member must obtain the dated signature of each named, associated person of the member authorized to exercise discretion in the account. This proposed change would eliminate any potential confusion regarding the scope of the rule and aid members' compliance efforts.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change would provide members the option of obtaining either manual or electronic signatures for purposes of compliance with FINRA Rule 4512(a)(3). FINRA believes that permitting the use of electronic signatures will provide flexibility in compliance without diminishing investor protection. The proposed rule change would also clarify that the signature requirement for discretionary accounts is limited to customer accounts maintained by a member for which associated persons of the member are authorized to exercise discretion, which would eliminate any potential confusion regarding the scope of the rule and assist members in their compliance efforts.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet its regulatory objective.

Regulatory Need

FINRA Rule 4512(a)(3) requires a member to validate the identity of associated persons who are authorized to exercise discretion in customer accounts maintained by the member. However, the current rule only allows members to validate the identity of such individuals by obtaining their manual signatures. This requirement may present operational and administrative burdens for members that have adopted automated and electronic processes for account documentation and related recordkeeping. In light of technological advances and the widespread use of electronic signatures in the financial services industry, FINRA believes that it is appropriate to provide members the option of obtaining electronic signatures to satisfy the signature requirement under FINRA Rule 4512(a)(3). FINRA believes that the clarifying amendment regarding the scope of the rule will eliminate potential confusion and assist members in their compliance efforts.

Economic Baseline

Current FINRA Rule 4512(a)(3) requires that a member validate the identity of an associated person authorized to exercise discretion in a customer's account by obtaining the associated person's wet signature. This typically requires that the customer authorization form be printed, manually signed by the associated person, and—if the member keeps electronic records—scanned for retention purposes.

Assets in discretionary accounts grew from 10% to 15% of total retail assets between 2014 and 2017.[11] Further, there are more than 100 million brokerage accounts and 14 million fee-based accounts,[12] and approximately 60% of U.S. households own one or more investment accounts.[13] However, FINRA does not know what percentage of these accounts are discretionary accounts maintained by members.

Economic Impact

The proposed rule change to permit the use of electronic signatures provides an additional avenue for complying with an existing requirement. The primary benefit of the proposed rule change is that it may yield a net cost savings to members because they will no longer be required to conduct a manual process. Members may experience cost savings in the form of time and physical supplies as a result of the proposed rule change. This benefit will accrue to those members that maintain discretionary accounts and that wish to validate the identity of their associated persons via electronic signature as well as to the associated persons of such firms.

The proposed rule change will benefit those members willing to leverage electronic signatures more than those that will maintain their manual (wet signature) process. Further, greater benefit will accrue to members that frequently accept discretionary authority over customer accounts than those that do so infrequently. However, the proposed rule change will apply to all members equally. Even if a member does not experience cost savings, the proposed rule change would not result in a greater cost burden to any firm because the proposed rule change provides an additional option for

[8] *See* Securities Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001) (Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a–4(f)).

[9] *See, e.g.,* Letter from Nancy Libin, NASD, to Jeffrey W. Kilduff, O'Melveny & Myers, LLP, dated July 5, 2001, *http://www.finra.org/industry/interpretive-letters/july-5-2001-1200am.*

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] *See* PriceMetrix, *The State of Wealth Management,* 7th ed., *https://www.mckinsey.com/~/media/mckinsey/industries/financial%20services/our%20insights/the%20state%20of%20retail%20wealth%20management%20in%20north%20america/the-state-of-retail-wealth-management.ashx.*

[12] *See* Wall Street Journal, *Is It Time to Adopt a Uniform Fee-Only Standard for Financial Advice?* (March 18, 2018) (stating that U.S. investors hold more than 100 million brokerage accounts and 14 million fee-based accounts), *https://www.wsj.com/articles/is-it-time-to-adopt-a-uniform-fee-only-standard-for-financial-advice-1521424980.*

[13] *See* FINRA Investor Education Foundation, *A Snapshot of Investor Households in America* (September 2015), *https://www.finrafoundation.org/files/snapshot-investor-households-america.*

compliance and does not impose a new requirement. Further, it should not interfere with or impede the forces of competition among members.

An additional benefit may be increased regulatory consistency insofar as similar requirements by other regulators allow for electronic signatures. For example, the SEC allows investment advisers to utilize electronic signatures for documentation of discretionary authority.[14] The proposed rule change should facilitate compliance for all members, but especially for dually-registered firms. Further, because investment advisers are already allowed to use electronic signatures for discretionary accounts, allowing members to use them will create a more level playing field between investment advisers and broker-dealers.

Finally, the proposed rule change should not undermine investor protection because the primary investor protection features relating to the exercise of discretion in a customer account, including the customer's prior written authorization permitting the exercise of discretion, remain intact under NASD Rule 2510.[15] In addition, associated persons with discretionary authority will continue to be required to acknowledge their discretionary authority over accounts, and firms will have documented evidence of that authority.

Alternatives Considered

FINRA considered whether members could authenticate the identity of an authorized associated person other than by obtaining the individual's signature. FINRA determined that requiring members to use different means, other than signatures, to validate the identity of authorized associated persons could create confusion and potential compliance issues, particularly in light of the signature requirement under SEA Rule 17a–3(a)(17)(ii).[16]

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2018–040 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–FINRA–2018–040. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2018–040 and should be submitted on or before January 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27205 Filed 12–14–18; 8:45 am]

BILLING CODE 8011–01–P

[14] Moreover, as noted above, SEA Rule 17a–3(a)(17)(ii) does not impose a manual signature requirement on broker-dealers. *See supra* note 3.

[15] *See supra* note 3.

[16] 17 CFR 240.17a–3(a)(17)(ii).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84791; File No. SR–GEMX–2018–41]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete GEMX Section 22 of the Rulebook

December 11, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2018, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete GEMX Section 22 of the GEMX rulebook (''Rulebook'') entitled ''Rate-Modified Foreign Currency Options Rules.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

GEMX rules at Section 22, titled ''Rate-Modified Foreign Currency Options Rules'' incorporate by reference Nasdaq ISE, LLC (''ISE'') Chapter 22. ISE recently filed to delete Section 22 from its Rulebook.[3] At this time, the Exchange proposes to delete the text at Section 22 of GEMX rules as the ISE rule no longer exists and there is no rule to incorporate by reference.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by eliminating rule text within GEMX's Rulebook which redirects GEMX Members to a non-existent ISE section of rules for listing and trading FCOs.

The Exchange [sic] recently eliminated ISE rules at Section 22. GEMX Section 22 incorporated by reference ISE Section 22. GEMX proposes to remove the text at Section 22 to avoid confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that eliminating the GEMX Section 22 rules will create an undue burden on intra-market competition because this rule set directs GEMX Members to a nonexistent ISE section of rules.

[3] Securities Exchange Act Release No. 84516 (November 1, 2018), 83 FR 55771 (November 7, 2018) (SR–ISE–2018–91).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

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–GEMX–2018–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2018–41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2018–41 and should be submitted on or before January 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27204 Filed 12–14–18; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 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.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84790; File No. SR–MRX–2018–38]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to MRX Section 22 of the Rulebook

December 11, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2018, Nasdaq MRX, LLC (''MRX'' or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to delete MRX Section 22 of the Rulebook entitled ''Rate-Modified Foreign Currency Options Rules.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

MRX rules at Section 22, titled ''Rate-Modified Foreign Currency Options Rules'' incorporate by reference Nasdaq ISE, LLC (''ISE'') Chapter 22. ISE recently filed to delete Section 22 from its Rulebook.[3] At this time, the Exchange proposes to delete the text at Section 22 of MRX rules as the ISE rule no longer exists and there is no rule to incorporate by reference.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by eliminating rule text within MRX's Rulebook which redirects MRX Members to a non-existent ISE section of rules for listing and trading FCOs.

The Exchange [sic] recently eliminate [sic] ISE rules at Section 22. MRX Section 22 incorporated by reference ISE Section 22. MRX proposes to remove the text at Section 22 to avoid confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that eliminating the MRX Section 22 rules will create an undue burden on intra-market competition because this rule set directs MRX Members to a nonexistent ISE section of rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

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–MRX–2018–38 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–MRX–2018–38. 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–MRX–2018–38 and should

[3] Securities Exchange Act Release No. 84516 (November 1, 2018), 83 FR 55771 (November 7, 2018) (SR–ISE–2018–91).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 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.

be submitted on or before January 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27202 Filed 12–14–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84786; File No. SR–NYSEArca-2018–88]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect a Change to the Benchmark Index of the SPDR Nuveen Bloomberg Barclays Municipal Bond ETF

December 11, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 28, 2018, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect a change to the benchmark index for the SPDR Nuveen Bloomberg Barclays Municipal Bond ETF, shares of which are currently listed and traded on the Exchange pursuant to NYSE Arca Rule 5.2–E(j)(3), Commentary .02. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reflect a change to the benchmark index for the SPDR Nuveen Bloomberg Barclays Municipal Bond ETF (the ''Fund''), shares (''Shares'') of which are currently listed and traded on the Exchange pursuant to NYSE Arca Rule 5.2–E(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units (''Units'')[4] based on fixed income securities indexes.[5] The Fund is a series of the SPDR Series Trust (''Trust'').

As discussed below, the Exchange is submitting this proposed rule change to change the listing requirements applicable to the Fund as set forth in the Approval Order. Specifically, the Exchange proposes to change the benchmark index for the Fund to the ''New Index'' (as defined below).

Description of the Shares and the Fund

As stated in the Approval Order, the Fund seeks to provide investment results that, before fees and expenses, correspond generally to the price and yield performance of the Bloomberg Barclays Municipal Managed Money Index (''Current Index'') which tracks the U.S. municipal bond market. The Trust, in a November 6, 2018 supplement to the Fund's prospectus (''Prospectus Supplement''), stated that, effective December 3, 2018, the new benchmark index for the Fund will be the Bloomberg Barclays Municipal Managed Money 1–25 Years Index (''New Index'').[6] The New Index is the sub-set of the Current Index with effective maturities of 1–25 years.[7] The

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An open-end investment company that issues Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission previously has approved a proposed rule change to facilitate listing and trading of Shares of the Fund on the Exchange in Securities Exchange Act Release No. 82295 (December 12, 2017), 82 FR 60056 (December 18, 2017) (SR–NYSEArca–2017–56) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Shares of Twelve Series of Investment Company Units Pursuant to NYSE Arca Rule 5.2–E(j)(3)) (''Approval Order''). *See also,* Amendment 3 to SR–NYSEArca–2017–56 at *https://www.sec.gov/comments/sr-nysearca-2017-56/nysearca201756-2714674-161523.pdf.* In addition, the Commission also has approved other proposed rule changes relating to listing and trading of funds based on municipal bond indexes. *See, e.g.,* Securities Exchange Act Release Nos. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR–NYSEArca–2012–92) (order approving proposed rule change to list and trade the iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Rule 5.2(j)(3), Commentary .02); 72523 (July 2, 2014), 79 FR 39016 (July 9, 2014) (SR–NYSEArca–2014–37) (order approving proposed rule change to list and trade iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Rule 5.2(j)(3), Commentary .02); and 75468 (July 16, 2015), 80 FR 43500 (July 22, 2015) (SR–NYSEArca–2015–25) (order approving proposed rule change to list and trade the iShares iBonds Dec 2021 AMT-Free Muni Bond ETF and iShares iBonds Dec 2022 AMT-Free Muni Bond ETF under NYSE Arca Rule 5.2(j)(3), Commentary .02); 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120) (order approving proposed rule change to list and trade shares of the SPDR Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Rule 5.2–E(j)(3)). The Commission has issued notices of filing and immediate effectiveness of proposed rule changes relating to certain series of Units under NYSE Arca Rule 5.2–E(j)(3) and Managed Fund Shares under NYSE Arca Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 83982 (August 29, 2018), 83 FR 45168 (September 5, 2018) (SR–NYSEArca–2018–62) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the American Century Diversified Municipal Bond ETF under NYSE Arca Rule 8.600–E); 84379 (October 5, 2018), 83 FR 51724 (October 12, 2018) (SR–NYSEArca–2018–73) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the First Trust Short Duration Managed Municipal ETF under NYSE Arca Rule 8.600–E); 84381 (October 5, 2018), 83 FR 51111752 (October 12, 2018) (SR–NYSEArca–2018–72) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the First Trust Ultra Short Duration Municipal ETF under NYSE Arca Rule 8.600–E); 84396 (October 10, 2018), 83 FR 52266 (October 16, 2018) (SR–NYSEArca–2018–70) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the iShares iBond Dec 2026 Term Muni Bond ETF Under Commentary .02 to NYSE Arca Rule 5.2–E(j)(3)).

[6] The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). On October 31, 2018, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Fund (File Nos. 333–57793 and 811–08839) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement and the Prospectus Supplement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29524 (December 13, 2010) (File No. 812–13487) (''Exemptive Order'').

[7] The Trust represents that it will not implement the proposed change to the index underlying the Fund until this proposed rule change is effective and operative.

Exchange believes it is appropriate to facilitate the continued listing and trading of Shares of the Fund because, as described below, the Fund will be based on a broad-based index of fixed income municipal bond securities that is not readily susceptible to manipulation. As noted in Amendment 3 to SR–NYSEArca–2017–56, the Fund listed on the Exchange prior to 2010.

Pursuant to NYSE Arca Rule 5.2–E(j)(3), the Exchange proposed to facilitate the listing and trading of certain series of Investment Company Units that do not otherwise meet the standards set forth in Commentary.02 to Rule 5.2–E(j)(3). Specifically, the Exchange proposed to facilitate the listing and trading of the certain series of Investment Company Units, including the Fund, based on a multistate index of fixed income municipal bond securities.

According to the Prospectus Supplement, under normal market conditions,[8] the Fund generally will invest substantially all, but at least 80%, of its total assets in the securities comprising the New Index or in securities that the Nuveen Asset Management, LLC (the Fund's ''Sub-Adviser'') determines have economic characteristics that are substantially identical to the economic characteristics of the securities that comprise the New Index. In addition, in seeking to track the New Index, the Fund may invest in debt securities that are not included in the New Index, cash and cash equivalents or money market instruments, such as repurchase agreements and money market funds (including money market funds advised by SSGA Funds Management, Inc. (''SSGA FM'' or the ''Adviser''), the investment adviser to the Fund.

With respect to the remaining 20% of its assets, the Fund may invest in debt securities that are not included in the New Index, cash and cash equivalents or money market instruments, such as repurchase agreements and money market funds, commercial paper, foreign currency transactions, reverse repurchase agreements, securities of other investment companies, exchange-traded futures on Treasuries or Eurodollars (all such exchange-traded futures contracts will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement), U.S. exchange-traded or over-the-counter (''OTC'') put and call options contracts and exchange-traded or OTC swap agreements (including interest rate swaps, total return swaps, excess return swaps and credit default swaps) and treasury-inflation protected securities of the U.S. Treasury as well as major governments and emerging market countries.

The New Index is designed to track the U.S. fully tax-exempt bond market. The New Index includes state and local general obligation bonds, revenue bonds, pre-refunded bonds, and insured bonds. The New Index is comprised of tax-exempt municipal securities issued by states, cities, counties, districts and their respective agencies. The New Index also includes municipal lease obligations, which are securities issued by state and local governments and authorities to finance the acquisition of equipment and facilities.

For informational purposes, as of November 1, 2018, there were approximately 21,478 securities in the New Index from issuers in 49 different states or U.S. territories. The most heavily weighted security in the New Index represented less than 0.11% of the total weight of the New Index and the aggregate weight of the top five most heavily weighted securities in the New Index represented approximately 0.48% of the total weight of the New Index. Approximately 10% of the weight of the components in the New Index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the New Index was approximately $505 billion and the average dollar amount outstanding of issues in the New Index was approximately $23.2 million.

Requirement for New Index Constituents

On a continuous basis, (1) at least 90% of the weight of the New Index will be comprised of securities that have an outstanding par value of at least $7 million and were issued as part of a transaction of at least $75 million, and (2) the New Index will include at least 500 components.

The Exchange notes that, in the Approval Order, the Commission approved Exchange listing and trading of Units of the Fund for which at least 90% of the weight of Current Index will be comprised of securities that have an outstanding par value of at least $7 million and were issued as part of a transaction of at least $75 million, and that included at least 500 components.[9]

In addition, the Exchange represents that: (1) Except for Commentary .02(a)(2) to Rule 5.2–E(j)(3),[10] the New Index currently satisfies all of the generic listing standards under NYSE Arca Rule 5.2–E(j)(3); (2) the continued listing standards under Commentary .02 to NYSE Arca Rule 5.2–E(j)(3), as applicable to Units based on fixed income securities, will apply to the Shares of the Fund; and (3) the issuer of the Fund is required to comply with Rule 10A–3 [11] under the Act for the initial and continued listing of the Shares. The Exchange represents that the Fund will comply with all other requirements applicable to Units, including, but not limited to, requirements relating to the dissemination of key information such as the value of the New Index and the Intraday Indicative Value (''IIV''),[12] rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Bulletin, as set forth in the Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.[13]

Additional Information

The current value of the New Index will be widely disseminated by one or more major market data vendors at least once per day, as required by Commentary .02(b)(ii) to NYSE Arca Rule 5.2–E(j)(3). The portfolio of securities held by the Fund will be disclosed daily on the Fund's website *www.spdrs.com.*

[8] The term ''normal market conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] *See* note 5, *supra.*

[10] Commentary .02(a)(2) provides that Fixed Income Security components that in aggregate account for at least 75% of the Fixed Income Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[11] 17 CFR 240.10A–3.

[12] The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session (normally, 9:30 a.m. to 4:00 p.m., E.T. Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIV taken from CTA or other data feeds.

[13] *See, e.g.,* Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

Availability of Information

On each business day, the Fund will disclose on its website (*www.spdrs.com*) the portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.

On a daily basis, the Fund will disclose for each portfolio security or other financial instrument of the Fund the following information on the Fund's website: Ticker symbol (if applicable), name of security and financial instrument, a common identifier such as CUSIP or ISIN (if applicable), number of shares (if applicable), and dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The website information will be publicly available at no charge. The current value of the New Index will be widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Rule 5.2–E(j)(3), Commentary .02 (b)(ii).

The IIV for Shares of the Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session, as required by NYSE Arca Rule 5.2–E(j)(3), Commentary .02(c). The current value of the New Index would be widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Rule 5.2–(j)(3), Commentary .02 (b)(ii). In addition, the portfolio of securities held by the Fund will be disclosed daily on the Fund's website.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares of the Fund will be available via the Consolidated Tape Association (''CTA'') high speed line. Quotation information for investment company securities may be obtained through nationally recognized pricing services through subscription agreements or from brokers and dealers who make markets in such securities. Price information regarding municipal bonds is available from third party pricing services and major market data vendors. Trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (''EMMA'') system.

Quotation information for OTC swaps agreements may be obtained from brokers and dealers who make markets in such instruments. Quotation information for exchange-traded swaps, futures and options will be available from the applicable exchange and/or major market vendors.

Surveillance

The Exchange represents that trading in the Shares of the Fund will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares of the Fund in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[14]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain futures and certain options with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, certain futures and certain options from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain futures and certain options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

The Exchange represents that at least 90% of the weight of Fund holdings invested in exchange-traded futures contracts and exchange-traded options will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[15] in general and Section 6(b)(5) of the Act[16] 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 mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares of the Fund will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 5.2–E(j)(3), except for the requirement in Commentary .02(a)(2) that the component fixed income securities, in the aggregate, account for at least 75% of the weight of the index each shall have a minimum principal amount outstanding of $100 million or more. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[17] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of

[14] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain futures and certain options with other markets that are members of the ISG. In addition, the Exchange will communicate as needed regarding trading in the Shares, certain futures and certain options with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares of the Fund. At least 90% of the weight of Fund holdings invested in exchange-traded futures contracts and exchange-traded options will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

As discussed above, the Exchange believes that the New Index is sufficiently broad-based to deter potential manipulation. For informational purposes, as of November 1, 2018, there were approximately 21,478 securities in the New Index from issuers in 49 different states or U.S. territories. The most heavily weighted security in the New Index represented less than 0.11% of the total weight of the New Index and the aggregate weight of the top five most heavily weighted securities in the New Index represented approximately 0.48% of the total weight of the New index. Approximately 10% of the weight of the components in the New Index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the New Index was approximately $505 billion and the average dollar amount outstanding of issues in the New Index was approximately $23.2 million.[18] Therefore, the Exchange believes that the New Index is sufficiently broad-based to deter potential manipulation, given that it is comprised of approximately 21,478 issues.

On a continuous basis, (1) at least 90% of the weight of the New Index will be comprised of securities that have an outstanding par value of at least $7 million and were issued as part of a transaction of at least $75 million, and (2) the New Index will include at least 500 components.

The Exchange notes that, in the Approval Order, the Commission approved Exchange listing and trading of Units of the Fund for which at least 90% of the weight of Current Index will be comprised of securities that have an outstanding par value of at least $7 million and were issued as part of a transaction of at least $75 million, and that included at least 500 components.[19] In the Approval Order, the Commission stated that the applicable index was sufficiently designed to deter potential manipulation.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on the Fund's website daily after the close of trading on the Exchange. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. The current value of the New Index will be disseminated by one or more major market data vendors at least once per day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The website for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. If the IIV or the New Index values are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or New Index value occurs. If the interruption to the dissemination of the IIV or New Index value persists past the trading day in which it occurred, the Exchange will halt trading. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Rule 7.34–E, which sets forth circumstances under which Shares of the Fund may be halted. In addition, investors will have ready access to information regarding the IIV, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded fund that holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, investors will have ready access to information regarding the IIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.[20]

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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of Units based on a

[18] Commentary .02(a)(4) to NYSE Arca Rule 5.2–E(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[19] *See* note 5, *supra*.

[20] 15 U.S.C. 78f(b)(5).

municipal bond index that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [23] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay such that the proposed rule change will become operative on the date the Trust implements the New Index for the Fund.

The Exchange notes that the Commission previously approved a proposed rule change to allow the continued listing and trading of Shares on the Exchange based on the Current Index.[24] The Exchange represents that the New Index is the sub-set of the Current Index with effective maturities of 1–25 years. The Exchange further represents that other than the substitution of the New Index for the Current Index, the continued listing requirements of the Shares will remain the same as those approved by the Commission in the Approval Order. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the continued listing requirements for the Shares will remain the same. Therefore, the Commission hereby waives the 30-day operative delay.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2018–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2018–88. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website *(http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–88 and should be submitted on or before January 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27207 Filed 12–14–18; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] *See* Approval Order, *supra* note 5.

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84787; File No. SR–C2–2018–024]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Provisions Related to Its Risk Monitor Mechanism

December 11, 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 30, 2018, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend its provision related to its Risk Monitor Mechanism. The text of the proposed rule change is provided in Exhibit 5.

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 Rule 6.14 which governs, among other things, the Risk Monitor Mechanism.

Background

By way of background, the Risk Monitor Mechanism providers Users [5] with the ability to manage their order and execution risk. Each User may establish limits for various parameters in the Exchange's counting program. The system counts each of the following within a class (''class limit'') and across all classes for an EFID [6] (''firm limit'') over a User-established time period (''interval'') on a rolling basis up to five minutes (except as set forth in Rule 6.14(c)(5)(A)(iv)) and on an absolute basis for a trading day (''absolute limits''): (i) Number of contracts executed (''volume''); (ii) notional value of executions (''notional''); (iii) number of executions (''count''); and (iv) number of contracts executed as a percentage of number of contracts outstanding within an Exchange-designated time period or during the trading day, as applicable (''percentage'') [7] (collectively, ''risk parameters''). Additionally, when the system determines a risk parameter exceeds a User's class limit within the interval or the absolute limit for the class, the Risk Monitor Mechanism cancels or rejects such User's orders or quotes in all series of the class and cancels or rejects any additional orders or quotes from the User in the class until the counting program resets. Similarly, when the system determines a risk parameter exceeds a User's firm limit within the interval or the absolute limit for the firm, the Risk Monitor Mechanism cancels or rejects such User's orders or quotes in all classes and cancels or rejects any additional orders or quotes from the User in all classes until the counting program resets.

Proposed Rule Change

The Exchange proposes to amend Rule 6.14 to (i) make clarifying and miscellaneous non-substantive changes, (ii) provide the ability for Users [sic] to establish limits for a group of EFIDs, and (iii) adopt a new risk parameter.

Clarifying and Miscellaneous Changes

First, the Exchange proposes to eliminate the term ''User'' in Rule 6.14(c)(5) and replace it with the term ''TPH'' (which stands for Trading Permit Holder).[8] The Exchange notes that the definition of User is broader than TPH, as it specifically captures Sponsored Users. The Exchange believes ''TPH'' is the more appropriate term to use with respect to the Risk Monitor Mechanism as the rule describes how the functionality works with respect to TPHs, and not necessarily Sponsored Users. The Exchange notes that it currently does not have any Sponsored Users, and to the extent it expects to have any in the future, it will revise the rule as needed to incorporate how the Risk Monitor Mechanism would function with respect to Sponsored Participants. The Exchange notes that ''User'' will be referred to herein as ''TPH''.

Next, the Exchange proposes to eliminate the term ''class'' and replace it with ''underlying''. Specifically, the Exchange notes that the Risk Monitor Mechanism is configured to count the risk parameters across underlying securities or indexes. As an example, any option related to Apple (AAPL), would be considered to have the same underlying. Accordingly, if a corporate action resulted in AAPL1, AAPL and APPL1 one [sic] would be considered to share the same underlying symbol AAPL. Only a single symbol-level rule for underlying AAPL would be configurable by the Risk Monitor Mechanism. The Exchange notes that the term ''underlying'' is also utilized in the Exchange's technical specification documents. The Exchange therefore believes underlying is a more accurate term to use.

The Exchange also proposes to eliminate the requirement that the ''interval'' time periods be on a rolling basis up to five minutes. The Exchange notes that its system is not configured to limit intervals to 5 minutes and as such believes the proposal to eliminate the language will alleviate confusion and more accurately reflect current functionality.

The Exchange also proposes to clarify and codify what were to occur in the event a TPH does not reactivate its ability to send quotes or orders after its configured risk parameter limits have been reached. Currently, subparagraph (c)(5)(D) of Rule 6.14 governs how the counting program is reset. In the event an underlying limit, EFID limit or EFID Group limit (as proposed), is exceeded, the rules provide that the System will not accept new orders or quotes from that TPH (in a underlying, from an EFID, or EFID Group, as applicable) until the TPH instructs the System or Exchange, as applicable, to reset the counting program. The Exchange proposes to add new subparagraph (c)(5)(D)(v) to explicitly provide that if the Exchange cancels all of a TPH's quotes and orders resting in the Book, and the TPH does not reactivate its ability to send quotes or orders, the block will be in effect only for the trading day that the TPH reached its underlying, EFID and/or EFID Group limit. The Exchange notes this is not a substantive change, but rather current practice, and that its affiliated Exchange, Cboe Options, includes

[5] The term ''User'' means any Trading Permit Holder or Sponsored User who is authorized to obtain access to the System pursuant to Rule 6.8. As discussed below, the Exchange is proposing to replace references to ''User'' in Rule 6.14(c)(5) with ''TPH''.

[6] The term ''EFID'' means an Executing Firm ID. The Exchange assigns an EFID to a Trading Permit Holder, which the System uses to identify the Trading Permit Holder and clearing number for the execution of orders and quotes submitted to the System with that EFID. *See* C2 Rule 6.8(b).

[7] The system determines the percentage by calculating the percentage of a TPH's [sic] outstanding contracts that executed on each side of the market during the time period or trading day, as applicable, and then summing the series percentages on each side in the underlying [sic].

[8] *See* Exchange Rule 1.1 (''Trading Permit Holder'' or ''TPH''). The term ''Trading Permit Holder'' or ''TPH'' mean an Exchange-recognized holder of a Trading Permit. A Trading Permit Holder is deemed a ''member'' under the Exchange Act.

similar language in its rules.[9] The Exchange believes adding this provision to the rules provides further transparency in its rules and reduces potential confusion as to what would happen in the situation where a TPH fails to reset the counting program.

The Exchange also proposes to add language regarding resets from its affiliated Exchanges' rules governing their Risk Monitor Mechanism functionality, which is substantively the same as the Risk Monitor Mechanism functionality on C2. Particularly, Cboe EDGX and Cboe BZX Rule 21.16(d) currently provides that the System will reset the counting period for absolute limits when a TPH refreshes its risk limit thresholds and the System will reset the counting program and commence a new interval time period when (i) a previous interval time period has expired and a transaction occurs in any series of a underlying [sic] or (ii) a TPH refreshes its risk limit thresholds prior to the expiration of the interval time period. The Exchange proposes to add this language under subparagraph (D)(vi) of C2 Rule 6.14(c)(5) (''Counting Program Reset''), which provision would govern ''other resets'' (*i.e.,* resets that are not a result from a limit being reached). The Exchange believes adding this provision to C2's rules provides transparency in the rules that TPH's may refresh their limits for both absolute and interval time periods (which results in a ''reset of the counting program'') and also clarifies that the interval time periods are reset after the prior interval time period ended and a transaction in a series of a underlying occurred. The Exchange notes this is not a substantive change, but rather current practice. The Exchange believes adding this provision to the rules provides further transparency in its rules and reduces potential confusion as to whether a TPH can refresh its limits and when interval time periods commence.

The Exchange also proposes to include language from BZX and EDGX Rule 21.16(e) that provides that a TPH may engage the Risk Monitor Mechanism to cancel resting bids and offers, as well as subsequent orders as set forth in Rule 6.14(c)(7), which adds transparency in the rules that the Risk Monitor Mechanism may be utilized in this context. The Exchange notes this is not a substantive change, but rather current practice.

The Exchange also proposes other non-substantive clarifying changes. For example, the Exchange proposes to replace references to ''firm limit'' with ''EFID limit''; clarify that resets will occur when limits are reached, instead of ''exceeded''; and replace certain references to ''User'' with ''EFID''. The Exchange notes that the proposed changes do not reflect a change in practice, but rather are intended to adopt language the Exchange believes is more accurate and would be less confusing to investors.

EFID Groups

The Exchange next proposes to provide in the rules that in addition to underlying limits and EFID limits, the System will be able to count each of the risk parameters across all underlyings for a group of EFIDs (''EFID Group'')(''EFID Group limit'').[10] Similar to when a underlying limit or EFID limit are reached, when a TPH's EFID Group(s) limit is reached, the Risk Monitor Mechanism will cancel or reject such TPH's orders or quotes in all underlyings and cancel or reject any additional orders or quotes from any EFID within the EFID Group(s) in all underlyings until the counting program resets. The System will not accept new orders or quotes from any EFID within an EFID Group after an EFID Group limit is reached until the TPH manually notifies the Trade Desk to reset the counting program for the EFID Group, unless the TPH instructs the Exchange to permit it to reset the counting program by submitting an electronic message to the System. The Exchange believes each TPH is in the best position to determine risk settings appropriate for its firm based on its trading activity and business needs and that it may be based on a single EFID or EFID Group(s). The Exchange notes that its affiliate Exchange, Cboe Exchange, Inc. (''Cboe Options'') similarly allows its members to set similar risk parameters at the acronym-level (which is similar to an EFID) or firm level (similar to an EFID Group).[11]

New Risk Parameter

The Exchange lastly proposes to adopt a new risk parameter. Specifically, under the proposed functionality, a TPH may specify a maximum number of times that the risk parameters (*i.e.,* volume, notional, count and/or percentage) are reached over a specified interval or absolute period (''risk trips''). When a risk trip limit has been reached, the Risk Monitor Mechanism will cancel or reject a TPH's orders or quotes pursuant to subparagraph (c)(5)(B) of Rule 6.14. The Exchange notes that a similar risk parameter (*i.e.,* a parameter based on the number of risk ''incidents'' that occur over a specified time) is available on its affiliate Exchange, Cboe Options.[12] The Exchange believes the proposed changes to its Risk Monitor Mechanism rule sufficiently allows TPHs to adjust and adopt parameter inputs in accordance with their business models and risk management needs.

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.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] 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 the Section 6(b)(5)[15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the Exchange believes its changes to codify existing functionality alleviates potential confusion, provides transparency in the rules and makes the rules easier to read. For example, the proposal to remove the reference to the requirement that the interval time periods be on a rolling basis up to five minutes alleviates confusion as the system is in fact not configured to have a five minute limit. Providing language regarding (i) a TPH's failure to reset or initiate a reset of the counting program, (ii) other resets due to a TPH's refresh of its limits or a new interval time period commencing and (iii) the use of the Risk Monitor Mechanism with respect to C2 Rule 6.14(c)(7), provides

[9] *See* Cboe Options Rule 8.18.

[10] An EFID may not belong to more than one EFID Group. The Exchange notes that the Users [sic] determine how many, if any, EFID Groups to establish and determine which EFIDs belong to a particular EFID Group, if any.

[11] *See* Cboe Options Rule 8.18.

[12] *See* Cboe Options Rule 8.18, which provides that a Hybrid Market Maker or a TPH Organization may specify a maximum number of Quote Risk Monitor Mechanism (''QRM'') QRM Incidents on an Exchange-wide basis.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *Id.*

transparency in the rules as to what occurs in those situations, harmonizes rule language with that of the Exchange's affiliated Exchanges, and reduces potential confusion. The alleviation of confusion removes impediments to, and perfects the mechanism of, a free and open market and a national market system, and, in general, protects investors and the public interest. Similarly, the Exchange believes using the term ''underlying'' instead of ''class'' and ''TPH'' instead of ''User'' alleviates potential confusion as the proposed terms more accurately reflect how the Risk Monitor Mechanism operates.

The Exchange believes providing TPHs the ability to configure certain risk parameters across underlyings for an EFID Group is also appropriate because it permits a TPH to protect itself from inadvertent exposure to excessive risk on an additional level (*i.e.,* on an EFID group-level, not just underlying- or EFID-level). Reducing such risk will enable TPHs to enter quotes and orders with protection against inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they may receive better prices and because it may lower volatility in the options market. The Exchange also believes each TPH is in the best position to determine risk settings appropriate for its firm based on its trading activity and business needs and that that may be based on an EFID Group(s). Additionally, as discussed above, Cboe Options similarly allows its TPHs to set risk parameters at the acronym-level (which is similar to an EFID) or firm-level (similar to an EFID Group).[16]

Lastly, the Exchange believes the proposal to adopt the new risk parameter based on number of times a risk parameter or group of risk parameters are reached will provide TPHs with an additional tool for managing risks. Furthermore, as noted above, the Exchange's affiliated exchange offers similar functionality.[17] Overall, the proposed rule change provides TPHs more protections that reduce the risks from potential system errors and market events. As a result, the proposed changes, including the new risk parameter for the Risk Monitor Mechanism, have the potential to promote just and equitable principles of trade. Additionally, the proposed changes apply to all TPHs.

[16] *See* Cboe Options Rule 8.18.

[17] *See* Cboe Options Rule 8.18.

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. Rather, the Exchange believes that the proposed changes with respect to its Risk Monitor Mechanism help promote fair and orderly markets and provide clarity and transparency the Rule. For example, the proposed rule change adds an additional risk control parameter and flexibility to help further prevent potentially erroneous executions, which benefits all market participants. The proposed changes apply uniformly to all TPHs and the Exchange notes that the proposed changes apply to all quotes and orders in the same manner. Additionally, the Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed enhancements apply only to trading on the Exchange. Additionally, the Exchange notes that it is voluntary for the TPHs to determine whether to make use of the new enhancements of the Risk Monitor Mechanism. To the extent that the proposed changes may make the Exchange a more attractive trading venue for market participants on other exchanges, such market participants may elect to become Exchange 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[21] 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 to provide TPHs with additional tools and greater flexibility for managing their potential risk as soon as possible. Accordingly, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[22]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2018–024 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.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–C2–2018–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing 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–C2–2018–024, and should be submitted on or before January 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27203 Filed 12–14–18; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84789; File No. SR–CboeBZX–2018–085]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List Shares of the Cambria Global Momentum ETF Under Rule 14.11(i), Managed Fund Shares

December 11, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2018, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list shares of the Cambria Global Momentum ETF (the ''Fund'') under Rule 14.11(i), (''Managed Fund Shares''),[5] which governs the listing and trading of Managed Fund Shares on the Exchange.[6] The Exchange notes that the Fund is currently listed on Arca and the Shares are already trading on the Exchange pursuant to unlisted trading privileges, as provided in Rule 14.11(j).

The text of the proposed rule change is also available on the Exchange's website (*www.cboe.com*), 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 list shares of the Cambria Global Momentum ETF (the ''Fund'') under Rule 14.11(i), (''Managed Fund Shares''),[7] which governs the listing and trading of Managed Fund Shares on the Exchange.[8] The Exchange notes that the Fund is currently listed on Arca and the Shares are already trading on the Exchange pursuant to unlisted trading privileges, as provided in Rule 14.11(j).

The Shares are offered by the Cambria ETF Trust (the ''Trust''), a Delaware statutory trust which is registered with the Commission as an open-end management investment company.[9]

Description of the Shares and the Fund

Cambria Investment Management, L.P. (''Cambria'' or the ''Adviser'') serves as the investment adviser of the Fund. SEI Investments Distribution Co. (the ''Distributor'') is the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange notes that the Commission previously approved a proposal to list and trade shares of the Fund on Arca. *See* Securities Exchange Act Release No. 73004 (September 5, 2014), 79 FR 54333 (September 11, 2014) (SR–NYSEArca–2014–76) (the ''Prior Proposal''). This proposal is substantively identical to the Prior Proposal and the issuer represents that all material representations contained within the Prior Proposal remain true. As further described below, the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares.

[6] The Commission approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[7] The Exchange notes that the Commission previously approved a proposal to list and trade shares of the Fund on Arca. *See* Securities Exchange Act Release No. 73004 (September 5, 2014), 79 FR 54333 (September 11, 2014) (SR–NYSEArca–2014–76) (the ''Prior Proposal''). This proposal is substantively identical to the Prior Proposal and the issuer represents that all material representations contained within the Prior Proposal remain true. As further described below, the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares.

[8] The Commission approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[9] The Trust is registered under the 1940 Act. On September 21, 2018, the Trust filed an amendment to the Trust's registration statement on Form N–1A under the Securities Act of 1933 (the ''1933 Act'') (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–180879 and 811–22704) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30340 (January 4, 2013) (''Exemptive Order''). Investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

underwriter and distributor of the Fund's Shares. SEI Investments Global Funds Services (''SEI'') serves as the fund accountant and administrator of the Fund. Brown Brothers Harriman & Co. serves as the Custodian and Transfer Agent of the Fund's assets.

Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[10] In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event that (a) the Adviser or any sub-adviser becomes registered as, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Principal Investment Policies

According to the Registration Statement, the Fund will seek to preserve and grow capital from investments in the U.S. and foreign equity, fixed income, commodity and currency markets, independent of market direction. The Fund will be considered a ''fund of funds'' that seeks to achieve its investment objective by primarily investing in other 1940 Act-registered exchange-traded funds (''ETFs'') and other exchange traded products (''ETPs'') including, but not limited to, exchange-traded notes (''ETNs''),[11] exchange traded currency trusts, and closed-end funds (together, ''Underlying Vehicles'') [12] that offer diversified exposure, including inverse exposure, to global regions (including emerging markets), countries, styles (*i.e.,* market capitalization, value, growth, etc.) and sectors. Under normal market conditions,[13] the Fund will invest at least 80% of its net assets in the securities of Underlying Vehicles.

According to the Registration Statement, the Fund will seek to preserve and grow capital by producing absolute returns with reduced volatility and manageable risk and drawdowns. The Fund will invest in Underlying Vehicles spanning all the major world asset classes including equities, bonds (including high yield bonds, which are commonly referred to as ''junk bonds''), real estate, derivatives, commodities, and currencies. The Adviser will actively manage the Fund's portfolio utilizing a quantitative strategy with risk management controls in an attempt to protect capital. Through Underlying Vehicles, the Fund may have exposure to companies in any industry and of any market capitalization. Under normal market conditions, the Fund expects to invest at least 40% of its net assets, including through investments in Underlying Vehicles, in securities of issuers located in at least three different countries (including the United States).

Through Underlying Vehicles, the Fund may invest in shares of real estate investment trusts (''REITs''), which are pooled investment vehicles that invest primarily in real estate or real estate-related loans and trade on a U.S. exchange.

Other Investments

While, under normal market conditions, the Fund will invest at least 80% of its net assets in Underlying Vehicles, as described above, the Fund may invest its remaining 20% of net assets in other securities and financial instruments, other than Underlying Vehicles, including futures contracts, cash and cash equivalents, as described below.

Exchange-Traded Equity Securities. The Fund may invest in exchange-traded common stocks. The Fund also may invest in foreign securities by purchasing ''Depositary Receipts'', including American Depositary Receipts (''ADRs''), European Depositary Receipts (''EDRs'') and Global Depositary Receipts (''GDRs'') or other securities convertible into securities of issuers based in foreign countries. These securities may not necessarily be denominated in the same currency as the securities which they represent.[14]

[10] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[11] As described in the Registration Statement, ETFs are registered investment companies whose shares are exchange-traded and give investors a proportional interest in the pool of securities and other assets held by the ETF. ETPs are exchange-traded equity securities whose value derives from an underlying asset or portfolio of assets, which may correlate to a benchmark, such as a commodity, currency, interest rate or index. ETFs are one type of ETP. ETNs are unsecured and unsubordinated debt securities whose value derives, in part, from an underlying asset or benchmark and, in part, from the credit quality of the securities' issuer.

[12] For purposes of this filing, the term ''Underlying Vehicles'' includes Index Fund Shares (as described in BZX Rule 14.11(c)); Index-Linked Securities (as described in Rule BZX Rule 14.11(d)); Portfolio Depositary Receipts (as described in BZX Rule 14.11(b)); Trust Issued Receipts (as described in BZX Rule 14.11(f)(1)); Commodity-Based Trust Shares (as described in BZX Rule 14.11(e)(4)); Currency Trust Shares (as described in BZX Rule 14.11(e)(5)); Commodity Index Trust Shares (as described in BZX Rule 14.11(e)(6)); Commodity Futures Trust Shares (as described in BZX Rule 14.11(e)(7)); Managed Fund Shares (as described in BZX Rule 14.11(i)); and closed-end funds (as described in BZX Rule 14.8(e)). All Underlying Vehicles will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse or leveraged (*e.g.,* 2X, –2X, 3X or –3X) Underlying Vehicles.

[13] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[14] Generally, ADRs, in registered form, are denominated in U.S. dollars and are designed for use in the U.S. securities markets, GDRs, in bearer form, are issued and designed for use outside the United States, and EDRs, in bearer form, may be denominated in other currencies and are designed for use in European securities markets. ADRs are receipts typically issued by a U.S. bank or trust

Continued

With respect to its exchange-traded equity securities investments, the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of the Intermarket Surveillance Group (''ISG'') or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

Fixed Income Securities. The Fund may invest in debt and other fixed income securities, as described below. Debt and other fixed income securities include fixed and floating rate securities of any maturity. Fixed rate securities pay a specified rate of interest or dividends. Floating rate securities pay a rate that is adjusted periodically by reference to a specified index or market rate. Fixed and floating rate securities may be issued by federal, state, local, and foreign governments and related agencies, and by a wide range of private issuers. The Fund's investments in debt and other fixed income securities will be limited to those described below.

The Fund may invest in indexed bonds, which are a type of fixed income security whose principal value and/or interest rate is adjusted periodically according to a specified instrument, index, or other statistic (*e.g.,* another security, inflation index, currency, or commodity).

The Fund may invest in securities issued or guaranteed by the U.S. Government, its agencies, instrumentalities, and political subdivisions; [15] securities issued by foreign governments, their authorities, agencies, instrumentalities, and political subdivisions; securities issued by supra-national agencies; [16] corporate debt securities; master demand notes; [17] Yankee dollar and Eurodollar bank certificates of deposit; time deposits; bankers' acceptances; commercial paper; [18] and inflation-indexed securities. The Fund may invest also in zero coupon securities, which may be issued by a wide variety of corporate and governmental issuers.

The Fund may invest in fixed income securities of any credit quality, from investment grade securities to high yield securities. Investment grade securities are securities rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations (''Rating Organizations'') rating that security, such as Standard & Poor's Ratings Services (''Standard & Poor's'') or Moody's Investors Service, Inc. (''Moody's''), or rated in one of the four highest rating categories by one Rating Organization if it is the only Rating Organization rating that security, or unrated, if deemed to be of comparable quality[19] by Cambria and traded publicly on the world market. The Fund, at the discretion of the Adviser, may retain a debt security that has been downgraded below the initial investment criteria.[20]

For securities that carry a rating assigned by a Rating Organization, Cambria will use the highest rating assigned by the Rating Organization to determine a security's credit rating. Commercial paper must be rated at least ''A–1'' or equivalent by a Rating Organization. Corporate debt obligations must be rated at least ''B-''or equivalent by a Rating Organization. For securities that are not rated by a Rating Organization, Cambria's internal credit rating will apply and be subject to equivalent rating minimums.

Futures. The Fund may invest in futures contracts on indices, currencies and commodities. The Fund will trade only futures contracts that are listed and traded on a U.S. board of trade. According to the Registration Statement, the Fund's investments in futures, will be subject to the limits on leverage imposed by the 1940 Act. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage that an investment company, such as the Fund, can obtain.

Cash and Cash Equivalents. The Fund may temporarily invest a portion of its assets in cash or cash equivalents pending other investments or to maintain liquid assets required in connection with some of the Fund's investments. Cash and cash equivalents include money market instruments, such as obligations issued or guaranteed by the U.S. Government, its agencies and/or instrumentalities (including government-sponsored enterprises), bankers' acceptances, bank certificates of deposit, repurchase agreements [21] and investment companies that invest primarily in such instruments (*i.e.,* money market funds). The Fund may hold funds in bank deposits in U.S. or foreign currency, including during the completion of investment programs.

Investments in Other Investment Companies. The Fund may invest in the securities of other investment companies to the extent permitted by law. The Fund may make significant

company evidencing ownership of the underlying securities. EDRs are European receipts evidencing a similar arrangement. GDRs are receipts typically issued by non-United States banks and trust companies that evidence ownership of either foreign or domestic securities. ADRs may be sponsored or unsponsored, but unsponsored ADRs will not exceed 10% of the Fund's net assets.

[15] U.S. Government securities include securities issued or guaranteed by the U.S. Government or its authorities, agencies, or instrumentalities. Foreign government securities include securities issued or guaranteed by foreign governments (including political subdivisions) or their authorities, agencies, or instrumentalities or by supra-national agencies. Different kinds of U.S. government securities and foreign government securities have different kinds of government support. For example, some U.S. government securities (*e.g.,* U.S. Treasury bonds) are supported by the full faith and credit of the U.S. Other U.S. government securities are issued or guaranteed by federal agencies or government-chartered or -sponsored enterprises but are neither guaranteed nor insured by the U.S. government (*e.g.,* debt securities issued by the Federal Home Loan Mortgage Corporation (''Freddie Mac''), Federal National Mortgage Association (''FNMA'' or ''Fannie Mae''), and Federal Home Loan Banks (''FHLBs''). Similarly, some foreign government securities are supported by the full faith and credit of a foreign national government or political subdivision and some are not.

[16] Supra-national agencies are agencies whose member nations make capital contributions to support the agencies' activities. Examples include the International Bank for Reconstruction and Development (the World Bank), the Asian Development Bank, the European Coal and Steel Community, and the Inter-American Development Bank.

[17] The Fund may invest in master demand notes that are denominated in U.S. dollars. Master demand notes are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of the Fund. The interest rate on a master demand note may fluctuate based upon changes in specified interest rates, be reset periodically according to a prescribed formula or be a set rate. Although there is no secondary market in master demand notes, if such notes have a demand future, the payee may demand payment of the principal amount of the note upon relatively short notice. Master demand notes are generally illiquid and therefore subject to the Fund's percentage limitations for investments in illiquid securities.

[18] Commercial paper consists of short-term promissory notes issued by corporations. Commercial paper may be traded in the secondary market after its issuance.

[19] In determining whether a security is of ''comparable quality'', the Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features (if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis and sector or industry analysis.

[20] Securities rated lower than Baa by Moody's, or equivalently rated by S&P or Fitch, are sometimes referred to as ''high yield securities'' or ''junk bonds.''

[21] A repurchase agreement is an agreement under which securities are acquired by the Fund from a securities dealer or bank subject to resale at an agreed upon price on a later date. The Fund may enter into repurchase agreements with banks and broker-dealers.

investments in money market funds. In addition, the Trust intends to enter into agreements with unaffiliated ETFs that permit such unaffiliated ETFs to sell, and the Fund to purchase, the unaffiliated ETFs' shares in excess of the limits imposed by Sections 12(d)(1)(A) and (B) of the 1940 Act.

Temporary Defensive Position. To respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities (*i.e.,* BBB or higher) and money market instruments (as described above). The Fund may be invested in these instruments for extended periods, depending on Cambria's assessment of market conditions.

Investment Restrictions

The Fund may invest in the securities of other investment companies to the extent that such an investment would be consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof.[22]

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company (''RIC'') under the Internal Revenue Code.[23]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser[24] and master demand notes, consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[25]

The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve inverse returns or leveraged returns (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A).[26]

Net Asset Value

The net asset value (''NAV'') of Shares will be calculated each business day by SEI as of the close of regular trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m., Eastern Time on each day that the NYSE is open. The Fund will calculate its NAV per Share by taking the value of its total assets, subtracting any liabilities, and dividing that amount by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV.

When calculating the NAV of the Fund's Shares, investments will generally be valued using market valuations. Market valuations are generally valuations (i) obtained from an exchange, a pricing service or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of a value supplied by an exchange, a pricing service or a major market maker (or dealer), in each case as approved by the Trust's Board of Trustees pursuant to the Trust's valuation policies and procedures. Thus, to the extent that the Fund uses a pricing vendor approved for the Trust by the Board, whether the pricing vendor bases valuations upon dealer quotes, a proprietary analysis of the relevant market, matrix pricing, sensitivity analysis, a combination of the above or any other means, the price provided by the pricing vendor may be considered a market valuation.

Exchange-traded equity securities, including Underlying Vehicles, common stocks and sponsored Depositary Receipts, as well as futures contracts, will be valued at the official closing price on their principal exchange or board of trade, or, lacking any current reported sale at the time of valuation, at the mean of the most recent bid and asked quotations on their principal exchange or board of trade. Unsponsored Depositary Receipts, fixed income securities (including bonds; U.S. Government obligations; corporate debt securities; securities issued by foreign governments and supra-national agencies; master-demand notes; Yankee dollar and Eurodollar bank certificates of deposit; time deposits; bankers' acceptances; commercial paper; inflation-indexed securities; zero coupon securities; and money market instruments) will be valued at the mean between the most recent bid and asked quotations.

Repurchase agreements will be valued at cost. Fixed-income instruments maturing in 60 days or less will be valued at amortized cost and those maturing in excess of 60 days will be valued at the midpoint of bid and asked quotations. Investments in non-exchange-traded investment companies (including money market funds) will be valued at their NAV.

Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current exchange rate on the date of valuation as quoted by one or more third parties.

If a market quotation is not readily available or is deemed not to reflect an instrument's market value, the Fund will determine its fair value pursuant to policies and procedures approved by the Board. The Fund may use fair valuation to price securities that trade on a foreign exchange, if any, when a significant event has occurred after the foreign exchange closes but before the time at which the Fund's NAV is calculated. In such cases, the Fund may use various criteria, including an evaluation of U.S. market moves after the close of foreign markets, in determining whether a foreign security's market price is reflective of market value and, if not, the fair value of the security. In general, in determining an instrument's fair value, the Fund may consider, among other things, price comparisons among multiple sources, corporate actions and news events, other financial indicators. Fair value pricing involves subjective judgments.

Accordingly, it is possible that the fair value determination for an instrument is materially different than the value that could be realized upon its sale.

[22] 15 U.S.C. 80a–12(d)(1).

[23] 26 U.S.C. 851.

[24] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers willing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[25] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[26] The Fund's broad-based securities market index is the Cambria Global Value Index.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will sell and redeem Shares in aggregations of 50,000 Shares (each, a ''Creation Unit'') on a continuous basis through the Distributor, without a sales load, at the NAV next determined after receipt of an order in proper form on any business day. The size of a Creation Unit is subject to change.

The purchase or redemption of Creation Units from the Fund must be effected by or through an ''Authorized Participant'' (*i.e.,* either a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'')) or a participant in the Depository Trust Company (''DTC'') with access to the DTC system, and who has executed an agreement (''Participant Agreement'') with the Distributor that governs transactions in the Fund's Creation Units.

The consideration for a Creation Unit of the Fund will be the ''Fund Deposit''. The Fund Deposit will consist of the ''In-Kind Creation Basket'' and ''Cash Component'', or an all cash payment (''Cash Value''), as determined by Cambria to be in the best interest of the Fund. The Cash Component will typically include a ''Balancing Amount'' reflecting the difference, if any, between the NAV of a Creation Unit and the market value of the securities in the ''In-Kind Creation Basket''.

If the NAV per Creation Unit exceeds the market value of the securities in the In-Kind Creation Basket, the purchaser will pay the Balancing Amount to the Fund. By contrast, if the NAV per Creation Unit is less than the market value of the securities in the In-Kind Creation Basket, the Fund will pay the Balancing Amount to the purchaser.

The Transfer Agent, in a portfolio composition file sent via the NSCC, generally will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time), a list of the names and the required number of shares of each security in the In-Kind Creation Basket to be included in the current Fund Deposit for the Fund (based on information about the Fund's portfolio at the end of the previous business day) (subject to amendment or correction). If applicable, the Transfer Agent, through the NSCC, also will make available on each business day, the estimated Cash Component or Cash Value, effective through and including the previous business day, per Creation Unit.

The announced Fund Deposit will be applicable, subject to any adjustments as described below, for purchases of Creation Units of the Fund until such time as the next-announced Fund Deposit is made available. From day to day, the composition of the In-Kind Creation Basket may change as, among other things, corporate actions and investment decisions by Cambria are implemented for the Fund's portfolio. The Fund reserves the right to accept a nonconforming (*i.e.,* custom) Fund Deposit.

The Fund may, in its sole discretion, permit or require the substitution of an amount of cash (''cash in lieu'') to be added to the Cash Component to replace any security in the In-Kind Creation Basket. The Fund may permit or require cash in lieu when, for example, the securities in the In-Kind Creation Basket may not be available in sufficient quantity for delivery or may not be eligible for transfer through the systems of DTC. Similarly, the Fund may permit or require cash in lieu when, for example, the Authorized Participant or its underlying investor is restricted under U.S. or local securities law or policies from transacting in one or more securities in the In-Kind Creation Basket.[27]

To compensate the Trust for costs incurred in connection with creation and redemption transactions, investors will be required to pay to the Trust a ''Transaction Fee'' as described in the Registration Statement.

According to the Registration Statement, Fund Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day. The redemption proceeds for a Creation Unit will consist of the ''In-Kind Redemption Basket'' and a ''Cash Redemption Amount'', or an all cash payment (''Cash Value''), in all instances equal to the value of a Creation Unit.

The Cash Redemption Amount will typically include a Balancing Amount, reflecting the difference, if any, between the NAV of a Creation Unit and the market value of the securities in the In-Kind Redemption Basket. If the NAV per Creation Unit exceeds the market value of the securities in the In-Kind Redemption Basket, the Fund will pay the Balancing Amount to the redeeming investor. By contrast, if the NAV per Creation Unit is less than the market value of the securities in the In-Kind Redemption Basket, the redeeming investor will pay the Balancing Amount to the Fund.

The composition of the In-Kind Creation Basket will normally be the same as the composition of the In-Kind Redemption Basket. Otherwise, the In-Kind Redemption Basket will be made available by the Adviser or Transfer Agent. The Fund reserves the right to accept a nonconforming (*i.e.,* custom) ''Fund Redemption''.

In lieu of an In-Kind Redemption Basket and Cash Redemption Amount, Creation Units may be redeemed consisting solely of cash in an amount equal to the NAV of a Creation Unit, which amount is referred to as the Cash Value. If applicable, information about the Cash Value will be made available by the Adviser or Transfer Agent.

The right of redemption may be suspended or the date of payment postponed:

(i) for any period during which the NYSE is closed (other than customary weekend and holiday closings);

(ii) for any period during which trading on the NYSE is suspended or restricted;

(iii) for any period during which an emergency exists as a result of which disposal of the Shares or determination of the Fund's NAV is not reasonably practicable; or

(iv) in such other circumstances as permitted by the Commission.

The Fund may, in its sole discretion, permit or require the substitution of an amount of cash (''cash in lieu'') to be added to the Cash Redemption Amount to replace any security in the In-Kind Redemption Basket. A Fund may permit or require cash in lieu when, for example, the securities in the In-Kind Redemption Basket may not be available in sufficient quantity for delivery or may not be eligible for transfer through the systems of DTC. Similarly, the Fund may permit or require cash in lieu when, for example, the Authorized Participant or its underlying investor is restricted under U.S. or local securities law or policies from transacting in one or more securities in the In-Kind Redemption Basket.

If it is not possible to effect deliveries of the securities in the In-Kind Redemption Basket, the Trust may in its discretion exercise its option to redeem Shares in cash, and the redeeming beneficial owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash that the Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its Shares

[27] The Adviser represents that, to the extent the Trust effects the creation of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

based on the NAV of Shares of the relevant Fund next determined after the redemption request is received in proper form (minus a Transaction Fee, including a variable charge, if applicable, as described in the Registration Statement).[28]

The Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities that differs from the exact composition of the In-Kind Redemption Basket, or cash in lieu of some securities added to the Cash Component, but in no event will the total value of the securities delivered and the cash transmitted differ from the NAV. Redemptions of Fund Shares for the In-Kind Redemption Basket will be subject to compliance with applicable federal and state securities laws and the Fund (whether or not it otherwise permits cash redemptions) reserves the right to redeem Creation Units for cash to the extent that the Trust could not lawfully deliver specific securities in the In-Kind Redemption Basket upon redemptions or could not do so without first registering the securities in the In-Kind Redemption Basket under such laws.

When cash redemptions of Creation Units are available or specified for the Fund, they will be effected in essentially the same manner as in-kind redemptions. In the case of a cash redemption, the investor will receive the cash equivalent of the In-Kind Redemption Basket minus any Transaction Fees.

Availability of Information

The Fund's website (*www.cambriafunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund (1) the prior business day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[29] and a calculation of the premium and discount of the closing price or Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares during Regular Trading Hours,[30] the Fund will disclose on its website the Disclosed Portfolio as defined in BZX Rule 14.11(i)(3)(B), that will form the basis for the Fund's calculation of NAV at the end of the business day.[31]

On a daily basis, the Fund will disclose on its website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of BZX via NSCC. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), a Fund's Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov*. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

Quotation and last sale information for the Shares will be available via the Exchange proprietary quote and trade services and via the Consolidated Tape Association (''CTA'') high-speed line.

Intra-day price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms. Intra-day price information on such assets will also be available through free and subscription services that can be accessed by Authorized Participants and other investors. For example, pricing information for exchange-traded instruments (including exchange-traded equity securities (such as common stocks, ETNs, closed-end funds, and Underlying Vehicles), futures contracts and sponsored Depositary Receipts), will be readily available from the websites of the exchanges or boards of trade trading such securities or futures contracts, automated quotation systems, published or other public sources, and subscription services such as Bloomberg or Reuters. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Pricing information for unsponsored Depositary Receipts, non-exchange-traded investment company securities, fixed income securities (including bonds; U.S. Government obligations; corporate debt securities; securities issued by foreign governments and supra-national agencies; master-demand notes; Yankee dollar and Eurodollar bank certificates of deposit; time deposits; bankers' acceptances; commercial paper; inflation-indexed securities; and zero coupon securities), repurchase agreements, and money market instruments will be available through brokers and dealers and/or subscription services, such as Markit, Bloomberg and Thompson Reuters. In addition, the Intraday Indicative Value, as defined in BZX Rule 14.11(i)(3)(C), will be widely disseminated at least every 15 seconds during Regular Trading Hours by one or more major market data vendors.[32] The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund and provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies,

[28] The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

[29] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and their service providers.

[30] As defined in Rule 1.5(w), the term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[31] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[32] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values taken from CTA or other data feeds.

distributions and taxes is included in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[33] Trading in Shares of the Fund will be halted if the circuit breaker parameters in BZX Rule 11.18 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to BZX Rule 11.18, which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 14.11(i)(2)(C), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01. The Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the Shares of the Fund. At least 100,000 Shares will be outstanding upon the commencement of trading.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares.

The Exchange will communicate as needed regarding trading in the Shares, Underlying Vehicles, other exchange-traded equity securities, and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and Underlying Vehicles, other exchange-traded equity securities, and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Underlying Vehicles, other exchange-traded equity securities, and futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[34] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or party to a CSSA with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of listing on the Exchange, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening[35] and After Hours Trading Sessions[36] when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund website. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Fund Registration Statement.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[37] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the applicable initial and continued listing criteria in BZX Rule 14.11(i). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser to the investment company shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to

[33] *See* BZX Rule 11.18.

[34] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for each Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[35] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[36] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

[37] 15 U.S.C. 78f(b)(5).

information concerning the composition and/or changes to such investment company portfolio. The Exchange will communicate as needed regarding trading in the Shares, the Underlying Vehicles, other exchange-traded equity securities, and futures with other markets and other entities that are members of the ISG, and the Exchange may obtain trading information regarding trading in the Shares, the Underlying Vehicles, other exchange-traded equity securities, and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, the Underlying Vehicles, other exchange-traded equity securities, and futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[38] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE. Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or party to a CSSA with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event that (a) the Adviser or any sub-adviser becomes registered as, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), consistent with Commission guidance. The Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

[38] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Trading Hours. On each business day, before commencement of trading in Shares in the Regular Trading on the Exchange, the Adviser will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.

Quotation and last sale information for the Shares will be available via the Exchange proprietary quote and trade services and via the CTA high-speed line. Intra-day price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms. Intra-day price information on such assets will also be available through free and subscription services that can be accessed by Authorized Participants and other investors. For example, pricing information for exchange-traded securities (including exchange-traded equity securities (such as common stocks and Underlying Vehicles), futures contracts and sponsored Depositary Receipts), will be readily available from the websites of the exchanges or boards of trade trading such securities or futures contracts, automated quotation systems, published or other public sources, and subscription services such as Bloomberg or Reuters. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Pricing information for unsponsored Depositary Receipts, non-exchange-traded investment company securities, fixed income securities (including bonds; U.S. Government obligations; corporate debt securities; securities issued by foreign governments and supra-national agencies; masterdemand [sic] notes; Yankee dollar and Eurodollar bank certificates of deposit; time deposits; bankers' acceptances; commercial paper; inflation-indexed securities; and zero coupon securities), repurchase agreements, and money market instruments will be available through brokers and dealers and/or subscription services. Moreover, prior to the commencement of listing on the Exchange, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted under the conditions specified in BZX Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BZX Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. As noted above, investors will also have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information of the Shares. The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the transfer from Arca and listing of an additional actively-managed exchange-traded product on the Exchange, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 Act [39] and Rule 19b–4(f)(6) thereunder.[40]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that BZX is requesting approval to list a series of Managed Fund Shares that was previously approved by the Commission to list and trade, and is currently listed and traded, on Arca and that the Exchange has represented that this proposal is substantively identical to the Prior Proposal, and the issuer represents that all material representations contained within the Prior Proposal remain true.[41] Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[42]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR-CboeBZX–2018–085 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2018–085. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–085 and should be submitted on or before January 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27206 Filed 12–14–18; 8:45 am]

BILLING CODE 8011–01–P

[39] 15 U.S.C. 78s(b)(3)(A).

[40] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[41] *See supra* note 7.

[42] 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).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, December 19, 2018 at 9:00 a.m.

PLACE: The meeting will be held in Auditorium LL–002 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 9:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: The subject matters of the Open Meeting will be the Commission's consideration of:

- Whether to approve the 2019 budget of the Public Company Accounting Oversight Board and the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.
- Whether to issue a Request for Comment on the nature and content of quarterly reports and earnings releases issued by reporting companies.
- Whether to adopt Rule of Practice 194 pursuant to Section 15F(b)(6) of the Securities Exchange Act of 1934.
- Whether to propose rules under Section 15F(i)(2) of the Securities Exchange Act of 1934 that would require security-based swap dealers and major security-based swap participants to comply with certain risk mitigation techniques with respect to portfolios of security-based swaps not submitted for clearing to a central counterparty.
- Whether to adopt rules to implement Section 955 of the Dodd-Frank Wall Street Reform and Consumer Protection Act by requiring disclosure about the ability of a company's employees or directors to hedge or offset any decrease in the market value of equity securities granted as compensation to, or held directly or indirectly by, an employee or director.

• Whether to propose a new rule and rule amendments to allow funds to acquire shares of other funds (*i.e.,* ''fund of funds'' arrangements), including arrangements involving exchange-traded funds, without first obtaining exemptive orders from the Commission.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted, or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: December 12, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–27317 Filed 12–13–18; 11:15 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2018–0061]

Agreement on Social Security Between the United States and Slovenia; Entry Into Force

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: We are giving notice that an agreement coordinating the United States (U.S.) and Slovenian social security programs will go into force effective on February 1, 2019. The Agreement with Slovenia, which was signed on January 17, 2017, is similar to U.S. social security agreements already in force with 28 other countries—Australia, Austria, Belgium, Brazil, Canada, Chile, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea (South), Luxembourg, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom, and Uruguay. Section 233 of the Social Security Act authorizes agreements of this type.

SUPPLEMENTARY INFORMATION: Like the other agreements, the U.S.-Slovenian Agreement eliminates dual social security coverage. This situation exists when a worker from one country works in the other country and has coverage under the social security systems of both countries for the same work. Without such agreements in force, when dual coverage occurs, the worker, the worker's employer, or both may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-Slovenian Agreement, a worker who is sent by an employer in one country to work in the other country for 5 or fewer years remains covered only by the sending country. The Agreement includes additional rules that eliminate dual U.S. and Slovenian coverage in other work situations.

The Agreement also helps eliminate situations where workers suffer a loss of benefit rights because they have divided their careers between the two countries. Under the Agreement, workers may qualify for partial U.S. benefits or partial Slovenian benefits based on combined (totalized) work credits from both countries.

Persons who wish to receive copies of the agreement or who want more information about its provisions may write to the Social Security Administration, Office of Data Exchange, Policy Publications, and International Negotiations, 4700 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235 or visit the Social Security website at *www.socialsecurity.gov/international.* The full text of the agreement and its accompanying administrative arrangement are available at *https://www.ssa.gov/international/Agreement_Texts/slovenia.html.*

Nancy A. Berryhill,

Acting Commissioner of Social Security.

[FR Doc. 2018–27166 Filed 12–14–18; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 33 (Sub–No. 336X)]

Union Pacific Railroad Company—Abandonment Exemption—in Douglas County, Neb.

On November 27, 2018, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 0.28-mile rail line known as the Omaha Belt Industrial Lead, extending from milepost 485.55 near Grover Street to milepost 485.27, the point switch on the Wimmer Wye just west of Dahlman Avenue, all in Omaha, Douglas County, Neb. (the Line). The Line traverses United States Postal ZIP Codes 68105 and 68107.

UP states that it seeks to abandon the Line and sell the track and property to Darling Ingredients, the only shipper on the Line, which plans to use the track and property to support expansion of its plant, and that UP will continue to serve Darling Ingredients in substantially the same manner as it does today.

According to UP, based on the information in its possession, the Line does not contain federally granted rights-of-way, and any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 15, 2019.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption.[1] Each OFA must be accompanied by a $1,800 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 3, 2019. Each trail request must be accompanied by a $300 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 33 (Sub-No. 336X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001; and (2) Jeremy M. Berman, Union Pacific Railroad Company, 1400 Douglas Street, MS #1580, Omaha, NE 68179. Replies to the petition are due on or before January 3, 2019.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's

[1] The Board modified its OFA procedures effective July 29, 2017. Among other things, the OFA process now requires potential offerors in all abandonment and discontinuance proceedings to file a formal expression of intent to file an offer. The process also requires potential offerors, in their formal expression of intent, to make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly available information. *See Offers of Financial Assistance,* EP 729 (STB served June 29, 2017); 82 FR 30,997 (July 5, 2017).

Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service (FRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: December 12, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2018–27261 Filed 12–14–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice to Manufacturers of Lithium-ion Secondary Cell Battery Packs or Comparable Secondary Cell Battery Packs

AGENCY: Federal Aviation Administration (FAA), U.S. DOT.

ACTION: Notice; Request for Information.

SUMMARY: Projects funded under the Airport Improvement Program (AIP) must meet the requirements of Title 49 Buy American Preferences. The FAA is considering issuing waivers to foreign manufacturers of Lithium-ion Secondary Cell Battery Packs, or any comparable secondary cell battery packs, that meet the requirements of eligible airport-dedicated vehicles identified in Title 49 Zero-Emission Airport Vehicles and Infrastructure Program. This section allows the FAA to award Airport Improvement Program (AIP) grant funds for the acquisition and operation of zero-emissions vehicles (ZEVs) at an airport, including the construction or modification of infrastructure to facilitate the delivery of fuel and services necessary for the use of such vehicles. The FAA is requesting any information from battery makers on the availability of lithium-ion secondary cell battery packs or comparable products manufactured in the U.S. and capable of meeting heavy-duty transit applications of the ZEV and ''FAA Buy American'' requirements of the AIP.

DATES: Information requested must be received by January 16, 2019.

FOR FURTHER INFORMATION CONTACT: Carlos N. Fields, Airport Planning and Programming, APP 520, Room 619, FAA, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8826; email *carlos.fields@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA manages a Federal grant program for the planning and development of public-use airports called the Airport Improvement Program (AIP). AIP grant funds support awards made to eligible projects under the Airport Zero Emissions Vehicle (ZEV) and Infrastructure Pilot Program. All AIP grant recipients, regardless of program affiliation, must follow Title 49, U.S.C. 50101, Buy American Preferences.

Under Title 49, U.S.C. 50101(b)(2), the Secretary of Transportation may waive the Buy American Preference requirement if the goods are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality.

The purpose of this notice is to request manufacturers of small-form-factor secondary cells meeting the needs of particular airport applications, including heavy-duty transit equipment under the ZEV program, to submit a statement of interest and product description, a completed FAA Product Content Percentage Worksheet, and Product Final Assembly Questionnaire. Both forms are located on the FAA website: *https://www.faa.gov/airports/aip/buy_american/.* The submission must be sent via email and on company letterhead.

The FAA needs to determine if there is a sufficient quantity of lithium (or comparable) secondary cells produced in the United States capable of meeting the requirements to equip eligible airport-dedicated vehicles identified in Title 49, U.S.C. 47136a, Zero-Emission Airport Vehicles and Infrastructure.

If the FAA finds that lithium or comparable cells produced in the United States are not sufficiently available in both quantity and quality, then it may recommend to the Secretary of Transportation to issue a nationwide waiver to the foreign manufacturer(s) identified as being capable of meeting the technical requirements of eligible airport-dedicated vehicles identified in Title 49, U.S.C. 47136a, Zero-Emission Airport Vehicles and Infrastructure.

The FAA may recommend final approval of the waiver to the Secretary of Transportation, who has final decision authority.

Waivers will not be issued for manufacturers that do not fully meet the technical requirements. This ''nationwide waiver'' would signify the eligibility of equipment to be used on airport projects without having to receive separate project specific waivers. Having a nationwide waiver allows projects to start quickly without have to wait for the Buy American analysis to be completed for every project.

Issued in Washington, DC on December 11, 2018.

Michael S. Hines,

Acting Manager, Airports Financial Assistance Division.

[FR Doc. 2018–27252 Filed 12–14–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0086]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that on October 5, 2018, the Texas State Railroad (TSR), on behalf of the Texas & Eastern Railroad, a subsidiary of The Western Group, petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 and 224. FRA assigned the petition Docket Number FRA–2018–0086.

Specifically, TSR requests relief from 49 CFR 215.303, *Stenciling of restricted cars,* and 49 CFR part 224, *Reflectorization of Rail Freight Rolling Stock,* for 14 TSR freight cars. Each of these freight cars is more than 50 years old, measured from the date of original construction, and is the subject of a parallel petition for Special Approval for continued operation under § 215.203(c). TSR states that the required stenciling and reflectorization would violate the historic impression that the cars are maintained to preserve.

TSR further states that these freight cars have been inspected by its shop personnel and have been deemed safe for service. The restricted cars are limited in their service by speed, lading and territory, specifically, its 29-mile railroad, at speeds not exceeding 25 miles per hour, with light tonnage (if any), in accordance with Part 215. The cars will never be subject to regular railroad interchange operations. TSR states that its restricted cars will always be operated in a context that ensures that each car and its restrictions and

limitations are readily accessible and known both to TSR and to FRA.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by January 31, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–27214 Filed 12–14–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0108]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on December 4, 2018, the San Pedro Valley Railroad (SPVR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 229.23(a). FRA assigned the petition Docket Number FRA–2018–0108.

Specifically, SPVR seeks relief from 49 CFR 229.23(a), which requires that railroads perform periodic inspections ''only where adequate facilities are available,'' and that ''a locomotive shall be positioned so that a person may safely inspect the entire underneath portion of the locomotive.'' SPVR explains the railroad operates a small, rural switching operation with one locomotive in Willcox, AZ, and does not have an inspection pit. SPVR states that quarterly periodic inspections do not justify a costly inspection pit, which would entail extensive excavation, require a pumping system to remove storm water, and would create a safety hazard to the public. Finally, SPVR states it has been performing periodic inspections without the use of a pit for several years without accident or incident.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by January 31, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–27211 Filed 12–14–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2018–0184]

Agency Request for Approval of a New Information Collection: Mariner Survey

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments

about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The collection involves a biennial survey of appropriately credentialed U.S. merchant mariners to determine their availability and willingness to serve on U.S. government-owned sealift ships or commercial ships in the event of a war, armed conflict, national emergency, or maritime mobilization need (hereinafter collectively called ''National Need''). The information to be collected will be used by MARAD and is necessary to assess the emergency preparedness of the nation's sealift fleet.

DATES: Written comments should be submitted by February 15, 2019. MARAD will consider comments filed after this date to the extent practicable.

ADDRESSES: You may submit comments identified by Docket No. MARAD–2018–0184 through one of the following methods:

- *Electronic Submission:* Go to *http://www.regulations.gov.* Search by using the docket number (provided above). Follow the instructions for submitting comments on the electronic docket site.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 of the Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number.

Note: All comments received, including any personal information, will be posted without change to the docket and is accessible via *http://www.regulations.gov*. Input submitted online via *www.regulations.gov* is not immediately posted to the site. It may take several business days before your submission is posted.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room PL–401 of the Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management Facility's telephone number is 202–366–9826 or 202–366–9317, the fax number is 202–493–2251.

FOR FURTHER INFORMATION CONTACT: You may contact Nuns Jain, Maritime Administration, at 202–385–0115 or by electronic mail at *Nuns.Jain@dot.gov.* You may send mail to Nuns Jain at Maritime Administration, Building 19, Suite 300, 7737 Hampton Boulevard, Norfolk, Virginia 23505. If you have questions on viewing the Docket, call Docket Operations, telephone: 202–366–9826 or 202–366–9317.

SUPPLEMENTARY INFORMATION:

Title of Collection: Mariner Survey.

OMB Control Number: 2133–NEW.

Form Number: TBD.

Type of Review: New information collection.

Background: The Mariner Survey project will conduct a biennial survey of appropriately credentialed U.S. merchant mariners to determine their availability and willingness to serve on short notice on U.S. government-owned sealift ships or commercial ships during a period of National Need. Responses will be primarily collected via an online survey, with a mail survey option.

Respondents: Appropriately credentialed U.S. Merchant Mariners.

Affected Public: Individuals or Households.

Total Estimated Number of Responses: 6,545.

Frequency: Every two years.

Estimated Time per Respondent: 30 minutes.

Total Estimated Number of Annual Burden Hours: 3,273.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

Dated: December 12, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2018–27210 Filed 12–14–18; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL REGISTER

Vol. 83 Monday,

No. 241 December 17, 2018

Part II

Corporation for National and Community Service

45 CFR Parts 2551, 2552, and 2553

Senior Corps: Senior Companion Program, Foster Grandparent Program, Retired and Senior Volunteer Program; Final Rule

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2551, 2552, and 2553

RIN 3045–AA63

Senior Corps: Senior Companion Program, Foster Grandparent Program, Retired and Senior Volunteer Program

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: On February 14, 2018, the Corporation for National and Community Service (CNCS) proposed changes to existing regulations under the Domestic Volunteer Service Act of 1973, as amended, for the following Senior Corps programs: Foster Grandparent Program (FGP), Senior Companion Program (SCP), and the Retired Senior Volunteer Program (RSVP). The final rule will increase flexibility in program administration while maintaining accountability at the local level, correct grammatical errors, update terminology and streamline requirements for more effective administration of projects in local communities.

DATES: This final rule is effective January 31, 2019.

FOR FURTHER INFORMATION CONTACT: Jill Sears, Senior Corps, at the Corporation for National and Community Service, 250 E Street SW, Washington, DC 20525, phone 303–390–2211. The TDD/TTY number is 800–833–3722.

SUPPLEMENTARY INFORMATION:

I. Background

The National Senior Service Corps, known today as Senior Corps, is comprised of three separate programs; the Senior Companion Program (SCP), the Foster Grandparent Program (FGP) and the Retired and Senior Volunteer Program (RSVP).

The SCP engages low-income older adults to help their more frail peers remain independent in their homes. Senior Companions provide companionship and support to older adults in need of extra assistance to remain at home or in the community for as long as possible, as well as provide respite for caregivers. Senior Companions receive a small stipend enabling them to participate without cost to themselves.

The FGP engages low-income older adults in opportunities to provide one-to-one mentoring, nurturing, and support to children with special or exceptional needs, or who are in academic, social, or financial disadvantage. Foster Grandparents receive a small stipend enabling them to participate without cost to themselves.

RSVP promotes the engagement of older persons as community resources in planning for community improvement and in delivery of volunteer services. RSVP matches the skills of older adults, who are willing to help with local organizations, with the identified needs of the community.

In 1973, Congress enacted the Domestic Volunteer Service Act of 1973 (DVSA), Senior Corps' enabling legislation. Senior Corps continues to retain its purpose, as stated in the DVSA, ''to provide opportunities for senior service to meet unmet local, State, and national needs in the areas of education, public safety, emergency and disaster preparedness, relief, and recovery, health and human needs, and the environment.''

In 1990, Congress enacted the National and Community Service Act of 1990 (NCSA), the enabling legislation that expanded national and community service initiatives throughout the United States. In 1994, the Corporation for National and Community Service (CNCS) was established pursuant to the National and Community Service Trust Act of 1993; at this time, the operations of all service programs previously administered by the former federal agency, ACTION (the Federal Domestic Volunteer Agency), including Senior Corps, began to be administered by CNCS. Since 1994, Senior Corps continues to be primarily operated and administered under the DVSA.

In 2009, Congress enacted the Edward M. Kennedy Serve America Act of 2009 (Serve America Act), which contained certain amendments to both the DVSA and the NCSA. With regard to Senior Corps, the Serve America Act amendments largely related to initiating competition for the RSVP, decreasing the age limit for volunteers from 60 to 55 and modifying the income eligibility requirements for SCP and FGP volunteers.

II. Discussion of the Final Rule

The final rule includes modifications to current program requirements and technical updates to the three Senior Corps programs: SCP, FGP and RSVP. To modify and update program requirements, CNCS published a notice of proposed rulemaking in the **Federal Register** on February 14, 2018. The final rule reflects CNCS's consideration of the comments it received. The final rule clarifies several requirements where the proposed language introduced unintended ambiguity. In addition, CNCS made minor technical corrections to the proposed language.

A. Senior Companion Program

For the SCP, changes are applicable to: Subpart A, General, which includes technical updates to definitions and the addition or subtraction of certain definitions; Subpart B, Eligibility and Responsibility of a Sponsor, which includes modifications to specific administrative responsibilities and technical updates; Subpart C, Suspension Termination and Denial of Refunding, which includes technical updates and clarifying language; Subpart D, Senior Companion Eligibility, Status and Cost Reimbursements, which includes: Technical updates, such as updating the income exclusion list to specify public benefits and disability benefits, and updating the list of what is considered income for purposes of determining eligibility to serve to include retirement saving plans; and substantive updates, such as removing the requirement for annual physicals and clarification of language to demonstrate which cost reimbursements are optional and which are required; Subpart E, Senior Companion Terms of Service, which includes reducing the minimum hour requirement and establishing annual minimum and maximum hour requirements, and making technical updates; Subpart F, Responsibilities of a Volunteer Station, which includes technical updates; Subpart G, Senior Companion Placement and Assignments, which includes the addition of a new section that consolidates all regulations regarding Senior Companion Leaders, and technical updates; Subpart I, Application and Fiscal Requirements, which includes technical updates, clarification of how applications are made to CNCS, and the removal of regulations for the direct benefit ration, or ''80/20 rule''; Subpart J, Non-Stipended Senior Companions, which includes consolidation of regulations and technical updates; Subpart K, Non-Corporation Funded SCP Projects, which includes technical updates; and Subpart L, Restrictions and Legal Representation, which includes technical updates.

B. Foster Grandparent Program

For the FGP, changes are applicable to: Subpart A, General, which include technical updates to definitions and the addition or modification of certain definitions; Subpart B, Eligibility and Responsibility of a Sponsor, which include modifications to specific administrative responsibilities and

technical updates; Subpart C, Suspension Termination and Denial of Refunding, which include technical updates; Subpart D, Foster Grandparent Eligibility, Status and Cost Reimbursements, which includes: Technical updates, such as updating the income exclusion list to specify public benefits and disability benefits, updating the list of what is considered income for purposes of determining eligibility to serve to include retirement saving plans; and substantive updates, such as removing the requirement for annual physicals and clarification of language to demonstrate what cost reimbursements are optional and what are required; Subpart E, Foster Grandparent Terms of Service, which include reducing the minimum hour requirement and establishing annual minimum and maximum hour requirements, and technical updates; Subpart F, Responsibilities of a Volunteer Station, which include technical updates; Subpart G, Foster Grandparent Placement and Assignments, which include technical updates; Subpart H, Children Served, which include language updates; Subpart I, Application and Fiscal Requirements, which include technical updates, clarification of how applications are made to CNCS, and the removal of regulations for the direct benefit ration, or ''80/20 rule''; Subpart J, Non-Stipended Foster Grandparents, which include consolidation of regulations and technical updates; Subpart K, Non-Corporation Funded Foster Grandparent Program Projects, which include technical updates; and Subpart L, Restrictions and Legal Representation, which include technical updates.

C. RSVP

For the RSVP, changes are applicable to: Subpart A, General, which include technical updates to definitions and the addition or modification of certain definitions; Subpart B, Eligibility and Responsibility of a Sponsor, which include modifications to specific administrative responsibilities and technical updates; Subpart C, Suspension Termination and Denial of Refunding, which include technical updates; Subpart D, Eligibility, Cost Reimbursements and Volunteer Assignments, which include technical updates and clarification of language to demonstrate what cost reimbursements are optional and what are required; Subpart E, Volunteer Terms of Service, which include technical updates; Subpart F, Responsibilities of a Volunteer Station, which include the removal of a cap on volunteers used to assist with project administration and support as well as technical updates; Subpart G, Application and Fiscal Requirements, which include technical updates, and the removal of regulations that were specific to the enactment of competition for RSVP in 2013; Subpart H, Non-Corporation Funded Projects, which include technical updates; Subpart I, Restrictions and Legal Representation, which include technical updates; and Subpart J, Performance Measurement, which include consolidation of this part as well as clarification of grantee responsibilities.

III. Non-Regulatory Matters

There are no non-regulatory matters to clarify.

IV. Comments and Responses

CNCS published the proposed rule on February 14, 2018 in the **Federal Register** with a 60-day comment period that ended on April 16, 2018. We received over 130 comments to the proposed rule. Commenters identified themselves, largely, as representatives of CNCS grantees required to comply with the rule, current Senior Corps volunteers impacted by the rule, and prospective volunteers interested in serving through Senior Corps programs. Commenters also consisted of CNCS's Office of Inspector General, and members of the public.

CNCS received overwhelming support for the proposed rule changes. For instance, we received overwhelming support for the elimination of the language requiring that a sponsor expend a sum equal to at least 80% of the total budget on expenses directly benefitting SCP and FGP volunteers, also known as the ''Direct Benefit Ratio rule'' or the ''80/20 rule''. Many commenters agreed that the elimination of the Direct Benefit Ratio rule reduces administrative burden for grantees, increases budgetary flexibility, allows grantees to focus on the delivery of high quality program services, and removes a duplicative and onerous requirement.

We also received strong support for reducing the required hours of service in SCP and FGP from ''a minimum of 15 hours per week and a maximum of 40 hours per week'' to ''a minimum of 260 hours annually, or a minimum of 5 hours per week''. Many commenters agreed that the reduction in required hours of service increases program flexibility, program reach to communities in need, and volunteer recruitment.

In addition, we received overwhelming support for the elimination of the annual physical examination requirement for SCP and FGP volunteers. Commenters indicated that the requirement may not properly assess one's ability to serve, and noted that a similar eligibility requirement does not exist in other national service programs. Some commenters said they found the annual paperwork requirement to be burdensome.

We also received overwhelming support for reducing the required annual in-service training hours for SCP and FGP volunteers. Commenters mentioned the diminishing value of repetitive training content from year-to-year. Commenters also mentioned the desire to optimize programmatic resources so that volunteers spend as much time as possible providing direct services to beneficiaries. Commenters agreed that reducing the required annual in-service training hours still achieves our intention to ensure that SCP and FGP volunteers are well-trained and provided valuable adult learning opportunities aimed at personal enrichment and enhancing performance of service assignments.

Furthermore, CNCS received strong support for defining the term ''Proprietary Health Care Organization'' for SCP, FGP, and RSVP, and for expanding the FGP definition of ''Children having exceptional needs'' to include ''behavioral disorders'' and ''math and other educational needs.'' Also, many commenters expressed the view that the requirement that meal times be specified in the goal statement of a volunteer's service activity in order for SCP and FGP volunteers to accrue a stipend during those meal times is unnecessary, and supported that elimination of the requirement. Finally, CNCS received strong support for the elimination of the current RSVP requirement that states that ''no more than 5% of the total number of volunteers budgeted for the project are assigned to it in administrative or support positions.'' CNCS agrees that these changes will strengthen grantee program operations, reduce administrative burden, and clarify the meanings of defined terms. The changes will also eliminate certain unnecessary requirements that are redundant because the goals of these requirements are already achieved through other required programmatic and budgetary measures.

The comments and CNCS's responses are set forth below.

A. Definitions

Comment: We received comments recommending that we modify the current definition of ''stipend'' for the SCP and FGP programs, at 45 CFR 2551.12(s) and 45 CFR 2552.12(v), to

state whether there is a maximum stipend level and/or whether a maximum stipend level may be set by projects locally.

Response: The current definition of ''stipend'' for SCP and FGP ensures that stipend amounts are not subject to a specified maximum. In addition, because the amount of the stipend is required to be set nationally, a maximum stipend level may not be set by projects locally. Therefore, CNCS will not modify the current definition of ''stipend'' found at 45 CFR 2551.12 and 45 CFR 2552.12.

Comment: CNCS received comments seeking clarification asking the agency to set exact licensure or certification requirements within the requirement for SCP, FGP and RSVP that a ''Volunteer station'' must be licensed or otherwise certified, when required, by the appropriate state or local government, as currently set forth at 45 CFR 2551.12, 45 CFR 2552.12, and 45 CFR 2553.12.

Response: CNCS has determined that the requirements as set forth in the proposed regulations provide the correct level of clarity and specificity, as each state or local government may have its own rules defining necessary licensing and certification and these rules may vary by locality. Therefore, CNCS is not modifying language on ''volunteer station'' requirements for the three programs (45 CFR 2551.12, 45 CFR 2552.12, and 45 CFR 2553.12).

B. Senior Corps Project Staffing Requirements

Comment: We received a comment recommending that CNCS clarify the requirement that currently exists at 45 CFR 2551.25(c), 45 CFR 2552.25(c), and 45 CFR 2553.25(c), that addresses whether an exception may be made to the requirement that a SCP, FGP or RSVP project director work full-time.

Response: The current language in the regulations provides sufficient clarity regarding when an exception may be made to the requirement that a project director work in that capacity on a full-time basis. The language in all three regulations explicitly states that ''a sponsor may negotiate the employment of a part-time project director with CNCS when the sponsor can demonstrate that such an arrangement will not adversely affect the size, scope, or quality of project operations.'' Therefore further clarity is not required. (45 CFR 2551.25(c), 45 CFR 2552.25(c), and 45 CFR 2553.25(c)).

Comment: We received several comments that opposed CNCS's proposal to remove language that currently exists at 45 CFR 2551.25(e), 45 CFR 2552.25(e), and 45 CFR 2553.25(e) that requires a sponsoring organization to compensate project staff at a level that is comparable to other similar staff positions in the organization and/or in the project service area. Commenters stated that the removal of this rule would interfere with the ability of many project directors to negotiate an equitable salary, when needed.

Response: CNCS has considered the comments received and in response made revisions to the proposed changes to the SCP, FGP and RSVP regulations, so that sponsors have the discretion to negotiate with their project staff regarding appropriate compensation levels. The revised language states that a sponsoring organization shall ''Compensate project staff at a level that is comparable to similar staff positions in the sponsor organization and/or project service area, as is practicable'' (45 CFR 2551.25, 45 CFR 2552.25(e), 45 CFR 2553.25(e)).

C. Sponsor Administrative Requirements

Comment: We received comments in support of the elimination of the requirement for SCP and FGP projects to coordinate with local RSVP projects when SCP and FGP projects enroll non-stipended volunteers, which is currently required at 45 CFR 2551.101 and 45 CFR 2552.101. Commenters suggested that the requirement for SCP and FGP projects to coordinate with nearby RSVP projects when enrolling over-income volunteers increased administrative burden for all three projects. In addition, the requirement presumes that a prospective non-stipended volunteer is willing to transition to a different project that may not offer a similar volunteer opportunity.

Response: CNCS agrees with these comments. Not only may local RSVP projects offer volunteer opportunities that are dissimilar to SCP and FGP opportunities, potential non-stipended volunteers may prefer to serve through the SCP or FGP project that recruited them. Accordingly, SCP and FGP projects will no longer be required to coordinate with local RSVP projects when enrolling non-stipended SCP and FGP volunteers. Therefore, as set forth in the proposed rule, this requirement is eliminated in the final rule.

Comment: We received comments supporting the elimination of two recommendations that are currently set forth at 45 CFR 2551.102(e), CFR 2551.102(f), CFR 2552.102(e), and CFR 2552.102(f). These regulatory provisions recommended that: (1) Non-stipended volunteers serve at separate volunteer stations from stipended SCP and FGP volunteers, and (2) non-stipended volunteers serve an average number of hours per week that differed from the requirement for stipended volunteers.

Response: CNCS has determined that the elimination of certain service recommendations pertaining to non-stipended volunteers is warranted in order to make requirements for both stipended and non-stipended SCP and FGP volunteers consistent, equitable, and conducive to an effective service environment. In addition, the elimination of these recommendations ensures that service is carried out in a unified manner that promotes team building and strengthens impacts on communities. Moreover, we have determined that maintaining a separate and additional set of criteria related to non-stipended volunteers increases the administrative burden that is needed to support both stipended and non-stipended volunteers. Thus, as set forth in the proposed rule, we are eliminating the language which recommended that non-stipended volunteers serve at separate volunteer stations, and which recommended that non-stipended volunteers maintain average weekly service hours that differ from stipended volunteers.

Comment: We received comments in support of clarifying the regulation that currently exists at 45 CFR 2553.61 that specifies that a sponsor may also serve as a volunteer station. Commenters sought clarification that both the RSVP sponsor and the RSVP project itself may serve as a volunteer station as some commenters found the current language too vague.

Response: CNCS has determined that expressly stating that RSVP sponsors and RSVP projects themselves may serve as volunteer stations helps more clearly articulate the rule. Accordingly, the final rule provides this clarification. (45 CFR 2553.61).

Comment: We received comments related to the current requirement, at 45 CFR 2553.71(2)(e), that addresses RSVP grant cycles. Some commenters asked for clarification as to whether grant awards may be made for one three-year grant cycle or two three-year grant cycles. Other commenters requested that CNCS explicitly state that sponsoring organizations may be permitted to retain grant awards indefinitely, assuming satisfactory performance.

Response: CNCS finds the language in the current regulation to be sufficiently clear and therefore no further change to the language is needed. The regulation states that ''CNCS awards an RSVP grant for a specified period that is 3 years in duration with an option for a grant renewal of 3 years, if the grantee's performance and compliance with grant

terms and conditions are satisfactory.'' This regulation is pursuant to the statutory requirements related to the duration of RSVP grants and optional grant renewals. CNCS does not have the legal authority to indefinitely retain a sponsoring organization. Rather, we must carry out statutory requirements related to RSVP competition.

Comment: We received a variety of comments related to RSVP performance measure requirements as currently set forth at 45 CFR part 2553, subpart J. Some commenters took issue with the requirement, as currently set forth specifically at 45 CFR 2553.108, that if a sponsor fails to meet a target performance measure established in the approved grant application, CNCS may take one or more of the following actions: (a) Reduce the amount, suspend, or deny refunding of the grant or (b) terminate the grant. One commenter suggested that CNCS introduce language that supports training and technical assistance ahead of the actions listed in the proposed rule. Another commenter sought clarification as to who develops performance measures. Other comments sought clarification on the elimination of definitions related to performance measures that are currently set forth at 45 CFR 2553.12.

Response: CNCS appreciates the range of comments related to performance measure requirements. While we understand that the comments are indicative of an ongoing desire from practitioners for robust support materials related to measuring the impact of Senior Corps projects across the country, compliance with performance measure requirements is mandated by statute. Where possible, CNCS will continue to provide information on performance measures through guidance and training rather than through regulation. Support in understanding and implementing national performance measures is best delivered through guidance and training as these tools allow sponsors more flexibility with project design and implementation. Further, by setting performance measure requirements in regulation, CNCS and sponsors are less able to keep pace with evolving industry standards. In addition, applicants have the flexibility to elect specific measures from a list of national measures provided by CNCS with each grant opportunity. Moreover, including additional requirements into regulation may limit sponsor choice without providing a tangible benefit. Thus, CNCS is publishing the final rule related to 45 CFR 2553.12 and 45 CFR part 2553, subpart J, as proposed (45 CFR 2553.101–45 CFR 2553.109).

D. Volunteer Service Requirements

Comment: Commenters overwhelmingly support the reduction of required annual in-service training hours that currently exist for SCP and FGP volunteers at 45 CFR 2551.23(f) and 45 CFR 2552.23(f). Some commenters mentioned the diminishing value of repetitive training content from year-to-year and thereby support the overall reduction in required in-service training hours. Others mentioned preferring to spend time in direct service with beneficiaries. One commenter stated that fewer hours of training were required to maintain a previous professional training certification for similar services. In addition, we received a few comments requesting elimination of the training requirement altogether.

Response: CNCS maintains that an investment in ongoing training is important to provide SCP and FGP volunteers with valuable adult learning opportunities aimed at enhancing performance of service assignments and providing volunteers with personal enrichment. The proposed change does not alter the requirement that volunteers receive at least twenty (20) hours of pre-service orientation when they begin service, However, the proposed change clarifies ongoing in-service training language and reduces the minimum requirement from forty (40) hours to twenty-four (24) hours of in-service training annually. By reducing the minimum requirement for annual, ongoing in-service training, projects are able to allow volunteers to spend more time delivering services to beneficiaries each year. CNCS disagrees with the comments proposing the complete elimination of the training requirement as ongoing training ensures that volunteers continue to deliver high-quality service and that volunteers have opportunities for personal enrichment. Consequently, CNCS includes the proposed language reducing the minimum number of in-service training hours for SCP and FGP volunteers in the final rule. (45 CFR 2551.23(f) and 45 CFR 2552.23(f)).

E. Volunteer Eligibility Requirements

Comment: We received many comments strongly in favor of removing the annual physical examination requirement for SCP and FGP volunteers that currently exists at 45 CFR 2551.41(a)(2), 45 CFR 2551.46(d), 45 CFR 2552.41(a)(2), and 45 CFR 2552.46(d). Some commenters indicated that they found the requirement may not properly assess one's ability to serve. They noted that a similar eligibility requirement does not exist in other national service programs. Some commenters said they found the annual paperwork requirement to be burdensome. Many commenters supported the elimination of the annual physical examination requirement while also expressing a desire to retain physical examinations an option, and therefore as an allowable expense because some sponsoring organizations and/or volunteer stations like the idea of providing the annual physical examination as an option available for volunteers. Finally, some commenters disagree with the removal of the physical examination and voiced preferences ranging from a one-time enrollment requirement to a mandatory requirement every three years.

Response: CNCS agrees that annual physical examinations, while potentially valuable to certain volunteers and stations, may not be determinative of one's ability to serve. Furthermore, the annual paperwork requirement may be burdensome for both projects and volunteers. Accordingly, we are eliminating this requirement in the final rule. However, both CNCS and sponsors recognize the value of offering physical examinations to volunteers who may not otherwise have the resources or means to obtain them. Sponsors who will be offering physical examinations to volunteers will likely support the retention of incumbent, experienced volunteers, which will in turn support and sustain project operations. Therefore, this direct benefit shall be retained as an allowable grant expense. As such, CNCS is adding ''Physical examination'' to the articulated cost reimbursements in the final rule (45 CFR 2551.46(f) and 45 CFR 2552.46(f)).

Comment: CNCS proposed clarifying in the SCP and FGP regulations currently set forth in 45 CFR 2551.44(b) and 45 CFR 2552.44(b) that Supplemental Nutrition Assistance Program (SNAP) benefits, public assistance, child support, and disability payments, are not considered income for eligibility verification purposes. CNCS also received a comment suggesting that the nonexhaustive listings of funds that are considered income be updated to reflect CNCS's longstanding position that retirement savings plans, including 401(k) plans, are considered income for eligibility verification purposes.

Response: CNCS has determined that articulating certain forms of public assistance that are not to be counted toward an SCP or FGP volunteer's

eligibility is helpful. We have also determined that explicitly articulating certain forms of income that are to be counted toward an SCP or FGP volunteer's eligibility is likewise helpful. Accordingly, we are clarifying in the final rule that SNAP benefits, public assistance, child support, and disability payments shall not be used to determine income eligibility. (45 CFR 2551.44(b)(3), (b)(4) and 45 CFR 2552.44(b)(3), (b)(4)). While it has always been CNCS's position that these forms of public benefits and assistance are not considered income for volunteer eligibility purposes, we note that those forms of public benefits and assistance are not specifically denoted in the current SCP and FGP regulations as such. Accordingly, in the final rule, we are updating the non-exhaustive listings of what funds are not considered income for eligibility verification purposes to include SNAP benefits, public assistance, child support, and disability payments.

In addition, non-exhaustive listings of what funds are considered income for eligibility purposes are set forth in the current SCP and FGP regulations. It was suggested that the nonexhaustive listings of funds that are considered income reflect CNCS's longstanding position that retirement savings plans, including 401(k) plans, are considered income for volunteer eligibility purposes. Accordingly, for both SCP and FGP regulations, we are updating the non-exhaustive listings of what funds are considered income to reflect retirement savings plans.

F. Volunteer Stipend for Senior Companion Leaders

Comment: We received a comment that sought clarification as to whether a Senior Companion leader may be paid a stipend.

Response: Yes, a Senior Companion leader may be paid a stipend. A Senior Companion leader may also be provided a monetary incentive, through recognition, for his or her service as a Senior Companion leader. An individual's cumulative service as a Senior Companion and a Senior Companion leader may not exceed 40 hours per week.

CNCS is relocating the Senior Companion leader regulatory provision to a new section at 45 CFR 2551.73(b).

G. Comments Related to the Direct Benefit Ratio Rule and Minimum Service Hours

Comment: The agency received overwhelming support for the elimination of the language requiring that a sponsor expend a sum equal to at least 80% of the total budget on expenses directly benefitting SCP and FGP volunteers, also known as the ''Direct Benefit Ratio rule'' or the ''80/20 rule'' that currently exist at 45 CFR 2551.92(e) and 45 CFR 2552.92(e). For example, several commenters stated that the elimination of the Direct Benefit Ratio rule would reduce administrative burden for grantees and allow them to focus on the delivery of high quality program services.

Response: CNCS agrees that eliminating the Direct Benefit Ratio rule will reduce administrative burden for grantees and allow them to focus on the delivery of high quality services for their SCP and FGP projects. Also, in CNCS's view, elimination of the rule will lead to more local control over project design and to increased flexibility in budget expenditures.

The Direct Benefit Ratio rule was intended to control spending on administrative costs. However, we have found that the rule no longer achieves this goal. Rather, the Direct Benefit Ratio rule constrains local control of project design and innovation, and adds a layer of complexity to grant awards that is unnecessary and unduly burdensome.

Moreover, the Direct Benefit Ratio rule is duplicative because CNCS regulations and policy, as well as other applicable federal regulations set forth in the ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' (OMB Uniform Guidance), as established by the Office of Management and Budget, already restrict spending on administrative costs. The applicable regulations and policy are as follows:

(1) CNCS requires that grantees match at least 10% of the total project cost for SCP and FGP projects. (45 CFR 2551.92, 45 CFR 2552.92).

(2) Sponsors must request prior CNCS approval if seeking to reduce the funding that is allocated to volunteer stipends. (45 CFR 2551.93, 45 CFR 2552.93).

(3) SCP and FGP grants are federal awards and continue to be governed by the OMB Uniform Guidance, as established by the Office of Management and Budget. The OMB Uniform Guidance aims to reduce administrative burden on award recipients while guarding against the risk of waste and misuse of federal funding. (2 CFR part 200 and 2 CFR part 2205).

(4) CNCS has established a policy that defines a maximum cost per volunteer service year (VSY). A VSY is a unit of measure that is equal to 1,044 hours of annual volunteer service. At a set volunteer stipend rate of $2.65 per hour, each VSY is equivalent to $2,767 per year. This means that grantees must annually budget $2,767 for each VSY they agree to produce. In turn, they have the flexibility to budget the remaining amount, up to the maximum cost per VSY, for a combination of administrative costs and other direct benefits for volunteers, like meals, transportation, insurance, etc. This rate is communicated to applicants or grantees during the application or renewal process rather than in regulation. As such, CNCS may adjust the rate in accordance with inflation over time. In addition, the maximum cost per VSY is linked to service activity in outcome-based assignments. This effectively establishes a minimum amount of expected service delivery in relation to the federal award; establishing such a minimum amount serves as a strong internal control to ensure that quality services at satisfactory and higher levels are delivered to the community.

Finally, the administrative burden necessary to comply with this Direct Benefit Ratio rule is unduly onerous. Accordingly, this requirement is eliminated in the final rule.

Comment: We received numerous comments strongly supporting the reduction of required hours of service in SCP and FGP from ''a minimum of 15 hours per week and a maximum of 40 hours per week'' that currently exist at 45 CFR 2551.51 and 45 CFR 2552.51 to ''a minimum of 260 hours annually, or a minimum of 5 hours per week''. We received strong support from project staff, volunteers, and prospective volunteers, many of whom articulated challenges associated with the current requirement. Challenges articulated include: (1) Prospective volunteers' not wanting to commit to serve at least 15 hours per week which, in turn, adversely impacts project recruitment; and (2) projects' being impeded from offering volunteer services for certain established programs (*e.g.,* after-school programs) because the schedules of those programs warrant far fewer hours per week for such services. In addition, some commenters requested that we set a minimum number of hours at a different level, *e.g.* a minimum of 10 hours per week, while others recommended the complete elimination of the requirement.

We also received comments related to the proposal to remove language allowing projects to set local policies regarding hours of service. Additionally, we received two comments questioning the proposed reduction in minimum hours of service; two commenters noted the possibility that reducing hours of

service could lead to the enrollment of additional volunteers, which could then lead to a potential increase in costs related to supporting those additional volunteers. These commenters also expressed concern that the increase in costs associated with supporting additional volunteers could lead to a decrease in resource availability, which could then possibly lead to a decrease in the support of beneficiaries.

Finally, we received a comment requesting that CNCS conduct research to determine the extent to which the existing requirement that volunteers serve a minimum of 15 hours per week prevents grantees from filling volunteer slots or retaining volunteers.

Response: CNCS notes that the majority of commenters support this proposed change and recognize the value of reducing the required minimum hours of service per week for volunteers. The agency further notes that the challenges associated with the existing minimum number of hours of service required of each volunteer can adversely impact project recruitment. For example, CNCS has received feedback from a range of stakeholders that prospective volunteers are deterred from service because the weekly commitment is viewed as difficult to meet, given other personal interests or obligations. These challenges may also restrict a sponsor's ability to offer a diversity of volunteer services, which consequently impede sponsors from offering a wider range of volunteer opportunities. CNCS anticipates that reducing the minimum requirement to five hours weekly, or 260 hours annually, will help alleviate these challenges and is therefore adhering to the proposed change.

We also recognize that our proposal to eliminate the language that allows projects to set local policies regarding hours of service may raise questions as to whether projects will still be permitted to set such local policies. Projects will still be able to set local policies that define hours of service. Indeed, because sponsors are able to set local weekly hours of service policies, they may elect to establish the minimum weekly hours of service expected at any level in between the 5 hour weekly minimum and the 40 hour weekly maximum. Therefore, CNCS will not eliminate the proposed language.

Finally, we address the comment suggesting that CNCS conduct research to determine the extent to which the existing requirement of a minimum of 15 hours of service per week prevents grantees from filling volunteer slots or retaining volunteers. CNCS has determined that more research is not necessary prior to issuing this regulatory change.

Based on CNCS's observation of the adverse impact on stakeholders, which includes direct feedback, and research commissioned by CNCS, reducing the 15 hour per week minimum service requirement is appropriate and warranted. The 15 hour per week minimum serves as a barrier to recruitment, retention, project growth, and/or project innovation. Research commissioned by CNCS also indicates that prospective volunteers are deterred from service because the weekly commitment is viewed as difficult to meet, given other personal interests or obligations. Additionally, CNCS recognizes that reducing the minimum number of required weekly service hours for prospective and current volunteers is likely to result in strengthened increased recruitment of new volunteers and retention of existing volunteers. Therefore, CNCS has determined that this proposed change is appropriate and, accordingly incorporates it in the final rule. (45 CFR 2551.51 and 45 CFR 2552.51).

Comment: We received one comment in which the commenter recommended that CNCS consider the cost effectiveness of the proposed amendment reducing the minimum number of volunteer service hours per week from 15 to 5. The commenter suggests that, by decreasing the number of hours each individual serves, the service delivered directly to beneficiaries will be minimized because additional funding will be spent in support of mobilizing and retaining additional volunteers in service. This commenter also recommended that CNCS consider the cost effectiveness of eliminating the Direct Benefit Ratio rule (the ''80/20 rule''), which requires that a sum equal to at least 80% of the federal award be expended on benefits provided directly to SCP and FGP volunteers.

Response: As stated in the responses to the comments above, CNCS has received strong positive feedback from many commenters that express support for the proposed reduction to the minimum weekly service hour requirement and the elimination of the Direct Benefit Ratio rule. CNCS has considered the cost effectiveness of reducing the minimum number of volunteer service hours and found that the benefits of making this change far outweigh the potential costs. We considered whether reducing the weekly service hour requirement would likely improve the quality, increase the range, and expand the reach, of services to beneficiaries, for the cost incurred. Reducing the minimum number of volunteer service hours per week positions CNCS to achieve such increased value and better results. This change also removes barriers to service, which will, in turn, attract greater numbers of volunteers and support a broader range of volunteers in service.

In addition, this rule states that projects may set local policies within these parameters. Therefore, individual sponsors are given the discretion to assess the local needs of both prospective volunteers and the volunteer stations at which they serve. With the reduction in minimum weekly service hours, sponsors will be able to offer service opportunities that are attractive to both a larger and more diverse group of volunteers and a larger and more diverse group of service sites and volunteer stations. Sponsors report that, for some prospective volunteer stations, CNCS resources are inaccessible because these sites cannot support the 15-hour per week minimum service requirement of volunteers. By allowing for more individualized volunteer service opportunities, sponsors will have a broader reach into the community. Sponsors will be able to support new community partners and consequently reach a larger and more diverse group of beneficiaries.

Furthermore, the increased flexibility in service schedules should be considered in conjunction with the reduction in required in-service training hours as well as other program rules. As discussed above, the required amount of in-service training is being reduced from 40 hours annually to 24 hours annually. This change will create efficiencies because the likelihood of repetitive content appearing in year-to-year in-service trainings is diminished. The change will also optimize programmatic resources so that volunteers spend as much time as possible providing direct services to beneficiaries.

Moreover, the reduction in the required amount of annual in-service training would allow sponsors to spend less of their stipend funding in support of mandatory volunteer training. In addition, sponsors continue to be required to request prior CNCS approval if seeking to reduce the funding that is allocated to volunteer stipends. This is significant for two reasons: (1) A sponsor may expend less stipend funding on time spent in training, and (2) a sponsor may not shift stipend funding to other expenses without express prior CNCS approval. Therefore, a sponsor may shift stipend funding from training and must expend that funding on time spent in direct service

unless granted permission from CNCS to do otherwise.

In other words, the reduction in required minimum hours of in-service training could result in cost savings for a sponsor, which would then be directed into additional hours of service spent with beneficiaries of service.

CNCS has also considered the impact of eliminating the Direct Benefit Ratio rule (the ''80/20 rule''), which requires that a sum equal to at least 80% of the federal award be expended on benefits provided directly to SCP and FGP volunteers. CNCS has determined that the Direct Benefit Ratio rule, which must operate in conjunction with the match requirement, and the restriction on re-budgeting stipend funding, not only constrains local control of project design and innovation, but also add a layer of complexity to these grant awards that is unnecessary and unduly burdensome. CNCS also finds the Direct Benefit Ratio rule to be duplicative because CNCS regulations and policy, as well as other applicable federal regulations, already restrict spending on administrative costs.

The applicable regulations and policies used to closely monitor and control administrative costs include:

(1) CNCS requires that grantees match at least 10% of the total project cost for SCP and FGP projects. (45 CFR 2551.92, 45 CFR 2552.92)

(2) Sponsors must request prior CNCS approval if seeking to reduce the funding that is allocated to volunteer stipends. (45 CFR 2551.93, 45 CFR 2552.93)

(3) SCP and FGP grants are federal awards and continue to be governed by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as established by the Office of Management and Budget. The ''Uniform Guidance'' aims to reduce administrative burden on award recipients while guarding against the risk of waste and misuse of federal funding. (2 CFR part 200 and 2 CFR part 2205)

(4) CNCS has established a policy that defines a maximum cost per volunteer service year (VSY). A VSY is a unit of measure that is equal to 1,044 hours of annual volunteer service. At a set volunteer stipend rate of $2.65 per hour, each VSY is equivalent to $2,767 per year. This means that grantees must annually budget $2,767 for each VSY they agree to produce. In turn, they have the flexibility to budget the remaining amount, up to the maximum cost per VSY, for a combination of administrative costs and other direct benefits for volunteers, like meals, transportation, insurance, etc. This rate is communicated to applicants or grantees during the application or renewal process rather than in regulation. As such, CNCS may adjust the rate in accordance with inflation over time. In addition, the maximum cost per VSY is linked to service activity in outcome-based assignments. This effectively establishes a minimum amount of expected service delivery in relation to the federal award; establishing such a minimum amount serves as a strong internal control to ensure that quality services at satisfactory and higher levels are delivered to the community.

Moreover, eliminating the Direct Benefit Ratio rule will not adversely impact the number of volunteers or the level of services performed. Rather, establishing a maximum cost per VSY, in combination with eliminating the Direct Benefit Ratio rule, allow grantees to both assert control over local budgetary needs and deliver an expected amount of service to the community.

To be sure, the elimination of the rule allows grantees, if they choose, to incur additional administrative costs. However, even in those cases where grantees elect to spend more in administrative costs, eliminating the Direct Benefit Ratio rule will reduce burden, improve programmatic flexibility, and ultimately, allow more effective service. Notwithstanding possible increases in administrative costs for certain grantees, we have determined that the value still outweighs such costs.

Comment: CNCS received one comment that recommended the initiation of a pilot program to determine how the proposed changes will impact direct service to the community and the total administrative costs associated with the SCP and FGP programs, specifically related to the reduction in required minimum weekly hours of service and the elimination of the Direct Benefit Ratio rule.

Response: CNCS has determined that a pilot program is unnecessary because we have established controls in policy that bind grant expenditures, and we evaluate and monitor the impact of direct service to the communities where SCP and FGP programs operate on an ongoing basis. In addition, SCP and FGP grant awards are governed by the OMB Uniform Guidance (2 CFR part 200, 2 CFR part 2205). These rules properly regulate and control administrative costs associated with federal grant awards and provide sufficient budgetary controls over the administrative costs incurred when implementing SCP and FGP awards.

Moreover, designing, implementing and evaluating the results of a pilot program are likely to take several years' time and produce little added benefit. CNCS has determined that it has sufficient information to conclude that the likely impact of the reduction in minimum hours of weekly required service and the elimination of the Direct Benefit Ratio rule will be highly favorable for sponsors and the communities they serve, as volunteer service will increase and administrative burden will decrease.

To that end, CNCS has received a high degree of positive feedback regarding the impact of these proposed regulatory changes, in the form of many favorable comments from parties of interest—*i.e.,* grantees and other stakeholders. Furthermore, CNCS has conducted research that indicates that the 15-hour per week minimum serves as a barrier to recruitment, retention, and/or project innovation. This research indicates that prospective volunteers are deterred from service because the weekly commitment is viewed as difficult to meet given other personal obligations and interests. This research also shows that the Direct Benefit Ratio rule impedes project growth and innovation because it hinders budget flexibility that would allow the projects to grow and evolve to meet changing community needs. For example, while projects have a reasonable desire to leverage more funding to deliver expanded and high quality programming, some sponsors report that they have elected to forego accepting additional non-federal funding to avoid the administrative burden associated with the Direct Benefit Ratio rule.

Therefore, CNCS has determined that a pilot program is not warranted and does not plan to conduct one.

Comment: CNCS received a comment that asked us to consider and test alternative approaches to the proposed changes, specifically to reducing the minimum number of service hours per week and eliminating the Direct Benefit Ratio rule. The commenter suggested permitting calendar-based variation in minimum service hour requirements to allow volunteer commitments to fluctuate with the school year. The commenter also suggested that CNCS consider modifying rather than eliminating the Direct Benefit Ratio rule.

Response: CNCS has considered alternative approaches to achieving the same objectives of increasing volunteer service opportunities by reducing the minimum number of service hours per week from 15 to 5, and to decreasing

administrative burden by eliminating the Direct Benefit Ratio rule. We have determined that reducing the minimum number of service hours per week is the best approach.

Indeed, CNCS has guidance in the SCP and FGP Handbooks that provides technical support to sponsors so that they can accommodate calendar-based variations of service opportunities, particularly when considering a typical school year, as this is a common challenge experienced by FGP projects.

Based on CNCS's observation of the adverse impact on stakeholders, which includes direct feedback, and research commissioned by CNCS, reducing the 15 hour per week minimum service requirement and eliminating the Direct Benefit Ratio rule is appropriate and warranted. CNCS determined that the 15-hour per week minimum service requirement is a barrier to recruitment, retention, and/or project innovation. In addition, CNCS determined that the Direct Benefit Ratio rule impedes project growth and innovation because it hinders budget flexibility that would allow projects to grow and evolve to meet changing community needs.

Indeed, CNCS established and implemented a more effective approach to achieve both objectives of increasing volunteer service opportunities and decreasing administrative burden prior to publishing the proposed rules. As stated above, by establishing a maximum cost per volunteer service year (VSY) for time spent in outcome-based assignments, a sponsor is able to optimally and more flexibly budget non-stipend funding. This consequently makes the Direct Benefit Ratio rule unnecessary, and, by eliminating the rule, we relieve sponsors of the unduly administrative burden associated with it.

By setting a maximum cost per VSY, sponsors are also given the flexibility, if they choose, to mobilize additional volunteers into service. A VSY, again, represents a set number of service hours. It is not tied to a specific, individual volunteer, but rather is used as a tool to budget service hours and stipend funding. By reducing the number of weekly service hours that each individual volunteer is required to serve, sponsors are able to bring new volunteers into service and offer additional and diverse volunteer opportunities. Sponsors are also able to engage additional and diverse volunteer stations, as some prospective volunteer stations have reported that CNCS resources are inaccessible to them because their sites cannot support the 15-hour per week minimum service requirement for volunteers.

In addition, CNCS has linked the maximum cost per VSY to service activities in outcome-based assignments. In other words, sponsors must assign volunteers to service assignments that are aimed at achieving national performance measure outcomes. By setting a maximum cost per VSY, CNCS has effectively established a minimum amount of expected service delivery in relation to the federal award. That is, by tying the maximum cost per VSY to outcome-based assignments, CNCS protects its investment in high quality service that directly impacts communities.

Therefore, for the reasons set forth above, further consideration of alternatives is unnecessary.

V. Effective Dates and Implementation

The new regulations are in effect [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION] and apply to all awards funded after the effective date of the new regulations, and to all grant activity funded in FY18.

VI. Regulatory Procedures

Executive Order 12866

CNCS has determined that the rule is not an ''economically significant'' rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), CNCS certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, CNCS has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Unfunded Mandates

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

Paperwork Reduction Act

This rule addresses the requirement that entities that wish to apply to be Senior Corps SCP, FGP, or RSVP sponsors complete an application. Consistent with this requirement are two documents: the FGP/SCP Grant Application and the RSVP Grant Application (*http://www.nationalservice.gov/documents/senior-corps/2015/2016-fgpscp-grant-application-instructions; http://www.nationalservice.gov/documents/senior-corps/2015/rsvp-grant-application-instructions*).

This requirement constitutes one set of information under the Paperwork Reduction Act (PRA), 44 U.S.C. 507 *et seq.* OMB, in accordance with the Paperwork Reduction Act, has previously approved these information collections for use. The OMB Control Number for both the FGP/SCP Grant Application and the RSVP Grant Application is 3045–0035.

Under the PRA, an agency may not conduct or sponsor a collection of information unless the collections of information displays valid control numbers. This rule's collections of information are contained in 45 CFR part 2551, subparts B, D, F, G, and I, part 2552, subpart B, D, F, G, and I, and part 2553, subparts B, D, F, G, and I for the FGP/SCP Grant Application and the RSVP Grant Application, respectively.

This information is necessary to ensure that only eligible and qualified entities serve as Senior Corps sponsors. This information is also necessary to ensure that only eligible and suitable individuals are approved by the Senior Corps SCP, FGP, or RSVP programs to

serve as volunteers in the SCP, FGP, or RSVP programs.

The likely respondents to these collections of information are entities interested in or seeking to become Senior Corps SCP, FGP or RSVP sponsors and current sponsors.

Executive Order 13132, Federalism

Executive Order 13132, *Federalism,* prohibits an agency from publishing any rule that has Federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. The rule does not have any Federalism implications, as described above.

List of Subjects

45 CFR Part 2551

Aged, Grant programs—social programs, Volunteers.

45 CFR Part 2552

Aged, Grant programs—social programs, Volunteers.

45 CFR Part 2553

Aged, Grant programs—social programs, Volunteers.

For the reasons discussed in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service amends chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2551—SENIOR COMPANION PROGRAM

■ 1. The authority citation for part 2551 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 2. Amend § 2551.12 as follows:

■ a. Remove paragraphs (f), (l), (m), (o), (t), and (u).

■ b. Remove all alphabetical paragraph designations.

■ c. Revise the definitions of ''Adequate staffing level'' and ''Chief Executive Officer''.

■ d. Move the definition of ''Adequate staffing level'' before the definition of ''Adult with special needs''.

■ e. Add the definition of ''CNCS'' in alphabetical order.

■ f. Revise the definitions of ''Cost reimbursements'', ''Letter of Agreement'', and ''National Senior Service Corps (NSSC)''.

■ g. Add the definitions of ''Non-CNCS support (excess)'', ''Non-CNCS support (match)'', and ''Performance measures'' in alphabetical order.

■ h. Revise the definition of ''Project''.

■ i. Add the definition of ''Proprietary Health Care Organization'' in alphabetical order.

■ j. Revise the definitions of ''Service area'', ''Sponsor'', and ''Stipend''.

■ k. Add the definition of ''United States and Territories'' in alphabetical order.

■ l. Revise the definitions of ''Volunteer assignment plan'' and ''Volunteer station''.

The revisions and additions read as follows:

§ 2551.12 Definitions.

* * * * *

Adequate staffing level. The number of project staff or full time equivalent needed by a sponsor to manage the National Senior Service Corps (NSSC) project operations considering such factors as: Number of budgeted Volunteer Service Years (VSYs), number of volunteer stations, and the size of the service area.

* * * * *

Chief Executive Officer. The Chief Executive Officer of CNCS appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

CNCS. The Corporation for National and Community Service established under the NCSA, as amended, 42 U.S.C. 12501 *et seq.*

Cost reimbursements. Reimbursements budgeted as Volunteer Expenses and provided to volunteers, including stipends to cover incidental costs, transportation, meals, recognition, supplemental accident, personal liability and excess automobile liability insurance and other expenses as negotiated in the Memorandum of Understanding.

* * * * *

Letter of Agreement. A written agreement between a volunteer station or sponsor, and person(s) served or the person legally responsible for that person. It authorizes the assignment of an SCP volunteer in the home of a client, defines SCP volunteer activities, and specifies supervision arrangements.

* * * * *

National Senior Service Corps (NSSC). The collective name for the Senior Companion Program (SCP), the Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), and Demonstration Programs, all of which are established under Parts A, B, C, and E, Title II of the Act. NSSC is also referred to as the ''Senior Corps''.

Non-CNCS support (excess). The amount of non-CNCS cash and in-kind contributions generated by a sponsor in excess of the required percentage.

Non-CNCS support (match). The percentage share of non-CNCS cash and in-kind contributions required to be raised by the sponsor in support of the grant.

Performance measures. Indicators that help determine the impact of an SCP project on the community and clients served, including the volunteers.

Project. The locally planned SCP activity or set of activities in a service area as approved by CNCS and implemented by the sponsor.

Proprietary Health Care Organizations. Private, for-profit health care organization that serves one or more vulnerable populations.

Service area. The geographically defined area(s) in which Senior Companions are enrolled and placed on assignments.

* * * * *

Sponsor. A public agency, including Indian tribes as defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Senior Companion project.

Stipend. A payment to Senior Companions to enable them to serve without cost to themselves. The amount of the stipend is set by CNCS in accordance with federal law.

United States and Territories. Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

Volunteer assignment plan. A written description of a Senior Companion's assignment with a client. The plan identifies specific outcomes for the client served and the activities of the Senior Companion.

Volunteer station. A public agency; a private, non-profit organization, secular or faith-based; or a proprietary health care organization. A volunteer station must accept responsibility for the assignment and supervision of Senior Companions in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

■ 3. Revise § 2551.21 to read as follows:

§ 2551.21 Who is eligible to serve as a sponsor?

CNCS awards grants to public agencies, including Indian tribes as

defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Senior Companion project.

■ 4. Revise § 2551.22 to read as follows:

§ 2551.22 What are the responsibilities of a sponsor?

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the Senior Companion Program as specified in the Act. A sponsor shall not delegate or contract these overall management responsibilities to another entity. CNCS retains the right to determine what types of management responsibilities may or may not be contracted.

■ 5. Amend § 2551.23 as follows:

■ a. Revise the section heading and paragraphs (a), (b), and (c) introductory text.

■ b. Remove the word ''and'' from the end of paragraph (c)(2)(iii).

■ c. Revise paragraphs (c)(2)(iv), (f), and (g).

■ d. Remove paragraphs (i) and (j);

■ e. Redesignate paragraphs (k) and (l) as (i) and (j), respectively, and revise newly redesignated paragraphs (i) and (j).

■ f. Add new paragraphs (k) and (l).

The revisions and additions read as follows:

§ 2551.23 What are a sponsor's project responsibilities?

* * * * *

(a) Focus Senior Companion resources within the project's service area, on critical problems affecting the frail elderly and other adults with special needs.

(b) In collaboration with other community organizations or by using existing assessments, assess the needs of the community or service area, and develop strategies to respond to identified needs using Senior Companions.

(c) Develop and manage one or more volunteer stations by:

(2) * * *

(iv) That states the station will not discriminate against SCP volunteers, service beneficiaries, or in the operation of its program on the basis of race, color, national origin including individuals with limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service; and

* * * * *

(f) Provide Senior Companions with assignments that show direct and demonstrable benefits to the adults and the community served, the Senior Companions, and the volunteer station; with required cost reimbursements specified in § 2551.46; with 20 hours of pre-service orientation and at least 24 hours annually of in-service training.

(g) Encourage the most efficient and effective use of Senior Companions by coordinating project services and activities with related national, state and local programs, including other CNCS programs.

* * * * *

(i) Establish written service policies for Senior Companions that include but are not limited to:

(1) Annual and sick leave.

(2) Holidays.

(3) Service schedules.

(4) Termination and appeal procedures.

(5) Meal and transportation reimbursements.

(j) Conduct National Service Criminal History Checks in accordance with the requirements in 45 CFR 2540.200 through 2540.207.

(k) Provide Senior Companion volunteers with cost reimbursements specified in this section.

(l) Make every effort to meet such performance measures as established in the approved grant application.

■ 6. Revise § 2551.24(a)(2), (3), and (4) to read as follows;

§ 2551.24 What are a sponsor's responsibilities for securing community participation?

(a) * * *

(2) With an interest in the field of community service and volunteerism;

(3) Capable of helping the sponsor satisfy its administrative and program responsibilities including fund-raising, publicity, and meeting or exceeding performance measures;

(4) With an interest in, and knowledge of, the range of abilities of older adults; and

* * * * *

■ 7. Amend § 2551.25 as follows:

■ a. Revise paragraph (c).

■ b. Revise paragraphs (e) through (h).

The revisions read as follows.

§ 2551.25 What are a sponsor's administrative responsibilities?

* * * * *

(c) Employ a full-time project director to accomplish project objectives and manage the functions and activities delegate to project staff for Senior Corps project(s) within its control. The project director may participate in activities to coordinate project resources with those of related local agencies, boards or organizations. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. A sponsor may negotiate the employment of a part-time project director with CNCS when the sponsor can demonstrate that such an arrangement will not adversely affect the size, scope, or quality of project operations.

* * * * *

(e) Compensate project staff at a level that is comparable to similar staff positions in the sponsor organization and/or project service area, as is practicable.

(f) Establish risk management policies and procedures covering Senior Companion project activities. This includes provision of appropriate insurance coverage for Senior Companions, which includes; accident insurance, personal liability insurance, and excess automobile liability insurance.

(g) Establish record keeping and reporting systems in compliance with CNCS requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with CNCS evaluation and data collection efforts.

(h) Comply with, and ensure that all volunteer stations comply with, all applicable civil rights laws and regulations, including non-discrimination based on disability.

§ 2551.33 [Removed and Reserved]

■ 8. Remove and reserve § 2551.33.

■ 9. Revise § 2551.34(a)(3) and (b) to read as follows:

§ 2551.34 What are the rules on suspension, termination, and denial of refunding of grants?

(a) * * *

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and CNCS; and

* * * * *

(b) Hearings or other meetings as may be necessary to fulfill the requirements of this section should, to the extent practicable, be held in locations convenient to the recipient agency.

* * * * *

■ 10. Amend § 2551.41 as follows:

■ a. Add the word ''and'' at the end of paragraph (a)(1).

■ b. Remove paragraphs (a)(2) and (3).

■ c. Redesignate paragraph (a)(4) as (a)(2).

■ d. Revise paragraph (b).

The revisions read as follows:

§ 2551.41 Who is eligible to be a Senior Companion?

* * * * *

(b) Eligibility to serve as a Senior Companion shall not be restricted on the basis of formal education, experience, race, color, national origin including limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service.

■ 11. Revise § 2551.43(b) to read as follows:

§ 2551.43 What income guidelines govern eligibility to serve as a stipended Senior Companion?

* * * * *

(b) For applicants to become stipended Senior Companions, annual income is projected for the following 12 months, based on income at the time of application. For serving stipended Senior Companions, annual income is counted for the past 12 months. Annual income includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in the same residence.

* * * * *

■ 12. Amend § 2551.44 as follows:

■ a. Revise paragraphs (a)(1), (3), and (4).

■ b. Remove the period at the end of paragraph (b)(2) and add a semicolon in its place.

■ c. Add paragraphs (b)(3) through (5).

The revisions and additions read as follows:

§ 2551.44 What is considered income for determining volunteer eligibility?

(a) * * *

(1) Money, wages, and salaries before any deduction;

* * * * *

(3) Social Security, Unemployment or Workers Compensation, strike benefits, training stipends, alimony, and military family allotments, or other regular support from an absent family member or someone not living in the household;

(4) Government employee pensions, private pensions, regular insurance or annuity payments, and 401(k) or other retirement savings plans;

* * * * *

(b) * * *

(3) Regular payments for public assistance, including Supplemental Nutrition Assistance Program (SNAP);

(4) Social Security Disability or any type of disability payment; and

(5) Food or rent received in lieu of wages.

■ 13. Revise § 2551.45 to read as follows:

§ 2551.45 Is a Senior Companion a federal employee, an employee of the sponsor or of the volunteer station?

Senior Companions are volunteers, and are not employees of the sponsor, the volunteer station, CNCS, or the Federal Government.

■ 14. Amend § 2551.46 as follows:

■ a. Revise the section heading, introductory text, and paragraphs (a), (b) introductory text, (b)(1) and (2), (b)(3)(i)(A) and (B), (b)(3)(ii), (c), (d), and (e).

■ b. Remove paragraph (f).

■ c. Redesignate paragraph (g) as (f) and revise newly redesignated paragraph (f).

■ d. Add a new paragraph (g).

The revisions and addition read as follows:

§ 2551.46 What cost reimbursements and benefits do sponsors provide to Senior Companions?

Cost reimbursements and benefits provided by sponsors include:

(a) *Stipend.* The stipend is paid for the time Senior Companions spend with their assigned clients, for earned leave, and for attendance at official project events.

(b) *Insurance.* Insurance is made available to Senior Companions with the CNCS specified minimum levels of insurance as follows:

(1) *Accident insurance.* Accident insurance covers Senior Companions for personal injury during travel between their homes and places of assignment, during their service, during meal periods while serving as a Senior Companion, and while attending project-sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the Senior Companion from other sources.

(2) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. Such protection does not include professional liability coverage.

(3) * * *

(i) * * *

(A) Liability insurance Senior Companions carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection that CNCS determines, and that the sponsor must provide, for each person, and each accident, and for property damage.

(ii) Senior Companions who drive their personal vehicles to, or on, assignments or project-related activities, shall maintain personal automobile liability insurance equal to or exceeding the levels established by CNCS.

(c) *Transportation.* Senior Companions shall receive assistance with the cost of transportation to and from, assignments and official project activities, including orientation, training, and recognition events.

(d) *Meals.* Senior Companions may be provided assistance with the cost of meals taken while on assignment, within limits of the project's available resources.

(e) *Recognition.* Senior Companion volunteers shall be provided recognition for their service.

(f) *Physical examination.* Senior Companions may be provided a physical examination or assistance with the cost of a physical examination prior to assignment and annually thereafter.

(g) *Other volunteer expenses.* Senior Companions may also be reimbursed for allowable out-of-pocket expenses incurred while performing their assignments.

■ 15. Revise § 2551.47 to read as follows:

§ 2551.47 May the cost reimbursements and benefits of a Senior Companion be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?

No. Senior Companion's cost reimbursements and benefits are not subject to any tax or charge or treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Cost reimbursements and benefits are not subject to garnishment and do not reduce or eliminate the level of, or eligibility for, assistance or services a Senior Companion may be receiving under any governmental program.

■ 16. Revise § 2551.51 to read as follows:

§ 2551.51 What are the terms of service of a Senior Companion?

A Senior Companion shall serve a minimum of 260 hours annually, or a minimum of 5 hours per week. A Senior Companion may serve a maximum of 2080 hours annually, or a maximum of 40 hours per week. Within these limitations, a sponsor may set service policies consistent with local needs.

■ 17. Revise § 2551.52(c) to read as follows:

§ 2551.52 What factors are considered in determining a Senior Companion's service schedule?

* * * * *

(c) Meal time may be part of the service schedule and is stipended.

■ 18. Revise § 2551.53 to read as follows:

§ 2551.53 Under what circumstances may a Senior Companion be removed from service?

(a) A sponsor may remove a Senior Companion from service for cause. Grounds for removal include, but are not limited to: Extensive and unauthorized absences; misconduct; failure to perform assignments or failure to accept supervision. A Senior Companion may also be removed from stipended service for having income in excess of the eligibility level. A Senior Companion shall be removed immediately if ineligible to serve based on criminal history check results.

(b) The sponsor shall establish appropriate policies on removal from service, as well as procedures for appeal.

■ 19. Revise § 2551.61 to read as follows:

§ 2551.61 May a sponsor serve as a volunteer station?

Yes. A sponsor may serve as a volunteer station, if the activities are part of a work plan in the approved project application.

■ 20. Amend § 2551.62 as follows:

■ a. Revise paragraphs (c) and (d).

■ b. Add the word ''and'' at the end of paragraph (e)(1).

■ c. Revise paragraph (e)(2).

■ d. Remove paragraph (e)(3).

■ e. Revise paragraphs (i) and (j).

The revisions read as follows:

§ 2551.62 What are the responsibilities of a volunteer station?

* * * * *

(c) Develop a written volunteer assignment plan for each Senior Companion that identifies their roles and activities, each client served, and expected outcomes.

(d) Keep a Letter of Agreement for each client who receives in-home service.

(e) * * *

(2) Resources required for performance of assignments, including reasonable accommodation, as needed, to enable Senior Companions with disabilities to perform the essential functions of their service.

* * * * *

(i) Comply with all applicable civil rights laws and regulations, including providing Senior Companions with disabilities reasonable accommodation, to perform the essential functions of their service.

(j) Undertake such other responsibilities as may be necessary for the successful performance of Senior Companions in their assignments or as agreed to in the Memorandum of Understanding.

§ 2551.71 [Amended]

■ 21. Amend § 2551.71 by removing paragraph (b) and redesignating paragraph (c) as (b).

■ 22. Amend § 2551.72 as follows:

■ a. Revise the section heading and paragraph (a)(5).

■ b. Remove and reserve paragraph (b).

■ c. Remove paragraph (c).

The revisions read as follows:

§ 2551.72 Is a written volunteer assignment plan required for each Senior Companion?

(a) * * *

(5) Is used to review the impact of the assignment on the client(s).

* * * * *

■ 23. Add § 2551.73 to subpart G to read as follows:

§ 2551.73 May a Senior Companion serve as a volunteer leader?

Yes. Senior Companions—who on the basis of experience as volunteers, special skills, and demonstrated leadership abilities—may spend time, in addition to their regular assignment, to assist newer Senior Companion volunteers in performing their assignments and in coordinating activities of such volunteers.

(a) All Senior Companions serving as volunteer leaders shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Senior Companion;

(2) Identifies the role and activities of the Senior Companion and expected outcomes;

(3) Addresses the period of time of service; and

(4) Is used to review the status of the Senior Companion's services identified in the assignment plan, as well as the impact of those services.

(b)While serving in the capacity of a volunteer leader, a Senior Companion may be paid a stipend (at the same rate as the established Senior Companion stipend) for his or her additional hours served as a volunteer leader.

(c) Senior Companion leaders, through recognition, may receive an additional monetary incentive.

■ 24. Revise § 2551.91 to read as follows:

§ 2551.91 What is the process for application and award of a grant?

(a) *How and when may an eligible organization apply for a grant?* (1) An eligible organization may file an application in response to CNCS' published request, such as a Notice of Funding Opportunity or a Notice of Funding Availability. Applicants are not assured of selection or approval and may have to compete with other applicants.

(2) The applicant shall comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' (3 CFR, 1982 Comp., p. 197) in 45 CFR part 1233 and any other applicable requirements.

(b) *Who reviews the merits of an application and how is a grant awarded?* (1) CNCS reviews and determines the merit of an application by its responsiveness to published guidelines and to the overall purposes and objectives of the program. When funds are available, CNCS awards a grant in writing to each applicant whose grant proposal provides the best potential for serving the purpose of the program.

(2) The award will be documented by the Notice of Grant Award (NGA). CNCS and the sponsoring organization are the parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of CNCS' obligation to provide financial support to the sponsor.

(c) *What happens if CNCS rejects an application?* CNCS will notify the applicant if the applicant is not approved for funding, along with an explanation of CNCS' decision.

(d) *For what period of time does CNCS award a grant?* CNCS awards a Senior Companion grant for a specified period that is usually three years in duration.

■ 25. Amend § 2551.92 as follows:

■ a. Revise paragraphs (a), (b) introductory text, (c), and (d).

■ b. Remove paragraph (e).

■ c. Redesignate paragraph (f) as (e) and revise newly redesignated paragraph (e).

The revisions read as follows:

§ 2551.92 What are project funding requirements?

(a) *Is non-CNCS support required?* A CNCS grant may be awarded to fund up to 90 percent of the cost of development and operation of a Senior Companion project. The sponsor is required to contribute at least 10 percent of the total project cost from non-Federal sources or authorized Federal sources.

(b) *Under what circumstances does CNCS allow less than the 10 percent non-CNCS support?* CNCS may allow exceptions to the 10 percent local support requirement in cases of demonstrated need such as:

* * * * *

(c) *May CNCS restrict how a sponsor uses locally generated contributions in excess of the 10 percent non-CNCS support required?* Whenever locally generated contributions to Senior Companion projects are in excess of the minimum 10 percent non-CNCS support required, CNCS may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* All expenditures by the grantee of Federal and non-Federal funds, including expenditures from excess locally generated contributions in support of the grant, are subject to audit by CNCS, its Inspector General, or their authorized agents.

(e) *May a sponsor pay stipends at rates different than those established by CNCS?* No, a sponsor shall pay stipends at rates established by CNCS.

■ 26. Amend § 2551.93 as follows:

■ a. Revise the section heading.

■ b. Remove the word ''and'' from the end of paragraph (a)(3).

■ c. Revise paragraph (a)(4).

■ d. Add paragraph (a)(5).

■ e. Revise paragraphs (b), (e), and (f).

The revisions and addition read as follows:

§ 2551.93 What are a sponsor's legal requirements in managing grants?

* * * * *

(a) * * *

(4) All applicable CNCS policies; and

(5) All other applicable CNCS requirements.

(b) Project support provided under a CNCS grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

* * * * *

(e) Payments to settle discrimination complaints, either through a settlement agreement or formal adjudication, are not allowable costs.

(f) Written CNCS approval is required for the following changes in the approved grant:

(1) Reduction in budgeted volunteer service years.

(2) Change in the service area.

■ 27. Revise § 2551.101 to read as follows:

§ 2551.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Senior Companions?

Over-income persons as described in § 2551.43, age 55 or over, may be enrolled in SCP project as non-stipended volunteers.

■ 28. Amend § 2551.102 as follows:

■ a. Revise paragraphs (b) and (d).

■ b. Remove paragraphs (e) and (f).

■ c. Redesignate paragraph (g) as (e) and revise newly redesignated paragraph (e).

The revisions read as follows:

§ 2551.102 What are the conditions of service of non-stipended Senior Companions?

* * * * *

(b) No special privilege or status is granted or created among Senior Companions, whether stipended or non-stipended, and equal treatment is required.

* * * * *

(d) All regulations and requirements applicable to the program apply to Senior Companions.

(e) Non-stipended Senior Companions may contribute the costs they incur in connection with their participation in the program. An SCP project may not count such contributions as part of the required non-CNCS support (match) for the grant.

■ 29. Revise § 2551.103 to read as follows:

§ 2551.103 Must a sponsor be required to enroll non-stipended Senior Companions?

No. Enrollment of non-stipended Senior Companions is not a condition for a sponsor to receive a new or continuation grant.

§ 2551.104 [Removed and Reserved]

■ 30. Remove and reserve § 2551.104.

■ 31. Revise the heading for subpart K to read as follows:

Subpart K—Non-CNCS Funded Senior Companion Projects

■ 32. Revise § 2551.111 to read as follows:

§ 2551.111 Under what conditions may an agency or organization sponsor a Senior Companion project without CNCS funding?

An eligible agency or organization who wishes to sponsor a Senior Companion project without CNCS funding must make an application through the designated grants management system which is approved by CNCS and documented through the Notice of Grant Agreement (NGA).

■ 33. Amend § 2551.112 by revising the section heading, introductory text, and paragraph (a) to read as follows:

§ 2551.112 What are the resources and benefits to which a non-CNCS funded project is entitled?

The Notice of Grant Award entitles the sponsor of a Non-CNCS funded project to:

(a) All technical assistance and materials provided to CNCS funded Senior Companion projects; and

* * * * *

■ 34. Revise § 2551.113 to read as follows:

§ 2551.113 What financial obligation does CNCS incur for non-CNCS funded projects?

Issuance of an NGA to a sponsor of a non-CNCS funded project does not create a financial obligation on the part of CNCS for any costs associated with the project.

■ 35. Revise § 2551.114 to read as follows:

§ 2551.114 What happens if a non-CNCS funded sponsor does not comply with the NGA?

A non-CNCS funded project sponsor's noncompliance with the NGA may result in suspension or termination CNCS' agreement and all benefits specified in § 2551.112.

■ 36. Revise § 2551.121(c)(2), (g), and (h) to read as follows:

§ 2551.121 What legal limitations apply to the operation of the Senior Companion Program and to the expenditure of grant funds?

* * * * *

(c) * * *

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by CNCS.

* * * * *

(g) *Religious activities.* (1) A Senior Companion or a member of the project staff funded by CNCS shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of his/her duties.

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use CNCS funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the

sponsor under subpart B of this part, and with notification to CNCS.

■ 37. Revise § 2551.122 to read as follows:

§ 2551.122 What legal coverage does CNCS make available to Senior Companions?

It is within CNCS's discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a SCP volunteer are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the volunteer's activities. The circumstances under which CNCS may pay such expenses are specified in 45 CFR part 1220.

PART 2552—FOSTER GRANDPARENT PROGRAM

■ 38. The authority citation for part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 39. Revise § 2552.11 to read as follows:

§ 2552.11 What is the Foster Grandparent Program?

The Foster Grandparent Program provides grants to qualified agencies and organizations for the dual purpose of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are used to support Foster Grandparents in providing supportive, person to person service to children with special and or exceptional needs, or in circumstances that limit their academic, social or emotional development.

■ 40. Amend § 2552.12 as follows:

■ a. Remove paragraphs (h), (n), (o), (r), (w), and (x).

■ b. Remove all alphabetical paragraph designations.

■ c. Revise the definitions of ''Adequate staffing level'', ''Chief Executive Officer'', and ''Children having exceptional needs''.

■ d. Add the definition of ''CNCS'' in alphabetical order.

■ e. Revise the definitions of ''Cost reimbursements'', ''Letter of Agreement'', and ''National Senior Service Corps (NSSC)''.

■ f. Add the definitions of ''Non-CNCS support (excess)'', ''Non-CNCS support (match)'', and ''Performance measures'' in alphabetical order.

■ g. Revise the definition of ''Project''.

■ h. Add the definition of ''Proprietary Health Care Organization'' in alphabetical order.

■ i. Revise the definitions of ''Service area'', ''Sponsor'', and ''Stipend''.

■ j. Add the definition of ''United States and Territories'' in alphabetical order.

■ k. Revise the definitions of ''Volunteer assignment plan'' and ''Volunteer station''.

The revisions and additions read as follows:

§ 2552.12 Definitions.

* * * * *

Adequate staffing level. The number of project staff or full time equivalent needed by a sponsor to manage the National Senior Service Corps (NSSC) project operations considering such factors as: Number of budgeted Volunteer Service Years (VSYs), number of volunteer stations, and the size of the service area.

* * * * *

Chief Executive Officer. The Chief Executive Officer of CNCS appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

* * * * *

Children having exceptional needs. Children who have a developmental disability, such as those who have autism, intellectual disability, cerebral palsy or epilepsy, a visual impairment, speech impairment, hearing impairment, or orthopedic impairment, an emotional or behavioral disorder, a language disorder, a specific learning disability, multiple disabilities, other significant health impairments, or have literacy, math or other educational assistance needs. Before a Foster Grandparent is assigned to the child, existence of a child's exceptional need shall be verified by an appropriate professional, such as a physician, psychiatrist, psychologist, including school psychologists, registered nurse or licensed practical nurse, speech therapist, licensed clinical social worker, or educator.

* * * * *

CNCS. The Corporation for National and Community Service established under the NCSA, as amended, 42 U.S.C. 12501 *et seq.*

Cost reimbursements. Reimbursements budgeted as Volunteer Expenses and provided to volunteers, including stipends to cover incidental costs, transportation, meals, recognition, supplemental accident, personal liability and excess automobile liability insurance, and other expenses as negotiated in the Memorandum of Understanding.

* * * * *

Letter of Agreement. A written agreement between a volunteer station or sponsor, and person(s) served or the person legally responsible for that person. It authorizes the assignment of an FGP volunteer in the home of a client, defines FGP volunteer activities, and specifies supervision arrangements.

* * * * *

National Senior Service Corps (NSSC). The collective name for the Senior Companion Program (SCP), the Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), and Demonstration Programs, all of which are established under Parts A, B, C, and E, Title II of the Act. NSSC is also referred to as the ''Senior Corps''.

Non-CNCS support (excess). The amount of non-Federal cash and in-kind contributions generated by a sponsor in excess of the required percentage.

Non-CNCS support (match). The percentage share of non-CNCS cash and in-kind contributions required to be raised by the sponsor in support of the grant.

* * * * *

Performance measures. Indicators that help determine the impact of an FGP project on the community and clients served, including the volunteers.

Project. The locally planned FGP activity or set of activities in a service area as approved by CNCS and implemented by the sponsor.

Proprietary Health Care Organizations. Private, for-profit health care organization that serves one or more vulnerable populations.

Service area. The geographically defined area(s) in which Foster Grandparents are enrolled and placed on assignments.

* * * * *

Sponsor. A public agency, including Indian tribes as defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Foster Grandparent project.

Stipend. A payment to Foster Grandparents to enable them to serve without cost to themselves. The amount of the stipend is set by CNCS in accordance with federal law.

United States and Territories. Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

Volunteer assignment plan. A written description of a Foster Grandparent's assignment with a child. The plan identifies specific outcomes for the child served and the activities of the Foster Grandparent.

Volunteer station. A public agency; a private, non-profit organization, secular or faith-based; or a proprietary health care organization. A volunteer station must accept responsibility for the assignment and supervision of Foster Grandparents in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

■ 41. Revise § 2552.21 to read as follows:

§ 2552.21 Who is eligible to serve as a sponsor?

CNCS awards grants to public agencies, including Indian tribes as defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Foster Grandparent project.

■ 42. Revise § 2552.22 to read as follows:

§ 2552.22 What are the responsibilities of a sponsor?

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the Foster Grandparent Program as specified in the Act. A sponsor shall not delegate or contract these overall management responsibilities to another entity. CNCS retains the right to determine what types of management responsibilities may or may not be contracted.

■ 43. Amend § 2552.23 as follows:

■ a. Revise the section heading and paragraphs (a), (b), and (c) introductory text.

■ b. Remove the word ''and'' from the end of paragraph (c)(2)(iii).

■ c. Revise paragraphs (c)(2)(iv), (f), and (g).

■ d. Remove paragraphs (i) and (j).

■ e. Redesignate paragraphs (k) and (l) as (i) and (j), respectively, and revise newly redesignated paragraphs (i) and (j).

■ f. Add new paragraphs (k) through (l).

The revisions and additions read as follows:

§ 2552.23 What are a sponsor's project responsibilities?

* * * * *

(a) Focus Foster Grandparent resources, within the project's service area, on providing supportive services and companionship to children with special and exceptional needs, or in circumstances that limit their academic, social or emotional development.

(b) In collaboration with other community organizations or by using existing assessments, assess the needs of the community or service area, and develop strategies to respond to identified needs using Foster Grandparents.

(c) Develop and manage one or more volunteer stations by:

(2) * * *

(iv) That states the station will not discriminate against FGP volunteers, service beneficiaries, or in the operation of its program on the basis of race, color, national origin including individuals with limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service; and

* * * * *

(f) Provide Foster Grandparents with assignments that show direct and demonstrable benefits to the children and the community served, the Foster Grandparents, and the volunteer station; with required cost reimbursements specified in § 2552.46; with 20 hours of pre-service orientation and at least 24 hours annually of in-service training.

(g) Encourage the most efficient and effective use of Foster Grandparents by coordinating project services and activities with related national, state and local programs, including other CNCS programs.

* * * * *

(i) Establish written service policies for Foster Grandparents that include but are not limited to:

(1) Annual and sick leave.

(2) Holidays.

(3) Service schedules.

(4) Termination and appeal procedures.

(5) Meal and transportation reimbursements.

(j) Conduct National Service Criminal History Checks in accordance with the requirements in 45 CFR 2540.200 through 2540.207.

(k) Provide Foster Grandparent volunteers with cost reimbursements specified in this section.

(l) Make every effort to meet such performance measures as established in the approved grant application.

■ 44. Revise § 2552.24(a)(2), (3), and (4) to read as follows:

§ 2552.24 What are a sponsor's responsibilities for securing community participation?

(a) * * *

(2) With an interest in the field of community service and volunteerism;

(3) Capable of helping the sponsor satisfy its administrative and program responsibilities including fund-raising, publicity and meeting or exceeding performance measures;

(4) With an interest in, and knowledge of, the range of abilities of older adults; and

* * * * *

■ 45. Amend § 2552.25 as follows:

■ a. Revise paragraph (c).

■ b. Revise paragraphs (e) through (h).

The revisions read as follows:

§ 2552.25 What are a sponsor's administrative responsibilities?

* * * * *

(c) Employ a full-time project director to accomplish project objectives and manage the functions and activities delegate to project staff for Senior Corps project(s) within its control. The project director may participate in activities to coordinate project resources with those of related local agencies, boards or organizations. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. A sponsor may negotiate the employment of a part-time project director with CNCS when the sponsor can demonstrate that such an arrangement will not adversely affect the size, scope or quality of project operations.

* * * * *

(e) Compensate project staff at a level that is comparable to similar staff positions in the sponsor organization and/or project service area, as is practicable.

(f) Establish risk management policies and procedures covering Foster Grandparent project activities. This includes provision of appropriate insurance coverage for Foster Grandparents, which includes; accident insurance, personal liability insurance, and excess automobile liability insurance.

(g) Establish record keeping and reporting systems in compliance with CNCS requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with CNCS evaluation and data collection efforts.

(h) Comply with, and ensure that all volunteer stations comply with, all applicable civil rights laws and regulations, including non-discrimination based on disability.

§ 2552.33 [Removed and Reserved]

■ 46. Remove and reserve § 2552.33.

■ 47. Revise § 2552.34(a)(3) and (b) to read as follows:

§ 2552.34 What are the rules on suspension, termination, and denial of refunding of grants?

(a) * * *

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and CNCS; and

* * * * *

(b) Hearings or other meetings as may be necessary to fulfill the requirements of this section should, to the extent practicable, be held in locations convenient to the grant recipient.

* * * * *

■ 48. Revise the heading for subpart D to read as follows:

Subpart D—Foster Grandparent Eligibility, Status, Cost Reimbursements and Benefits

■ 49. Amend § 2552.41 as follows:

■ a. Add the word ''and'' at the end of paragraph (a)(1).

■ b. Remove paragraphs (a)(2) and (3).

■ c. Redesignate paragraph (a)(4) as (a)(2) and revise newly redesignated paragraph (a)(2).

■ d. Revise paragraph (b).

The revisions read as follows:

§ 2552.41 Who is eligible to be a Foster Grandparent?

(a) * * *

(2) In order to receive a stipend, have an income that is within the income eligibility guidelines specified in this subpart.

(b) Eligibility to serve as a Foster Grandparent shall not be restricted on the basis of formal education, experience, race, color, national origin including limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service.

■ 50. Revise § 2552.43(b) to read as follows:

§ 2552.43 What income guidelines govern eligibility to serve as a stipended Foster Grandparent?

* * * * *

(b) For applicants to become stipended Foster Grandparents, annual income is projected for the following 12 months, based on income at the time of application. For serving stipended Foster Grandparents, annual income is counted for the past 12 months. Annual income includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in the same residence.

* * * * *

■ 51. Amend § 2552.44 by revising paragraphs (a)(1), (3) and (4) and adding paragraphs (b)(3) through (5) to read as follows:

§ 2552.44 What is considered income for determining volunteer eligibility?

(a) * * *

(1) Money, wages, and salaries before any deduction;

* * * * *

(3) Social Security, Unemployment or Workers Compensation, strike benefits, training stipends, alimony, and military family allotments, or other regular support from an absent family member or someone not living in the household;

(4) Government employee pensions, private pensions, regular insurance or annuity payments, and 401(k) or other retirement savings plans;

* * * * *

(b) * * *

(3) Regular payments for public assistance including the Supplemental Nutrition Assistance Program (SNAP).

(4) Social Security Disability or any type of disability payment.

(5) Food or rent received in lieu of wages.

■ 52. Revise § 2552.45 to read as follows:

§ 2552.45 Is a Foster Grandparent a federal employee, an employee of the sponsor or of the volunteer station?

Foster Grandparents are volunteers, and are not employees of the sponsor, the volunteer station, CNCS or the Federal Government.

■ 53. Amend § 2552.46 by revising the section heading, introductory text, and paragraphs (a), (b) introductory text, (b)(1) and (2), (b)(3)(i)(A) and (B), (b)(3)(ii), (c), (d), (e), and (f), and adding paragraph (g), to read as follows:

§ 2552.46 What cost reimbursements and benefits do sponsors provide to Foster Grandparents?

Cost reimbursements and benefits include:

(a) *Stipend.* The stipend is paid for the time Foster Grandparents spend with their assigned children, for earned leave, and for attendance at official project events.

(b) *Insurance.* A Foster Grandparent is provided with the CNCS specified minimum levels of insurance as follows:

(1) *Accident insurance.* Accident insurance covers Foster Grandparents for personal injury during travel between their homes and places of assignment, during their service, during meal periods while serving as a Foster Grandparent, and while attending project-sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the Foster Grandparent from other sources.

(2) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. Such protection does not include professional liability coverage.

(3) * * *

(i) * * *

(A) Liability insurance Foster Grandparents carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by CNCS for each person, each accident, and for property damage.

(ii) Foster Grandparents who drive their personal vehicles to, or on, assignments or project-related activities, shall maintain personal automobile liability insurance equal to or exceeding the levels established by CNCS.

(c) *Transportation.* Foster Grandparents shall receive assistance with the cost of transportation to and from, assignments and official project activities, including orientation, training, and recognition events.

(d) *Meals.* Foster Grandparents may be provided assistance with the cost of meals taken while on assignment, within limits of the project's available resources.

(e) *Recognition.* Foster Grandparent volunteers shall be provided recognition for their service.

(f) *Physical examination.* Foster Grandparents may be provided a physical examination or assistance with the cost of a physical examination prior to assignment and annually thereafter.

(g) *Other volunteer expenses.* Foster Grandparents may also be reimbursed for allowable out-of-pocket expenses incurred while performing their assignments.

■ 54. Revise § 2552.47 to read as follows:

§ 2552.47 May the cost reimbursements and benefits received by a Foster Grandparent be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?

No. Foster Grandparent's cost reimbursements and benefits are not subject to any tax or charge or treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum

wage laws. Cost reimbursements and benefits are not subject to garnishment and do not reduce or eliminate the level of, or eligibility for, assistance or services a Foster Grandparent may be receiving under any governmental program.

■ 55. Revise § 2552.51 to read as follows:

§ 2552.51 What are the terms of service of a Foster Grandparent?

A Foster Grandparent shall serve a minimum of 260 hours annually, or a minimum of 5 hours per week. A Foster Grandparent may serve a maximum of 2080 hours annually, or a maximum of 40 hours per week. Within these limitations, a sponsor may set service policies consistent with local needs.

■ 56. Revise § 2552.52(c) to read as follows:

§ 2552.52 What factors are considered in determining a Foster Grandparent's service schedule?

* * * * *

(c) Meal time may be part of the service schedule and is stipended.

■ 57. Revise § 2552.53 to read as follows:

§ 2552.53 Under what circumstances may a Foster Grandparent be removed from service?

(a) A sponsor may remove a Foster Grandparent from service for cause. Grounds for removal include, but are not limited to: Extensive and unauthorized absences; misconduct; failure to perform assignments or failure to accept supervision. A Foster Grandparent may also be removed from stipended service for having income in excess of the eligibility level. A Foster Grandparent shall be removed immediately if ineligible to serve based on criminal history check results.

(b) The sponsor shall establish appropriate policies on removal from service, as well as procedures for appeal.

■ 58. Revise § 2552.61 to read as follows:

§ 2552.61 May a sponsor serve as a volunteer station?

Yes. A sponsor may serve as a volunteer station, if the activities are part of a work plan in the approved project application.

■ 59. Amend § 2552.62 as follows:

■ a. Revise paragraphs (c) and (d).

■ b. Add the word ''and'' to the end of paragraph (e)(1).

■ c. Revise paragraph (e)(2).

■ d. Remove paragraph (e)(3).

■ e. Revise paragraphs (i) and (j).

The revisions read as follows:

§ 2552.62 What are the responsibilities of a volunteer station?

* * * * *

(c) Develop a written volunteer assignment plan for each Foster Grandparent that identifies their roles and activities, each child served, and expected outcomes.

(d) Keep a Letter of Agreement for each child who receives in-home service.

(e) * * *

(2) Resources required for performance of assignments, including reasonable accommodation, as needed, to enable Foster Grandparents with disabilities to perform the essential functions of their service; and

* * * * *

(i) Comply with all applicable civil rights laws and regulations, including providing Foster Grandparents with disabilities reasonable accommodation, to perform the essential functions of their service.

(j) Undertake such other responsibilities as may be necessary for the successful performance of Foster Grandparents in their assignments or as agreed to in the Memorandum of Understanding.

■ 60. Revise § 2552.71(a) and (b) to read as follows:

§ 2552.71 What requirements govern the assignment of Foster Grandparents?

* * * * *

(a) Provide for Foster Grandparents to give direct services to one or more eligible children.

(b) Result in person-to-person supportive relationships with each child served. Foster Grandparent volunteers cannot be assigned to roles such as teacher's aides, group leaders or other similar positions that would detract from the person-to-person relationship.

* * * * *

■ 61. Amend § 2552.72 as follows:

■ a. Revise the section heading and paragraph (a)(5).

■ b. Remove and reserve paragraph (b).

§ 2552.72 Is a written volunteer assignment plan required for each Foster Grandparent?

(a) * * *

(5) Is used to review the impact of the assignment on the child(ren).

* * * * *

■ 62. Revise the heading for subpart H to read as follows:

Subpart H—Children and Youth Served

■ 63. Revise the heading for § 2552.81 to read as follows:

§ 2552.81 Who is eligible to be served?

* * * * *

■ 64. Revise § 2552.82(a) introductory text to read as follows:

§ 2552.82 Under what circumstances may a Foster Grandparent continue to serve an individual beyond his or her 21st birthday?

(a) Only when a Foster Grandparent has been assigned to, and has developed a relationship with an individual with a disability, may that assignment continue beyond the individual's 21st birthday, provided that:

* * * * *

■ 65. Revise § 2552.91 to read as follows:

§ 2552.91 What is the process for application and award of a grant?

(a) *How and when may an eligible organization apply for a grant?* (1) An eligible organization may file an application in response to CNCS' published request, such as a Notice of Funding Opportunity or a Notice of Funding Availability. Applicants are not assured of selection or approval and may have to compete with other applicants.

(2) The applicant shall comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' (3 CFR, 1982 Comp., p. 197) in 45 CFR part 1233 and any other applicable requirements.

(b) *Who reviews the merits of an application and how is a grant awarded?* (1) CNCS reviews and determines the merit of an application by its responsiveness to published guidelines and to the overall purposes and objectives of the program. When funds are available, CNCS awards a grant in writing to each applicant whose grant proposal provides the best potential for serving the purpose of the program.

(2) The award will be documented by the Notice of Grant Award (NGA). CNCS and the sponsoring organization are the parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of CNCS' obligation to provide financial support to the sponsor.

(c) *What happens if CNCS rejects an application?* CNCS will return an application that is not approved for funding to the applicant with an explanation of CNCS' decision.

(d) *For what period of time does CNCS award a grant?* CNCS awards a Foster Grandparent grant for a specified period that is usually three years in duration.

■ 66. Amend § 2552.92 as follows;

■ a. Revise paragraphs (a), (b) introductory text, (c), and (d).

■ b. Remove paragraph (e).
■ c. Redesignate paragraph (f) as (e) and revise newly redesignated paragraph (e).

The revisions read as follows:

§ 2552.92 What are project funding requirements?

(a) *Is non-CNCS support required?* A CNCS grant may be awarded to fund up to 90 percent of the cost of development and operation of a Foster Grandparent project. The sponsor is required to contribute at least 10 percent of the total project cost from non-Federal sources or authorized Federal sources.

(b) *Under what circumstances does CNCS allow less than the 10 percent non-CNCS support?* CNCS may allow exceptions to the 10 percent local support requirement in cases of demonstrated need such as:

* * * * *

(c) *May CNCS restrict how a sponsor uses locally generated contributions in excess of the 10 percent non-CNCS support required?* Whenever locally generated contributions to Foster Grandparent projects are in excess of the minimum 10 percent non-CNCS support required, CNCS may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit*? All expenditures by the grantee of Federal and non-Federal funds, including expenditures from excess locally generated contributions in support of the grant are subject to audit by CNCS, its Inspector General, or their authorized agents.

(e) *May a sponsor pay stipends at rates different than those established by CNCS?* No, a sponsor shall pay stipends at rates established by CNCS.

■ 67. Amend § 2552.93 as follows:
■ a. Revise the section heading.
■ b. Remove the word ''and'' from the end of paragraph (a)(3).
■ c. Revise paragraph (a)(4).
■ d. Add paragraph (a)(5).
■ e. Revise paragraphs (b), (e), and (f).

The revisions and addition read as follows:

§ 2552.93 What are a sponsor's legal requirements in managing grants?

* * * * *

(a) * * *

(4) All applicable CNCS policies; and

(5) All other applicable CNCS requirements.

(b) Project support provided under a CNCS grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

* * * * *

(e) Payments to settle discrimination complaints, either through a settlement agreement or formal adjudication, are not allowable costs.

(f) Written CNCS approval is required for the following changes in the approved grant:

(1) Reduction in budgeted volunteer service years.

(2) Change in the service area.

■ 68. Revise § 2552.101 to read as follows:

§ 2552.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Foster Grandparents?

Over-income persons as described in § 2552.43, age 55 or over, may be enrolled in FGP project as non-stipended volunteers.

■ 69. Amend § 2552.102 as follows:
■ a. Revise paragraphs (b) and (d).
■ b. Remove paragraphs (e) and (f).
■ c. Redesignate paragraph (g) as (e) and revise newly redesignated paragraph (e).

The revisions read as follows:

§ 2552.102 What are the conditions of service of non-stipended Foster Grandparents?

* * * * *

(b) No special privilege or status is granted or created among Foster Grandparents, whether stipended or non-stipended, and equal treatment is required.

* * * * *

(d) All regulations and requirements applicable to the program apply to all Foster Grandparents.

(e) Non-stipended Foster Grandparents may contribute the costs they incur in connection with their participation in the program. An FGP project may not count such contributions as part of the required non-CNCS support (match) for the grant.

■ 70. Revise § 2552.103 to read as follows:

§ 2552.103 Must a sponsor be required to enroll non-stipended Foster Grandparents?

No. Enrollment of non-stipended Foster Grandparents is not a condition for a sponsor to receive a new or continuation grant.

§ 2552.104 [Removed and Reserved]

■ 71. Remove and reserve § 2552.104.

■ 72. Revise the heading for subpart K to read as follows:

Subpart K—Non-CNCS Funded Foster Grandparent Projects

■ 73. Revise § 2552.111 to read as follows:

§ 2552.111 Under what conditions may an agency or organization sponsor a Foster Grandparent project without CNCS funding?

An eligible agency or organization who wishes to sponsor a Foster Grandparent project without CNCS funding must make an application through the designated grants management system which is approved by CNCS and documented through the Notice of Grant Agreement (NGA).

■ 74. Amend § 2552.112 by revising the section heading, introductory text, and paragraph (a) to read as follows:

§ 2552.112 What are the resources and benefits to which a non-CNCS funded project is entitled?

The Notice of Grant Award entitles the sponsor of a Non-CNCS funded project to:

(a) All technical assistance and materials provided to CNCS funded Foster Grandparent projects; and

* * * * *

■ 75. Revise § 2552.113 to read as follows:

§ 2552.113 What financial obligation does CNCS incur for non-CNCS funded projects?

Issuance of an NGA to a sponsor of a non-CNCS funded project does not create a financial obligation on the part of CNCS for any costs associated with the project.

■ 76. Revise § 2552.114 to read as follows:

§ 2552.114 What happens if a non-CNCS funded sponsor does not comply with the NGA?

A non-CNCS funded project sponsor's noncompliance with the NGA may result in suspension or termination CNCS' agreement and all benefits specified in § 2552.112.

■ 77. Revise § 2552.121(c)(2), (g), and (h) to read as follows:

§ 2552.121 What legal limitations apply to the operation of the Foster Grandparent Program and to the expenditure of grant funds?

* * * * *

(c) * * *

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by CNCS.

* * * * *

(g) *Religious activities.* (1) A Foster Grandparent or a member of the project staff funded by CNCS shall not give religious instruction, conduct worship

services or engage in any form of proselytization as part of his/her duties.

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use CNCS funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the sponsor under subpart B of this part, and with notification to CNCS.

■ 78. Revise § 2552.122 to read as follows:

§ 2552.122 What legal coverage does CNCS make available to Foster Grandparents?

It is within CNCS' discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a FGP volunteer are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the volunteer's activities. The circumstances under which CNCS may pay such expenses are specified in 45 CFR part 1220.

PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

■ 79. The authority citation for part 2553 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

■ 80. Amend § 2553.12 as follows:

■ a. Remove paragraphs (e), (j), (k), (n), (q), and (r).

■ b. Remove all alphabetical paragraph designations.

■ c. Revise the definition of ''Adequate staffing level''.

■ d. Add the definition of ''Assignment description'' in alphabetical order.

■ e. Revise the definition of ''Chief Executive Officer''.

■ f. Add the definition of ''CNCS'' in alphabetical order.

■ g. Revise the definitions of ''Cost reimbursements'', ''Letter of Agreement'', and ''National Senior Service Corps (NSSC)''.

■ h. Add the definitions of ''Non-CNCS support (excess)'' and ''Non-CNCS support (match)'' in alphabetical order.

■ i. Revise the definitions of ''Performance measures'' and ''Project''.

■ j. Add the definition of ''Proprietary Health Care Organization'' in alphabetical order.

■ k. Revise the definitions of ''Sponsor'' and ''Service area''.

■ l. Add the definition of ''United States and Territories'' in alphabetical order.

■ m. Revise the definition of ''Volunteer station''.

The revisions and additions read as follows:

§ 2553.12 Definitions.

* * * * *

Adequate staffing level. The number of project staff or full time equivalent needed by a sponsor to manage the National Senior Service Corps (NSSC) project operations considering such factors as: Number of budgeted volunteers, number of volunteer stations, and the size of the service area.

* * * * *

Assignment description. The written description of the activities, functions or responsibilities to be performed by RSVP volunteers.

Chief Executive Officer. The Chief Executive Officer of CNCS appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

CNCS. The Corporation for National and Community Service established under the NCSA.

Cost reimbursements. Reimbursements budgeted as Volunteer Expenses and provided to volunteers, including stipends to cover incidental costs, transportation, meals, recognition, supplemental accident, personal liability and excess automobile liability insurance, and other expenses as negotiated in the Memorandum of Understanding.

Letter of Agreement. A written agreement between a volunteer station or sponsor, and person(s) served or the person legally responsible for that person. It authorizes the assignment of an RSVP volunteer in the home of a client, defines RSVP volunteer activities, and specifies supervision arrangements.

* * * * *

National Senior Service Corps (NSSC). The collective name for the Senior Companion Program (SCP), Foster Grandparent Program (FGP), and the Retired and Senior Volunteer Program (RSVP), and Demonstration Programs, all of which are established under Parts A, B, C, and E, Title II of the Act. NSSC is also referred to as the ''Senior Corps.''

Non-CNCS support (excess). The amount of non-CNCS cash and in-kind contributions generated by a sponsor in excess of the required percentage.

Non-CNCS support (match). The percentage share of non-CNCS cash and in-kind contributions required to be raised by the sponsor in support of the grant.

Performance measures. Indicators intended to that help determine the impact of an RSVP project on the community, including the volunteers.

Project. The locally planned RSVP activity or set of activities in a service area as approved by CNCS and implemented by the sponsor.

Proprietary Health Care Organizations. Private, for-profit health care organization that serves one or more vulnerable populations.

Service area. The geographically defined area(s) approved in the grant application, in which RSVP volunteers are enrolled and placed on assignments.

Sponsor. A public agency, including Indian tribes as defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer an RSVP project.

United States and Territories. Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

Volunteer station. A public agency; a private, non-profit organization, secular or faith-based; or a proprietary health care organization. A volunteer station must accept responsibility for the assignment and supervision of RSVP volunteers in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

■ 81. Revise § 2553.21 to read as follows:

§ 2553.21 Who is eligible to serve as a sponsor?

CNCS awards grants to public agencies, including Indian tribes as defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and

the capability to administer an RSVP project.

■ 82. Revise § 2553.22 to read as follows:

§ 2553.22 What are the responsibilities of a sponsor?

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the RSVP project as specified in the Act. A sponsor shall not delegate or contract these overall management responsibilities to another entity. CNCS retains the right to determine what types of management responsibilities may or may not be contracted.

■ 83. Amend § 2553.23 as follows:

■ a. Revise the section heading, paragraph (b), and paragraph (c) introductory text.

■ b. Remove the word ''and'' from the end of paragraph (c)(2)(iii).

■ c. Revise paragraph (c)(2)(iv).

■ d. Add paragraph (c)(2)(v).

■ e. Remove paragraph (c)(3).

■ f. Revise paragraph (e).

■ g. Remove paragraphs (f), (g), and (i).

■ h. Redesignate paragraphs (h) and (j) as (f) and (g), respectively, and revise newly redesignated paragraph (g). The revisions and addition read as follows:

§ 2553.23 What are a sponsor's project responsibilities?

* * * * *

(b) In collaboration with other community organizations or by using existing assessments, assess the needs of the community or service area, and develop strategies to respond to identified needs using RSVP volunteers.

(c) Develop and manage one or more volunteer stations to provide a wide range of placement opportunities that appeal to persons age 55 and over by:

* * * * *

(2) * * *

(iv) That states the station will not discriminate against RSVP volunteers, service beneficiaries, or in the operation of its program on the basis of race, color, national origin including individuals with limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service; and

(v) That states the station will provide for the safety of the RSVP volunteers assigned to the station.

* * * * *

(e) Encourage the most efficient and effective use of RSVP volunteers by coordinating project services and activities with related national, state and local programs, including other CNCS programs.

* * * * *

(g) Make every effort to meet such performance measures as established in the approved grant application.

■ 84. Revise § 2553.24(a)(2) through (4) to read as follows:

§ 2553.24 What are a sponsor's responsibilities for securing community participation?

(a) * * *

(2) With an interest in the field of community service and volunteerism;

(3) Capable of helping the sponsor satisfy its administrative and program responsibilities including fund-raising, publicity and meeting or exceeding performance measures;

(4) With an interest in, and knowledge of, the range of abilities of older adults; and

* * * * *

■ 85. Amend § 2553.25 as follows:

■ a. Revise paragraph (c).

■ b. Revise paragraphs (e) through (i).

The revisions read as follows:

§ 2553.25 What are a sponsor's administrative responsibilities?

* * * * *

(c) Employ a full-time project director to accomplish project objectives and manage the functions and activities delegate to project staff for Senior Corps project(s) within its control. The project director may participate in activities to coordinate project resources with those of related local agencies, boards or organizations. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. A sponsor may negotiate the employment of a part-time project director with CNCS when the sponsor can demonstrate that such an arrangement will not adversely affect the size, scope or quality of project operations.

* * * * *

(e) Compensate project staff at a level that is comparable to similar staff positions in the sponsor organization and/or project service area, as is practicable.

(f) Establish risk management policies and procedures covering RSVP project activities. This includes provision of appropriate insurance coverage for RSVP volunteers, which includes; accident insurance, personal liability insurance, and excess automobile liability insurance.

(g) Establish record keeping and reporting systems in compliance with CNCS requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with CNCS evaluation and data collection efforts.

(h) Comply with, and ensure that all volunteer stations comply with, all applicable civil rights laws and regulations, including non-discrimination based on disability.

(i) Conduct National Service Criminal History Checks in accordance with the requirements in 45 CFR 2540.200 through 2540.207.

§ 2553.26 [Removed and Reserved]

■ 86. Remove and reserve § 2553.26.

■ 87. Revise § 2553.31(a)(3), (b), and (c) to read as follows;

§ 2553.31 What are the rules on suspension, termination and denial of refunding of grants?

(a) * * *

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and CNCS; and

* * * * *

(b) Hearings or other meetings as may be necessary to fulfill the requirements of this section should, to the extent practicable, be held in locations convenient to the grant recipient.

(c) The procedures for suspension, termination, and denial of refunding, that apply to the RSVP program are specified in 45 CFR part 1206.

■ 88. Amend § 2553.41 as follows:

■ a. Revise the section heading.

■ b. Add the word ''and'' at the end of paragraph (a)(2).

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

■ d. Remove paragraph (a)(4).

■ e. Revise paragraph (b).

The revisions read as follows:

§ 2553.41 Who is eligible to be an RSVP volunteer?

* * * * *

(b) Eligibility to serve as an RSVP volunteer shall not be restricted on the basis of formal education, experience, race, color, national origin including limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service.

■ 89. Revise § 2553.42 to read as follows:

§ 2553.42 Is an RSVP volunteer a federal employee, an employee of the sponsor or of the volunteer station?

RSVP volunteers are not employees of the sponsor, the volunteer station, CNCS or the Federal Government.

■ 90. Revise § 2553.43 to read as follows:

§ 2553.43 What cost reimbursements and benefits may sponsors provide to RSVP volunteers?

(a) RSVP volunteers may be provided the following cost reimbursements within the limits of the project's available resources:

(1) *Transportation.* RSVP volunteers may receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, and recognition events.

(2) *Meals.* RSVP volunteers may receive assistance with the cost of meals taken while on assignment.

(3) *Other volunteer expenses.* RSVP volunteers may also be reimbursed for allowable out-of-pocket expenses incurred while performing their assignments.

(b) RSVP volunteers must be provided the following cost reimbursements:

(1) *Recognition.* RSVP volunteers shall be provided recognition for their service.

(2) *Insurance.* An RSVP volunteer is provided with the CNCS-specified minimum levels of insurance as follows:

(i) *Accident insurance.* Accident insurance covers RSVP volunteers for personal injury during travel between their homes and places of assignment, during volunteer service, during meal periods while serving as a volunteer, and while attending project sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources.

(ii) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. It does not include professional liability coverage.

(iii) *Excess automobile insurance.* (A) RSVP drivers who drive in connection with their service shall be provided protection against claims in excess of the greater of either:

(*1*) Liability insurance the volunteers carry on their own automobiles; or

(*2*) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by CNCS for each person, each accident, and for property damage.

(B) RSVP volunteers who drive their personal vehicles to or on assignments or project-related activities shall maintain personal automobile liability insurance equal to or exceeding the levels established by CNCS.

■ 91. Revise § 2553.44 to read as follows:

§ 2553.44 May cost reimbursements received by RSVP volunteers be subject to any tax or charge, treated as wages or compensation, or affect eligibility to receive assistance from other programs?

No. An RSVP volunteer's cost reimbursements are not subject to any tax or charge, and are not treated as wages or compensation for the purposes of unemployment insurance, workers' compensation, temporary disability, retirement, public assistance or similar benefit payments or minimum wage laws. Cost reimbursements are not subject to garnishment, and do not reduce or eliminate the level of, or eligibility for, assistance or services that a volunteer may be receiving under any governmental program.

■ 92. Revise § 2553.51 to read as follows:

§ 2553.51 What are the terms of service of an RSVP volunteer?

An RSVP volunteer shall serve on a regular basis, or intensively on short-term assignments, consistent with the assignment description.

■ 93. Revise § 2553.52 to read as follows:

§ 2553.52 Under what circumstances may a sponsor remove an RSVP volunteer from service?

(a) A sponsor may remove an RSVP volunteer from service for cause. Grounds for removal include, but are not limited to: Extensive and unauthorized absences; misconduct; failure to perform assignments and or failure to accept supervision.

(b) The sponsor shall establish appropriate policies on removal from service as well as procedures for appeal.

■ 94. Revise § 2553.61 to read as follows:

§ 2553.61 When may a sponsor serve as a volunteer station?

The sponsor and RSVP project itself may function as a volunteer station or may initiate special volunteer activities provided that CNCS agrees these activities are in accord with program objectives and will not hinder overall project operations.

■ 95. Amend § 2553.62 as follows:

■ a. Revise paragraphs (b), (c), (e), and (f)(2) and (3).

■ b. Remove paragraphs (f)(4) and (5).

The revisions read as follows:

§ 2553.62 What are the responsibilities of a volunteer station?

* * * * *

(b) Assign staff member responsible for day to day oversight of RSVP volunteers within the volunteer station and for assessing the impact of volunteers in addressing community needs;

(c) Keep a Letter of Agreement for each client who receives in-home service;

* * * * *

(e) Comply with all applicable civil rights requirements including providing RSVP volunteers with disabilities reasonable accommodation to perform the essential functions of their service;

(f) * * *

(2) Resources required for performance of assignments including reasonable accommodation to RSVP volunteers with disabilities to perform the essential functions of their service; and

(3) Supervision.

* * * * *

■ 96. Amend § 2553.71 as follows:

■ a. Revise the introductory text and paragraphs (a)(1), (b)(1), (b)(2)(iv), (c)(2), (d), and (e).

■ b. Remove paragraph (f).

The revisions read as follows:

§ 2553.71 What is the process for application and award of a grant?

As funds become available, CNCS solicits application for RSVP grants from eligible organizations through a competitive process.

(a) * * *

(1) Submit required information determined by CNCS.

* * * * *

(b) *What process does CNCS use to select new RSVP grantees?* (1) CNCS reviews and determines the merits of an application by its responsiveness to published guidelines and to the overall purpose and objectives of the program. In conducting its review during the competitive process, CNCS considers the input and opinions of those serving on a peer review panel, including members with expertise in senior service and aging, and may conduct site inspections, as appropriate.

(2) * * *

(iv) Ensuring innovation and geographic, demographic, and programmatic diversity across CNCS RSVP grantee portfolio; and

* * * * *

(c) * * *

(2) CNCS and the sponsoring organization are parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of CNCS' obligation to provide assistance to the sponsor.

(d) *What happens if CNCS rejects an application?* CNCS will inform an applicant when an application is not approved for funding.

(e) *For what period of time does CNCS award a grant?* CNCS awards an RSVP

grant for a specified period that is usually three years in duration with an option for a grant renewal of three years, if the grantee's performance and compliance with grant terms and conditions are satisfactory. CNCS will terminate funding to a grantee when CNCS determines that the grant should not be renewed for an additional three year period.

■ 97. Revise § 2553.72(a), (b) introductory text, (c), and (d) to read as follows:

§ 2553.72 What are project funding requirements?

(a) *Is non-CNCS support required?* (1) A CNCS grant may be awarded to fund up to 90 percent of the total project cost in the first year, 80 percent in the second year, and 70 percent in the third and succeeding years.

(2) A sponsor is responsible for identifying non-CNCS funds which may include in-kind contributions.

(b) *Under what circumstances does CNCS allow less than the percentage identified in paragraph (a) of this section?* CNCS may allow exceptions to the local support requirement identified in paragraph (a) of this section in cases of demonstrated need such as:

* * * * *

(c) *May CNCS restrict how a sponsor uses locally generated contributions in excess of the non-CNCS support required?* Whenever locally generated contributions to RSVP projects are in excess of the non-CNCS funds required (10 percent of the total cost in the first year, 20 percent in the second year and 30 percent in the third and succeeding years), CNCS may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* All expenditures by the grantee of Federal and Non-Federal funds, including expenditures from excess locally generated contributions, are subject to audit by CNCS, its Inspector General or their authorized agents.

■ 98. Amend § 2553.73 as follows:

■ a. Revise the section heading.

■ b. Remove the word ''and'' from the end of paragraph (a)(3).

■ c. Revise paragraph (a)(4).

■ d. Add paragraph (a)(5).

■ e. Revise paragraphs (b), (e), and (f).

The revisions and addition read as follows:

§ 2553.73 What are a sponsor's legal requirements in managing grants?

* * * * *

(a) * * *

(4) All applicable CNCS policies; and

(5) All other applicable CNCS requirements.

(b) Project support provided under a CNCS grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

* * * * *

(e) Payments to settle discrimination complaints, either through a settlement agreement or formal adjudication, are not allowable costs.

(f) Written CNCS approval/concurrence is required for a change in the approved service area.

■ 99. Revise the heading for subpart H to read as follows:

Subpart H—Non-CNCS Funded Projects

■ 100. Revise § 2553.81 to read as follows:

§ 2553.81 Under what conditions may an agency or organization sponsor an RSVP project without CNCS funding?

An eligible agency or organization who wishes to sponsor an RSVP project without CNCS funding must make an application through the designated grants management system which is approved by CNCS and documented through the Notice of Grant Agreement (NGA).

■ 101. Amend § 2553.82 by revising the section heading and paragraph (a) to read as follows:

§ 2553.82 What are the resources and benefits to which a non-CNCS funded project is entitled?

(a) All technical assistance and materials provided to CNCS funded RSVP volunteer projects; and

* * * * *

■ 102. Revise § 2553.83 to read as follows:

§ 2553.83 What financial obligation does CNCS incur for non-CNCS funded projects?

Issuance of an NGA to a sponsor of a non-CNCS funded project does not create a financial obligation on the part of CNCS for any costs associated with the project.

■ 103. Revise § 2553.84 to read as follows:

§ 2553.84 What happens if a non-CNCS funded sponsor does not comply with the NGA?

A non-CNCS funded project sponsor's noncompliance with the NGA may result in suspension or termination CNCS' agreement and all benefits specified in § 2553.82.

■ 104. In § 2553.91, revise the section heading and paragraphs (c)(2), (g), and (h) to read as follows:

§ 2553.91 What legal limitations apply to the operation of the RSVP volunteer Program and to the expenditure of grant funds?

* * * * *

(c) * * *

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by CNCS.

* * * * *

(g) *Religious activities.* (1) An RSVP volunteer or a member of the project staff funded by CNCS shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of his/her duties.

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use CNCS funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the sponsor under subpart B of this part, and with notification to CNCS.

■ 105. Revise § 2553.92 to read as follows:

§ 2553.92 What legal coverage does CNCS make available to RSVP volunteers?

It is within CNCS' discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of an RSVP volunteer are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the volunteer's activities. The circumstances under which CNCS may pay such expenses are specified in 45 CFR part 1220.

§ 2553.100 [Removed]

■ 106. Remove § 2553.100.

■ 107. Revise § 2553.101 to read as follows:

§ 2553.101 What is the purpose of performance measurement?

The purpose of performance measurement is to strengthen the RSVP project and foster continuous improvement. Performance measures are used to assess how an applicant for a grant approaches the design of volunteer activities and how those activities impact community needs.

■ 108. Revise § 2553.102 to read as follows:

§ 2553.102 What performance measurement information must be part of an application for funding under RSVP?

An application to CNCS for funding under RSVP must contain:

(a) In a year one renewal application:

(1) Performance measures.

(2) Estimated performance data for the project years covered by the application.

(b) In a year two or three continuation application:

(1) Performance measures.

(2) Estimated performance data for the project years covered by the application.

(3) Actual performance data, where available, for the preceding completed project year.

■ 109. Revise § 2553.103 to read as follows:

§ 2553.103 Who develops the performance measures?

(a) CNCS may establish performance measures that will apply to RSVP projects, which sponsors will be responsible for meeting.

(b) An applicant is responsible for choosing its own project specific performance measures.

■ 110. Revise § 2553.104 to read as follows:

§ 2553.104 What performance measures must be submitted to CNCS and how are these submitted?

(a) An applicant for CNCS funds is required to submit any uniform performance measure CNCS may establish for all applicants. Requirements, including types of performance measures, will be communicated in the notice of funding and other related materials.

(b) CNCS may specify additional requirements related to performance measures on an annual basis in program guidance and related materials.

(c) Applicants for CNCS funds will submit performance measures through the grant application. CNCS will provide standard forms.

■ 111. Revise § 2553.105 to read as follows:

§ 2553.105 How are performance measures approved and documented?

(a) CNCS reviews and approves performance measures for all applicants that apply for funding.

(b) An applicant must follow CNCS provided guidance and formats when submitting performance measures.

(c) Final performance measures, as negotiated between the applicant and CNCS, will be documented in the approved grant application.

■ 112. Revise § 2553.106 to read as follows:

§ 2553.106 How does a sponsor report performance measures to CNCS?

CNCS will set specific reporting requirements, including frequency and deadlines, concerning performance measures established in the grant award. A sponsor is required to report on the actual results that occurred when implementing the grant and to regularly measure the project's performance.

■ 113. Amend § 2553.107 by revising the introductory text to read as follows:

§ 2553.107 What must a sponsor do if it cannot meet its performance measures?

When a sponsor finds it is not on track to meet its performance measures, the sponsor must develop a plan to get back on track or submit a request to CNCS to amend its performance measures. CNCS may limit when amendments to performance measure can be submitted, as well as limit the types of changes a sponsor can make to performance measures. The request must include all of the following:

* * * * *

§ 2553.108 [Removed]

■ 114. Remove § 2553.108.

§ 2553.109 [Redesignated as § 2553.108 and Amended]

■ 115. Redesignate § 2553.109 as § 2553.108 and revise newly redesignated § 2553.108 to read as follows:

§ 2553.108 What happens if a sponsor fails to meet the target performance measures included in the approved grant application?

If a sponsor fails to meet a target performance measure established in the approved grant application, CNCS may take one or more of the following actions:

(a) Reduce the amount, suspend, or deny refunding of the grant, in accordance with the provisions of § 2553.31;

(b) Terminate the grant, in accordance with 45 CFR part 1206.

Dated: December 4, 2018.

Tim Noelker,

General Counsel.

[FR Doc. 2018–26739 Filed 12–14–18; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL REGISTER

Vol. 83 Monday,

No. 241 December 17, 2018

Part III

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 3, 32, 217, and 324

Standardized Approach for Calculating the Exposure Amount of Derivative Contracts; Proposed Rules

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3 and 32

[Docket ID OCC–2018–0030]

RIN 1557–AE44

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket R–1629]

RIN 7100–AF22

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE80

Standardized Approach for Calculating the Exposure Amount of Derivative Contracts

AGENCY: The Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; and the Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (together, the agencies) are inviting public comment on a proposal that would implement a new approach for calculating the exposure amount of derivative contracts under the agencies' regulatory capital rule. The proposed approach, called the standardized approach for counterparty credit risk (SA–CCR), would replace the current exposure methodology (CEM) as an additional methodology for calculating advanced approaches total risk-weighted assets under the capital rule. An advanced approaches banking organization also would be required to use SA–CCR to calculate its standardized total risk-weighted assets; a non–advanced approaches banking organization could elect to use either CEM or SA–CCR for calculating its standardized total risk-weighted assets. In addition, the proposal would modify other aspects of the capital rule to account for the proposed implementation of SA–CCR. Specifically, the proposal would require an advanced approaches banking organization to use SA–CCR with some adjustments to determine the exposure amount of derivative contracts for calculating total leverage exposure (the denominator of the supplementary leverage ratio). The proposal also would incorporate SA–CCR into the cleared transactions framework and would make other amendments, generally with respect to cleared transactions. The proposed introduction of SA–CCR would indirectly affect the Board's single counterparty credit limit rule, along with other rules. The Office of the Comptroller of the Currency also is proposing to update cross-references to CEM and add SA–CCR as an option for determining exposure amounts for derivative contracts in its lending limit rules.

DATES: Comments should be received on or before February 15, 2019.

ADDRESSES: Comments should be directed to:

Board: You may submit comments, identified by Docket No. [R–1629 and RIN 7100–AF22], by any of the following methods:

1. *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

2. *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

3. *Fax:* (202) 452–3819 or (202) 452–3102.

4. *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 are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove sensitive personal identifying information (PII) at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE80, by any of the following methods:

- *Agency Website: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency website.
- *Email: Comments@FDIC.gov.* Include "RIN 3064–AE80" on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/RIN 3064–AE80, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. All comments received must include the agency name (FDIC) and RIN 3064–AE80 and will be posted without change to *http://www.fdic.gov/regulations/laws/federal,* including any personal information provided.

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 "Capital Adequacy: Standardized Approach for Calculating the Exposure Amount of Derivative Contracts" 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–2018–0030" 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–2018–0030" 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–2018–0030" 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.

FOR FURTHER INFORMATION CONTACT:

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; David Lynch, Deputy Associate Director, (202) 452–2081; Elizabeth MacDonald, Manager, (202) 475–6316; Michael Pykhtin, Manager, (202) 912–4312; Mark Handzlik, Senior Supervisory Financial Analyst, (202) 475–6636; Sara Saab, Supervisory Financial Analyst, (202) 872–4936; or Noah Cuttler, Senior Financial Analyst, (202) 912–4678; Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; Mark Buresh, Counsel, (202) 452–5270; Andrew Hartlage, Counsel, (202) 452–6483; 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, (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Irina Leonova, Senior Policy Analyst, *ileonova@fdic.gov;* Peter Yen, Senior Policy Analyst, *pyen@fdic.gov,* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel, *mphillips@fdic.gov;* Catherine Wood, Counsel, *cawood@fdic.gov;* Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

OCC: Guowei Zhang, Risk Expert, Capital Policy, (202) 649–7106; Kevin Korzeniewski, Counsel, (202) 649–5490; or Ron Shimabukuro, Senior Counsel, (202) 649–5490, or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Scope and Application of the Proposed Rule
B. Proposal's Interaction With Agency Requirements and Other Proposals
C. Overview of Derivative Contracts
D. Mechanics of the Current Exposure Methodology
E. Mechanics of the Internal Models Methodology
F. Review of the Capital Rule's Treatment of Derivative Contracts
II. Standardized Approach for Counterparty Credit Risk
A. Key Concepts
1. Netting Sets
2. Hedging Sets
3. Derivative Contract Amount for the PFE Component Calculation
4. Collateral Recognition and Differentiation Between Margined and Unmargined Derivative Contracts
B. Mechanics of the Standardized Approach for Counterparty Credit Risk
1. Exposure Amount
2. Replacement Cost
3. Aggregated Amount and Hedging Set Amounts
4. PFE Multiplier
5. PFE Calculation for Nonstandard Margin Agreements
6. Adjusted Derivative Contract Amount
7. Example of Calculation
III. Revisions to the Cleared Transactions Framework
A. Trade Exposure Amount
B. Treatment of Collateral
C. Treatment of Default Fund Contributions
IV. Revisions to the Supplementary Leverage Ratio
V. Technical Amendments
A. Receivables Due From a QCCP
B. Treatment of Client Financial Collateral Held by a CCP
C. Clearing Member Exposure When CCP Performance is Not Guaranteed
D. Bankruptcy Remoteness of Collateral
E. Adjusted Collateral Haircuts for Derivative Contracts
F. OCC Revisions to Lending Limits
VI. Impact of the Proposed Rule
VII. Regulatory Analyses
A. Paperwork Reduction Act
B. Regulatory Flexibility Act
C. Plain Language
D. Riegle Community Development and Regulatory Improvement Act of 1994
E. OCC Unfunded Mandates Reform Act of 1995 Determination

I. Background

A firm with a positive exposure on a derivative contract expects to receive a payment from its counterparty and is subject to the credit risk that the counterparty will default on its obligations and fail to pay the amount owed under the derivative contract. Because of this, the regulatory capital rule (capital rule) [1] of the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (together, the agencies) requires a banking organization [2] to hold regulatory capital based on the exposure amount of its derivative contracts. The agencies are issuing this notice of proposed rulemaking (proposal) to implement a new approach for calculating the exposure amount of derivative contracts under the capital rule.

As discussed in greater detail below, the capital rule prescribes different approaches to measuring the exposure amount of derivative contracts, depending on the size and complexity of the banking organization. For example, all banking organizations are required to use the current exposure methodology (CEM) to determine the exposure amount of their derivative contracts under the standardized approach of the capital rule, which is based on formulas described in the capital rule. Advanced approaches banking organizations also may use an internal models-based approach, the internal models methodology (IMM), to determine the exposure amount of their derivative contracts under the advanced approaches of the capital rule.[3] The addition of a new approach, called the standardized approach for counterparty credit risk (SA–CCR), would provide

[1] *See* 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC). The agencies have codified the capital rule in different parts of title 12 of the CFR (part 3 (OCC); part 217 (Board); and part 324 (FDIC)), but the internal structure of the sections within each agency's rule are identical. All references to sections in the capital rule or the proposal are intended to refer to the corresponding sections in the capital rule of each agency.

[2] Banking organizations subject to the agencies' capital rule include national banks, state member banks, insured state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States, but exclude banking organizations subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), and certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

[3] A banking organization is an advanced approaches banking organization if it has at least $250 billion in total consolidated assets or if it 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. *See* 12 CFR 3.100(b) (OCC); 12 CFR 217.100(b) (Board); and 12 CFR 324.100(b) (FDIC).

important improvements to risk-sensitivity and calibration relative to CEM, but also would provide a less complex and non-model-dependent approach than IMM.

In addition, the agencies are proposing to revise the capital rule's cleared transactions framework and the supplementary leverage ratio to accommodate the proposed implementation of SA–CCR, as well as make certain other changes to the cleared transaction framework in the capital rule.

A. Scope and Application of the Proposed Rule

The capital rule provides two methodologies for determining total risk-weighted assets: The standardized approach, which applies to all banking organizations, and the advanced approaches, which apply only to advanced approaches banking organizations. The standardized approach serves as a floor on advanced approaches banking organizations' total risk-weighted assets, and thus such banking organizations must calculate total risk-weighted assets under both approaches.[4] Total risk-weighted assets are the denominator of the risk-based capital ratios; regulatory capital is the numerator.

Under the standardized approach, the risk-weighted asset amount for a derivative contract is the product of the exposure amount of the derivative contract and the risk weight applicable to the counterparty, as provided under the capital rule. Under the advanced approaches, the risk-weighted asset amount for a derivative contract is derived using the internal ratings-based approach, which multiplies the exposure amount (or exposure at default amount) of the derivative contract by a models-based formula that uses risk parameters determined by a banking organization's internal methodologies.[5]

Both the standardized approach and the advanced approaches require a banking organization to determine the exposure amount for its derivative contracts that are not cleared transactions (*i.e.,* over-the-counter derivative contracts or noncleared derivative contracts). As part of the cleared transactions framework, both the standardized approach and the advanced approaches require a banking organization to determine the exposure amount of its derivative contracts that are cleared transactions (*i.e.,* cleared derivative contracts) and determine the risk-weighted asset amounts of its contributions or commitments to mutualized loss sharing agreements with central counterparties (*i.e.,* default fund contributions). For the advanced approaches, an advanced approaches banking organization may use either CEM or IMM to calculate the exposure amount of its noncleared and cleared derivative contracts, as well as the risk-weighted asset amounts of its default fund contributions. For purposes of determining these amounts for the standardized approach, all banking organizations must use CEM.

The proposal would revise the standardized approach and the advanced approaches for advanced approaches banking organizations by replacing CEM with SA–CCR. As a result, for purposes of determining total risk-weighted assets under the advanced approaches, an advanced approaches banking organization would have the option to use SA–CCR or IMM to calculate the exposure amount of its noncleared and cleared derivative contracts, as well as to determine the risk-weighted asset amount of its default fund contributions. For purposes of determining the exposure amount of these items under the standardized approach, an advanced approaches banking organization would be required to use SA–CCR.

The capital rule also requires an advanced approaches banking organization to meet a supplementary leverage ratio. The denominator of the supplementary leverage ratio, called total leverage exposure, includes the exposure amount of a banking organization's derivative contracts. The capital rule requires an advanced approaches banking organization to use CEM to determine the exposure amount of its derivative contracts for total leverage exposure. Under the proposal, an advanced approaches banking organization would be required to use SA–CCR to determine the exposure amount of its derivative contracts for total leverage exposure.

As it applies to advanced approaches banking organizations, the proposed implementation of SA–CCR would provide important improvements to risk-sensitivity and calibration relative to CEM, resulting in more appropriate capital requirements for derivative contracts. SA–CCR also would be responsive to concerns raised regarding the current regulatory capital treatment for derivative contracts under CEM. For example, the industry has raised concerns that CEM does not appropriately recognize collateral, including the risk-reducing nature of variation margin, and does not provide sufficient netting for derivative contracts that share similar risk factors. The agencies intend for the proposed implementation of SA–CCR to respond to these concerns, and to be substantially consistent with international standards issued by the Basel Committee on Banking Supervision (Basel Committee). In addition, requiring an advanced approaches banking organization to use SA–CCR or IMM for all purposes under the advanced approaches would facilitate regulatory reporting and the supervisory assessment of an advanced approaches banking organization's capital management program.

The proposed implementation of SA–CCR would require advanced approaches banking organizations to augment existing systems or develop new ones. Accordingly, the proposal includes a transition period, until July 1, 2020, by which time an advanced approaches banking organization must implement SA–CCR. An advanced approaches banking organization may, however, adopt SA–CCR as of the effective date of the final rule. In addition, the technical revisions in this proposal, as described in section V of this Supplementary Information, would become effective as of the effective date of the final rule.

While the agencies recognize that implementation of SA–CCR offers several improvements to CEM, it also will require, particularly for banking organizations with relatively small derivatives portfolios, internal systems enhancements and other operational modifications that could be costly and present additional burden. Therefore, the proposal would not require non-advanced approaches banking organizations to use SA–CCR, but instead would provide SA–CCR as an optional approach. However, a non-advanced approaches banking organization that elects to use SA–CCR for calculating its exposure amount for noncleared derivative contracts also would be required to use SA–CCR to calculate the exposure amount for its cleared derivative contracts and for calculating the risk-weighted asset amount of its default fund contributions. This approach should provide meaningful flexibility, while promoting consistency for the regulatory capital treatment of derivative contracts for non-advanced approaches banking organizations. The proposal also would

[4] 12 CFR 3.10(c) (OCC); 12 CFR 217.10(c) (Board); and 12 CFR 324.10(c) (FDIC). For example, an advanced approaches banking organization's tier 1 capital ratio is the *lower of* the ratio of the banking organization's common equity tier 1 capital to standardized total risk-weighted assets and the ratio of the banking organization's common equity tier 1 capital to advanced approaches total risk-weighted assets.

[5] *See generally* 12 CFR 3.132 (OCC); 12 CFR 217.132 (Board); and 12 CFR 324.132 (FDIC).

allow non-advanced approaches banking organizations to adopt SA–CCR as of the effective date of the final rule.	

TABLE 1—SCOPE AND APPLICABILITY OF THE PROPOSED RULE

	Non-cleared derivative contracts	Cleared transactions framework	Default fund contribution
Advanced approaches banking organizations, advanced approaches total risk-weighted assets.	Option to use SA–CCR or IMM to determine exposure amount for derivative contracts under the advanced approaches.	Must use the approach selected for purposes of the counterparty credit risk framework (either SA–CCR or IMM), to determine the trade exposure amount for cleared derivative contracts.	Must use SA–CCR for purposes of the default fund contribution included in risk-weighted assets.
Advanced approaches banking organizations, standardized approach total risk-weighted assets.	Must use SA–CCR to determine exposure amount for derivative contracts.	Must use SA–CCR to determine trade exposure amount for cleared derivative contracts.	Must use SA–CCR for purposes of the default fund contribution included in risk-weighted assets.
Non-advanced approaches banking organizations, standardized approach total risk-weighted assets.	Option to use CEM or SA–CCR to determine exposure amount for derivative contracts.	Must use the approach selected for purposes of the counterparty credit risk framework (either CEM or SA–CCR), to determine the trade exposure amount for cleared derivative contracts.	Must use the approach selected for purposes of the counterparty credit risk framework (either CEM or SA–CCR) for purposes of the default fund contribution included in risk-weighted assets.
Advanced approaches banking organizations, supplementary leverage ratio.	Must use modified SA–CCR to determine the exposure amount of derivative contracts for total leverage exposure under the supplementary leverage ratio.		

Question 1: The agencies invite comment on all aspects of this proposal. In addition to the risk-sensitivity enhancements SA–CCR provides relative to CEM, what other considerations relevant to the determination of whether to replace CEM with SA–CCR for advanced approaches banking organizations should the agencies consider?

Question 2: The agencies invite comment on the proposed effective date of SA–CCR for advanced approaches banking organizations. What alternative timing should be considered and why?

B. Proposal's Interaction With Agency Requirements and Other Proposals

The Board's single counterparty credit limit rule (SCCL) authorizes a banking organization subject to the SCCL to use any methodology that such a banking organization may use under the capital rule to value a derivative contract for purposes of the SCCL.[6] Thus, for valuing a derivative contract under the SCCL, the proposal would require an advanced approaches banking organization that is subject to the SCCL to use SA–CCR or IMM and would require a non-advanced approaches banking organization that is subject to the SCCL to use CEM or SA–CCR.[7] In addition, the agencies net stable funding ratio proposed rules would cross-reference provisions of the agencies' supplementary leverage ratio that are proposed to be amended in this proposal, and thus this proposal potentially could affect elements of the net stable funding ratio rulemaking.[8]

The agencies also are in the process of considering the appropriate scope of ''advanced approaches banking organizations'' and may propose changes to the scope of this term in the near future. The agencies anticipate that the proposal on the scope of ''advanced approaches banking organizations'' would have an overlapping comment period with this proposal. Commenters should consider both proposals together for purposes of their comments to the agencies.

C. Overview of Derivative Contracts

In general, derivative contracts represent agreements between parties either to make or receive payments or to buy or sell an underlying asset on a certain date (or dates) in the future. Parties generally use derivative contracts to mitigate risk, although nonhedging use of derivative contracts also occurs. For example, an interest rate derivative contract allows a party to manage the risk associated with a change in interest rates, while a commodity derivative contract allows a party to lock in commodity prices in the future and thereby minimize any exposure attributable to any uncertainty with respect to subsequent movements in those prices.

The value of a derivative contract, and thus a party's exposure to its counterparty, changes over the life of the contract based on movements in the value of the reference rates, assets, or indices underlying the contract. A party with a positive current exposure expects to receive a payment or other beneficial transfer from the counterparty and is considered to be ''in the money.'' A party that is in the money is subject to counterparty credit risk: The risk that the counterparty will default on its obligations and fail to pay the amount owed under the transaction. In contrast, a party with a zero or negative current exposure does not expect to receive a payment or beneficial transfer from the counterparty and is considered to be ''at the money'' or ''out of the money.'' A party that has no current exposure to counterparty credit risk may have exposure to counterparty credit risk in the future if the derivative contract becomes ''in the money.''

To mitigate the counterparty credit risk of a derivative contract, parties typically exchange collateral. In the derivatives context, collateral is either variation margin or initial margin (also known as independent collateral). Parties exchange variation margin on a periodic basis during the term of a derivative contract, as typically specified in a variation margin

[6] 83 FR 38460 (August 6, 2018).

[7] Many of the Board's other regulations rely on amounts determined under the capital rule, and the introduction of SA–CCR therefore could indirectly effect all such rules.

[8] *See* 81 FR 35124 (June 1, 2016).

agreement or by regulation.[9] Variation margin offsets changes in the market value of a derivative contract and thereby covers the potential loss arising from default of a counterparty. Variation margin may not always be sufficient to cover a party's positive exposure (*e.g.,* due to delays in receiving collateral), and thus parties may exchange initial margin. Parties typically exchange initial margin at the outset of the derivative contract and usually in an amount that does not directly depend on changes in the value of the derivative contract. Parties typically post initial margin in amounts that would reduce the likelihood of a positive exposure amount for the derivative contract in the event of the counterparty's default, resulting in overcollateralization.

To facilitate the exchange of collateral, variation margin agreements typically provide for a threshold amount and a minimum transfer amount. The threshold amount is the amount by which the market value of the derivative contract can change before a party must collect or post variation margin (in other words, the threshold amount specifies an acceptable amount of under-collateralization). The minimum transfer amount is the smallest amount of collateral that a party must transfer when it is required to exchange collateral under the variation margin agreement. Parties generally apply a discount (also known as a haircut) to collateral to account for a potential reduction in the value of the collateral during the period between the last exchange of collateral before the close out of the derivative contract (as in the case of default of the counterparty) and the replacement of the contract on the market. This period is known as the margin period of risk (MPOR). Often, two parties will enter into a large number of derivative contracts together. In such cases, the parties may enter into a netting agreement to allow for offsetting of the derivative contracts and to streamline certain aspects of the contracts, including the exchange of collateral.

Parties to a derivative contract may clear their derivative contracts through a central counterparty (CCP). The use of central clearing is designed to improve the safety and soundness of the derivatives markets through the multilateral netting of exposures, establishment and enforcement of collateral requirements, and the promotion of market transparency. A party engages with a CCP either as a clearing member or as a clearing member client. A clearing member is a member of, or direct participant in, a CCP that is entitled to enter into transactions with the CCP. A clearing member client is a party to a cleared transaction associated with a CCP in which a clearing member acts as a financial intermediary with respect to the clearing member client and either takes one position with the client and an offsetting position with the CCP (the principal model) or guarantees the performance of the clearing member client to the CCP (the agency model). With respect to the latter, the clearing member generally is responsible for fulfilling CCP initial and variation margin calls irrespective of the client's ability to post collateral.

D. Mechanics of the Current Exposure Methodology

Under CEM, the exposure amount of a single derivative contract is equal to the sum of its current credit exposure and potential future exposure (PFE).[10] Current credit exposure reflects a banking organization's current exposure to its counterparty and is equal to the greater of zero and the on-balance sheet fair value of the derivative contract.[11] PFE approximates the banking organization's potential exposure to its counterparty over the remaining maturity of the derivative contract. PFE equals the product of the notional amount of the derivative contract and a supervisory-provided conversion factor, which reflects the potential volatility in the reference asset for the derivative contract.[12] The capital rule gives the supervisory-provided conversion factors via a simple look-up table, based on the derivative contract's type and remaining maturity.[13] In general, potential exposure increases as volatility and duration of the derivative contract increases.

If certain criteria are met, CEM allows a banking organization to measure the exposure amount of a portfolio of its derivative contracts with a counterparty on a net basis, rather than on a gross basis, resulting in a lower measure of exposure and thus a lower capital requirement. A banking organization may measure, on a net basis, derivative contracts that are subject to the same qualifying master netting agreement (QMNA). A QMNA, in general, means a netting agreement that permits a banking organization to terminate, close-out on a net basis, and promptly liquidate or set off collateral upon an event of default of the counterparty.[14] To qualify as a QMNA, the netting agreement must satisfy certain operational requirements under § __.3 of the capital rule.[15]

For derivative contracts subject to a QMNA, the exposure amount equals the sum of the net current credit exposure and the adjusted sum of the PFE amounts of the derivative contracts.[16] The net current credit exposure is the greater of the net sum of all positive and negative fair values of the individual derivative contracts subject to the QMNA or zero.[17] Thus, derivative contracts that have positive and negative fair values can offset each other to reduce the net current credit exposure, subject to a floor of zero. The adjusted sum of the PFE amount component provides the netting function, and is a function of the gross PFE amount of the derivative contracts and the net-to-gross ratio. The gross PFE amount is the sum of the PFE of each derivative contract subject to the QMNA. The net-to-gross ratio is the ratio of the net current credit exposure of each derivative contract subject to the QMNA to the sum of the positive current credit exposure of these derivative contracts. Specifically, the adjusted sum of the PFE amounts equals the sum of (1) the gross PFE amount multiplied by 0.4 and (2) the gross PFE

[9] *See, e.g.,* Swap Margin Rule, 12 CFR part 45 (OCC); 12 CFR part 237 (Board); 12 CFR part 349 (FDIC).

[10] *See* 12 CFR 3.34 (OCC); 12 CFR 217.34 (Board); 12 CFR 324.34 (FDIC).

[11] 12 CFR 3.34(a)(1)(i) (OCC); 12 CFR 217.34(a)(1)(i) (Board); 12 CFR 324.34(a)(1)(i) (FDIC).

[12] 12 CFR 3.34(a)(1)(ii) (OCC); 12 CFR 217.34(a)(1)(ii) (Board); 12 CFR 324.34(a)(1)(ii) (FDIC).

[13] 12 CFR 3.34, Table 1 to § 3.34 (OCC); 12 CFR 217.34, Table 1 to § 217.34 (Board); 12 CFR 324.34, Table 1 to § 324.34 (FDIC). The derivative contract types are interest rate, exchange rate, investment grade credit, non-investment grade credit, equity, gold, precious metals except gold, and other. The maturities are one year or less, greater than one year and less than or equal to five years, and greater than five years.

[14] *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); and 12 CFR 324.2 (FDIC). In 2017, the agencies adopted a final rule that requires U.S. global systemically important banking institutions (GSIBs) and the U.S. operations of foreign GSIBs to amend their qualified financial contracts to prevent their immediate cancellation or termination if such a firm enters bankruptcy or a resolution process. Qualified financial contracts include derivative contracts, securities lending, and short-term funding transactions such as repurchase agreements. The 2017 rulemaking would have invalidated the ability of derivative contracts to be subject to a QMNA. Therefore, as part of the 2017 rulemaking, the agencies revised the definition of QMNA under the capital rule such that qualified financial contracts could be subject to a QMNA (notwithstanding other operational requirements). *See* 82 FR 42882 (September 2017).

[15] *See* Definition of ''qualifying master netting agreement,'' 12 CFR 3.3 (OCC); 12 CFR 217.3 (Board); and 12 CFR 324.3 (FDIC).

[16] 12 CFR 3.34(a)(2) (OCC); 12 CFR 217.34(a)(2) (Board); 12 CFR 324.34(a)(2) (FDIC).

[17] 12 CFR 3.34(a)(2)(i) (OCC); 12 CFR 217.34(a)(2)(i) (Board); 12 CFR 324.34(a)(2)(i) (FDIC).

amount multiplied by the net-to-gross ratio and 0.6.[18] Thus, as the net-to-gross ratio decreases so will the adjusted sum of the PFE amounts.

For all derivative contracts calculated under CEM, a banking organization may recognize the credit-risk-mitigating benefits of financial collateral, pursuant to § __.37 of the capital rule. In particular, a banking organization may either apply the risk weight applicable to the collateral to the secured portion of the exposure or net exposure amounts and collateral amounts according to a regulatory formula that includes certain haircuts for collateral.[19]

E. Mechanics of the Internal Models Methodology

Under IMM, an advanced approaches banking organization uses its own internal models of exposure to determine the exposure amount of its derivative contracts. The exposure amount under IMM is calculated as the product of the effective expected positive exposure (EEPE) for a netting set, which is the time-weighted average of the effective expected exposures (EE) profile over a one-year horizon, and an alpha factor.[20] For the purposes of regulatory capital calculations, the resulting exposure amount is treated as a loan equivalent exposure, which is the amount effectively loaned by the banking organization to the counterparty under the derivative contract.

F. Review of the Capital Rule's Treatment of Derivative Contracts

CEM was developed several decades ago and, as a result, does not reflect recent market conventions and regulatory requirements that are designed to reduce the risks associated with derivative contracts.[21] For banking organizations with substantial derivatives portfolios in particular, this can result in a significant mismatch between the risk posed by these portfolios and the regulatory capital that the banking organization must hold against them. For instance, CEM does not differentiate between margined and unmargined derivative contracts, and it does not function well with other regulatory requirements, including the swap margin rule, which mandates the exchange of initial margin and variation margin for specified covered swap entities.[22] In addition, the net-to-gross ratio under CEM does not recognize, in an economically meaningful way, the risk-reducing benefits of a balanced derivative portfolio (*i.e.,* mixed long and short positions). Further, the agencies developed the supervisory conversion factors provided under CEM prior to the 2007–2008 financial crisis and they have not been recalibrated to reflect stress volatilities observed in recent years.

Although IMM is more risk-sensitive than CEM, IMM is more complex and requires prior supervisory approval before an advanced approaches banking organization may use it. Specifically, an advanced approaches banking organization seeking to use IMM must demonstrate to its primary federal supervisor that it has established and maintains an infrastructure with risk measurement and management processes appropriate for the firm's size and level of complexity.[23]

For these reasons, the Basel Committee developed SA–CCR and published it as a final standard in 2014.[24] Relative to CEM, SA–CCR provides a more risk-sensitive approach to determining the replacement cost and PFE for a derivative contract. Notably, SA–CCR improves collateral recognition (*e.g.,* by differentiating between margined and unmargined derivative contracts); allows a banking organization to recognize meaningful, risk-reducing relationships between derivative contracts within a balanced derivative portfolio; and better captures recently observed stress volatilities among the primary risk drivers for derivative contracts. In addition, relative to IMM, SA–CCR provides a standardized, nonmodelled approach that is more accessible to banking organizations to determine the exposure amount for derivative contracts.

II. Standardized Approach for Counterparty Credit Risk

A. Key Concepts

1. Netting Sets

Under SA–CCR, a banking organization would calculate the exposure amount of its derivative contracts at the netting set level. The Basel Committee standard provides that a netting set may not be subject to more than one margin agreement. Thus, a banking organization, under the Basel Committee standard, would need to calculate the exposure amount at the level of each margin agreement and not at the level of each QMNA, regardless whether multiple margin agreements are under the same QMNA. The agencies recognize, however, that the Basel Committee standard does not reflect current industry practice and regulatory requirements, in which QMNAs often cover multiple margin agreements to order to reduce credit risk by increasing the net settlement of derivative contracts. Accordingly, and as with CEM, the proposal would allow a banking organization to calculate the exposure amount of multiple derivative contracts under the same netting set so long as each derivative contract is subject to the same QMNA. For purposes of SA–CCR, a derivative contract that is not subject to a QMNA would comprise a netting set of one derivative contract. Thus, the proposal would define a netting set to mean either one derivative contract between a banking organization and a single counterparty, or a group of derivative contracts between a banking organization and a single counterparty that are subject to a QMNA. The proposal would retain the capital rule's current definition of a QMNA.

2. Hedging Sets

For the PFE calculation under SA–CCR, a banking organization would fully

[18] 12 CFR 3.34(a)(2)(ii) (OCC); 12 CFR 217.34(a)(2)(ii) (Board); 12 CFR 324.34(a)(2)(ii) (FDIC).

[19] 12 CFR 3.34(b) (referencing 12 CFR 3.37) (OCC); 12 CFR 217.34(b) (referencing 12 CFR 217.37) (Board); 12 CFR 324.34(b) (referencing 12 CFR 324.37) (FDIC).

[20] A banking organization arrives at the exposure amount by first determining the EE profile for each netting set. In general, EE profile is determined by computing exposure distributions over a set of future dates using Monte Carlo simulations, and the expectation of exposure at each date is the simple average of all Monte Carlo simulations for each date. The expiration of short-term trades can cause the EE profile to decrease, even though a banking organization is likely to replace short-term trades with new trades (*i.e.,* rollover). To account for rollover, a banking organization converts the EE profile for each netting set into an effective EE profile by applying a nondecreasing constraint to the corresponding EE profile over the first year. The nondecreasing constraint prevents the effective EE profile from declining with time by replacing the EE amount at a given future date with the maximum of the EE amounts across this and all prior simulation dates. The EEPE for a netting set is the time-weighted average of the effective EE profile over a one-year horizon. EEPE would be the appropriate loan equivalent exposure in a credit risk capital calculation if the following assumptions were true: There is no concentration risk, systematic market risk, and wrong-way risk (*i.e.,* the size of an exposure is positively correlated with the counterparty's probability of default). However, these conditions nearly never exist with respect to a derivative contract. Thus, to account for these risks, IMM requires a banking organization to multiply EEPE by 1.4.

[21] The agencies initially adopted CEM in 1989. 54 FR 4168 (January 27, 1989) (OCC); 54 FR 4186 (January 27, 1989) (Board); 54 FR 11500 (March 21, 1989) (FDIC). The last significant update to CEM was in 1995. 60 FR 46170 (September 5, 1995).

[22] *See supra* n. 9.

[23] *See* 12 CFR 3.122 (OCC); 12 CFR 217.122 (Board); 12 CFR 324.122 (FDIC).

[24] ''The standardized approach for measuring counterparty credit risk exposures,'' Basel Committee on Banking Supervision, March 2014 (rev. April 2014), *https://www.bis.org/publ/bcbs 279.pdf. See* ''Foundations of the standardised approach for measuring counterparty credit risk exposures'' (August 2014, rev. June 2017), *https://www.bis.org/publ/bcbs__wp26.pdf.*

or partially net derivative contracts within the same netting set that share similar risk factors. This approach would recognize that derivative contracts with similar risk factors share economically meaningful relationships (*i.e.,* are more tightly correlated) and thus netting would be appropriate. In contrast, CEM recognizes only 60 percent of the netting benefits of derivative contracts subject to a QMNA, without accounting for relationships between derivative contracts' underlying risk factors.

To effectuate this approach, the proposal would introduce the concept of hedging sets, which would generally mean those derivative contracts within the same netting set that share similar risk factors. The proposal would define five types of hedging sets—interest rate, exchange rate, credit, equity, and commodities—and would provide formulas for netting within each hedging set. Each formula would be particular to each hedging set type and would reflect regulatory correlation assumptions between risk factors in the hedging set.

3. Derivative Contract Amount for the PFE Component Calculation

As with CEM, a banking organization would use an adjusted derivative contract amount for the PFE component calculation under SA–CCR. Unlike CEM, the agencies intend for the adjusted derivative contract amount under SA–CCR to reflect, in general, a conservative estimate of EEPE for a netting set composed of a single derivative contract, assuming zero fair value and zero collateral. As part of the estimate, SA–CCR would use updated supervisory factors that reflect stress volatilities observed during the financial crisis. The supervisory factors would reflect the variability of the primary risk factor of the derivative contract over a one-year horizon. In addition, SA–CCR would apply a separate maturity factor to each derivative contract that would scale down, if necessary, the default one-year risk horizon of the supervisory factor to the risk horizon appropriate for the derivative contract. A banking organization would apply a positive sign to the derivative contract amount if the derivative contract is long the risk factor and a negative sign if the derivative contract is short the risk factor. This adjustment, along with the assumption of zero fair value and zero collateral, would allow a banking organization to recognize offsetting and diversification between derivative contracts that share similar risk factors (*i.e.,* long and short derivative contracts within the same hedging set would be able to fully or partially offset one another).

4. Collateral Recognition and Differentiation Between Margined and Unmargined Derivative Contracts

The proposal would make several improvements to the recognition of collateral under SA–CCR. The proposal would account for collateral directly within the SA–CCR exposure amount calculation, whereas under CEM a banking organization recognizes the collateral only after the exposure amount has been determined. For replacement cost, the proposal would recognize collateral on a one-for-one basis. For PFE, SA–CCR would introduce the concept of a PFE multiplier, which would allow a banking organization to reduce the PFE amount through recognition of overcollateralization, in the form of both variation margin and independent collateral, and account for negative fair value amounts of the derivative contracts within the netting set. In addition, the proposal would differentiate between margined and unmargined derivative contracts such that a netting set that is subject to a variation margin agreement (as defined in the proposal) would always have a lower or equal exposure amount than an equivalent netting set that is not subject to a variation margin agreement.

B. Mechanics of the Standardized Approach for Counterparty Credit Risk

1. Exposure Amount

Under § __.132(c)(5) of the proposed rule, the exposure amount of a netting set would be equal to an alpha factor of 1.4 multiplied by the sum of the replacement cost of the netting set and PFE of the netting set. The can be represented as follows:

$$\textit{exposure amount} = 1.4 * (\textit{replacement cost} + \textit{PFE})$$

The alpha factor was included in the Basel Committee standard under the view that a standardized approach, such as SA–CCR, should not produce lower exposure amounts than a modelled approach. Therefore, to instill a level of conservatism consistent with the Basel Committee standard, the proposal would apply an alpha factor of 1.4 in order to produce exposure measure outcomes that generally are no lower than those amounts calculated using IMM. While the estimates of PFE under SA–CCR are conservative in many cases, the estimates of the sum of the replacement cost and PFE under SA–CCR would necessarily be close to IMM's EEPE for netting sets where the replacement cost dominates PFE.[25] Thus, reducing the value of alpha in SA–CCR below 1.4 could result in exposure amounts produced by SA–CCR that are smaller than exposure amounts produced by IMM for such deep in-the-money netting sets.

The exposure amount would be zero, however, for a netting set that consists only of sold options in which the counterparties to the options have paid the premiums up front and the options are not subject to a variation margin agreement.

Question 3: The agencies invite comment on whether the objective of ensuring that SA–CCR produces more conservative exposure amounts than IMM is appropriate for the implementation of SA–CCR. Does the incorporation of the alpha factor support this objective, why or why not? Are there alternative measures the agencies could incorporate into SA–CCR to support this objective? Are there other objectives regarding the comparability of SA–CCR and IMM that the agencies should consider? The agencies encourage commenters to provide appropriate data or examples to support their response.

2. Replacement Cost

SA–CCR would provide separate formulas for replacement cost depending on whether the counterparty to a banking organization is required to post variation margin. In general, when a banking organization is a net receiver of financial collateral, the amount of financial collateral would be positive, which would reduce replacement cost. Conversely, when the banking organization is a net provider of financial collateral, the amount of financial collateral would be negative, which would increase replacement cost. In all cases, replacement cost cannot be lower than zero. In addition, for purposes of calculating the replacement cost component (and the PFE multiplier), the fair value amount of the derivative contract would exclude any valuation adjustments. The purpose of excluding valuation adjustments is to

[25] For an unmargined netting set, IMM's EE profile starts at t=0, which is the date at which replacement cost under SA–CCR is calculated. For a deep in-the-money netting set, PFE would be much smaller than replacement cost, while IMM's EE profile would not increase significantly above replacement cost before declining (due to cash flow payments and trade expiration), because IMM volatilities typically are smaller than the volatilities implied by SA–CCR's PFE. The nondecreasing constraint would not allow the effective EE profile to drop below the replacement cost level, resulting in IMM's EEPE being slightly above replacement cost. Thus, both IMM's EEPE and SA–CCR's replacement cost plus PFE would be slightly above replacement cost and, therefore, close to each other.

arrive at the risk-free value of the derivative contract, and this requirement would exclude credit valuation adjustments, among other adjustments, as applicable.

Section __.2 of the proposed rule provides a definition of variation margin and independent collateral, as well as the variation margin amount and the independent collateral amount. The proposal would define variation margin as financial collateral that is subject to a collateral agreement provided by one party to its counterparty to meet the performance of the first party's obligations under one or more transactions between the parties as a result of a change in value of such obligations since the last time such financial collateral was provided. Variation margin amount would mean the fair value amount of the variation margin that a counterparty to a netting set has posted to a banking organization less the fair value amount of the variation margin posted by the banking organization to the counterparty.

Further, consistent with the capital rule, the amount of variation margin included in the variation margin amount would be adjusted by the standard supervisory haircuts under § __.132(b)(2)(ii) of the capital rule. The standard supervisory haircuts ensure that the derivative contract remains appropriately collateralized from a regulatory capital perspective, notwithstanding any changes in the value of the financial collateral. In particular, the standard supervisory haircuts address the possible decrease in the value of the financial collateral received by a banking organization and an increase in the value of the financial collateral posted by the banking organization over a one-year time horizon.

The standard supervisory haircuts are based on a ten-business-day holding period for derivative contracts, and the capital rule requires a banking organization to adjust, as applicable, the standard supervisory haircuts to align with the risk horizon of the associated derivative contract. To be consistent with this proposal, the agencies are proposing to revise the standard supervisory haircuts so that they align with the maturity factor adjustments as provided under SA–CCR. In particular, an unmargined derivative contract and a margined derivative contract that is not a cleared transaction would receive a holding period of 10 business days. A derivative contract that is a cleared transaction would receive a holding period of five business days.[26] A banking organization would be required to use a holding period of 20 business days for collateral associated with a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, and if a netting set contains one or more trades involving illiquid collateral or a derivative contract that cannot be easily replaced. Notwithstanding the aforementioned, a banking organization would be required to double the applicable holding period if the derivative contract is subject to an outstanding dispute over variation margin.

The proposal would define independent collateral as financial collateral, other than variation margin, that is subject to a collateral agreement, or in which a banking organization has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any prior security interest granted to a CCP in connection with collateral posted to that CCP), and the amount of which does not change directly in response to the value of the derivative contract or contracts that the financial collateral secures.

The proposal would define the net independent collateral amount as the fair value amount of the independent collateral that a counterparty to a netting set has posted to a banking organization less the fair value amount of the independent collateral posted by the banking organization to the counterparty, excluding such amounts held in a bankruptcy remote manner,[27] or posted to a qualifying central counterparty (QCCP) and held in conformance with the operational requirements in § __.3 of the capital rule. As with variation margin, independent collateral also would be subject to the standard supervisory haircuts under § __.132(b)(2)(ii) of the capital rule.

Under § __.132(c)(6)(ii) of the proposed rule, the replacement cost of a netting set that is not subject to a variation margin agreement is the greater of (1) the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set, less the net independent collateral amount applicable to such derivative contracts, or (2) zero. This can be represented as follows:

$$replacement\ cost = max\{V - C; 0\}$$

Where:

V is the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set; and

C is the net independent collateral amount applicable to such derivative contracts.

The same requirement would apply to a netting set that is subject to a variation margin agreement under which the counterparty is not required to post variation margin. In the latter case, C would also include the negative amount of the variation margin that the banking organization posted to the counterparty (thus increasing replacement cost).

For netting sets subject to a variation margin agreement under which the counterparty must post variation margin, the replacement cost, as provided under § __.132(c)(6)(i) of the proposed rule, would equal the greater of (1) the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the sum of the net independent collateral amount and the variation margin amount applicable to such derivative contracts; (2) the sum of the variation margin threshold and the minimum transfer amount applicable to the derivative contracts within the netting set less the net independent collateral amount applicable to such derivative contracts; or (3) zero. This can be represented as follows:

$$replacement\ cost = max\{V - C; VMT + MTA - NICA; 0\}$$

Where:

V is the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set;

VMT is the variation margin threshold applicable to the derivative contracts within the netting set;

MTA is the minimum transfer amount applicable to the derivative contracts within the netting set; and

C is the sum of the net independent collateral amount and the variation margin amount applicable to such derivative contracts.

NICA is the net independent collateral amount applicable to such derivative contracts.

The requirement for the replacement cost of a netting set subject to a variation margin agreement is designed to account for the maximum possible unsecured exposure amount of the netting set that would not trigger a variation margin call. For example, a

[26] As described in section V of this preamble, the agencies are proposing to apply a five-day holding period to all derivative contracts that are cleared transactions, regardless whether the method the banking organization uses to calculate the exposure amount of the derivative contract.

[27] ''Bankruptcy remote'' is defined in § __.2 of the capital rule. *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); and 12 CFR 324.2 (FDIC).

derivative contract with a high variation margin threshold would have a higher replacement cost compared to an equivalent derivative contract with a lower variation margin threshold. Section __.2 of the proposed rule would define the variation margin threshold and the minimum transfer amount. The variation margin threshold would mean the amount of the credit exposure of a banking organization to its counterparty that, if exceeded, would require the counterparty to post variation margin to the banking organization. The minimum transfer amount would mean the smallest amount of variation margin that may be transferred between counterparties to a netting set.

In the agencies' experience, variation margin agreements can include variation margin thresholds that are set at such high levels that the netting set is effectively unmargined since the counterparty would never breach the threshold and be required to post variation margin. The agencies are concerned that in such a case the variation margin threshold would result in an unreasonably high replacement cost, because it is not attributable to the risk associated with the derivative contract but rather the terms of the variation margin agreement. Therefore, the proposal would cap the exposure amount of a netting set subject to a variation margin agreement at the exposure amount of the same netting set calculated as if the netting set were not subject to a variation margin agreement.[28]

For a netting set that is subject to multiple variation margin agreements, or a hybrid netting set, a banking organization would determine replacement cost using the methodology described in § __.132(c)(11)(i) of the proposed rule. A hybrid netting set is a netting set composed of at least one derivative contract subject to variation margin agreement under which the counterparty must post variation margin and at least one derivative contract that is not subject to such a variation margin agreement. In particular, a banking organization would use the methodology described in § __.132(c)(6)(ii) for netting sets subject to a variation margin agreement, except that the variation margin threshold would equal the sum of the variation margin thresholds of all the variation margin agreements within the netting set and the minimum transfer amount would equal the sum of the minimum transfer amounts of all the variation margin agreements within the netting set.

For multiple netting sets subject to a single variation margin agreement, a banking organization would assign a single replacement cost to the multiple netting sets, according to the following formula, as provided under § __.132(c)(10)(i) of the proposed rule:

$$\textit{Replacement Cost} = max\{\Sigma_{NS} max\{V_{NS}; 0\} - max\{C_{MA}; 0\}; 0\} + max\{\Sigma_{NS} min\{V_{NS}; 0\} - min\{C_{MA}; 0\}; 0\},$$

Where:

NS is each netting set subject to the variation margin agreement MA;

V_{NS} is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set NS; and

C_{MA} is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting sets subject to the single variation margin agreement.

The component $max\{\Sigma_{NS}\ max\{V_{NS}; 0\} - max\{C_{MA}; 0\}; 0\}$ reflects the exposure amount produced by the netting sets that have current positive market value. The exposure amount can be offset by variation margin and independent collateral when the banking organization is the net receiver of such amounts (*i.e.,* when C_{MA} is positive). However, netting sets that have current negative market value would not be allowed to offset the exposure amount. The component $max\{\Sigma_{NS}\ min\{V_{NS}; 0\} - min\{C_{MA}; 0\}; 0\}$ reflects the exposure amount produced when the banking organization posts variation margin and independent collateral to its counterparty (*i.e.,* this component contributes to replacement cost only in instances when C_{MA} is negative), and the exposure amount would be offset by the netting sets that have current negative market value.

Question 4: What are the potential consequences of the proposal to cap the exposure amount for a netting set subject to a variation margin agreement at the exposure amount for such netting set in the absence of a variation margin agreement?

Question 5: What are the potential consequences of the proposal to exclude from the fair value amount of the derivative contract any valuation adjustments? What are the potential consequences of instead using the market value of the derivative contract less any valuation adjustments that are specific to the banking organization?

Question 6: The agencies invite comment on the proposed alignment of the standard supervisory haircuts with the maturity factor adjustments. How could the agencies better align the standard supervisory haircuts under the capital rule with the maturity factor adjustments provided under SA–CCR?

Question 7: The agencies invite comment on the proposed definitions included in this proposal. What, if any, alternative definitions should the agencies consider, particularly to achieve greater consistency across other agencies' regulations?

3. Aggregated Amount and Hedging Set Amounts

Under § __.132(c)(7) of the proposed rule, the PFE of a netting set would be the product of the PFE multiplier and the aggregated amount. The proposal would define the aggregated amount as the sum of all hedging set amounts within the netting set. This can be represented as follows:

$$PFE = PFE\ multiplier * aggregated\ amount,$$

Where:

aggregated amount is the sum of each hedging set amount within the netting set.

To determine the hedging set amounts, a banking organization would first group into separate hedging sets derivative contracts that share similar risk factors based on the following asset classes: Interest rate, exchange rate, credit, equity, and commodities. Basis derivative contracts and volatility derivative contracts would require separate hedging sets. A banking organization would then determine each hedging set amount using asset-class specific formulas that allow for full or partial netting. If the risk of a derivative contract materially depends on more than one risk factor, whether interest rate, exchange rate, credit, equity, or commodity risk factor, a banking

[28] There could be a situation unrelated to the value of the variation margin threshold in which the exposure amount of a margined netting set would be greater than the exposure amount of an equivalent unmargined netting set. For example, in the case of a margined netting set composed of short-term transactions with a residual maturity of 10 business days or less, the risk horizon would be the MPOR, which the proposal would floor at 10 business days. The risk horizon for an equivalent unmargined netting set also would be equal to 10 business days because this would be the floor for the remaining maturity of such a netting set. However, the maturity factor for the margined netting set would be greater than the one for the equivalent unmargined netting set because of the application of a factor of 1.5 to margined derivative contracts. In such an instance, the exposure amount of a margined netting set would be more than the exposure amount of an equivalent unmargined netting set by a factor of 1.5, thus triggering the cap. In addition, in the case of disputes, the MPOR of a margined netting set would be doubled, which could further increase the exposure amount of a margined netting set composed of short-term transactions with a residual maturity of 10 business days or less above an equivalent unmargined netting set. The agencies believe, however, that such instances rarely occur and thus would have minimal effect on banking organizations' regulatory capital.

organization's primary federal regulator[29] may require the banking organization to include the derivative contract in each appropriate hedging set. The hedging set amount of a hedging set composed of a single derivative contract would equal the absolute value of the adjusted derivative contract amount of the derivative contract.

Section __.132(c)(2)(iii) of the proposal provides the respective hedging set definitions. Specifically, an interest rate hedging set would mean all interest rate derivative contracts within a netting set that reference the same reference currency. Thus, there would be as many interest rate hedging sets in a netting set as distinct currencies referenced by the interest rate derivative contracts. A credit derivative hedging set would mean all credit derivative contracts within a netting set. Similarly, an equity derivative hedging set would mean all equity derivative contracts within a netting set. Thus, there could be at most one equity hedging set and one credit hedging set within a netting set. A commodity derivative contract hedging set would mean all commodity derivative contracts within a netting set that reference one of the following commodity classes: Energy, metal, agricultural, or other commodities. Thus, there could be no more than four commodity derivative contract hedging sets within a netting set.

The proposal would define an exchange rate hedging set as all exchange rate derivative contracts within a netting set that reference the same currency pair. Thus, under this approach, there could be as many exchange rate hedging sets within a netting set as distinct currency pairs referenced by the exchange rate derivative contracts. This treatment would be generally consistent with the Basel Committee's standard. The agencies recognize, however, that the proposed approach to grouping exchange rate derivative contracts into hedging sets would not recognize economic relationships of exchange rate chains (*i.e.,* when more than one currency pair can offset the risk of another). For example, a Yen/Dollar forward contract and a Dollar/Euro forward contract, taken together, may be economically equivalent, with properly set notional amounts, to a Yen/Euro forward contract. To capture this economic relationship, the agencies are seeking comment on an alternative definition of an exchange rate hedging set that differs from the one in the Basel Committee's standard. Under the alternative definition, an exchange rate derivative contract hedging set would mean all exchange rate derivative contracts within a netting set that reference the same non-U.S. currency. Thus, a banking organization would be required, under the proposed alternative definition, to include in separate hedging sets an exchange rate derivative contract that references two or more foreign currencies. For example, a banking organization would include the Yen/Euro forward contract both in one hedging set consisting of Yen derivative contracts and another hedging set consisting of Euro derivative contracts. Under this alternative approach, there could be as many exchange rate derivative contract hedging sets as non-U.S. referenced currencies.

The proposal sets forth treatments for volatility derivative contracts and basis derivative contracts separate from the treatment for the risk factors described above. A basis derivative contract would mean a non-foreign-exchange derivative contract (*i.e.,* the contract is denominated in a single currency) in which the cash flows of the derivative contract depend on the difference between two risk factors that are attributable solely to one of the following derivative asset classes: Interest rate, credit, equity, or commodity. A basis derivative contract hedging set would mean all basis derivative contracts within a netting set that reference the same pair of risk factors and are denominated in the same currency. A volatility contract would mean a derivative contract in which the payoff of the derivative contract explicitly depends on a measure of the volatility of an underlying risk factor to the derivative contract. Examples of volatility derivative contracts include variance and volatility swaps and options on realized or implied volatility. A volatility derivative contract hedging set would mean all volatility derivative contracts within a netting set that reference one of interest rate, exchange rate, credit, equity, or commodity risk factors, separated according to the requirements under § __.132(c)(2)(iii)(A)–(E) of the proposed rule.

Question 8: Should SA–CCR include the alternative treatment for exchange rate derivative contracts in order to recognize the economic equivalence of chains of exchange rate transactions? What would be the benefit of including such an alternative treatment? Commenters providing information regarding an alternative treatment are encouraged to provide support for such treatment, together with information regarding any associated burden and complexity.

a. Interest Rate Derivative Contracts

The hedging set amount for interest rate derivative contracts would be determined under § __.132(c)(8)(i) of the proposed rule. The agencies recognize that interest rate derivative contracts with close tenors (*i.e.,* the amount of time remaining before the end date of the derivative contract) are generally highly correlated, and thus provide a greater offset relative to interest rate derivative contracts that do not have close tenors. Accordingly, the formula to determine the hedging set amount for interest rate derivative contracts would permit full offsetting within a tenor category, and partial offsetting across tenor categories. The tenor categories are less than one year, between one and five years, and more than five years. The proposal would use a correlation factor of 70 percent across adjacent tenor categories and a correlation factor of 30 percent across nonadjacent tenor categories.[30] The tenor of a derivative contract would be based on the period between the present date and the end date of the derivative contract, which, under the proposal, would mean the last date of the period referenced by the derivative contract, or if the derivative contract references another instrument, the period referenced by the underlying instrument.

Accordingly, a banking organization would calculate the hedging set amount for interest rate derivative contracts according to the following formula:

[29] For the capital rule, the Board is the primary federal regulator for all bank and savings and loan holding companies, intermediate holding companies of foreign banks, and state member banks; the OCC is the primary federal regulator for all national banks and federal thrifts; and the FDIC is the primary federal regulatory for all state nonmember banks.

[30] *See* ''Foundations of the standardised approach for measuring counterparty credit risk exposures.''

$$Hedging\ set\ amount = [(AddOn_{TB1}^{IR})^2 + (AddOn_{TB2}^{IR})^2 + (AddOn_{TB3}^{IR})^2 + 1.4 * AddOn_{TB1}^{IR} * AddOn_{TB2}^{IR} + 1.4 * AddOn_{TB2}^{IR} * AddOn_{TB3}^{IR} + 0.6 * AddOn_{TB1}^{IR} * AddOn_{TB3}^{IR})]^{\frac{1}{2}}$$, where

$AddOn_{TB1}^{IR}$ would be the sum of the adjusted derivative contract amounts within the hedging set with an end date of less than one year from the present date;

$AddOn_{TB2}^{IR}$ would be the sum of the adjusted derivative contract amounts within the hedging set with an end date of one to five years from the present date; and

$AddOn_{TB3}^{IR}$ would be the sum of the adjusted derivative contract amounts within the hedging set with an end date of more than five years from the present date.

The proposal also includes a simpler formula that does not provide an offset across tenor categories. In this case, the hedging set amount of the interest rate derivative contracts would equal the sum of the absolute amounts of each tenor category, which would be the sum of the adjusted derivative contract amounts within each respective tenor category. The simpler formula would always result in a more conservative measure of the hedging set amount for interest rate derivative contracts of different tenor categories but may be less burdensome for banking organizations with smaller interest rate derivative contract portfolios. Under the proposal, a banking organization could elect to use this simpler formula for some or all of its interest rate derivative contracts.

b. Exchange Rate Derivative Contracts

The hedging set amount for exchange rate derivative contracts would be determined under § __.132(c)(8)(ii) of the proposed rule. The agencies recognize that exchange rate derivative contracts that reference the same currency pair generally are driven by the same market factor (*i.e.,* the exchange spot rate between these currencies) and thus are highly correlated. Therefore, the formula to determine the hedging set amount for exchange rate derivative contracts would allow for full offsetting within the exchange rate derivative contract hedging set. Accordingly, the hedging set amount for exchange rate derivative contracts would equal the absolute value of the sum of the adjusted derivative contract amounts within the hedging set.

c. Credit Derivative Contracts and Equity Derivative Contracts

A banking organization would use the same formula to determine the hedging set amount for both its credit derivative contracts and equity derivative contracts. The formula would be provided under § __.132(c)(8)(iii) of the proposed rule. The formula would allow for full offsetting for credit or equity contracts referencing the same entity, and would use a single-factor model to allow for partial offsetting when aggregating across distinct reference entities. The proposed single-factor model recognizes that credit spreads and equity prices of different entities within a hedging set are, on average, positively correlated.[31] The proposed

[31] The dependence between N random variables can be described by an NxN correlation matrix. In the most general case, such a correlation matrix requires estimation of N*(N–1)/2 individual correlation parameters. Estimating these

single-factor model would use a single systematic component to describe joint movement of credit spreads or equity prices that are responsible for positive correlations, and would use an idiosyncratic component to describe entity-specific dynamics of each derivative contract.

The proposal would provide supervisory correlation parameters for credit derivative contracts and equity derivative contracts that depend on whether the derivative contract references a single name entity or an index. A single name entity credit derivative and a single name entity equity derivative would receive a correlation factor of 50 percent, while a credit index and equity index would receive a correlation factor of 80 percent, the higher number reflecting partial diversification of idiosyncratic risk within an index. The pairwise correlation between two entities is the product of the corresponding correlation factors, so that the pairwise correlation between two single name entities is 25 percent, between one single name entity and one index is 40 percent, and between two indices is 64 percent. Thus, the pairwise correlation between two single name entities is less than the pairwise correlation between an entity and an index, which is less than the pairwise correlation between two indices. The application of a higher correlation factor does not necessarily result in a higher exposure amount, as there would be a reduction of the exposure amount for balanced portfolios but an increase in the exposure amount for directional portfolios.[32]

A banking organization would calculate the hedging set amount for a credit derivative contract hedging set or an equity derivative contract hedging set according to the following formula:

$$Hedging\ set\ amount = \left[\left(\sum_{k=1}^{K} \rho_k * AddOn(Ref_k)\right)^2 + \sum_{k=1}^{K}\left(1 - (\rho_k)^2\right) * \left(AddOn(Ref_k)\right)^2\right]^{\frac{1}{2}},$$

Where:

k is each reference entity within the hedging set;

K is the number of reference entities within the hedging set;

$AddOn(Ref_k)$ equals the sum of the adjusted derivative contract amounts for all derivative contracts within the hedging set that reference reference entity k; and

ρ_k equals the applicable supervisory correlation factor, as provided in Table 2.

d. Commodity Derivative Contracts

A banking organization would use a similar single-factor model to determine the hedging set amount for commodity derivative contracts as it would use for credit derivative contracts and equity derivative contracts. The hedging set amount of commodity derivative contracts would be determined under § __.132(c)(8)(iv) of the proposed rule. Under the proposal, a banking organization would group commodity derivatives into one of four hedging sets based on the following commodity classes: Energy, metal, agricultural and other. Under the single-factor model used for commodity derivative contracts, a banking organization would be able to offset fully all derivative contracts within a hedging set that reference the same commodity type; however, the banking organization could only partially offset derivative contracts within a hedging set that reference different commodity types. For example, a hedging set composed of energy commodities may include crude oil derivatives and coal derivatives. Under the proposal, a banking organization could fully offset all crude oil derivatives; however, it could only partially offset a crude oil derivative against a coal derivative. In addition, a banking organization cannot offset commodity derivatives that belong to different hedging sets (*i.e.,* a forward contract on crude oil cannot hedge a forward contract on corn).

The agencies recognize that specifying individual commodity types is operationally difficult. Indeed, it is likely impossible to specify sufficiently all relevant distinctions between commodity types so that all basis risk is captured. Accordingly, the proposal would allow banking organizations to recognize commodity types without regard to characteristics such as location or quality. For example, a banking organization may recognize crude oil as a commodity type, and would not need to distinguish further between West Texas Intermediate and Saudi Light crude oil. The agencies expect to monitor the commodity-type distinctions made within the industry to ensure that they are sufficiently correlated for full-offset treatment under SA–CCR.

The agencies are proposing not to provide separate supervisory factors for electricity and oil/gas components of the energy commodity class, as provided under the Basel Committee standard. Rather, the agencies are proposing to provide a single supervisory factor for an energy commodity class that generally would include derivative contracts that reference electricity and oil/gas. In addition, the agencies are proposing not to provide more granular commodity categories than those provided under the Basel Committee's standard. The agencies believe that more granular commodity classes could pose operational challenges for banking organizations and could negate certain hedging benefits that may otherwise be available. This is because SA–CCR only permits offsetting within commodity classes, and additional commodity classes thereby may reduce the derivative contracts across which a banking organization may hedge.

A banking organization would calculate the hedging set amount for a commodity derivative contract hedging set according to the following formula:

correlations is problematic when N is large. Factor models are a popular means of reducing the number of independent correlation parameters by assuming that each random variable is driven by a combination of a small number of systematic factors (which are the same for all N random variables) and an idiosyncratic factor (which is unique to each random variable and is independent from all other factors). The simplest factor model is a single-factor model that assumes that a single systematic factor drives all N random variables.

[32] A higher correlation factor means that the underlying risk factors are more closely aligned. For a directional portfolio, more alignment between the risk factors would result in a more concentrated risk, leading to a higher exposure amount. For a balanced portfolio, more alignment between the risk factors would result in more offsetting of risk, leading to a lower exposure amount.

$$Hedging\ set\ amount = \left[\left(\rho * \sum_{k=1}^{K} AddOn(Type_k)\right)^2 + (1-(\rho)^2) * \sum_{k=1}^{K} (AddOn(Type_k))^2\right]^{\frac{1}{2}}$$

Where:

k is each commodity type within the hedging set;

K is the number of commodity types within the hedging set;

$AddOn(Type_k)$ equals the sum of the adjusted derivative contract amounts for all derivative contracts within the hedging set that reference commodity type k; and

ρ equals the applicable supervisory correlation factor, as provided in Table 2.

Question 9: What other commodity classes should the agencies consider for hedging set treatment, taking into account operational challenges for banking organizations and potential hedging benefits of the derivative contracts? What would be the consequences of not specifying the commodity types within each commodity class that are eligible for full offsetting? What level of granularity regarding the attributes of a commodity type would be required to appropriately distinguish among them?

4. PFE Multiplier

Under SA–CCR, the aggregated amount formula would not recognize financial collateral and would assume a zero market value for all derivative contracts. However, excess collateral and negative fair value of the derivative contracts within the netting set reduce PFE. This reduction in PFE is achieved through the PFE multiplier, which would recognize, if present, the amount of excess collateral available and the negative fair value of the derivative contracts within the netting set.

Under the proposal, the PFE multiplier would decrease exponentially from a value of one as the value of the financial collateral held exceeds the net fair value of the derivative contracts within the netting set, subject to a floor of 0.05. The PFE multiplier would decrease as the net fair value of the derivative contracts within the netting set decreases below zero, to reflect that ''out-of-the-money'' transactions have less chance to return to a positive, ''in-the-money'' value. Specifically, when the component $V-C$ is greater than zero, the multiplier would be equal to one. When the component $V-C$ is less than zero, the multiplier would be less than one and would decrease exponentially in value as the absolute value of $V-C$ increases. The PFE multiplier would approach the floor of 0.05 as the absolute value of $V-C$ becomes very large as compared with the aggregated amount of the netting set. Thus, the combination of the exponential function and the floor provides a sufficient level of conservatism by prohibiting overly favorable decreases in PFE when excess collateral increases and preventing PFE from reaching zero at any amounts of margin.

Under § __.132(c)(7)(i) of the proposal, a banking organization would calculate the PFE multiplier according to the following formula:

$$PFE\ multiplier = min\left\{1; 0.05 + 0.95 * e^{\left(\frac{V-C}{1.9*A}\right)}\right\},$$

Where:

V is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set;

C is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting set; and

A is the aggregated amount of the netting set.

Question 10: Can the PFE multiplier be calibrated to more appropriately recognize the risk-reducing effects of collateral and a netting set with a negative market value for purposes of the PFE calculation? Is the 5 percent floor appropriate, particularly in view of the exponential functioning of the formula for PFE multiplier, why or why not? Commenters are encouraged to provide data to support their responses.

5. PFE Calculation for Nonstandard Margin Agreements

When a single variation margin agreement covers multiple netting sets, the parties exchange variation margin based on the aggregated market value of the netting sets. Thus, netting sets with positive and negative market values can offset one another to reduce the amount of variation margin that the parties must exchange. However, a banking organization's exposure amount for a netting set is floored by zero. Thus, for purposes of determining a banking organization's aggregate exposure amount, a netting set with a negative market value cannot offset a netting set with a positive market value. Therefore, in cases when a single variation agreement covers multiple setting sets and at least one netting set has a negative market value, the amount of variation margin exchanged between the parties will be insufficient relative to the banking organization's exposure amount for the netting sets.[33] Under § __.132(c)(10)(ii) of the proposed rule, for multiple netting sets covered by a single variation margin agreement such that the banking organization's counterparty must post variation margin, a banking organization would be required to assign a single PFE equal to the sum of PFEs for each such netting set calculated as if none of the derivative contracts within the netting set are subject to a variation margin agreement.

Since swap margin requirements came into effect in September 2016, the amounts of netting agreements that are subject to more than one variation margin agreement and hybrid netting sets have increased. While all derivative contracts within a netting set can fully offset each other in the replacement cost component calculation, regardless of whether the netting set is subject to multiple variation margin agreements or is a hybrid netting set, margined derivative contracts cannot offset unmargined derivative contracts in the

[33] For example, consider a variation margin agreement with a zero threshold amount that covers two netting sets, one with a market value of 100 and the other with a market value of negative 100. The aggregate market value of the netting sets would be zero and thus no variation margin would be exchanged. However, the banking organization's aggregate exposure amount for these netting sets would be equal to 100 because the negative market value of the second netting set would not be available to offset the positive market value of the first netting set. In the event of default of the counterparty, the banking organization would pay the counterparty 100 for the second netting set and would be exposed to a loss of 100 on the first netting set.

PFE component calculation because of different applicable risk horizons. Similarly, derivative contracts with different MPORs cannot offset each other.

Therefore, the agencies are proposing, under § __.132(c)(11)(ii) of the proposed rule, that for a netting set subject to multiple variation margin agreements such that the counterparty to each variation margin agreement must post variation margin, or a netting set composed of at least one derivative contract subject to a variation margin agreement under which the counterparty to the derivative contract must post variation margin and at least one derivative contract that is not subject to such a variation margin agreement, a banking organization must divide the netting set into sub-netting sets and calculate the aggregated amount for each sub-netting set.

All derivative contracts within the netting set that are not subject to a variation margin agreement or that are subject to a variation margin agreement under which the counterparty is not required to post variation margin would form a single sub-netting set. A banking organization would calculate the aggregated amount for this sub-netting set as if the netting set were not subject to a variation margin agreement. All derivative contracts within the netting set that are subject to variation margin agreements under which the counterparty must post variation margin and that share the same MPOR value would form another sub-netting set. A banking organization would calculate the aggregated amount for this sub-netting set as if the netting set is subject to a variation margin agreement, using the MPOR value shared by the derivative contracts within the netting set. A banking organization would calculate the PFE multiplier at the netting set level.

6. Adjusted Derivative Contract Amount

The agencies intend for the adjusted derivative contract amount to represent a conservative estimate of EEPE of a netting set consisting of a single derivative contract, assuming zero market value and zero collateral, that is either positive (if a long position) or negative (if a short position).[34] The proposal would calculate the adjusted derivative contract amount as a product of four quantities: The adjusted notional amount, the applicable supervisory factor, the applicable supervisory delta adjustment, and the maturity factor. This can be represented as follows:

$$\textit{adjusted derivative contract amount} = d_i * \delta_i * MF_i * SF_i$$

Where:

d_i is the adjusted notional amount;

δ_i is the applicable supervisory delta adjustment;

MF_i is the applicable maturity factor; and

SF_i is the applicable supervisory factor.

The adjusted notional amount accounts for the size of the derivative contract and reflects attributes of the most common derivative contracts in each asset class. The supervisory factor would convert the adjusted notional amount of the derivative contract into an EEPE based on the measured volatility specific to each asset class over a one-year horizon.[35] Multiplication by the supervisory delta adjustment accounts for the sensitivity of a derivative contract (scaled to unit size) to the underlying primary risk factor, including the correct sign (positive or negative) to account for the direction of the derivative contract amount relative to the primary risk factor.[36] Finally, multiplication by the maturity factor scales down, if necessary, the derivative contract amount from the standard one-year horizon used for supervisory factor calibration to the risk horizon relevant for a given contract. The adjusted derivative contract amount is determined under § __.132(c)(9) of the proposed rule.

a. Adjusted Notional Amount

A banking organization would apply the same formula to interest rate derivative contracts and credit derivative contracts to arrive at the adjusted notional amount. For such contracts, the adjusted notional amount would equal the product of the notional amount of the derivative contract, as measured in U.S. dollars, using the exchange rate on the date of the calculation, and the supervisory duration. The agencies intend for the supervisory duration to recognize that interest rate derivative contracts and credit derivative contracts with a longer tenor would have a greater degree of variability than an identical derivative contract with a shorter tenor for the same change in the underlying risk factor (interest rate or credit spread).

The supervisory duration would be calculated for the period that starts at S and ends at E. S would be equal to the number of business days between the present date and the start date for the derivative contract, or zero if the start date has passed, and E would be equal to the number of business days from the present date until the end date for the derivative contract. The supervisory duration is based on the assumption of a continuous stream of equal payments and a constant continuously compounded interest rate of 5 percent. The exponential function provides discounting for S and E at 5 percent continuously compounded. In all cases, the supervisory duration is floored at 10 business days (or 0.04, based on an average of 250 business days per year).

The supervisory duration formula is provided as follows:

$$\text{Supervisory duration} = max\left\{\frac{e^{-0.05*\left(\frac{S}{250}\right)} - e^{-0.05*\left(\frac{E}{250}\right)})}{0.05}, .04\right\},$$

Where:

S is the number of business days from the present day until the start date for the derivative contract, or zero if the start date has already passed; and

E is the number of business days from the present day until the end date for the derivative contract.

[34] For a derivative contract that can be represented as a combination of standard option payoffs (such as collar, butterfly spread, calendar spread, straddle, and strangle), each standard option component would be treated as a separate derivative contract. For a derivative contract that includes multiple-payment options, (such as interest rate caps and floors) each payment option could be represented as a combination of effective single-payment options (such as interest rate caplets and floorlets). Linear derivative contracts (such as swaps) would not be decomposed into components.

[35] Specifically, the supervisory factors are intended to reflect the EEPE of a single at-the-money linear trade of unit size, zero market value and one-year maturity referencing a given risk factor in the absence of collateral.

[36] Sensitivity of a derivative contract to a risk factor is the ratio of the change in the market value of the derivative contract caused by a small change in the risk factor to the value of the change in the risk factor. In a linear derivative contract, the payoff of the derivative contract moves at a constant rate with the change in the value of the underlying risk factor. In a nonlinear contract, the payoff of the derivative contract does not move at a constant rate with the change in the value of the underlying risk factor. The sensitivity is positive if the derivative contract is long the risk factor and negative if the derivative contract is short the risk factor.

For an interest rate derivative contract or credit derivative contract that is a variable notional swap, the notional amount would equal the time-weighted average of the contract notional amounts of such a swap over the remaining life of the swap. For an interest rate derivative contract or credit derivative contract that is a leveraged swap, in which the notional amounts of all legs of the derivative contract are divided by a factor and all rates of the derivative contract are multiplied by the same factor, the notional amount would equal the notional amount of an equivalent unleveraged swap.

For an exchange rate derivative contract, the adjusted notional amount would equal the notional amount of the non-U.S. denominated currency leg of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation. In general, the non-U.S. dollar denominated currency leg is the source of exchange rate volatility. If both legs of the exchange rate derivative contract are denominated in currencies other than U.S. dollars, the adjusted notional amount of the derivative contract would be the largest leg of the derivative contract, measured in U.S. dollars. Under the agencies' alternative approach for treating exchange rate derivative contracts discussed above, the adjusted notional amount of an exchange rate derivative contract would be the notional amount of the derivative contract that is denominated in the foreign currency of the hedging set, as measured in U.S. dollars using the exchange rate on the date of the calculation. For an exchange rate derivative contract with multiple exchanges of principal, the notional amount would equal the notional amount of the derivative contract multiplied by the number of exchanges of principal under the derivative contract. For an equity derivative contract or a commodity derivative contract, the adjusted notional amount is the product of the fair value of one unit of the reference instrument underlying the derivative contract and the number of such units referenced by the derivative contract. The proposed treatment is designed to reflect the current price of the underlying reference entity. For example, if a banking organization has a derivative contract that references 15,000 pounds of frozen concentrated orange juice currently priced at $0.0005 a pound then the adjusted notional amount would be $75.

The payoff of a volatility derivative contract generally is determined based on a notional amount and the realized or implied volatility (or variance) referenced by the derivative contract and not necessarily the unit price of the underlying reference entity. Accordingly, for an equity derivative contract or a commodity derivative contract that is a volatility derivative contract, a banking organization would be required to replace the unit price with the underlying volatility referenced by the volatility derivative contract and replace the number of units with the notional amount of the volatility derivative contract.

The agencies anticipate that for most derivative contracts banking organizations would be able to determine the adjusted notional amount using one of the formulas or methodologies described above. The agencies recognize, however, that such approaches may not be applicable to all types of derivative contracts, and that a different approach may be necessary to determine the adjusted notional amount of a derivative contract. In such a case, the agencies would expect a banking organization to consult with its appropriate federal supervisor prior to using an alternative approach to the formulas or methodologies described above.

Question 11: The agencies invite comment on the proposed approaches to determine the adjusted notional amount of derivative contracts. In particular, how can the agencies improve the approaches set forth in the proposal to determine the adjusted notional amount for nonstandard derivative contracts so that they are appropriate for such transactions, including using formulas of the market value of underlying contracts? What, if any, nonstandard derivative contracts are not addressed by the proposal, and what approaches should be used to determine the adjusted notional amount for those contracts? Please provide examples and descriptions of how such adjusted notional amounts would be determined.

b. Supervisory Factor

Table 2 to § __.132 of the proposed rule provides the proposed supervisory factors. The agencies are proposing to use the same supervisory factors provided in the Basel Committee standard, with the exception of the supervisory factors for credit derivative contracts that reference single-name entities, which are based on the applicable credit rating of the reference entity.[37] Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) prohibits the use of credit ratings in federal regulations, and therefore, the agencies are unable to propose implementing this feature of the Basel Committee standard.[38] Accordingly, the agencies are proposing an approach that satisfies the requirements of section 939A while allowing for a level of granularity among the supervisory factors applicable to single-name credit derivatives that is generally consistent with the Basel Committee standard.

Specifically, the agencies are proposing to apply a supervisory factor to single-name credit derivative contracts based on the following categories: Investment grade, speculative grade, and sub-speculative grade. For credit derivative contracts that reference indices, the agencies are proposing to apply a higher supervisory factor to speculative grade indices than investment grade indices, because of the additional risk present with speculative grade credits. The proposal would maintain the current definition of investment grade in the capital rule and would propose new definitions for speculative grade and sub-speculative grade.

The investment grade category would capture single-name credit derivative contracts consistent with the three highest supervisory factor categories under the Basel Committee standard. The capital rule defines investment grade to mean that the entity to which the banking organization is exposed through a loan or security, or the reference entity with respect to a credit derivative contract, has adequate capacity to meet financial commitments for the projected life of the asset or exposure. Such an entity or reference entity has adequate capacity to meet financial commitments, as the risk of its default is low and the full and timely repayment of principal is expected.[39]

The agencies intend for the speculative grade category to cover single-name credit derivative contracts consistent with the next two lower supervisory factor categories under the Basel Committee standard. The proposal would define speculative grade to mean that the reference entity has adequate capacity to meet financial commitments in the near term, but is vulnerable to adverse economic conditions, such that should economic conditions deteriorate, the reference entity would present an elevated default risk. The agencies

[37] Specifically, the BCBS supervisory factors are as follow (in percent): AAA and AA—0.38, A—0.42; BBB—0.54; BB—1.06; B—1.6; CCC—6.0.

[38] Public Law 11–203, 124 Stat. 1376 (2010), § 939A. This provision is codified as part of the Securities Exchange Act of 1934 at 15 U.S.C. 78o–7.

[39] *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); and 12 CFR 324.2 (FDIC).

intend for the sub-speculative grade category to cover the lowest supervisory factor category under the Basel Committee standard. The proposal would define sub-speculative grade to mean that the reference entity depends on favorable economic conditions to meet its financial commitments, such that should economic conditions deteriorate, the reference entity likely would default on its financial commitments. The agencies believe that each of the proposed categories include exposures that perform largely in accordance with the performance criteria that would define each category under the proposed rule, and therefore would result in capital requirements that are largely equivalent to those resulting from application of the supervisory factors under the Basel Committee standard.

To determine the supervisory factor that would apply to the investment and speculative grade categories, the agencies reviewed ratings issuance data from 2012 to 2017, using information made publicly available by the Depository Trust & Clearing Corporation (DTCC).[40] The agencies used the DTCC data to determine the weighted-average supervisory factor for the investment and speculative grade categories, and rounded that supervisory factor to the nearest tenth. The agencies are proposing to retain the supervisory factor from the Basel Committee standard for the sub-speculative grade category, because that category would consist only of single name credit derivatives with the lowest credit quality.

The agencies considered using the same investment grade/non-investment grade distinction as provided under the standardized approach for determining whether a guarantor is an eligible guarantor for purposes of the rule. However, the agencies are concerned that this approach would not provide for sufficient risk differentiation across credit derivative products. The agencies also considered calibrating the supervisory factor for the investment and speculative grade categories by using a simple average of the ratings issued in accordance with the DTCC data, or the most conservative supervisory factor applicable to the credit ratings that mapped to each category. For example, if for purposes of the investment grade category the DTCC data demonstrated that the average rating in that category is AA (using a simple average of all ratings issued for single-name credit derivatives), the proposal would apply a 0.38 percent supervisory factor to investment grade single-name credit derivatives, because that supervisory factor corresponds to a AA rating under the Basel Committee standard. Under the other alternative considered, the proposal would apply the most conservative (*i.e.,* stringent) supervisory factor among the supervisory factors that apply to a given category. Under this approach, a supervisory factor of 1.6 percent would apply to speculative grade single-name credit derivatives, as that is the most stringent supervisory factor under the Basel Committee standard that corresponds to the categories intended to be captured by the term ''speculative grade.'' The agencies believe, however, that the weighted-average approach more accurately reflects the ratings issuance data and therefore would more closely align to the single-name credit derivatives held in banking organizations' derivatives portfolios.

The agencies expect that banking organizations would conduct their own due diligence to determine the appropriate category for a single-name credit derivative, in view of the performance criteria in the definitions for each category under the proposed rule. Although a banking organization would be able to consider the credit rating for a single-name credit derivative in making that determination, the credit rating should be part of a multi-factor analysis. In addition, the agencies would expect a banking organization to support its analysis and assignment of the respective credit categories.

Interest rate derivative contracts and exchange rate derivative contracts would each be subject to a single supervisory factor. Equity derivative contracts that reference single-name equities would be subject to a higher supervisory factor than derivative contracts that reference equity indices in recognition of the effect of diversification in the index. Commodity derivative contracts that reference energy would receive a higher supervisory factor than commodity derivative contracts that reference metals, agriculture, and other commodities (each of which would receive the same supervisory factor), to reflect the observed additional volatility inherent in the energy markets.

For volatility derivative contracts, a banking organization would multiply the applicable supervisory factor based on the asset class related to the volatility measure by a factor of five. The agencies are proposing this treatment because volatility derivative contracts are inherently subject to more price volatility than the underlying asset classes they reference. For basis derivative contracts, the agencies are proposing to multiply the applicable supervisory factor based on the asset class related to the basis measure by a factor of one half. The agencies are proposing this treatment because the volatility of a basis between highly correlated risk factors would be less than the volatility of the risk factors (assuming the factors have equal volatility).

TABLE 2—SUPERVISORY OPTION VOLATILITY AND SUPERVISORY FACTORS FOR DERIVATIVE CONTRACTS

Asset class	Subclass	Supervisory option volatility (%)	Supervisory correlation parameters (%)	Supervisory factor [a] (%)
Interest rate	N/A	50	N/A	0.5
Exchange rate	N/A	15	N/A	4.0
Credit, single name	Investment grade	100	50	0.5
	Speculative grade	100	50	1.3
	Sub-speculative grade	100	50	6.0
Credit, index	Investment Grade	80	80	0.38
	Speculative Grade	80	80	1.06
Equity, single name	N/A	120	50	32
Equity, index	N/A	75	80	20
Commodity	Energy	150	40	40

[40] Markit North America, Inc., accessed via Wharton Research Data Services (WRDS), *wrds-web.wharton.upenn.edu/wrds/about/databaselist.cfm.*

TABLE 2—SUPERVISORY OPTION VOLATILITY AND SUPERVISORY FACTORS FOR DERIVATIVE CONTRACTS—Continued

Asset class	Subclass	Supervisory option volatility (%)	Supervisory correlation parameters (%)	Supervisory factor [a] (%)
	Metals	70	40	18
	Agricultural	70	40	18
	Other	70	40	18

[a] The applicable supervisory factor for basis derivative contract hedging sets is equal to one-half of the supervisory factor provided in Table 2, and the applicable supervisory factor for volatility derivative contract hedging sets is equal to 5 times the supervisory factor provided in Table 2.

Question 12: Can the agencies improve the supervisory factors under the proposal to reflect more appropriately the volatility specific to each asset class? What, if any, additional categories and respective supervisory factors should the agencies consider? Commenters supporting changes to the supervisory factors or the categories within the asset classes should provide analysis supporting their request.

Question 13: Can the agencies improve the non-ratings-based methodology under the proposal to determine the supervisory factor applicable to a single-name credit derivative contract? Are there other non-ratings-based methodologies that could be used to determine the applicable supervisory factor for single-name credit derivatives? What would be the benefit of any such alternative relative to the proposal? What would be the burden associated with the proposed methodology, as well as any alternative suggested by commenters?

c. Supervisory Delta Adjustment

Under the proposal, derivative contracts that are not options or collateralized debt obligation tranches are considered to be linear in the primary underlying risk factor. For such derivative contracts, the supervisory delta adjustment would need to account only for the direction of the derivative contract (positive or negative) with respect to the underlying risk factor. Therefore, the supervisory delta adjustment would be equal to one if such a derivative contract is long in the primary risk factor and negative one if such a derivative contract is short in the primary risk factor. A derivative contract is long in the primary risk factor if the fair value of the instrument increases when the value of the primary risk factor increases. A derivative contract is short in the primary risk factor if the fair value of the instrument decreases when the value of the primary risk factor increases.

Because option contracts are nonlinear, the proposal would require a banking organization to use the Black-Scholes Model to determine the supervisory delta adjustment, as provided in Table 2. The agencies are proposing to use the Black-Scholes Model to determine the supervisory delta adjustment because the model is a widely used option-pricing model within the industry. The Black Scholes-Model assumes, however, that the underlying risk factor is greater than zero. In particular, the Black Scholes delta formula contains a ratio P/K that is an input into the natural logarithm function. P is the fair value of the underlying instrument and K is the strike price. Because the natural logarithm function can be defined only for amounts greater than zero, a reference risk factor with a negative value (*e.g.,* negative interest rates) would make the supervisory delta adjustment inoperable. Therefore, the formula incorporates a parameter, lambda, the purpose of which is to adjust the fraction P/K so that it has a positive value.

Table 3 – Supervisory Delta Adjustment for Options[41]

	Bought	Sold
Call Options	$\Phi\left(\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$-\Phi\left(\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$
Put Options	$-\Phi\left(-\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$\Phi\left(-\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$

Where:

Φ is the standard normal cumulative distribution function;

P equals the current fair value of the instrument or risk factor, as applicable, underlying the option;

K equals the strike price of the option;

T equals the number of business days until the latest contractual exercise date of the option; and

λ equals zero for all derivative contracts, except that for interest rate options that reference currencies currently associated with negative interest rates λ must be equal to; max $\{-L + 0.1\%; 0\}$;[42]

[41] A banking organization would be required to represent binary options with strike K as the combination of one bought European option and one sold European option of the same type as the original option (put or call) with the strike prices set equal to 0.95 * K and 1.05 * K. The size of the position in the European options must be such that the payoff of the binary option is reproduced exactly outside the region between the two strikes. The absolute value of the sum of the adjusted derivative contract amounts of the bought and sold options is capped at the payoff amount of the binary option.

[42] The same value λ_i of must be used for all interest rate options that are denominated in the

and σ equals the supervisory option volatility, determined in accordance with Table 2.

For a derivative contract that is a collateralized debt obligation tranche, the supervisory delta adjustment would be determined according to the following formula:

$$\text{Supervisory delta adjustment} = \frac{15}{(1+14*A)*(1+14*D)},$$

Where:

A is the attachment point, which equals the ratio of the notional amounts of all underlying exposures that are subordinated to the banking organization's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one;[43]

D is the detachment point, which equals one minus the ratio of the notional amounts of all underlying exposures that are senior to the banking organization's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one; and

The proposal would apply a positive sign to the resulting amount if the banking organization purchased the collateralized debt obligation tranche and would apply a negative sign if the banking organization sold the collateralized debt obligation tranche.

d. Maturity Factor

For derivative contracts not subject to a variation margin agreement, or derivative contracts subject to a variation margin agreement under which the counterparty to the variation margin agreement is not required to post variation margin to the banking organization, the risk horizon would be the lesser of one year and the remaining maturity of the derivative contract, subject to a 10-business-day floor. Accordingly, for such a derivative contract, a banking organization would use the following formula:

$$\text{Maturity factor} = \sqrt{\frac{\min\{M;250\}}{250}},$$

Where M equals the greater of 10 business days and the remaining maturity of the contract, as measured in business days.

For derivative contracts subject to a variation margin agreement under which the counterparty must post variation margin, the risk horizon would be equal to the MPOR of the variation margin agreement. Accordingly, for such a derivative contract a banking organization would use the following formula:

$$\text{Maturity factor} = \frac{3}{2}\sqrt{\frac{MPOR}{250}},$$

Where MPOR refers to the period from the most recent exchange of collateral under a variation margin agreement with a defaulting counterparty until the derivative contracts are closed out and the resulting market risk is re-hedged.

For derivative contracts that are not cleared transactions, MPOR would be floored at 10 business days. For derivative contracts between a clearing member banking organization and its client that are cleared transactions, MPOR would be floored at five business days. Under the capital rule, however, the exposure of a clearing member banking organization to its clearing member client is not a cleared transaction where the clearing member banking organization is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the clearing member banking organization provides a guarantee to the CCP on the performance of the client. Accordingly, in such cases, MPOR may not be less than 10 business days. If either a cleared or noncleared derivative contract is subject to an outstanding dispute over variation margin, the applicable MPOR would be twice the MPOR provided for those transactions in the absence of such a dispute.[44] For a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, MPOR would be floored at 20 business days.

For a derivative contract in which on specified dates any outstanding exposure of the derivative contract is settled and the terms of the derivative contract are reset so that the fair value of the derivative contract is zero, the remaining maturity of the derivative contract is the period until the next reset date.[45] In addition, derivative contracts with daily settlement would be treated as unmargined derivative contracts.

same currency. The value of λ_i for a given currency would be equal to the lowest value L of P_i and K_i of all interest rate options in a given currency that the banking organization has with all counterparties.

[43] In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the banking organization's exposure and A=0. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n–1) notional amounts of the underlying exposures are subordinated to the banking organization's exposure.

[44] In general, a party will not have violated its obligation to collect or post variation margin from or to a counterparty if the counterparty has refused or otherwise failed to provide or accept the required variation margin to or from the party; and the party has made the necessary efforts to collect or post the required variation margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms; or has otherwise demonstrated that it has made appropriate efforts to collect or post the required variation margin; or commenced termination of the derivative contract with the counterparty promptly following the applicable cure period and notification requirements.

[45] See ''Regulatory Capital Treatment of Certain Centrally-cleared Derivative Contracts Under Regulatory Capital Rules'' (August 14, 2017), OCC Bulletin: 2017–27; FDIC Letter FIL–33–2017; and Board SR letter 07–17.

7. Example Calculation [46]

To calculate the exposure amount of a netting set a banking organization would need to determine (1) the replacement cost, (2) the adjusted derivative contract amount of each derivative contract within the netting set, (3) the aggregated amount, which is the sum of each hedging set within the netting set, (4) the PFE multiplier, and (5) PFE. A banking organization may calculate these items together for derivative contracts that are subject to the same QMNA.

In this example, the netting set consists of two fixed versus floating interest rate swaps that are subject to the same QMNA. Table 4 summarizes the relevant contractual terms for these derivative contracts. The netting set is subject to a variation margin agreement, and the banking organization has received from the counterparty, as of the calculation date, variation margin in the amount of $10,000 and initial margin in the amount of $200,000. Both the variation margin threshold and the minimum transfer amount are zero. All notional amounts and market values in Table 4 are denominated in U.S. Dollars.

TABLE 4—CONTRACTUAL TERMS FOR THE DERIVATIVE CONTRACTS

Derivative	Type	Residual maturity (years)	Base currency	Pay leg	Notional (thousands)	Fair value excluding valuation adjustments (thousands)
1	Interest rate swap	10	USD	Fixed	$10,000	$30
2	Interest rate swap	4	USD	Floating	10,000	−20

Step 1: Determine the Replacement Cost

Under § __.132(c)(6)(i) of the proposed rule, the replacement cost of a netting set subject to a variation margin agreement would equal the greater of (1) the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the sum of the net independent collateral amount and the variation margin amount applicable to such derivative contracts; (2) the sum of the variation margin threshold and the minimum transfer amount applicable to the derivative contracts within the netting set less the net independent collateral amount applicable to such derivative contracts; and (3) zero.

The replacement cost of the netting set in the example is given as follows:

$$RC = \max\{(30-20)-(200+10);\ 0+0-200;\ 0\} = 0$$

Step 2: Determine the Adjusted Derivative Contract Amount of Each Derivative Contract Within the Netting Set

A banking organization would determine the adjusted derivative contract amount of each derivative contract within the netting set, in accordance with § __.132(c)(9) of the proposed rule. The adjusted derivative contract amount would be the product of the adjusted notional amount, the supervisory delta adjustment, the maturity factor, and the applicable supervisory factor, which are given as follows:

$$\textit{Adjusted derivative contract amount}_i^{IR} = d_i^{IR} * {}_{di} * MF_i * SF_i$$

Under § __.132(c)(9)(ii)(A) of the proposed rule, for each derivative contract *i,* the adjusted notional amount would be calculated as follows:

$$d_i^{IR} = Trade\ Notional * max\left\{\frac{e^{-0.05*(S_i/250)} - e^{-0.05*(E_i/250)})}{0.05}, 10/250\right\}$$

S_i and E_i represent the number of business days from the present day until the start date and the end date, respectively, of the period referenced by the interest rate derivative contracts. The residual maturity of derivative contract 1 is 10 years and thus term E_i equals 250 multiplied by 10. The residual maturity of derivative contract 2 is 4 years and thus term E_i equals 250 multiplied by 4. Accordingly, the adjusted notional amounts for derivative contract 1 and derivative contract 2 are given as follows:

$$d_1^{IR} = 10{,}000 * max\left\{\frac{e^{-0.05*(0/250)} - e^{-0.05*(10*250/250)})}{0.05}, 10/250\right\} = 78{,}694$$

$$d_2^{IR} = 10{,}000 * max\left\{\frac{e^{-0.05*(0/250)} - e^{-0.05*(4*250/250)})}{0.05}, 10/250\right\} = 36{,}254$$

The supervisory delta adjustment would be assigned to each derivative contract in accordance with § __.132(c)(9)(iii) of the proposed rule. Derivative contract 1 is long in the primary risk factor and is not an option; therefore, the supervisory delta is equal to one. Derivative contract 2 is short in the primary risk factor and is not an option; therefore, the supervisory delta is equal to negative one.

[46] This example is intended only for use as an illustrative guide. The calculation mechanics may vary based on a variety of factors, including for example, the number of hedging sets, the frequency at which variation margin is exchanged, and certain terms of the derivative contracts and underlying reference assets. SA–CCR considers a number of risk attributes to determine the exposure amount of a derivative contract, or netting set thereof, and not all of those attributes are captured in this example.

The maturity factor would be assigned to each derivative contract in accordance with § __.132(c)(9)(iv)(A) of the proposed rule. Assuming a MPOR of 15 business days, the maturity factor is given as follows:

$$\text{Maturity factor} = \frac{3}{2}\sqrt{\frac{MPOR = 15}{250}} = 0.3674$$

The supervisory factor for interest rate derivative contracts is 0.50 percent, as provided in Table 2.

For derivative contract 1, the adjusted derivative contract amount would equal 1 * 78,694 * 0.3674 * 0.50% = 144.57. For derivative contract 2, the adjusted derivative contract amount equals −1 * 36,254 * 0.3674 * 0.50% = −66.60.

Step 3: Determine the Hedging Set Amount

A banking organization would determine the hedging set amount for interest rate derivative contracts in accordance with § __.134(c)(8)(i) of the proposed rule, as follows:

$$[\left(AddOn_{TB1}^{IR}\right)^2 + \left(AddOn_{TB2}^{IR}\right)^2 + \left(AddOn_{TB3}^{IR}\right)^2 + 1.4 * AddOn_{TB1}^{IR} *$$

$$AddOn_{TB2}^{IR} + 1.4 * AddOn_{TB2}^{IR} * AddOn_{TB3}^{IR} + 0.6 * AddOn_{TB1}^{IR} * AddOn_{TB3}^{IR}\Big)]^{\frac{1}{2}},$$

Where:

$\mathrm{AddOn}_{\mathrm{TB1}}^{\mathrm{IR}}$ is the sum of the adjusted derivative contract amounts within the hedging set with an end date of less than one year from the present date;

$\mathrm{AddOn}_{\mathrm{TB2}}^{\mathrm{IR}}$ is the sum of the adjusted derivative contract amounts within the hedging set with an end date of one to five years from the present date; and

$\mathrm{AddOn}_{\mathrm{TB3}}^{\mathrm{IR}}$ is the sum of the adjusted derivative contract amounts within the hedging set with an end date of more than five years from the present date.

In this example, there are no derivative contracts in tenor bucket 1. Thus, $AddOn_{TB1}^{iR}$ would equal zero (and are not included in the formula below). Tenor bucket 2 contains derivative contract 2; thus, $AddOn_{TB2}^{iR}$ would equal 66.60. Tenor bucket 3 contains derivative contract 1; thus, $AddOn_{TB3}^{iR}$ would equal 144.57. The hedging set amount of the derivative contracts would be calculated as follows:

$$Hedging\ set\ amount = \sqrt{(-66.60)^2 + 144.57^2 + 1.4 * (-66.60) * 144.57}$$

$$= 108.89$$

Step 4: Determine the Aggregated Amount

Because the netting set includes only one hedging set, the aggregated amount is equal to 108.89.

Step 5: Determine the PFE Multiplier

A banking organization would calculate the PFE multiplier in accordance with § __.132(c)(7)(i) of the proposed rule, as follows:

$$PFE\ multiplier = min\left\{1; 0.05 + 0.95 * e^{\left(\frac{V-C}{1.9*A}\right)}\right\},$$

Where:

(A) V is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set;

(B) C is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting set

(C) A is the aggregated amount of the netting set

The PFE multiplier would be given as:

$$PFE\ multiplier = min\left\{1; 0.05 + 0.95 * e^{\left(\frac{30-20-200-10}{1.9*108.89}\right)}\right\} = 0.4113$$

Step 6: Determine PFE

In accordance with § __.132(c)(7) of the proposed rule, PFE would equal the product of the PFE multiplier and the aggregated amount. Thus, PFE would be calculated as 0.4113 * 108.89 = 44.79.

Step 7: Determine the Exposure Amount

In accordance with § __.132(c)(5) of the proposed rule, the exposure amount of a netting net would equal sum of the replacement cost of the netting set and the PFE of the netting set multiplied by 1.4. Therefore, the exposure amount of the netting set in the example would be calculated as, 1.4 * (0 + 44.79) = 62.70.

III. Revisions to the Cleared Transactions Framework

Under the cleared transactions framework in the capital rule, a banking organization is required to hold risk-based capital for its exposure to, and certain collateral posted in connection with, a derivative contract that is a cleared transaction. In addition, a clearing member banking organization must hold risk-based capital for its default fund contributions. The capital requirement for a cleared derivative contract reflects the counterparty credit risk of the derivative contract, whereas the capital requirement for collateral posted in connection with such a derivative contract reflects the risk that a banking organization may not be able to recover its collateral upon default of the entity holding the collateral. The capital requirement for a default fund contribution reflects the risk that a clearing member banking organization may incur loss on such contribution resulting from the CCP's or another clearing member's default. In addition, in recognition of the credit risk of the collateral itself, a banking organization must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction.

In general, the risk-based capital treatment under the cleared transactions framework distinguishes between derivative contracts cleared through a CCP and those cleared through a QCCP, whether the derivative contract is with a clearing member or clearing member client, and, with respect to collateral, the treatment depends on whether the collateral is held in a bankruptcy remote manner. Compared to transactions cleared through a CCP, those involving a QCCP generally are considered to be less risky, because to qualify as a QCCP for purposes of the capital rule a central counterparty must meet certain risk-management, supervision, and other requirements.[47] For purposes of the capital rule, ''bankruptcy remote'' generally means that collateral posted by a clearing member to a CCP would be excluded from the CCP's estate in receivership, insolvency, liquidation, or similar proceeding, and thus the banking organization would be more likely to recover such collateral upon the CCP's default.

The agencies are proposing to revise the cleared transactions framework under the capital rule by requiring certain banking organizations to use SA–CCR to determine the trade exposure amount for a cleared derivative contract. In addition, the agencies are proposing to simplify the formula used to determine the risk-weighted asset amount for a default fund contribution. The proposed revisions are consistent with standards developed by the Basel Committee.[48]

Notwithstanding the proposed implementation of SA–CCR, the requirements under the capital rule regarding the treatment of cleared derivative contracts, including the definition for cleared transactions and the operational requirements for cleared derivative contracts, would still apply irrespective of whether the exposure is associated with a CCP or a QCCP.[49]

[47] See the definition of ''qualifying central counterparty'' in 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); and 12 CFR 324.2 (FDIC). The requirements are consistent with the principles developed by the Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions. *See* ''Principles for financial market infrastructure,'' Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, (April 2012), *available at https://www.bis.org/cpmi/publ/d101a.pdf.*

[48] ''Capital requirements for bank exposures to central counterparties,'' Basel Committee on Banking Supervision, April 2014, *https://www.bis.org/publ/bcbs282.pdf.*

[49] 12 CFR 3.3 (OCC); 12 CFR 217.3 (Board); 12 CFR 324.3 (FDIC).

A. Trade Exposure Amount

To determine the risk-weighted asset amount for a cleared derivative contract, a banking organization must multiply the trade exposure amount of the derivative contract by the risk weight applicable to the CCP. In general, the trade exposure amount is the sum of the exposure amount of the derivative contract and the fair value of any related collateral held in a manner that is not bankruptcy remote. Under the standardized approach, a banking organization must use CEM to determine the trade exposure amount of its derivative contracts, whereas under the advanced approaches, an advanced approaches banking organization may use CEM or IMM to determine the trade exposure amount.

Consistent with the proposal to replace the use of CEM with SA–CCR in the advanced approaches for determining the exposure amount for a noncleared derivative contract, the agencies are proposing to require advanced approaches banking organizations to use SA–CCR or IMM to determine the trade exposure amount for a cleared derivative contract. Thus, an advanced approaches banking organization would be required to use the same approach (SA–CCR or IMM) for both noncleared and cleared derivative contracts. As noted above, the agencies believe that requiring an advanced approaches banking organization to use either SA–CCR or IMM for all purposes under the advanced approaches would facilitate regulatory reporting and the supervisory assessment of a banking organization's capital management program. In addition, for purposes of the standardized approach, an advanced approaches banking organization would be required to use SA–CCR to determine the trade exposure amount of its cleared derivative contracts.

For non-advanced approaches banking organizations, the proposal would permit the use of CEM or SA–CCR to determine the trade exposure amount for a derivative contract. However, similar to the uniformity requirement for the elections of advanced approaches banking organizations, a non-advanced approaches banking organization that elects to use SA–CCR for purposes of determining the exposure amount of a derivative contract (under § __.34 of the capital rule) would also be required to use SA–CCR (instead of CEM) to determine the trade exposure amount for a cleared derivative contract under the cleared transactions framework. Similarly, a non-advanced approaches banking organization that continues to use CEM under § __.34 of the proposed capital rule would continue to use CEM to determine the trade exposure amount of all its derivative contracts.

Question 14: Should the agencies maintain the use of CEM for purposes of the cleared transactions framework under the advanced approaches? What other factors should the agencies consider in determining whether SA–CCR is a more or less appropriate approach for calculating the trade exposure amount for derivative transactions with central counterparties?

Question 15: What would be the pros and cons of allowing advanced approaches banking organizations to use either SA–CCR or IMM for purposes of determining the risk-weighted asset amount of both centrally and noncentrally cleared derivative transactions?

B. Treatment of Default Fund Contributions

Under the capital rule, a clearing member banking organization must determine a risk-weighted asset amount for its default fund contributions according to one of three approaches. A clearing member banking organization's risk-weighted asset amount for its default fund contributions to a CCP that is not a QCCP generally is the sum of such default fund contributions multiplied by 1,250 percent. A clearing member banking organization's risk-weighted asset amount for its default fund contributions to a QCCP equals the sum of its capital requirement for each QCCP to which a banking organization contributes to a default fund, as calculated under one of two methods. Method one is a complex three-step approach that compares the default fund of the QCCP to the capital the QCCP would be required to hold if it were a banking organization and provides a method to allocate the default fund deficit or excess back to the clearing member. Method two is a simplified approach in which the risk-weighted asset amount for a default fund contribution to a QCCP equals 1,250 percent multiplied by the default fund contribution, subject to a cap.

The proposal would eliminate method one and method two under the capital rule and implement a new method for a clearing member banking organization to determine the risk-weighted asset amount for its default fund contributions to a QCCP. The agencies intend for the new method to be less complex than the current method one but also more granular than the current method two. Under the proposal, the risk-weighted asset amount for a clearing member banking organization's default fund contribution would be its pro-rata share of the QCCP's default fund.

To determine the capital requirement for a default fund contribution, a clearing member banking organization would first calculate the hypothetical capital requirement of the QCCP (K_{CCP}), unless the QCCP has already disclosed it, in which case the banking organization must rely on that disclosed figure. In either case, a banking organization may choose to use a higher amount of K_{CCP} than the minimum calculated under the formula if the banking organization has concerns about the nature, structure, or characteristics of the QCCP. In effect, K_{CCP} would serve as a consistent measure of a QCCP's default fund amount.

A clearing member banking organization would calculate K_{CCP} according to the following formula:

$$K_{CCP} = \Sigma_{CMi}\, EAD_i * 1.6\ percent,$$

Where:

CM_i is each clearing member of the QCCP; and

EAD_i is the exposure amount of each clearing member of the QCCP to the QCCP, as determined under § __.133(d)(6).

The component EAD_i would include both the clearing member banking organization's own transactions, its client transactions guaranteed by the clearing member, and all values of collateral held by the QCCP (including the clearing member banking organization's pre-funded default fund contribution against these transactions).[50] The amount 1.6 percent represents the product of a capital ratio of 8 percent and a 20 percent risk weight of a clearing member banking organization, which is equal to the sum of the 2 percent capital requirement for trade exposure plus 18 percent for the default fund portion of a banking organization's exposure to a QCCP.

A banking organization that is required to use SA–CCR to determine the exposure amount for its derivative contracts under the standardized approach would be required to use SA–CCR to calculate K_{CCP} for both the standardized approach and the

[50] The definition of default fund contribution includes fund commitments made by a clearing member to a CCP's mutualized loss sharing arrangements. The references to the commitments could include terms such as assessments, special assessments, guarantee commitments, and contingent capital commitments, among other terms.

advanced approaches.[51] For purposes of calculating K_{CCP}, the PFE multiplier would include collateral held by a QCCP in which the QCCP has a legal claim in the event of the default of the member or client, including default fund contributions of that member. In addition, a banking organization would use a MPOR of 10 days in the maturity factor adjustment. A banking organization that elects to use CEM to determine the exposure amount of its derivative contracts under the standardized approach would use CEM to calculate K_{CCP}.

EAD must be calculated separately for each clearing member's sub-client accounts and sub-house account (*i.e.,* for the clearing member's propriety activities). If the clearing member's collateral and its client's collateral are held in the same account, then the EAD of that account would be the sum of the EAD for the client-related transactions within the account and the EAD of the house-related transactions within the account. In such a case, for purposes of determining such EADs, the independent collateral of the clearing member and its client would be allocated in proportion to the respective total amount of independent collateral posted by the clearing member to the QCCP. This treatment would protect against a clearing member recognizing client collateral to offset the CCP's exposures to the clearing members' proprietary activity in the calculation of K_{CCP}.

In addition, if any account or sub-account contains both derivative contracts and repo-style transactions, the EAD of that account is the sum of the EAD for the derivative contracts within the account and the EAD of the repo-style transactions within the account. If independent collateral is held for an account containing both derivative contracts and repo-style transactions, then such collateral must be allocated to the derivative contracts and repo-style transactions in proportion to the respective product specific exposure amounts. The respective product specific exposure amounts would be calculated, excluding the effects of collateral, according to § __.132(b) of the capital rule for repo-style transactions and to § __.132(c)(5) for derivative contracts. Second, a clearing member banking organization would calculate its capital requirement (K_{CMi}), which would be the clearing member's share of the QCCP's default fund, subject to a floor equal to a 2 percent risk weight multiplied by the clearing member banking organization's prefunded default fund contribution to the QCCP and an 8 percent capital ratio. This calculation would allocate K_{CCP} on a pro rata basis to each clearing member based on the clearing member's share of the overall default fund contributions. Thus, a clearing member banking organization's capital requirement would increase as its contribution to the default fund increases relative to the QCCP's own prefunded amounts and the total prefunded default fund contributions from all clearing members to the QCCP. In all cases, a banking organization's capital requirement for its default fund contribution to a QCCP may not exceed the capital requirement that would apply if the same exposure were calculated as if it were to a CCP.

A clearing member banking organization would calculate according to the following formula:

$$K_{CM_i} = max\left(K_{CCP} * \left(\frac{DF^{pref}}{DF_{CCP}+DF_{CM}^{pref}}\right); 0.16\% * DF^{pref}\right),$$

Where:

K_{CCP} is the hypothetical capital requirement of the QCCP;

DF^{pref} is the prefunded default fund contribution of the clearing member banking organization to the QCCP;

DF_{CCP} is the QCCP's own prefunded amounts (e.g., contributed capital, retained earnings) that are contributed to the default waterfall and are junior or pari passu to the default fund contribution of the members; and

DF_{CM}^{pref} is the total prefunded default fund contributions from clearing members of the QCCP.

[51] The agencies are not proposing to make revisions to the calculations to determine the exposure amount of repo-style transactions for purposes of determining the risk-weighted asset amount of a banking organization's default fund contributions.

IV. Revisions to the Supplementary Leverage Ratio

Under the capital rule, an advanced approaches banking organization must satisfy a minimum supplementary leverage ratio of 3 percent. An advanced approaches banking organization's supplementary leverage ratio is the ratio of its tier 1 capital to its total leverage exposure. Total leverage exposure includes both on-balance sheet assets and certain off-balance sheet exposures.[52] For the on-balance sheet amount, a banking organization must include the balance sheet carrying value of its derivative contracts and certain cash variation margin.[53] For the off-balance sheet amount, the banking organization must include the PFE for each derivative contract (or each single-product netting set of derivative contracts), using CEM, as provided under § __.34 of the capital rule, but without regard to financial collateral.

The agencies are proposing to revise the capital rule to require advanced approaches banking organizations to use a modified version of SA–CCR to determine the on- and off-balance sheet amounts of derivative contracts for purposes of calculating total leverage exposure.[54] The agencies believe that SA–CCR provides a more appropriate measure of derivative contracts for leverage capital purposes than the current approach. The agencies also are sensitive to the operational complexity that could result from requiring advanced approaches banking organizations to continue to use CEM for leverage capital purposes and another approach, SA–CCR, for risk-based capital purposes. Further, in comments on prior proposals, banking organizations have requested that the agencies adopt SA–CCR for leverage capital purposes.[55] The proposal is consistent with the Basel Committee's standard on leverage capital requirements.[56]

For the on-balance sheet amount, an advanced approaches banking organization would include in total leverage exposure 1.4 multiplied by the greater of (1) the sum of the fair value of the derivative contracts within a netting set less the net amount of applicable cash variation margin, or (2) zero. Consistent with CEM, an advanced approaches banking organization would be able to recognize cash variation margin in the on-balance component calculation only if (1) the cash variation margin meets the conditions under § __.10(c)(4)(ii)(C)(*3*)–(*7*) of the proposed rule; and (2) it has not been recognized in the form of a reduction in the fair value of the derivative contracts within the netting set under the advanced approaches banking organization's operative accounting standard. The proposed rule would maintain the current treatment for the recognition of cash variation margin in the supplementary leverage ratio.

A banking organization would use this same approach to determine the on-balance sheet amount for a single netting set subject to multiple variation margin agreements. To calculate the on-balance sheet amount for multiple netting sets that are subject to a single variation margin agreement or a hybrid netting set, a banking organization would use the formula under § __.132(c)(10)(i) of the proposed rule, except the term "C_{MA}" in § __.132(c)(10)(i)(C) would include only cash variation margin that meets the requirements under § __.10(c)(4)(ii)(C)(*3*)–(*7*) of the proposed rule.

For the off-balance sheet amount, an advanced approaches banking organization would include in total leverage exposure 1.4 multiplied by the PFE of each netting set, calculated according to § __.132(c)(7) of the proposal, except an advanced approaches banking organization would not be permitted to recognize collateral in the PFE multiplier.[57] Thus, for purposes of calculating total leverage exposure, the term "C" under § __.132(c)(7)(i)(B) of the proposal would be equal to zero. These adjustments are consistent with the current treatment under the capital rule, which generally limits collateral recognition in leverage capital requirements, and also with the leverage standards developed by the Basel Committee. While the proposal would limit recognition of collateral in the PFE multiplier, the proposal would recognize the shorter default risk horizon applicable to margined derivative contracts. Thus, under the proposal, a netting set subject to a variation margin agreement would apply the maturity factor as provided under § __.132(c)(9)(iv) of the proposed rule.

Compared to CEM, the implementation of a modified SA–CCR for purposes of the supplementary leverage ratio would increase advanced approaches banking organizations' supplementary leverage ratios. However, the agencies are sensitive to impediments to banking organizations' willingness and ability to provide client-clearing services. The agencies also are mindful of international commitments to support the migration of derivative contracts to central clearing frameworks,[58] the Dodd-Frank Act mandate to mitigate systemic risk and promote financial stability by, in part, developing uniform standards for the conduct of systemically important payment, clearing, and settlement activities of financial institutions.[59] In view of these important, post-crisis reform objectives, the agencies are inviting comment on the consequences of not recognizing collateral provided by a clearing member client banking organization in connection with a cleared transaction.

Question 16: What concerns do commenters have regarding the proposal to replace the use of CEM with a modified version of SA–CCR, as proposed, for purposes of the supplementary leverage ratio?

Question 17: The agencies invite comment on the recognition of collateral provided by clearing member client banking organizations in connection with a cleared transaction for purposes of the SA–CCR methodology. What are the pros and cons of recognizing such collateral in the calculation of

[52] *See* 3.10(c)(4)(ii) (OCC); 12 CFR 217.10(c)(4)(ii) (Board); 324.10(c)(4)(ii) (FDIC).

[53] To determine the carrying value of derivative contracts, U.S. generally accepted accounting principles (GAAP) provide a banking organization with the option to reduce any positive fair value of a derivative contract by the amount of any cash collateral received from the counterparty, provided the relevant GAAP criteria for offsetting are met (the GAAP offset option). Similarly, under the GAAP offset option, a banking organization has the option to offset the negative mark-to-fair value of a derivative contract with a counterparty. *See* Accounting Standards Codification paragraphs 815–10–45–1 through 7 and 210–20–45–1. Under the capital rule, a banking organization that applies the GAAP offset option to determine the carrying value of its derivative contracts would be required to reverse the effect of the GAAP offset option for purposes of determining total leverage exposure, unless the collateral is cash variation margin recognized as settled with the derivative contract as a single unit of account for balance sheet presentation and satisfies the conditions under § __.10(c)(4)(ii)(C)(*1*)–(*7*) of the capital rule.

[54] Written options create an exposure to the derivative contact reference asset and thus must be included in total leverage exposure even though the proposal would allow certain written options to receive an exposure amount of zero for risk-based capital purposes.

[55] *See* 79 FR 57725, 57736 (Sept. 26, 2014).

[56] "Basel III: Finalising post-crisis reforms," Basel Committee on Banking Supervision, December 2017, *https://www.bis.org/bcbs/publ/d424.pdf.*

[57] Accordingly, a banking organization would not use § __.132(c)(7)(iii)–(iv) for purposes of calculating the PFE amount for the supplementary leverage ratio.

[58] *See, e.g.,* G–20 Pittsburgh Summit: Leaders Statement (September 2009); *see also* Consultative Document, "Leverage ratio treatment of client cleared derivatives," Basel Committee on Banking Supervision, October 2018, *https://www.bis.org/bcbs/publ/d451.pdf.*

[59] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, section 802(b).

replacement cost and potential future exposure? Commenters should provide data regarding how alternative approaches regarding the treatment of collateral would affect the cost of clearing services, as well as provide data regarding how such approaches would affect leverage capital allocation for that activity.

V. Technical Amendments

The proposed rule would make certain technical corrections and clarifications to the capital rule to address certain provisions that warrant revision, based on questions presented by banking organizations and further review by the agencies.

A. Receivables Due From a QCCP

The agencies are proposing to revise § __.32 of the capital rule to clarify that cash collateral posted by a clearing member banking organization to a QCCP, and which could be considered a receivable due from the QCCP under generally accepted accounting principles, would not be risk-weighted as a corporate exposure. Instead, for a client-cleared trade the cash collateral posted to a QCCP would receive a risk weight of 2 percent, if the cash associated with the trade meets the requirements under § __.35(b)(i)(3)(A) or § __.133(b)(i)(3)(A) of the capital rule, or 4 percent, if the collateral does not meet the requirements necessary to receive the 2 percent risk weight. For a trade made on behalf of the clearing member's own account, the cash collateral posted to a QCCP would receive a 2 percent risk weight. This amendment is intended to maintain incentives for banking organizations to post cash collateral and recognize that a receivable from a QCCP that arises in the context of a trade exposure should not be treated as equivalent to a receivable that would arise if, for example, a banking organization made a loan to a CCP.

B. Treatment of Client Financial Collateral Held by a CCP

Under § __.2 of the capital rule, financial collateral means, in part, collateral in which a banking organization has a perfected first-priority security interest in the collateral. However, when a banking organization is acting as a clearing member, it generally is required to post any client collateral to the CCP, in which case the CCP establishes and maintains a perfected first-priority security interest in the collateral instead of the clearing member. As a result, the capital rule does not permit a clearing member banking organization to recognize client collateral posted to a CCP as financial collateral.

Client collateral posted to a CCP remains available to support the credit risk of a derivative contract in the event of a client default. Specifically, where a client defaults the CCP will use the client collateral to offset its exposure to the client, and the clearing member would be required to cover only the amount of any deficiency between the liquidation value of the collateral and the exposure to the CCP. However, were the clearing member banking organization to enter into the derivative contract directly with the client, the clearing member would establish and maintain a perfected first-priority security interest in the collateral, and the exposure of the clearing member to the client would similarly be mitigated only to the extent the collateral is sufficient to cover the exposure amount of the transaction at the time of default. Therefore, the agencies are proposing to revise the definition of financial collateral to allow clearing member banking organizations to recognize as financial collateral noncash client collateral posted to a CCP. In this situation, the clearing member banking organization would not be required to establish and retain a first-priority security interest in the collateral for it to qualify as financial collateral under § __.2 of the capital rule.

C. Clearing Member Exposure When CCP Performance Is Not Guaranteed

The agencies are proposing to revise § __.35(c)(3) of the capital rule to align the capital requirements under the standardized approach for client-cleared transactions with the treatment under § __.133(c)(3) of the advanced approaches. Specifically, the proposal would allow a clearing member that does not guarantee the performance of the CCP to the clearing member's client to apply a zero percent risk weight to the CCP-facing portion of the transaction. The agencies already have implemented this treatment for purposes of the advanced approaches.[60]

D. Bankruptcy Remoteness of Collateral

The agencies are proposing to remove the requirement in § __.35(b)(4)(i) of the standardized approach and § __.133(b)(4)(i) of the advanced approaches that collateral posted by a clearing member client banking organization to a clearing member must be bankruptcy-remote from a custodian in order for the client banking organization to avoid the application of risk-based capital requirements to the collateral, and clarify that a custodian must be acting in its capacity as a custodian for this treatment to apply.[61] The agencies believe this revision is appropriate because the collateral would generally be considered to be bankruptcy-remote if the custodian is acting in its capacity as a custodian with respect to the collateral. Therefore, this revision would apply only in cases where the collateral is deposited with a third-party custodian, not in cases where a clearing member offers ''self-custody'' arrangements with its clients. In addition, this revision would make the collateral requirement for a clearing member client banking organization consistent with the treatment of collateral posted by a clearing member banking organization, which does not require that the posted collateral be bankruptcy-remote from the custodian, but would require in each case that the custodian be acting in its capacity as a custodian.

E. Adjusted Collateral Haircuts for Derivative Contracts

If a clearing member banking organization is acting as an agent between a client and a CCP and receives collateral from the client, the clearing member must determine the exposure amount for the client-facing portion of the derivative contract using the collateralized transactions framework under § __.37 of the capital rule or the counterparty credit risk framework under § __.132 of the capital rule. The clearing member banking organization may recognize the credit risk-mitigation benefits of the collateral posted by the client; however, under §§ __.37(c) and __.132(b) of the capital rule, the value of the collateral must be discounted by the application of a standard supervisory haircut to reflect any market price volatility in the value of the collateral over a 10-day holding period. For a repo-style transaction, the capital rule applies a scaling factor of 0.71 to the standard supervisory haircuts to reflect the limited risk to collateral in those transactions and effectively reduce the holding period to 5 days. The agencies believe a similar reduction in the haircuts should be provided for cleared derivative contracts, as they typically have a holding period of less than 10 days. Therefore, the agencies are proposing to revise §§ __.37 and __.132 of the capital rule to add an exception to the 10-day holding period for cleared derivative contracts and apply a scaling factor of 0.71 to the standard

[60] *See* 80 FR 41411 (July 15, 2015).

[61] *See* 12 CFR 3.35(b)(4) and 3.133(b)(4) (OCC); 12 CFR 217.35(b)(4) and 217.133(b)(4) (Board); 12 CFR 324.35(b)(4) and 324.133(b)(4) (FDIC).

supervisory haircuts to reflect a 5-day holding period.

F. OCC Revisions to Lending Limits

The OCC proposes to revise its lending limit rule at 12 CFR part 32. The current lending limits rule references sections of CEM in the OCC's advanced approaches capital rule as one available methodology for calculating exposures to derivatives transactions. However, these sections are proposed to be amended or replaced with SA–CCR in the advanced approaches. Therefore, the OCC is proposing to replace the references to CEM in the advanced approaches with references to CEM in the standardized approach. The OCC is also proposing to adopt SA–CCR as an option for calculation of exposures under lending limits.

Question 18: Should the OCC permit or require banking organizations to calculate exposures for derivatives transactions for lending limits purposes using SA–CCR? What advantages or disadvantages does this offer compared with the current methods allowed for calculating derivatives exposures for lending limits purposes?

VI. Impact of the Proposed Rule

To assess the effect of the proposed changes to the capital rule, the agencies reviewed data provided by advanced approaches banking organizations that represent a significant majority of the derivatives market. In particular, the agencies analyzed the change in exposure amount between CEM and SA–CCR, as well as the change in risk-weighted assets as determined under the standardized approach.[62] The data covers diverse portfolios of derivative contracts, both in terms of asset type and counterparty. In addition, the data includes firms that serve as clearing members, allowing the agencies to consider the effect of the proposal under the cleared transactions framework for both a direct exposure to a CCP and an exposure to a CCP on behalf of a client. As a result, the analysis provides a reasonable proxy for the potential changes for all advanced approaches banking organizations.

As noted above, SA–CCR would improve risk-sensitivity when measuring the exposure amount for derivative contracts compared to CEM, including through improved collateral recognition. For instance, the exposure amount of margined derivative contracts for these firms would decrease by approximately 44 percent, while the exposure amount of unmargined derivative contracts for these firms would increase by approximately 90 percent. Overall, the agencies estimate that, under the proposal, the exposure amount for derivative contracts held by advanced approaches banking organizations would decrease by approximately 7 percent.

The agencies also analyzed the changes based on both asset classes and counterparties for these firms. With respect to asset classes, the exposure amount would increase for interest rate derivative contracts, equity derivative contracts, and commodity derivative contracts, while the exposure amount would decrease for exchange rate derivative contracts and credit derivative contracts. These changes are largely due to the updated supervisory factors, which reflect stress volatilities observed during the financial crisis. With respect to counterparties, the exposure amount would decrease for derivative contracts with banks, broker-dealers, and CCPs, which are typically margined, hedged, and subject to QMNAs. In contrast, exposure amounts would increase for derivative contracts with other financial institutions, such as asset managers, investment funds, and pension funds; sovereigns and municipalities; and commercial entities that use derivative contracts to hedge commercial risk.

The agencies estimate that the proposal would result in an approximately 5 percent increase in advanced approaches banking organizations' standardized risk-weighted assets associated with derivative contract exposures.[63] This would result in a reduction (approximately 6 basis points) in advanced approaches banking organizations' tier 1 risk-based capital ratios, on average. This estimate assumes, consistent with the proposal, that a netting set is defined to include all derivative contracts subject to a QMNA.

The agencies estimate that the proposal would result in an increase (approximately 30 basis points) in advanced approaches banking organizations' supplementary leverage ratio, on average. However, this estimate does not reflect the broad definition of netting set in the proposal, which, if adopted, would likely result in an additional increase in advanced approaches banking organizations' supplementary leverage ratio. The proposal would use a modified version of SA–CCR that would recognize only certain cash variation margin in the replacement cost component calculation for purposes of the supplementary leverage ratio. Additional recognition of client collateral in the modified version of SA–CCR would further increase clearing member banking organizations' supplementary leverage ratio, but such an increase would largely depend on the degree of client clearing services provided by a clearing member banking organization.

The effects of the proposed rule likely would be limited for non-advanced approaches banking organizations. First, these banking organizations hold relatively small derivative portfolios. Non-advanced approaches banking organizations account for less than 8 percent of derivative contracts of all banking organizations, even though they account for 40 percent of total assets of all banking organizations.[64] Second, non-advanced approaches banking organization are not subject to supplementary leverage ratio requirements, and thus would not be affected by any changes to the calculation of total leverage exposure. Finally, these banking organizations retain the option of using CEM, and the agencies anticipate that only those banking organizations that receive a net benefit from using SA–CCR would elect to use it.

VII. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The OMB

[62] The agencies estimate that, on aggregate, exposure amounts under SA–CCR would equal approximately 170 percent of the exposure amounts for identical derivative contracts under IMM. Thus, firms that use IMM currently would likely continue to use IMM to determine the exposure amount of their derivative contracts to determine advanced approaches total risk-weighted assets. However, the standardized approach serves as a floor on advanced approaches banking organizations' total risk-weighted assets. Thus, a firm would only receive the benefit of IMM if the firm is not bound by standardized total risk-weighted assets.

[63] Total risk-weighted assets are a function of the exposure amount of the netting set and the applicable risk-weight of the counterparty. Total risk-weighted assets increase under the analysis while exposure amounts decrease because higher applicable risk-weights amplify increases in the exposure amount of certain derivative contracts, which outweighs decreases in the exposure amount of other derivative contracts.

[64] According to data from the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC report forms 031, 041, and 051), as of March 31, 2018.

control number for the OCC is 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. These information collections will be extended for three years, with revision. The information collection requirements contained in this proposed rulemaking have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and § 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

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

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

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

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

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

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira__submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Recordkeeping and Disclosure Requirements Associated With Capital Adequacy.

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

Respondents:

OCC: National banks and federal savings associations.

Board: State member banks (SMBs), bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), savings and loan holding companies (SLHCs), and global systemically important bank holding companies (GSIBs) domiciled in the United States.

FDIC: State nonmember banks, state savings associations, and certain subsidiaries of those entities.

Current Actions: The proposal would revise §§ __.2, __.10, __.32, __.34 (including Table 1), __.35, __.132 (including Table 2), and __.133 of the capital rule to implement SA–CCR in order to calculate the exposure amount of derivatives contracts under the agencies' regulatory capital rule as well as update other parts of the capital rule to account for the proposed incorporation of SA–CCR.

The proposal will not, however, result in changes to the burden. In order to be consistent across the agencies, the agencies are applying a conforming methodology for calculating the burden estimates. The agencies are also updating the number of respondents based on the current number of supervised entities even though this proposal only affects a limited number of entities. The agencies believe that any changes to the information collections associated with the proposed rule are the result of the conforming methodology and updates to the respondent count, and not the result of the proposed rule changes.

PRA Burden Estimates

OCC

OMB control number: 1557–0318.

Estimated number of respondents: 1,365 (of which 18 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios (1,365 institutions affected for ongoing)

Recordkeeping (Ongoing)—16.

Standardized Approach (1,365 institutions affected for ongoing)

Recordkeeping (Initial setup)—122.

Recordkeeping (Ongoing)—20.

Disclosure (Initial setup)—226.25.

Disclosure (Ongoing quarterly)—131.25.

Advanced Approach (18 institutions affected for ongoing)

Recordkeeping (Initial setup)—460.

Recordkeeping (Ongoing)—540.77.

Recordkeeping (Ongoing quarterly)—20.

Disclosure (Initial setup)—280.

Disclosure (Ongoing)—5.78.

Disclosure (Ongoing quarterly)—35.

Estimated annual burden hours: 1,088 hours initial setup, 64,929 for ongoing.

Board

Agency form number: FR Q.

OMB control number: 7100–0313.

Estimated number of respondents: 1,431 (of which 17 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios (1,431 institutions affected for ongoing)

Recordkeeping (Ongoing)—16.

Standardized Approach (1,431 institutions affected for ongoing)

Recordkeeping (Initial setup)—122.

Recordkeeping (Ongoing)—20.

Disclosure (Initial setup)—226.25.

Disclosure (Ongoing quarterly)—131.25.

Advanced Approach (17 institutions affected)

Recordkeeping (Initial setup)—460.

Recordkeeping (Ongoing)—540.77.

Recordkeeping (Ongoing quarterly)—20.

Disclosure (Initial setup)—280.

Disclosure (Ongoing)—5.78.

Disclosure (Ongoing quarterly)—35.

Disclosure (Table 13 quarterly)—5.

Risk-based Capital Surcharge for GSIBs (21 institutions affected)

Recordkeeping (Ongoing)—0.5.

Estimated annual burden hours: 1,088 hours initial setup, 78,183 hours for ongoing.

FDIC

OMB control number: 3064–0153.

Estimated number of respondents: 3,604 (of which 2 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios (3,604 institutions affected)

Recordkeeping (Ongoing)—16.

Standardized Approach (3,604 institutions affected)

Recordkeeping (Initial setup)—122.

Recordkeeping (Ongoing)—20.

Disclosure (Initial setup)—226.25.

Disclosure (Ongoing quarterly)—131.25.

Advanced Approach (2 institutions affected)

Recordkeeping (Initial setup)—460.

Recordkeeping (Ongoing)—540.77.

Recordkeeping (Ongoing quarterly)—20.

Disclosure (Initial setup)—280.

Disclosure (Ongoing)—5.78.

Disclosure (Ongoing quarterly)—35.

Estimated annual burden hours: 1,088 hours initial setup, 131,802 hours for ongoing.

Also as a result of this proposed rule, the agencies would clarify the reporting instructions for the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051) and Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101). The OCC and FDIC would clarify the reporting instructions for

DFAST 14A, and the Board would clarify the reporting instructions for the Consolidated Financial Statements for Holding Companies (FR Y–9C), Capital Assessments and Stress Testing (FR Y–14A and FR Y–14Q), and Banking Organization Systemic Risk Report (FR Y–15) to reflect the changes to the capital rules that would be required under this proposal. The OCC also is proposing to update cross-references in its lending limit rules to account for the proposed incorporation of SA–CCR.

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (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 Small Business Administration (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 impose requirements on all OCC supervised entities that are subject to the advanced approaches risk-based capital rules, which typically have assets in excess of $250 billion, and therefore would not be small entities. While small entities would have the option to adopt SA–CCR, the OCC does not expect any small entities to elect that option. Therefore, the OCC estimates the proposed rule would not generate any costs for small entities. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

FDIC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[65] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[66]

As of March 31, 2018, there were 3,604 FDIC-supervised institutions, of which 2,804 are considered small entities for the purposes of RFA. These small entities hold $505 billion in assets, accounting for 17 percent of total assets held by FDIC-supervised institutions.[67]

The proposed rule would require advanced approaches institutions to replace CEM with SA–CCR as an option for calculating EAD. There are no FDIC-supervised advanced approaches institutions that are considered small entities for the purposes of RFA.

In addition, the proposed rule would allow non-advanced approaches institutions to replace CEM with SA–CCR as the approach for calculating EAD. This allowance applies to all 2,804 small institutions supervised by the FDIC. Institutions that elect to use SA–CCR would incur some costs related to other compliance requirements of the proposed rule. However, these costs are difficult to estimate given that adoption of SA–CCR is voluntary. The FDIC expects that non-advanced approaches institutions will elect to use SA–CCR only if the net benefits of doing so are positive. Thus, the FDIC expects the proposed rule will not impose any net economic costs on these entities.

According to recent data, 395 (14.1 percent) small FDIC-supervised institutions, reporting $107 billion in assets, report holding some volume of derivatives and would thus have the option of electing to use SA–CCR. However, these institutions report holding only $5.4 billion (or 5 percent of assets) in derivatives.[68] Therefore, the potential effects of electing SA–CCR are likely to be insignificant for these institutions.

Based on the information above, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

Board: The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[69] In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis 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, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

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 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. The proposal would also make corresponding changes to the Board's reporting forms.

[65] 5 U.S.C. 601 *et seq.*

[66] The SBA defines a small banking organization as having $550 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective December 2, 2014). In its determination, the ''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.

[67] FDIC Call Report, March 31, 2018.

[68] *Id.*

[69] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less and trust companies with total assets of $38.5 million or less. As of June 30, 2018, there were approximately 3,304 small bank holding companies, 216 small savings and loan holding companies, and [541] small state member banks.

As discussed in detail above, the proposed rule would amend the capital rule to provide a new methodology for calculating the exposure amount for derivative contracts. For purposes of calculating advanced approaches total risk-weighted assets, an advanced approaches Board-regulated institution would be able to use either SA–CCR or the internal models methodology. For purposes of calculating standardized approach total risk-weighted assets, an advanced approaches Board-regulated institution would be required to use SA–CCR and a non–advanced approaches Board-regulated institution would be able to elect either SA–CCR or the existing methodology. In addition, for purposes of the denominator of the supplementary leverage ratio, the proposal would integrate SA–CCR into the calculation of the denominator, replacing CEM.

The Board has broad authority under the International Lending Supervision Act (ILSA) [70] and the PCA provisions of the Federal Deposit Insurance Act [71] to establish regulatory capital requirements for the institutions it regulates. For example, ILSA directs each Federal banking agency to cause banking institutions to achieve and maintain adequate capital by establishing minimum capital requirements as well as by other means that the agency deems appropriate.[72] The PCA provisions of the Federal Deposit Insurance Act direct each Federal banking agency to specify, for each relevant capital measure, the level at which an IDI subsidiary is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.[73] In addition, the Board has broad authority to establish regulatory capital standards for bank holding companies, savings and loan holding companies, and U.S. intermediate holding companies of foreign banking organizations under the Bank Holding Company Act, the Home Owners' Loan Act, and the Dodd-Frank Reform and Consumer Protection Act (Dodd-Frank Act).[74]

The proposed rule would only impose mandatory changes on advanced approaches banking organizations. Advanced approaches banking organizations include depository institutions, bank holding companies, savings and loan holding companies, or intermediate holding companies with at least $250 billion in total consolidated assets or has consolidated on-balance sheet foreign exposures of at least $10 billion, or 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. The proposed rule therefore would not impose mandatory requirements on any small entities. However, the proposal would allow Board-regulated institutions that are not advanced approaches Board-regulated institutions to elect to use SA–CCR instead of CEM. Small entities that are subject to the Board's capital rule could make such an election, which would require immediate changes to reporting, recordkeeping, and compliance systems, as well as the ongoing burden of maintaining these different systems. However, the entities that elect to use SA–CCR may face reduced regulatory capital requirements as a result.

Further, as discussed previously in the Paperwork Reduction Act section, the proposal would make changes to the projected reporting, recordkeeping, and other compliance requirements of the rule by proposing to collect information from advanced approaches Board-regulated institutions and non–advanced approaches Board-regulated institutions that elect to use SA–CCR. These changes would include limited revisions to the Call Report (FFIEC 031, 041, and 051), the Consolidated Financial Statements for Holding Companies (FR Y–9C), and the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101) to provide for reporting of derivative contracts under SA–CCR. Firms would be required to update their systems to implement these changes to reporting forms. The Board does not expect that the compliance, recordkeeping, and reporting updates described previously would impose a significant cost on small Board-regulated institutions. These changes would only impact small entities that elect to use SA–CCR. In addition, the Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed changes to the capital rule. Therefore, the Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

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

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[75] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with 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, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[76]

[70] 12 U.S.C. 3901–3911.

[71] 12 U.S.C. 1831o.

[72] 12 U.S.C. 3907(a)(1).

[73] 12 U.S.C. 1831o(c)(2).

[74] *See* 12 U.S.C. 1467a, 1844, 5365, 5371.

[75] 12 U.S.C. 4802(a).

[76] 12 U.S.C. 4802.

Because the proposal [would/would not] impose additional reporting, disclosure, or other requirements on IDIs, section 302 of the RCDRIA therefore [does/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 Determination

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). 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.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Risk.

12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, the OCC proposes to amend 12 CFR parts 3 and 32 as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. Section 3.2 is amended by:

■ a. Adding the definitions of ''Basis derivative contract'' in alphabetical order;

■ b. Revising paragraph (2) of the definition of ''Financial collateral;''

■ c. Adding the definitions of ''Independent collateral,'' ''Minimum transfer amount,'' and ''Net independent collateral amount'' in alphabetical order;

■ d. Revising the definition of ''Netting set;'' and

■ e. Adding the definitions of ''Speculative grade,'' ''Sub-speculative grade,'' ''Variation margin,'' ''Variation margin agreement,'' ''Variation margin amount,'' ''Variation margin threshold,'' and ''Volatility derivative contract'' in alphabetical order.

The additions and revisions read as follows:

§ 3.2 Definitions.

* * * * *

Basis derivative contract means a non-foreign-exchange derivative contract (*i.e.,* the contract is denominated in a single currency) in which the cash flows of the derivative contract depend on the difference between two risk factors that are attributable solely to one of the following derivative asset classes: Interest rate, credit, equity, or commodity.

* * * * *

Financial collateral * * *

(2) In which the national bank and Federal savings association has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP).

* * * * *

Independent collateral means financial collateral, other than variation margin, that is subject to a collateral agreement, or in which a national bank and Federal savings association has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; notwithstanding the prior security interest of any custodial agent or any prior security interest granted to a CCP in connection with collateral posted to that CCP), and the amount of which does not change directly in response to the value of the derivative contract or contracts that the financial collateral secures.

* * * * *

Minimum transfer amount means the smallest amount of variation margin that may be transferred between counterparties to a netting set.

* * * * *

Net independent collateral amount means the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under § 3.132(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to a national bank or Federal savings association less the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under § 3.132(b)(2)(ii), as applicable, posted by the national bank or Federal savings association to the counterparty, excluding such amounts held in a bankruptcy remote manner, or posted to a QCCP and held in conformance with the operational requirements in § 3.3.

Netting set means either one derivative contract between a national bank or Federal savings association and a single counterparty, or a group of derivative contracts between a national bank or Federal savings association and a single counterparty, that are subject to a qualifying master netting agreement.

* * * * *

Speculative grade means the reference entity has adequate capacity to meet financial commitments in the near term, but is vulnerable to adverse economic conditions, such that should economic conditions deteriorate, the reference entity would present an elevated default risk.

* * * * *

Sub-speculative grade means the reference entity depends on favorable economic conditions to meet its financial commitments, such that should such economic conditions deteriorate the reference entity likely would default on its financial commitments.

* * * * *

Variation margin means financial collateral that is subject to a collateral agreement provided by one party to its counterparty to meet the performance of the first party's obligations under one or more transactions between the parties as a result of a change in value of such obligations since the last time such financial collateral was provided.

Variation margin agreement means an agreement to collect or post variation margin.

Variation margin amount means the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under § 3.132(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to a national bank or Federal savings

association less the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under § 3.132(b)(2)(ii), as applicable, posted by the national bank or Federal savings association to the counterparty.

Variation margin threshold means the amount of credit exposure of a national bank or Federal savings association to its counterparty that, if exceeded, would require the counterparty to post variation margin to the national bank or Federal savings association.

Volatility derivative contract means a derivative contract in which the payoff of the derivative contract explicitly depends on a measure of the volatility of an underlying risk factor to the derivative contract.

* * * * *

■ 3. Section 3.10 is amended by revising paragraphs (c)(4)(ii)(A) through (C) to read as follows:

§ 3.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) The balance sheet carrying value of all the national bank's or Federal savings association's on-balance sheet assets, plus the value of securities sold under a repurchase transaction or a securities lending transaction that qualifies for sales treatment under U.S. GAAP, less amounts deducted from tier 1 capital under § 3.22(a), (c), and (d), less the value of securities received in security-for-security repo-style transactions, where the national bank or Federal savings association acts as a securities lender and includes the securities received in its on-balance sheet assets but has not sold or re-hypothecated the securities received, and less the fair value of any derivative contracts;

(B) The PFE for each netting set (including cleared transactions except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the national bank or Federal savings association, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under U.S. GAAP), as determined under § 3.132(c)(7), in which the term C in § 3.132(c)(7)(i)(B) equals zero, multiplied by 1.4;

(C) The sum of:

(*1*)(*i*) 1.4 multiplied by the replacement cost of each derivative contract or single product netting set of derivative contracts to which the national bank or Federal savings association is a counterparty, calculated according to the following formula:

$$\textit{Replacement Cost} = \max\{V - CVM_r + CVM_p; 0\}$$

Where:

V equals the fair value for each derivative contract or each single-product netting set of derivative contracts (including a cleared transaction except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the national bank or Federal savings association, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under U.S. GAAP);

CVM_r equals the amount of cash collateral received from a counterparty to a derivative contract and that satisfies the conditions in paragraph (c)(4)(ii)(C)(*3*) through (*7*); and

CVM_p equals the amount of cash collateral that is posted to a counterparty to a derivative contract and that has not off-set the fair value of the derivative contract and that satisfies the conditions in paragraphs (c)(4)(ii)(C)(*3*) through (*7*) of this section; and

(*ii*) Notwithstanding paragraph (c)(4)(ii)(C)(*1*)(*i*) of this section, where multiple netting sets are subject to a single variation margin agreement, a national bank or Federal savings association must apply the formula for replacement cost provided in § 3.132(c)(10), in which the term may only include cash collateral that satisfies the conditions in paragraphs (c)(4)(ii)(C)(*3*) through (*7*) of this section;

(*2*) The amount of cash collateral that is received from a counterparty to a derivative contract that has off-set the fair value of a derivative contract and that does not satisfy the conditions in paragraphs (c)(4)(ii)(C)(*3*) through (*7*) of this section;

(*3*) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated (by law, regulation or an agreement with the counterparty);

(*4*) Variation margin is calculated and transferred on a daily basis based on the fair value of the derivative contract;

(*5*) The variation margin transferred under the derivative contract or the governing rules for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contracts, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(*6*) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph (c)(4)(ii)(C)(*6*), currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement and the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(*7*) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction, and the qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

* * * * *

■ 4. Section 3.32 is amended by revising paragraph (f) to read as follows:

§ 3.32 General risk weights.

* * * * *

(f) *Corporate exposures.* (1) A national bank or Federal savings association must assign a 100 percent risk weight to all its corporate exposures, except as provided in paragraph (f)(2) of this section.

(2) A national bank or Federal savings association must assign a 2 percent risk weight to an exposure to a QCCP arising from the national bank or Federal savings association posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 3.35(b)(3)(i)(A) and a 4 percent risk weight to an exposure to a QCCP arising from the national bank or Federal savings association posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 3.35(b)(3)(i)(B).

(3) A national bank or Federal savings association must assign a 2 percent risk weight to an exposure to a QCCP arising from the national bank or Federal savings association posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 3.35(c)(3)(i).

* * * * *

■ 5. Section 3.34 is revised to read as follows:

§ 3.34 Derivative contracts.

(a) *Exposure amount for derivative contracts*—(1) *National bank or Federal savings association that is not an advanced approaches national bank or*

Federal savings association. (i) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association must use the current exposure methodology (CEM) described in paragraph (b) of this section to calculate the exposure amount for all its OTC derivative contracts, unless the national bank or Federal savings association makes the election provided in paragraph (a)(1)(ii) of this section.

(ii) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association may elect to calculate the exposure amount for all its OTC derivative contracts under the standardized approach for counterparty credit risk (SA–CCR) in § 3.132(c), rather than calculating the exposure amount for all its derivative contracts using the CEM. A national bank or Federal savings association that elects under this paragraph (a)(1)(ii) to calculate the exposure amount for its OTC derivative contracts under the SA–CCR must apply the treatment of cleared transactions under § 3.133 to its derivative contracts that are cleared transactions, rather than applying § 3.35. A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association must use the same methodology to calculate the exposure amount for all its derivative contracts and may change its election only with prior approval of the OCC.

(2) *Advanced approaches national bank or Federal savings association.* An advanced approaches national bank or Federal savings association must calculate the exposure amount for all its derivative contracts using the SA–CCR in § 3.132(c). An advanced approaches national bank or Federal savings association must apply the treatment of cleared transactions under § 3.133 to its derivative contracts that are cleared transactions.

(b) *Current exposure methodology exposure amount*—(1) *Single OTC derivative contract.* Except as modified by paragraph (c) of this section, the exposure amount for a single OTC derivative contract that is not subject to a qualifying master netting agreement is equal to the sum of the national bank's or Federal savings association's current credit exposure and potential future credit exposure (PFE) on the OTC derivative contract.

(i) *Current credit exposure.* The current credit exposure for a single OTC derivative contract is the greater of the fair value of the OTC derivative contract or zero.

(ii) *PFE.* (A) The PFE for a single OTC derivative contract, including an OTC derivative contract with a negative fair value, is calculated by multiplying the notional principal amount of the OTC derivative contract by the appropriate conversion factor in Table 1 to this section.

(B) For purposes of calculating either the PFE under this paragraph (b) or the gross PFE under paragraph (b)(2) of this section for exchange rate contracts and other similar contracts in which the notional principal amount is equivalent to the cash flows, notional principal amount is the net receipts to each party falling due on each value date in each currency.

(C) For an OTC derivative contract that does not fall within one of the specified categories in Table 1 to this section, the PFE must be calculated using the appropriate ''other'' conversion factor.

(D) A national bank or Federal savings association must use an OTC derivative contract's effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the OTC derivative contract) rather than the apparent or stated notional principal amount in calculating PFE.

(E) The PFE of the protection provider of a credit derivative is capped at the net present value of the amount of unpaid premiums.

TABLE 1 TO § 3.34—CONVERSION FACTOR MATRIX FOR DERIVATIVE CONTRACTS [1]

Remaining maturity [2]	Interest rate	Foreign exchange rate and gold	Credit (investment grade reference asset) [3]	Credit (non-investment-grade reference asset)	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Greater than one year and less than or equal to five years	0.005	0.05	0.05	0.10	0.08	0.07	0.12
Greater than five years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

[1] For a derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3] A national bank or Federal savings association must use the column labeled ''Credit (investment-grade reference asset)'' for a credit derivative whose reference asset is an outstanding unsecured long-term debt security without credit enhancement that is investment grade. A national bank or Federal savings association must use the column labeled ''Credit (non-investment-grade reference asset)'' for all other credit derivatives.

(2) *Multiple OTC derivative contracts subject to a qualifying master netting agreement.* Except as modified by paragraph (c) of this section, the exposure amount for multiple OTC derivative contracts subject to a qualifying master netting agreement is equal to the sum of the net current credit exposure and the adjusted sum of the PFE amounts for all OTC derivative contracts subject to the qualifying master netting agreement.

(i) *Net current credit exposure.* The net current credit exposure is the greater of the net sum of all positive and negative fair values of the individual OTC derivative contracts subject to the qualifying master netting agreement or zero.

(ii) *Adjusted sum of the PFE amounts.* The adjusted sum of the PFE amounts, Anet, is calculated as

$$\text{Anet} = (0.4 \times \text{Agross}) + (0.6 \times \text{NGR} \times \text{Agross}),$$

Where:

(A) Agross = the gross PFE (that is, the sum of the PFE amounts as determined under paragraph (b)(1)(ii) of this section for each individual derivative contract subject to the qualifying master netting agreement); and

(B) Net-to-gross Ratio (NGR) = the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph (b)(1)(i) of this section) of all individual derivative contracts subject to the qualifying master netting agreement.

(c) *Recognition of credit risk mitigation of collateralized OTC derivative contracts.* (1) A national bank or Federal savings association using the

CEM under paragraph (b) of this section may recognize the credit risk mitigation benefits of financial collateral that secures an OTC derivative contract or multiple OTC derivative contracts subject to a qualifying master netting agreement (netting set) by using the simple approach in § 3.37(b).

(2) As an alternative to the simple approach, a national bank or Federal savings association using the CEM under paragraph (b) of this section may recognize the credit risk mitigation benefits of financial collateral that secures such a contract or netting set if the financial collateral is marked-to-fair value on a daily basis and subject to a daily margin maintenance requirement by applying a risk weight to the uncollateralized portion of the exposure, after adjusting the exposure amount calculated under paragraph (b)(1) or (2) of this section using the collateral haircut approach in § 3.37(c). The national bank or Federal savings association must substitute the exposure amount calculated under paragraph (b)(1) or (2) of this section for ΣE in the equation in § 3.37(c)(2).

(d) *Counterparty credit risk for credit derivatives*—(1) *Protection purchasers.* A national bank or Federal savings association that purchases a credit derivative that is recognized under § 3.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F of this part is not required to compute a separate counterparty credit risk capital requirement under § 3.32 provided that the national bank or Federal savings association does so consistently for all such credit derivatives. The national bank or Federal savings association must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A national bank or Federal savings association that is the protection provider under a credit derivative must treat the credit derivative as an exposure to the underlying reference asset. The national bank or Federal savings association is not required to compute a counterparty credit risk capital requirement for the credit derivative under § 3.32, provided that this treatment is applied consistently for all such credit derivatives. The national bank or Federal savings association must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (d)(2) apply to all relevant counterparties for risk-based capital purposes unless the national bank or Federal savings association is treating the credit derivative as a covered position under subpart F of this part, in which case the national bank or Federal savings association must compute a supplemental counterparty credit risk capital requirement under this section.

(e) *Counterparty credit risk for equity derivatives.* (1) A national bank or Federal savings association must treat an equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the equity derivative contract under §§ 3.51 through 3.53 (unless the national bank or Federal savings association is treating the contract as a covered position under subpart F of this part).

(2) In addition, the national bank or Federal savings association must also calculate a risk-based capital requirement for the counterparty credit risk of an equity derivative contract under this section if the national bank or Federal savings association is treating the contract as a covered position under subpart F of this part.

(3) If the national bank or Federal savings association risk weights the contract under the Simple Risk-Weight Approach (SRWA) in § 3.52, the national bank or Federal savings association may choose not to hold risk-based capital against the counterparty credit risk of the equity derivative contract, as long as it does so for all such contracts. Where the equity derivative contracts are subject to a qualified master netting agreement, a national bank or Federal savings association using the SRWA must either include all or exclude all of the contracts from any measure used to determine counterparty credit risk exposure.

(f) *Clearing member national bank's or Federal savings association's exposure amount.* The exposure amount of a clearing member national bank or Federal savings association using the CEM under paragraph (b) of this section for an OTC derivative contract or netting set of OTC derivative contracts where the national bank or Federal savings association is either acting as a financial intermediary and enters into an offsetting transaction with a QCCP or where the national bank or Federal savings association provides a guarantee to the QCCP on the performance of the client equals the exposure amount calculated according to paragraph (b)(1) or (2) of this section multiplied by the scaling factor 0.71. If the national bank or Federal savings association determines that a longer period is appropriate, the national bank or Federal savings association must use a larger scaling factor to adjust for a longer holding period as follows:

$$\text{Scaling factor} = \sqrt{\frac{H}{10}}$$

Where H = the holding period greater than five days. Additionally, the OCC may require the national bank or Federal savings association to set a longer holding period if the OCC determines that a longer period is appropriate due to the nature, structure, or characteristics of the transaction or is commensurate with the risks associated with the transaction.

■ 6. Section 3.35 is amended by adding paragraph (a)(3), revising paragraph (b)(4)(i), and adding paragraph (c)(3)(iii) to read as follows:

§ 3.35 Cleared transactions.

(a) * * *

(3) *Alternate requirements.* Notwithstanding any other provision of this section, an advanced approaches national bank or Federal savings association or a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association and that has elected to use SA–CCR under § 3.34(a)(1) must apply § 3.133 to its derivative contracts that are cleared transactions rather than this section.

(b) * * *

(4) * * *

(i) Notwithstanding any other requirements in this section, collateral posted by a clearing member client national bank or Federal savings association that is held by a custodian (in its capacity as custodian) in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

* * * * *

(c) * * *

(3) * * *

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member national bank or Federal savings association may apply a risk weight of zero percent to the trade exposure amount for a cleared transaction with a CCP where the clearing member national bank or Federal savings association is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 3.3(a),

and the clearing member national bank or Federal savings association is not obligated to reimburse the clearing member client in the event of the CCP default.

* * * * *

■ 7. Section 3.37 is amended by revising paragraph (c)(3)(iii) to read as follows:

§ 3.37 Collateralized transactions.

* * * * *

(c) * * *

(3) * * *

(iii) For repo-style transactions and cleared transactions, a national bank or Federal savings association may multiply the standard supervisory haircuts provided in paragraphs (c)(3)(i) and (ii) of this section by the square root of ½ (which equals 0.707107).

* * * * *

§§ 3.134, 3.202, and 3.210 [Amended]

■ 8. For each section listed in the following table, the footnote number listed in the ''Old footnote number'' column is redesignated as the footnote number listed in the ''New footnote number'' column as follows:

Section	Old footnote No.	New footnote No.
3.134(d)(3)	30	31
3.202, paragraph (1) introductory text of the definition of ''Covered position''	31	32
3.202, paragraph (1)(i) of the definition of ''Covered position''	32	33
3.210(e)(1)	33	34

■ 9. Section 3.132 is amended by:

■ a. Revising paragraphs (b)(2)(ii)(A)(*3*) through (*5*);

■ b. Adding paragraphs (b)(2)(ii)(A)(*6*) and (*7*);

■ c. Revising paragraphs (c) heading and (c)(1) and (2) and (5) through (8);

■ d. Adding paragraphs (c)(9) through (12);

■ e. Removing ''Table 3 to § 3.132'' and adding in its place ''Table 4 to this section'' in paragraphs (e)(5)(i)(A) and (H); and

■ f. Redesignating Table 3 to § 3.132 as Table 4 to § 3.132.

The revisions and additions read as follows:

§ 3.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) * * *

(*3*) For repo-style transactions and cleared transactions, a national bank or Federal savings association may multiply the supervisory haircuts provided in paragraphs (b)(2)(ii)(A)(*1*) and (*2*) of this section by the square root of ½ (which equals 0.707107).

(*4*) A national bank or Federal savings association must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days (for eligible margin loans) or five business days (for repo-style transactions), using the formula provide in paragraph (b)(2)(ii)(A)(*6*) of this section where the following conditions apply. If the number of trades in a netting set exceeds 5,000 at any time during a quarter, a national bank or Federal savings association must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days for the following quarter (except when a national bank or Federal savings association is calculating EAD for a cleared transaction under § 3.133). If a netting set contains one or more trades involving illiquid collateral, a national bank or Federal savings association must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the national bank or Federal savings association must adjust the supervisory haircuts upward for that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set.

(*5*)(*i*) A national bank or Federal savings association must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days for collateral associated derivative contracts that are not cleared transactions using the formula provided in paragraph (b)(2)(ii)(A)(*6*) of this section where the following conditions apply. For collateral associated with a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, a national bank or Federal savings association must use a holding period of twenty business days. If a netting set contains one or more trades involving illiquid collateral or a derivative contract that cannot be easily replaced, a national bank or Federal savings association must use a holding period of twenty business days.

(*ii*) Notwithstanding paragraph (b)(2)(ii)(A)(*1*) or (*3*) or (b)(2)(ii)(A)(*5*)(*i*) of this section, for collateral associated with a derivative contract that is subject to an outstanding dispute over variation margin, the holding period is twice the amount provide under paragraph (b)(2)(ii)(A)(*1*) or (*3*) or (b)(2)(ii)(A)(*5*)(*i*) of this section.

(*6*) A national bank or Federal savings association must adjust the standard supervisory haircuts upward, pursuant to the adjustments provided in paragraphs (b)(2)(ii)(A)(*4*) and (*5*) of this section, using the following formula:

$$H_A = H_S \sqrt{\frac{T_M}{T_S}}$$

Where:

TM equals a holding period of longer than 10 business days for eligible margin loans and derivative contracts or longer than 5 business days for repo-style transactions;

Hs equals the standard supervisory haircut; and

Ts equals 10 business days for eligible margin loans and derivative contracts or 5 business days for repo-style transactions.

(*7*) If the instrument a national bank or Federal savings association has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral, the national bank or Federal savings association must use a 25.0 percent haircut for market price volatility (Hs).

* * * * *

(c) *EAD for derivative contracts*—(1) *Options for determining EAD.* A national bank or Federal savings association must determine the EAD for a derivative contract using the standardized approach for counterparty credit risk (SA–CCR) under paragraph (c)(5) of this section or using the internal models methodology described in paragraph (d) of this section. If a national bank or Federal savings association elects to use SA–CCR for one or more derivative contracts, the exposure amount determined under SA–CCR is the EAD for the derivative

contract or derivatives contracts. A national bank or Federal savings association must use the same methodology to calculate the exposure amount for all its derivative contracts and may change its election only with prior approval of the OCC.

(2) *Definitions.* For purposes of this paragraph (c), the following definitions apply:

(i) Except as otherwise provided in paragraph (c) of this section, the *end date* means the last date of the period referenced by an interest rate or credit derivative contract or, if the derivative contract references another instrument, by the underlying instrument.

(ii) Except as otherwise provided in paragraph (c) of this section, the *start date* means the first date of the period referenced by an interest rate or credit derivative contract or, if the derivative contract references the value of another instrument, by underlying instrument.

(iii) *Hedging set* means:

(A) With respect interest rate derivative contracts, all such contracts within a netting set that reference the same reference currency;

(B) With respect to exchange rate derivative contracts, all such contracts within a netting set that reference the same currency pair;

(C) With respect to credit derivative contract, all such contracts within a netting set;

(D) With respect to equity derivative contracts, all such contracts within a netting set;

(E) With respect to a commodity derivative contract, all such contracts within a netting set that reference one of the following commodity classes: Energy, metal, agricultural, or other commodities;

(F) With respect to basis derivative contracts, all such contracts within a netting set that reference the same pair of risk factors and are denominated in the same currency; or

(G) With respect to volatility derivative contracts, all such contracts within a netting set that reference one of interest rate, exchange rate, credit, equity, or commodity risk factors, separated according to the requirements under paragraphs (c)(2)(iii)(A) through (E) of this section.

(H) If the risk of a derivative contract materially depends on more than one of interest rate, exchange rate, credit, equity, or commodity risk factors, the OCC may require a national bank or Federal savings association to include the derivative contract in each appropriate hedging set under paragraphs (c)(2)(iii)(A) through (E) of this section.

* * * * *

(5) *Exposure amount.* The exposure amount of a netting set, as calculated under paragraph (c) of this section, is equal to 1.4 multiplied by the sum of the replacement cost of the netting set, as calculated under paragraph (c)(6) of this section, and the potential future exposure of the netting set, as calculated under paragraph (c)(7) of this section, except that, notwithstanding the requirements of this paragraph (c)(5):

(i) The exposure amount of a netting set subject to a variation margin agreement, excluding a netting set that is subject to a variation margin agreement under which the counterparty to the variation margin agreement is not required to post variation margin, is equal to the lesser of the exposure amount of the netting set and the exposure amount of the netting set calculated as if the netting set were not subject to a variation margin agreement; and

(ii) The exposure amount of a netting set that consists of only sold options in which the premiums have been fully paid and that are not subject to a variation margin agreement is zero.

(6) *Replacement cost of a netting set*—(i) *Netting set subject to a variation margin agreement under which the counterparty must post variation margin.* The replacement cost of a netting set subject to a variation margin agreement, excluding a netting set that is subject to a variation margin agreement under which the counterparty is not required to post variation margin, is the greater of:

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the sum of the net independent collateral amount and the variation margin amount applicable to such derivative contracts;

(B) The sum of the variation margin threshold and the minimum transfer amount applicable to the derivative contracts within the netting set less the net independent collateral amount applicable to such derivative contracts; or

(C) Zero.

(ii) *Netting sets not subject to a variation margin agreement under which the counterparty must post variation margin.* The replacement cost of a netting set that is not subject to a variation margin agreement under which the counterparty must post variation margin to the national bank or Federal savings association is the greater of:

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the net independent collateral amount and variation margin amount applicable to such derivative contracts; or

(B) Zero.

(iii) *Multiple netting sets subject to a single variation margin agreement.* Notwithstanding paragraphs (c)(6)(i) and (ii) of this section, the replacement cost for multiple netting sets subject to a single variation margin agreement must be calculated according to paragraph (c)(10)(i) of this section.

(iv) *Multiple netting sets subject to multiple variation margin agreements or a hybrid netting set.* Notwithstanding paragraphs (c)(6)(i) and (ii) of this section, the replacement cost for a netting set subject to multiple variation margin agreements or a hybrid netting set must be calculated according to paragraph (c)(11)(i) of this section.

(7) *Potential future exposure of a netting set.* The potential future exposure of a netting set is the product of the PFE multiplier and the aggregated amount.

(i) *PFE multiplier.* The PFE multiplier is calculated according to the following formula:

$$H_A = H_S \sqrt{\frac{T_M}{T_S}}$$

Where:

V is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set;

C is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting set; and

A is the aggregated amount of the netting set.

(ii) *Aggregated amount.* The aggregated amount is the sum of all hedging set amounts, as calculated under paragraph (c)(8) of this section, within a netting set.

(iii) *Multiple netting sets subject to a single variation margin agreement.* Notwithstanding paragraphs (c)(7)(i) and (ii) of this section and when calculating the PFE amount for purposes of total leverage exposure under § 3.10(c)(4)(ii)(B), the potential future exposure for multiple netting sets subject to a single variation margin agreement must be calculated according to paragraph (c)(10)(ii) of this section.

(iv) *Multiple netting sets subject to multiple variation margin agreements or a hybrid netting set.* Notwithstanding paragraphs (c)(7)(i) and (ii) of this section and when calculating the PFE amount for purposes of total leverage exposure under § 3.10(c)(4)(ii)(B), the potential future exposure for a netting set subject to multiple variation margin agreements or a hybrid netting set must be calculated according to paragraph (c)(11)(ii) of this section.

(8) *Hedging set amount*—(i) *Interest rate derivative contracts.* To calculate the hedging set amount of an interest rate derivative contract hedging set, a national bank or Federal savings association may use either of the formulas provided in paragraphs (c)(8)(i)(A) and (B) of this section:

(A) *Formula 1.*

$$Hedging\ set\ amount =$$

$$[(AddOn_{TB1}^{IR})^2 + (AddOn_{TB2}^{IR})^2 + (AddOn_{TB3}^{IR})^2 + 1.4 * AddOn_{TB1}^{IR} *$$

$$AddOn_{TB2}^{IR} + 1.4 * AddOn_{TB2}^{IR} * AddOn_{TB3}^{IR} + 0.6 * AddOn_{TB1}^{IR} * AddOn_{TB3}^{IR})]^{\frac{1}{2}};$$

or

(B) *Formula 2.*

$$Hedging\ set\ amount = |AddOn_{TB1}^{IR}| + |AddOn_{TB2}^{IR}| + |AddOn_{TB3}^{IR}|.$$

Where in paragraphs (c)(8)(i)(A) and (B) of this section:

$AddOn_{TB1}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of less than one year from the present date;

$AddOn_{TB2}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of one to five years from the present date; and

$AddOn_{TB3}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of more than five years from the present date.

(ii) *Exchange rate derivative contracts.* For an exchange rate derivative contract hedging set, the hedging set amount equals the absolute value of the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set.

(iii) *Credit derivative contracts and equity derivative contracts.* The hedging set amount of a credit derivative contract hedging set or equity derivative contract hedging set within a netting set is calculated according to the following formula:

$$Hedging\ set\ amount = \left[\left(\sum_{k=1}^{K} \rho_k * AddOn(Ref_k)\right)^2 + \sum_{k=1}^{K}(1-(\rho_k)^2) * (AddOn(Ref_k))^2\right]^{\frac{1}{2}}$$

Where:

k is each reference entity within the hedging set.

K is the number of reference entities within the hedging set.

$AddOn(Ref_k)$ equals the sum of the adjusted derivative contract amounts, as determined under paragraph (c)(9) of this section, for all derivative contracts within the hedging set that reference reference entity k.

ρ_k equals the applicable supervisory correlation factor, as provided in Table 2 to this section.

(iv) *Commodity derivative contracts.* The hedging set amount of a commodity derivative contract hedging set within a netting set is calculated according to the following formula:

$$Hedging\ set\ amount = \left[\left(\rho * \sum_{k=1}^{K} AddOn(Type_k)\right)^2 + (1-(\rho)^2) * \sum_{k=1}^{K}(AddOn(Type_k))^2\right]^{\frac{1}{2}}$$

Where:

k is each commodity type within the hedging set.

K is the number of commodity types within the hedging set.

$AddOn(Type_k)$ equals the sum of the adjusted derivative contract amounts, as determined under paragraph (c)(9) of this section, for all derivative contracts within the hedging set that reference reference commodity type k.

ρ equals the applicable supervisory correlation factor, as provided in Table 2 to this section.

(v) *Basis derivative contracts and volatility derivative contracts.* Notwithstanding paragraphs (c)(8)(i) through (iv) of this section, a national bank or Federal savings association must calculate a separate hedging set amount for each basis derivative contract hedging set and each volatility derivative contract hedging set. A national bank or Federal savings association must calculate such hedging set amounts using one of the formulas under paragraphs (c)(8)(i) through (iv) that corresponds to the primary risk factor of the hedging set being calculated.

(9) *Adjusted derivative contract amount*—(i) *Summary.* To calculate the adjusted derivative contract amount of a derivative contract, a national bank or Federal savings association must determine the adjusted notional amount of derivative contract, pursuant to paragraph (c)(9)(ii) of this section, and multiply the adjusted notional amount by each of the supervisory delta adjustment, pursuant to paragraph (c)(9)(iii) of this section, the maturity factor, pursuant to paragraph (c)(9)(iv) of this section, and the applicable supervisory factor, as provided in Table 2 to this section.

(ii) *Adjusted notional amount.* (A)(*1*) For an interest rate derivative contract or a credit derivative contract, the adjusted notional amount equals the product of the notional amount of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation, and the supervisory duration, as calculated by the following formula:

$$\text{Supervisory duration} = max\left\{\frac{e^{-0.05*\left(\frac{S}{250}\right)} - e^{-0.05*\left(\frac{E}{250}\right)}}{0.05}, 0.04\right\}$$

Where:

S is the number of business days from the present day until the start date of the derivative contract, or zero if the start date has already passed; and

E is the number of business days from the present day until the end date of the derivative contract.

(*2*) For purposes of paragraph (c)(9)(ii)(A)(*1*) of this section:

(*i*) For an interest rate derivative contract or credit derivative contract that is a variable notional swap, the notional amount is equal to the time-weighted average of the contractual notional amounts of such a swap over the remaining life of the swap; and

(*ii*) For an interest rate derivative contract or a credit derivative contract that is a leveraged swap, in which the notional amount of all legs of the derivative contract are divided by a factor and all rates of the derivative contract are multiplied by the same factor, the notional amount is equal to the notional amount of an equivalent unleveraged swap.

(B)(*1*) For an exchange rate derivative contract, the adjusted notional amount is the notional amount of the non-U.S. denominated currency leg of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation. If both legs of the exchange rate

derivative contract are denominated in currencies other than U.S. dollars, the adjusted notional amount of the derivative contract is the largest leg of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation.

(*2*) Notwithstanding paragraph (c)(9)(ii)(B)(*1*) of this section, for an exchange rate derivative contract with multiple exchanges of principal, the national bank or Federal savings association must set the adjusted notional amount of the derivative contract equal to the notional amount of the derivative contract multiplied by the number of exchanges of principal under the derivative contract.

(C)(*1*) For an equity derivative contract or a commodity derivative contract, the adjusted notional amount is the product of the fair value of one unit of the reference instrument underlying the derivative contract and the number of such units referenced by the derivative contract.

(*2*) Notwithstanding paragraph (c)(9)(ii)(C)(*1*) of this section, when calculating the adjusted notional amount for an equity derivative contract or a commodity derivative contract that is a volatility derivative contract, the national bank or Federal savings association must replace the unit price with the underlying volatility referenced by the volatility derivative contract and replace the number of units with the notional amount of the volatility derivative contract.

(iii) *Supervisory delta adjustments.* (A) For a derivative contract that is not an option contract or collateralized debt obligation tranche, the supervisory delta adjustment is 1 if the fair value of the derivative contract increases when the value of the primary risk factor increases and −1 if the fair value of the derivative contract decreases when the value of the primary risk factor increases;

(B)(*1*) For a derivative contract that is an option contract, the supervisory delta adjustment is determined by the following formulas, as applicable:

Table 3 to §3.132--Supervisory Delta Adjustment for Options Contracts

	Bought	Sold
Call Options	$\Phi\left(\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$-\Phi\left(\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$
Put Options	$-\Phi\left(-\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$\Phi\left(-\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$

(*2*) As used in the formulas in Table 3 to this section:

(*i*) **Φ** is the standard normal cumulative distribution function;

(*ii*) P equals the current fair value of the instrument or risk factor, as applicable, underlying the option;

(*iii*) K equals the strike price of the option;

(*iv*) T equals the number of business days until the latest contractual exercise date of the option;

(*v*) λ equals zero for all derivative contracts except interest rate options for the currencies where interest rates have negative values. The same value of λ must be used for all interest rate options that are denominated in the same currency. To determine the value of λ for a given currency, a national bank or Federal savings association must find the lowest value L of P and K of all interest rate options in a given currency that the national bank or Federal savings association has with all counterparties. Then, λ is set according to this formula: $\lambda = max\{-L + 0.1\%, 0\}$; and

(*vi*) σ equals the supervisory option volatility, as provided in Table 2 to of this section.

(C)(*1*) For a derivative contract that is a collateralized debt obligation tranche, the supervisory delta adjustment is determined by the following formula:

$$\text{Supervisory delta adjustment} = \frac{15}{(1+14*A)*(1+14*D)}$$

(*2*) As used in the formula in paragraph (c)(9)(iii)(C)(*1*) of this section:

(*i*) A is the attachment point, which equals the ratio of the notional amounts of all underlying exposures that are subordinated to the national bank's or Federal savings association's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one;[30]

(*ii*) D is the detachment point, which equals one minus the ratio of the notional amounts of all underlying exposures that are senior to the national bank's or Federal savings association's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one; and

(*iii*) The resulting amount is designated with a positive sign if the collateralized debt obligation tranche was purchased by the national bank or Federal savings association and is designated with a negative sign if the collateralized debt obligation tranche was sold by the national bank or Federal savings association.

(iv) *Maturity factor.* (A)(*1*) The maturity factor of a derivative contract that is subject to a variation margin agreement, excluding derivative contracts that are subject to a variation margin agreement under which the counterparty is not required to post variation margin, is determined by the following formula:

[30] In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the national bank's or Federal savings association's exposure. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n-1) notional amounts of the underlying exposures are subordinated to the national bank's or Federal savings association's exposure.

$$\text{Maturity factor} = \frac{3}{2}\sqrt{\frac{MPOR}{250}}$$

Where MPOR refers to the period from the most recent exchange of collateral covering a netting set of derivative contracts with a defaulting counterparty until the derivative contracts are closed out and the resulting market risk is re-hedged.

(*2*) Notwithstanding paragraph (c)(9)(iv)(A)(*1*) of this section:

(*i*) For a derivative contract that is not a cleared transaction, MPOR cannot be less than ten business days plus the periodicity of re-margining expressed in business days minus one business day;

(*ii*) For a derivative contract that is a cleared transaction, MPOR cannot be less than five business days plus the periodicity of re-margining expressed in business days minus one business day; and

(*iii*) For a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, MPOR cannot be less than twenty business days.

(*3*) Notwithstanding paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section, for a derivative contract subject to an outstanding dispute over variation margin, the applicable floor is twice the amount provided in (c)(9)(iv)(A)(*1*) and (*2*) of this section.

(B) The maturity factor of a derivative contract that is not subject to a variation margin agreement, or derivative contracts under which the counterparty is not required to post variation margin, is determined by the following formula:

$$\text{Maturity factor} = \sqrt{\frac{\min\{M;250\}}{250}}$$

Where M equals the greater of 10 business days and the remaining maturity of the contract, as measured in business days.

(C) For purposes of paragraph (c)(9)(iv) of this section, derivative contracts with daily settlement are treated as derivative contracts not subject to a variation margin agreement and daily settlement does not change the end date of the period referenced by the derivative contract.

(v) *Derivative contract as multiple effective derivative contracts.* A national bank or Federal savings association must separate a derivative contract into separate derivative contracts, according to the following rules:

(A) For an option where the counterparty pays a predetermined amount if the value of the underlying asset is above or below the strike price and nothing otherwise (binary option), the option must be treated as two separate options. For purposes of paragraph (c)(9)(iii)(B) of this section, a binary option with strike K must be represented as the combination of one bought European option and one sold European option of the same type as the original option (put or call) with the strikes set equal to 0.95*K and 1.05*K so that the payoff of the binary option is reproduced exactly outside the region between the two strikes. The absolute value of the sum of the adjusted derivative contract amounts of the bought and sold options is capped at the payoff amount of the binary option.

(B) For a derivative contract that can be represented as a combination of standard option payoffs (such as collar, butterfly spread, calendar spread, straddle, and strangle), each standard option component must be treated as a separate derivative contract.

(C) For a derivative contract that includes multiple-payment options, (such as interest rate caps and floors) each payment option may be represented as a combination of effective single-payment options (such as interest rate caplets and floorlets).

(10) *Multiple netting sets subject to a single variation margin agreement*—(i) *Calculating replacement cost.* Notwithstanding paragraph (c)(6) of this section, a national bank or Federal savings association shall assign a single replacement cost to multiple netting sets that are subject to a single variation margin agreement under which the counterparty must post variation margin, calculated according to the following formula:

$$\textit{Replacement Cost} = max\{\Sigma_{NS}\, max\{V_{NS}; 0\} - max\{C_{MA}; 0\}; 0\} + max\{\Sigma_{NS}\, min\{V_{NS}; 0\} - min\{C_{MA}; 0\}; 0\}$$

Where:

NS is each netting set subject to the variation margin agreement MA.

V_{NS} is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set NS.

C_{MA} is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting sets subject to the single variation margin agreement.

(ii) *Calculating potential future exposure.* Notwithstanding paragraph (c)(5) of this section, a national bank or Federal savings association shall assign a single potential future exposure to multiple netting sets that are subject to a single variation margin agreement under which the counterparty must post variation margin equal to the sum of the potential future exposure of each such netting set, each calculated according to paragraph (c)(7) of this section as if such nettings sets were not subject to a variation margin agreement.

(11) *Netting set subject to multiple variation margin agreements or a hybrid netting set*—(i) *Calculating replacement cost.* To calculate replacement cost for either a netting set subject to multiple variation margin agreements under which the counterparty to each variation margin agreement must post variation margin, or a netting set composed of at least one derivative contract subject to variation margin agreement under which the counterparty must post variation margin and at least one derivative contract that is not subject to such a variation margin agreement, the calculation for replacement cost is provided under paragraph (c)(6)(ii) of this section, except that the variation margin threshold equals the sum of the variation margin thresholds of all variation margin agreements within the netting set and the minimum transfer amount equals the sum of the minimum transfer amounts of all the variation margin agreements within the netting set.

(ii) *Calculating potential future exposure.* (A) To calculate potential future exposure for a netting set subject to multiple variation margin agreements under which the counterparty to each variation margin agreement must post variation margin, or a netting set composed of at least one derivative contract subject to variation margin agreement under which the counterparty to the derivative contract must post variation margin and at least one derivative contract that is not subject to such a variation margin agreement, a national bank or Federal savings association must divide the netting set into sub-netting sets and calculate the aggregated amount for each sub-netting set. The aggregated amount for the netting set is calculated as the sum of the aggregated amounts for the sub-netting sets. The multiplier is calculated for the entire netting set.

(B) For purposes of paragraph (c)(11)(ii)(A) of this section, the netting set must be divided into sub-netting sets as follows:

(*1*) All derivative contracts within the netting set that are not subject to a variation margin agreement or that are subject to a variation margin agreement

under which the counterparty is not required to post variation margin form a single sub-netting set. The aggregated amount for this sub-netting set is calculated as if the netting set is not subject to a variation margin agreement.

(*2*) All derivative contracts within the netting set that are subject to variation margin agreements in which the counterparty must post variation margin and that share the same value of the MPOR form a single sub-netting set. The aggregated amount for this sub-netting set is calculated as if the netting set is subject to a variation margin agreement, using the MPOR value shared by the derivative contracts within the netting set.

(12) *Treatment of cleared transactions.* (i) A national bank or Federal savings association must apply the adjustments in paragraph (c)(12)(iii) of this section to the calculation of exposure amount under this paragraph (c) for a netting set that is composed solely of one or more cleared transactions.

(ii) A national bank or Federal savings association that is a clearing member must apply the adjustments in paragraph (c)(12)(iii) of this section to the calculation of exposure amount under this paragraph (c) for a netting set that is composed solely of one or more exposures, each of which are exposures of the national bank or Federal savings association to its clearing member client where the national bank or Federal savings association is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the national bank or Federal savings association provides a guarantee to the CCP on the performance of the client.

(iii)(A) For purposes of calculating the maturity factor under paragraph (c)(9)(iv)(B) of this section, MPOR may not be less than 10 business days;

(B) For purposes of calculating the maturity factor under paragraph (c)(9)(iv)(B) of this section, the minimum MPOR under paragraph (c)(9)(iv)(A)(*3*) of this section does not apply if there are no outstanding disputed trades in the netting set, there is no illiquid collateral in the netting set, and there are no exotic derivative contracts in the netting set; and

(C) For purposes of calculating the maturity factor under paragraph (c)(9)(iv)(A) and (B) of this section, if the CCP collects and holds variation margin and the variation margin is not bankruptcy remote from the CCP, M_i may not exceed 250 business days.

TABLE 2 TO § 3.132—SUPERVISORY OPTION VOLATILITY, SUPERVISORY CORRELATION PARAMETERS, AND SUPERVISORY FACTORS FOR DERIVATIVE CONTRACTS

Asset class	Subclass	Supervisory option volatility (%)	Supervisory correlation factor (%)	Supervisory factor [1] (%)
Interest rate	N/A	50	N/A	0.50
Exchange rate	N/A	15	N/A	4.0
Credit, single name	Investment grade	100	50	0.5
	Speculative grade	100	50	1.3
	Sub-speculative grade	100	50	6.0
Credit, index	Investment Grade	80	80	0.38
	Speculative Grade	80	80	1.06
Equity, single name	N/A	120	50	32
Equity, index	N/A	75	80	20
Commodity	Energy	150	40	40
	Metals	70	40	18
	Agricultural	70	40	18
	Other	70	40	18

[1] The applicable supervisory factor for basis derivative contract hedging sets is equal to one-half of the supervisory factor provided in this Table 2, and the applicable supervisory factor for volatility derivative contract hedging sets is equal to 5 times the supervisory factor provided in this Table 2.

* * * * *

■ 10. Section 3.133 is amended by revising paragraphs (a), (b) heading, (b)(1) through (3), (b)(4)(i), (c)(1) thorough (3), (c)(4)(i), and (d) to read as follows:

§ 3.133 Cleared transactions.

(a) *General requirements*—(1) *Clearing member clients.* A national bank or Federal savings association that is a clearing member client must use the methodologies described in paragraph (b) of this section to calculate risk-weighted assets for a cleared transaction.

(2) *Clearing members.* A national bank or Federal savings association that is a clearing member must use the methodologies described in paragraph (c) of this section to calculate its risk-weighted assets for a cleared transaction and paragraph (d) of this section to calculate its risk-weighted assets for its default fund contribution to a CCP.

(b) *Clearing member client national bank or Federal savings association*—(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a national bank or Federal savings association that is a clearing member client must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (b)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (b)(3) of this section.

(ii) A clearing member client national bank's or Federal savings association's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* (i) For a cleared transaction that is a derivative contract or a netting set of derivative contracts, trade exposure amount equals the EAD for the derivative contract or netting set of derivative contracts calculated using the methodology used to calculate EAD for derivative contracts set forth in § 3.132(c) or (d), plus the fair value of the collateral posted by the clearing member client national bank or Federal savings association and held by the CCP or a clearing member in a manner that is not bankruptcy remote. When the national bank or Federal savings association calculates EAD for the cleared transaction using the

methodology in § 3.132(d), EAD equals $EAD_{unstressed}$.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD for the repo-style transaction calculated using the methodology set forth in § 3.132(b)(2) or (3) or (d), plus the fair value of the collateral posted by the clearing member client national bank or Federal savings association and held by the CCP or a clearing member in a manner that is not bankruptcy remote. When the national bank or Federal savings association calculates EAD for the cleared transaction under § 3.132(d), EAD equals $EAD_{unstressed}$.

(3) *Cleared transaction risk weights.* (i) For a cleared transaction with a QCCP, a clearing member client national bank or Federal savings association must apply a risk weight of:

(A) 2 percent if the collateral posted by the national bank or Federal savings association to the QCCP or clearing member is subject to an arrangement that prevents any loss to the clearing member client national bank or Federal savings association due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and the clearing member client national bank or Federal savings association has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from an event of default or from liquidation, insolvency or receivership proceedings) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding and enforceable under the law of the relevant jurisdictions.

(B) 4 percent, if the requirements of paragraph (b)(3)(i)(A) of this section are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client national bank or Federal savings association must apply the risk weight applicable to the CCP under § 3.32.

(4) * * *

(i) Notwithstanding any other requirement of this section, collateral posted by a clearing member client national bank or Federal savings association that is held by a custodian (in its capacity as a custodian) in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

* * * * *

(c) * * *

(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a clearing member national bank or Federal savings association must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (c)(2) of this section by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (c)(3) of this section.

(ii) A clearing member national bank's or Federal savings association's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* A clearing member national bank or Federal savings association must calculate its trade exposure amount for a cleared transaction as follows:

(i) For a cleared transaction that is a derivative contract or a netting set of derivative contracts, trade exposure amount equals the EAD calculated using the methodology used to calculate EAD for derivative contracts set forth in § 3.132(c) or (d), plus the fair value of the collateral posted by the clearing member national bank or Federal savings association and held by the CCP in a manner that is not bankruptcy remote. When the clearing member national bank or Federal savings association calculates EAD for the cleared transaction using the methodology in § 3.132(d), EAD equals $EAD_{unstressed}$.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD calculated under § 3.132(b)(2) or (3) or (d), plus the fair value of the collateral posted by the clearing member national bank or Federal savings association and held by the CCP in a manner that is not bankruptcy remote. When the clearing member national bank or Federal savings association calculates EAD for the cleared transaction under § 3.132(d), EAD equals $EAD_{unstressed}$.

(3) *Cleared transaction risk weights.* (i) A clearing member national bank or Federal savings association must apply a risk weight of 2 percent to the trade exposure amount for a cleared transaction with a QCCP.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member national bank or Federal savings association must apply the risk weight applicable to the CCP according to § 3.32.

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member national bank or Federal savings association may apply a risk weight of zero percent to the trade exposure amount for a cleared transaction with a QCCP where the clearing member national bank or Federal savings association is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 3.3(a), and the clearing member national bank or Federal savings association is not obligated to reimburse the clearing member client in the event of the QCCP default.

(4) * * *

(i) Notwithstanding any other requirement of this section, collateral posted by a clearing member client national bank or Federal savings association that is held by a custodian (in its capacity as a custodian) in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

* * * * *

(d) *Default fund contributions*—(1) *General requirement.* A clearing member national bank or Federal savings association must determine the risk-weighted asset amount for a default fund contribution to a CCP at least quarterly, or more frequently if, in the opinion of the national bank or Federal savings association or the OCC, there is a material change in the financial condition of the CCP.

(2) *Risk-weighted asset amount for default fund contributions to nonqualifying CCPs.* A clearing member national bank's or Federal savings association's risk-weighted asset amount for default fund contributions to CCPs that are not QCCPs equals the sum of such default fund contributions multiplied by 1,250 percent, or an amount determined by the OCC, based on factors such as size, structure and membership characteristics of the CCP and riskiness of its transactions, in cases where such default fund contributions may be unlimited.

(3) *Risk-weighted asset amount for default fund contributions to QCCPs.* A clearing member national bank's or Federal savings association's risk-weighted asset amount for default fund contributions to QCCPs equals the sum of its capital requirement, K_{CM} for each QCCP, as calculated under the methodology set forth in paragraph (e)(4) of this section.

(i) EAD must be calculated separately for each clearing member's sub-client accounts and sub-house account (*i.e.,* for the clearing member's propriety activities). If the clearing member's collateral and its client's collateral are held in the same default fund contribution account, then the EAD of that account is the sum of the EAD for the client-related transactions within the account and the EAD of the house-related transactions within the account. For purposes of determining such EADs, the independent collateral of the clearing member and its client must be allocated in proportion to the respective total amount of independent collateral posted by the clearing member to the QCCP.

(ii) If any account or sub-account contains both derivative contracts and repo-style transactions, the EAD of that account is the sum of the EAD for the derivative contracts within the account and the EAD of the repo-style transactions within the account. If independent collateral is held for an account containing both derivative contracts and repo-style transactions, then such collateral must be allocated to the derivative contracts and repo-style transactions in proportion to the respective product specific exposure amounts, calculated, excluding the effects of collateral, according to § 3.132(b) for repo-style transactions and to § 3.132(c)(5) for derivative contracts.

(4) *Risk-weighted asset amount for default fund contributions to a QCCP.* A clearing member national bank's or Federal savings association's capital requirement for its default fund contribution to a QCCP (K_{CM}) is equal to:

$$K_{CM} = \max\{K_{CCP} * \left(\frac{DF^{pref}}{DF_{CCP}+DF^{pref}_{CCPCM}}\right); 0.16\ percent * DF^{pref}\}$$

Where:

K_{CCP} is the hypothetical capital requirement of the QCCP, as determined under paragraph (d)(5) of this section;

DF^{pref} is the prefunded default fund contribution of the clearing member national bank or Federal savings association to the QCCP;

DF_{CCP} is the QCCP's own prefunded amount that are contributed to the default waterfall and are junior or pari passu with prefunded default fund contributions of clearing members of the CCP; and

DF^{pref}_{CM} is the total prefunded default fund contributions from clearing members of the QCCP to the QCCP.

(5) *Hypothetical capital requirement of a QCCP.* Where a QCCP has provided its K_{CCP}, a national bank or Federal savings association must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph (d)(5), unless the national bank or Federal savings association determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP. The hypothetical capital requirement of a QCCP (K_{CCP}), as determined by the national bank or Federal savings association, is equal to:

$K_{CCP} = \Sigma_{CM_i} EAD_i * 1.6\ percent$

Where:

CM_i is each clearing member of the QCCP; and

EAD_i is the exposure amount of each clearing member of the QCCP to the QCCP, as determined under paragraph (d)(6) of this section.

(6) *EAD of a clearing member national bank or Federal savings association to a QCCP.* (i) The EAD of a clearing member national bank or Federal savings association to a QCCP is equal to the sum of the EAD for derivative contracts determined under paragraph (d)(6)(ii) of this section and the EAD for repo-style transactions determined under paragraph (d)(6)(iii) of this section.

(ii) With respect to any derivative contracts between the national bank or Federal savings association and the CCP that are cleared transactions and any guarantees that the national bank or Federal savings association has provided to the CCP with respect to performance of a clearing member client on a derivative contract, the EAD is equal to the sum of:

(A) The exposure amount for all such derivative contracts and guarantees of derivative contracts calculated under SA–CCR in § 3.132(c) using a value of

10 business days for purposes of § 3.132(c)(9)(iv)(B);

(B) The value of all collateral held by the CCP posted by the clearing member national bank or Federal savings association or a clearing member client of the national bank or Federal savings association in connection with a derivative contract for which the national bank or Federal savings association has provided a guarantee to the CCP; and

(C) The amount of the prefunded default fund contribution of the national bank or Federal savings association to the CCP.

(iii) With respect to any repo-style transactions between the national bank or Federal savings association and the CCP that are cleared transactions, EAD is equal to:

$$EAD = \max\{EBRM - IM - DF; 0\}$$

Where:

EBRM is the sum of the exposure amounts of each repo-style transaction between the national bank or Federal savings association and the CCP as determined under § 3.132(b)(2) and without recognition of any collateral securing the repo-style transactions;

IM is the initial margin collateral posted by the national bank or Federal savings association to the CCP with respect to the repo-style transactions; and

DF is the prefunded default fund contribution of the national bank or Federal savings association to the CCP.

■ 11. Section 3.300 is amended by adding paragraph (f) to read as follows:

§ 3.300 Transitions.

* * * * *

(f) *SA–CCR.* After giving prior notice to the OCC, an advanced approaches national bank or Federal savings association may use CEM rather than SA–CCR to determine the exposure amount for purposes of § 3.34 and the EAD for purposes of § 3.132 for its derivative contracts until July 1, 2020. On July 1, 2020, and thereafter, an advanced approaches national bank or Federal savings association must use SA–CCR for purposes of § 3.34 and must use either SA–CCR or IMM for purposes of § 3.132. Once an advanced approaches national bank or Federal savings association has begun to use SA–CCR, the advanced approaches national bank or Federal savings association may not change to use CEM.

PART 32—LENDING LIMITS

■ 12. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), 5412(b)(2)(B), and 15 U.S.C. 1639h.

■ 13. Section 32.9 is amended by revising paragraph (b)(1)(iii) and adding paragraph (b)(1)(iv) to read as follows:

§ 32.9 Credit exposure arising from derivative and securities financing transactions.

* * * * *

(b) * * *

(1) * * *

(iii) *Current Exposure Method.* The credit exposure arising from a derivative transaction (other than a credit derivative transaction) under the Current Exposure Method shall be calculated pursuant to 12 CFR 3.34(b)(1) and (2) and (c) or 324.34(b)(1) and (2) and (c), as appropriate.

(iv) *Standardized Approach for Counterparty Credit Risk Method.* The credit exposure arising from a derivative transaction (other than a credit derivative transaction) under the Standardized Approach for Counterparty Credit Risk Method shall be calculated pursuant to 12 CFR 3.132(c)(5) or 324.132(c)(5), as appropriate.

* * * * *

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

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

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

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 15. Section 217.2 is amended by:

■ a. Adding the definition of ''Basis derivative contract'' in alphabetical order;

■ b. Revising paragraph (2) of the definition of ''Financial collateral;''

■ c. Adding the definitions of ''Independent collateral,'' ''Minimum transfer amount,'' and ''Net independent collateral amount'' in alphabetical order;

■ d. Revising the definition of ''Netting set;''

■ e. Adding the definitions of ''Speculative grade,'' ''Sub-speculative grade,'' ''Variation margin,'' ''Variation margin agreement,'' ''Variation margin amount,'' ''Variation margin threshold,'' and ''Volatility derivative contract'' in alphabetical order.

The additions and revisions read as follows:

§ 217.2 Definitions.

* * * * *

Basis derivative contract means a non-foreign-exchange derivative contract (*i.e.,* the contract is denominated in a single currency) in which the cash flows of the derivative contract depend on the difference between two risk factors that are attributable solely to one of the following derivative asset classes: interest rate, credit, equity, or commodity.

* * * * *

Financial collateral * * *

(2) In which the Board-regulated institution has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof, (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP).

* * * * *

Independent collateral means financial collateral, other than variation margin, that is subject to a collateral agreement, or in which a Board-regulated institution has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; notwithstanding the prior security interest of any custodial agent or any prior security interest granted to a CCP in connection with collateral posted to that CCP), and the amount of which does not change directly in response to the value of the derivative contract or contracts that the financial collateral secures.

* * * * *

Minimum transfer amount means the smallest amount of variation margin that may be transferred between counterparties to a netting set.

* * * * *

Net independent collateral amount means the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under § 217.132(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to a Board-regulated institution less the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under § 217.132(b)(2)(ii), as applicable, posted by the Board-regulated institution to the counterparty, excluding such amounts held in a bankruptcy remote manner, or posted to a QCCP and held in

conformance with the operational requirements in § 217.3.

Netting set means either one derivative contract between a Board-regulated institution and a single counterparty, or a group of derivative contracts between a Board-regulated institution and a single counterparty, that are subject to a qualifying master netting agreement.

* * * * *

Speculative grade means the reference entity has adequate capacity to meet financial commitments in the near term, but is vulnerable to adverse economic conditions, such that should economic conditions deteriorate, the reference entity would present an elevated default risk.

* * * * *

Sub-speculative grade means the reference entity depends on favorable economic conditions to meet its financial commitments, such that should such economic conditions deteriorate the reference entity likely would default on its financial commitments.

* * * * *

Variation margin means financial collateral that is subject to a collateral agreement provided by one party to its counterparty to meet the performance of the first party's obligations under one or more transactions between the parties as a result of a change in value of such obligations since the last time such financial collateral was provided.

Variation margin agreement means an agreement to collect or post variation margin.

Variation margin amount means the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under § 217.132(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to a Board-regulated institution less the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under § 217.132(b)(2)(ii), as applicable, posted by the Board-regulated institution to the counterparty.

Variation margin threshold means the amount of credit exposure of a Board-regulated institution to its counterparty that, if exceeded, would require the counterparty to post variation margin to the Board-regulated institution.

Volatility derivative contract means a derivative contract in which the payoff of the derivative contract explicitly depends on a measure of the volatility of an underlying risk factor to the derivative contract.

* * * * *

■ 16. Section 217.10 is amended by revising paragraphs (c)(4)(ii)(A) through (C) to read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) The balance sheet carrying value of all the Board-regulated institution's on-balance sheet assets, *plus* the value of securities sold under a repurchase transaction or a securities lending transaction that qualifies for sales treatment under U.S. GAAP, *less* amounts deducted from tier 1 capital under § 217.22(a), (c), and (d), *less* the value of securities received in security-for-security repo-style transactions, where the Board-regulated institution acts as a securities lender and includes the securities received in its on-balance sheet assets but has not sold or re-hypothecated the securities received, and *less* the fair value of any derivative contracts;

(B) The PFE for each netting set (including cleared transactions except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the Board-regulated institution, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under U.S. GAAP), as determined under § 217.132(c)(7), in which the term C in § 217.132(c)(7)(i)(B) equals zero, multiplied by 1.4;

(C) The sum of:

(*1*)(*i*) 1.4 multiplied by the replacement cost of each derivative contract or single product netting set of derivative contracts to which the Board-regulated institution is a counterparty, calculated according to the following formula:

$$\text{Replacement Cost} = \{V - CVM_r + CVM_p; 0\}$$

Where:

V equals the fair value for each derivative contract or each single-product netting set of derivative contracts (including a cleared transaction except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the Board-regulated institution, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under U.S. GAAP);

CVM_r equals the amount of cash collateral received from a counterparty to a derivative contract and that satisfies the conditions in paragraphs (c)(4)(ii)(C)(*3*) through (*7*) of this section; and

CVM_p equals the amount of cash collateral that is posted to a counterparty to a derivative contract and that has not off-set the fair value of the derivative contract and that satisfies the conditions in paragraphs (c)(4)(ii)(C)(*3*) through (*7*) of this section; and

(*ii*) Notwithstanding paragraph (c)(4)(ii)(C)(*1*)(*i*) of this section, where multiple netting sets are subject to a single variation margin agreement, a Board-regulated institution must apply the formula for replacement cost provided in § 217.132(c)(10), in which the term may only include cash collateral that satisfies the conditions in paragraphs (c)(4)(ii)(C)(*3*) through (*7*) of this section;

(*2*) The amount of cash collateral that is received from a counterparty to a derivative contract that has off-set the fair value of a derivative contract and that does not satisfy the conditions in paragraphs (c)(4)(ii)(C)(*3*) through (*7*) of this section;

(*3*) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated (by law, regulation or an agreement with the counterparty);

(*4*) Variation margin is calculated and transferred on a daily basis based on the fair value of the derivative contract;

(*5*) The variation margin transferred under the derivative contract or the governing rules for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contracts, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(*6*) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph (c)(4)(ii)(C)(*6*), currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement and the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(*7*) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction, and the qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net

basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

* * * * *

■ 17. Section 217.32 is amended by revising paragraph (f) to read as follows:

§ 217.32 General risk weights.

* * * * *

(f) *Corporate exposures.* (1) A Board-regulated institution must assign a 100 percent risk weight to all its corporate exposures, except as provided in paragraph (f)(2) of this section.

(2) A Board-regulated institution must assign a 2 percent risk weight to an exposure to a QCCP arising from the Board-regulated institution posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 217.35(b)(3)(i)(A) and a 4 percent risk weight to an exposure to a QCCP arising from the Board-regulated institution posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 217.35(b)(3)(i)(B).

(3) A Board-regulated institution must assign a 2 percent risk weight to an exposure to a QCCP arising from the Board-regulated institution posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 217.35(c)(3)(i).

* * * * *

■ 18. Section 217.34 is revised to read as follows:

§ 217.34 Derivative contracts.

(a) *Exposure amount for derivative contracts*—(1) *Board-regulated institution that is not an advanced approaches Board-regulated institution.* (i) A Board-regulated institution that is not an advanced approaches Board-regulated institution must use the current exposure methodology (CEM) described in paragraph (b) of this section to calculate the exposure amount for all its OTC derivative contracts, unless the Board-regulated institution makes the election provided in paragraph (a)(1)(ii) of this section.

(ii) A Board-regulated institution that is not an advanced approaches Board-regulated institution may elect to calculate the exposure amount for all its OTC derivative contracts under the standardized approach for counterparty credit risk (SA–CCR) in § 217.132(c), rather than calculating the exposure amount for all its derivative contracts using the CEM. A Board-regulated institution that elects under this paragraph (a)(1)(ii) to calculate the exposure amount for its OTC derivative contracts under the SA–CCR must apply the treatment of cleared transactions under § 217.133 to its derivative contracts that are cleared transactions, rather than applying § 217.35. A Board-regulated institution that is not an advanced approaches Board-regulated institution must use the same methodology to calculate the exposure amount for all its derivative contracts and may change its election only with prior approval of the Board.

(2) *Advanced approaches Board-regulated institution.* An advanced approaches Board-regulated institution must calculate the exposure amount for all its derivative contracts using the SA–CCR in § 217.132(c). An advanced approaches Board-regulated institution must apply the treatment of cleared transactions under § 217.133 to its derivative contracts that are cleared transactions.

(b) *Current exposure methodology exposure amount*—(1) *Single OTC derivative contract.* Except as modified by paragraph (c) of this section, the exposure amount for a single OTC derivative contract that is not subject to a qualifying master netting agreement is equal to the sum of the Board-regulated institution's current credit exposure and potential future credit exposure (PFE) on the OTC derivative contract.

(i) *Current credit exposure.* The current credit exposure for a single OTC derivative contract is the greater of the fair value of the OTC derivative contract or zero.

(ii) *PFE.* (A) The PFE for a single OTC derivative contract, including an OTC derivative contract with a negative fair value, is calculated by multiplying the notional principal amount of the OTC derivative contract by the appropriate conversion factor in Table 1 to this section.

(B) For purposes of calculating either the PFE under this paragraph (b) or the gross PFE under paragraph (b)(2) of this section for exchange rate contracts and other similar contracts in which the notional principal amount is equivalent to the cash flows, notional principal amount is the net receipts to each party falling due on each value date in each currency.

(C) For an OTC derivative contract that does not fall within one of the specified categories in Table 1 to this section, the PFE must be calculated using the appropriate ''other'' conversion factor.

(D) A Board-regulated institution must use an OTC derivative contract's effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the OTC derivative contract) rather than the apparent or stated notional principal amount in calculating PFE.

(E) The PFE of the protection provider of a credit derivative is capped at the net present value of the amount of unpaid premiums.

TABLE 1 TO § 217.34—CONVERSION FACTOR MATRIX FOR DERIVATIVE CONTRACTS [1]

Remaining maturity [2]	Interest rate	Foreign exchange rate and gold	Credit (investment grade reference asset) [3]	Credit (non-investment-grade reference asset)	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Greater than one year and less than or equal to five years	0.005	0.05	0.05	0.10	0.08	0.07	0.12
Greater than five years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

[1] For a derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3] A Board-regulated institution must use the column labeled ''Credit (investment-grade reference asset)'' for a credit derivative whose reference asset is an outstanding unsecured long-term debt security without credit enhancement that is investment grade. A Board-regulated institution must use the column labeled ''Credit (non-investment-grade reference asset)'' for all other credit derivatives.

(2) *Multiple OTC derivative contracts subject to a qualifying master netting agreement.* Except as modified by paragraph (c) of this section, the exposure amount for multiple OTC derivative contracts subject to a qualifying master netting agreement is equal to the sum of the net current credit exposure and the adjusted sum of

the PFE amounts for all OTC derivative contracts subject to the qualifying master netting agreement.

(i) *Net current credit exposure.* The net current credit exposure is the greater of the net sum of all positive and negative fair values of the individual OTC derivative contracts subject to the qualifying master netting agreement or zero.

(ii) *Adjusted sum of the PFE amounts.* The adjusted sum of the PFE amounts, Anet, is calculated as Anet = (0.4 × Agross) + (0.6 × NGR × Agross), where:

(A) Agross = the gross PFE (that is, the sum of the PFE amounts as determined under paragraph (b)(1)(ii) of this section for each individual derivative contract subject to the qualifying master netting agreement); and

(B) Net-to-gross Ratio (NGR) = the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph (b)(1)(i) of this section) of all individual derivative contracts subject to the qualifying master netting agreement.

(c) *Recognition of credit risk mitigation of collateralized OTC derivative contracts.* (1) A Board-regulated institution using the CEM under paragraph (b) of this section may recognize the credit risk mitigation benefits of financial collateral that secures an OTC derivative contract or multiple OTC derivative contracts subject to a qualifying master netting agreement (netting set) by using the simple approach in § 217.37(b).

(2) As an alternative to the simple approach, a Board-regulated institution using the CEM under paragraph (b) of this section may recognize the credit risk mitigation benefits of financial collateral that secures such a contract or netting set if the financial collateral is marked-to-fair value on a daily basis and subject to a daily margin maintenance requirement by applying a risk weight to the uncollateralized portion of the exposure, after adjusting the exposure amount calculated under paragraph (b)(1) or (2) of this section using the collateral haircut approach in § 217.37(c). The Board-regulated institution must substitute the exposure amount calculated under paragraph (b)(1) or (2) of this section for ΣE in the equation in § 217.37(c)(2).

(d) *Counterparty credit risk for credit derivatives*—(1) *Protection purchasers.* A Board-regulated institution that purchases a credit derivative that is recognized under § 217.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F of this part is not required to compute a separate counterparty credit risk capital requirement under § 217.32 provided that the Board-regulated institution does so consistently for all such credit derivatives. The Board-regulated institution must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A Board-regulated institution that is the protection provider under a credit derivative must treat the credit derivative as an exposure to the underlying reference asset. The Board-regulated institution is not required to compute a counterparty credit risk capital requirement for the credit derivative under § 217.32, provided that this treatment is applied consistently for all such credit derivatives. The Board-regulated institution must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (d)(2) apply to all relevant counterparties for risk-based capital purposes unless the Board-regulated institution is treating the credit derivative as a covered position under subpart F of this part, in which case the Board-regulated institution must compute a supplemental counterparty credit risk capital requirement under this section.

(e) *Counterparty credit risk for equity derivatives.* (1) A Board-regulated institution must treat an equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the equity derivative contract under §§ 217.51 through 217.53 (unless the Board-regulated institution is treating the contract as a covered position under subpart F of this part).

(2) In addition, the Board-regulated institution must also calculate a risk-based capital requirement for the counterparty credit risk of an equity derivative contract under this section if the Board-regulated institution is treating the contract as a covered position under subpart F of this part.

(3) If the Board-regulated institution risk weights the contract under the Simple Risk-Weight Approach (SRWA) in § 217.52, the Board-regulated institution may choose not to hold risk-based capital against the counterparty credit risk of the equity derivative contract, as long as it does so for all such contracts. Where the equity derivative contracts are subject to a qualified master netting agreement, a Board-regulated institution using the SRWA must either include all or exclude all of the contracts from any measure used to determine counterparty credit risk exposure.

(f) *Clearing member Board-regulated institution's exposure amount.* The exposure amount of a clearing member Board-regulated institution using the CEM under paragraph (b) of this section for an OTC derivative contract or netting set of OTC derivative contracts where the Board-regulated institution is either acting as a financial intermediary and enters into an offsetting transaction with a QCCP or where the Board-regulated institution provides a guarantee to the QCCP on the performance of the client equals the exposure amount calculated according to paragraph (b)(1) or (2) of this section multiplied by the scaling factor 0.71. If the Board-regulated institution determines that a longer period is appropriate, the Board-regulated institution must use a larger scaling factor to adjust for a longer holding period as follows:

$$\text{Scaling factor} = \sqrt{\frac{H}{10}}$$

Where H = the holding period greater than five days. Additionally, the Board may require the Board-regulated institution to set a longer holding period if the Board determines that a longer period is appropriate due to the nature, structure, or characteristics of the transaction or is commensurate with the risks associated with the transaction.

■ 19. Section 217.35 is amended by adding paragraph (a)(3), revising paragraph (b)(4)(i), and adding paragraph (c)(3)(iii) to read as follows:

§ 217.35 Cleared transactions.

(a) * * *

(3) *Alternate requirements.* Notwithstanding any other provision of this section, an advanced approaches Board-regulated institution or a Board-regulated institution that is not an advanced approaches Board-regulated institution and that has elected to use SA–CCR under § 217.34(a)(1) must apply § 217.133 to its derivative contracts that are cleared transactions rather than this section.

(b) * * *

(4) * * *

(i) Notwithstanding any other requirements in this section, collateral posted by a clearing member client Board-regulated institution that is held by a custodian (in its capacity as custodian) in a manner that is bankruptcy remote from the CCP,

clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

* * * * *

(c) * * *

(3) * * *

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member Board-regulated institution may apply a risk weight of zero percent to the trade exposure amount for a cleared transaction with a CCP where the clearing member Board-regulated institution is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 217.3(a), and the clearing member Board-regulated institution is not obligated to reimburse the clearing member client in the event of the CCP default.

* * * * *

■ 20. Section 217.37 is amended by revising paragraph (c)(3)(iii) to read as follows:

§ 217.37 Collateralized transactions.

* * * * *

(c) * * *

(3) * * *

(iii) For repo-style transactions and cleared transactions, a Board-regulated institution may multiply the standard supervisory haircuts provided in paragraphs (c)(3)(i) and (ii) of this section by the square root of ½ (which equals 0.707107).

* * * * *

§§ 217.134, 217.202, and 217.210 [Amended]

■ 21. For each section listed in the following table, the footnote number listed in the ''Old footnote number'' column is redesignated as the footnote number listed in the ''New footnote number'' column as follows:

Section	Old footnote No.	New footnote No.
217.134(d)(3)	30	31
217.202, paragraph (1) introductory text of the definition of ''Covered position''	31	32
217.202, paragraph (1)(i) of the definition of ''Covered position''	32	33
217.210(e)(1)	33	34

■ 22. Section 217.132 is amended by:

■ a. Revising paragraphs (b)(2)(ii)(A)(*3*) through (*5*);

■ b. Adding paragraphs (b)(2)(ii)(A)(*6*) and (*7*);

■ c. Revising paragraphs (c) heading and (c)(1) and (2) and (5) through (8);

■ d. Adding paragraphs (c)(9) through (12);

■ e. Removing ''Table 3 to § 217.132'' and adding in its place ''Table 4 to this section'' in paragraphs (e)(5)(i)(A) and (H); and

■ f. Redesignating Table 3 to § 217.132 as Table 4 to § 217.132.

The revisions and additions read as follows:

§ 217.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) * * *

(*3*) For repo-style transactions and cleared transactions, a Board-regulated institution may multiply the supervisory haircuts provided in paragraphs (b)(2)(ii)(A)(*1*) and (*2*) of this section by the square root of ½ (which equals 0.707107).

(*4*) A Board-regulated institution must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days (for eligible margin loans) or five business days (for repo-style transactions), using the formula provide in paragraph (b)(2)(ii)(A)(*6*) of this section where the following conditions apply. If the number of trades in a netting set exceeds 5,000 at any time during a quarter, a Board-regulated institution must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days for the following quarter (except when a Board-regulated institution is calculating EAD for a cleared transaction under § 217.133). If a netting set contains one or more trades involving illiquid collateral, a Board-regulated institution must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the Board-regulated institution must adjust the supervisory haircuts upward for that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set.

(*5*)(*i*) A Board-regulated institution must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days for collateral associated derivative contracts that are not cleared transactions using the formula provided in paragraph (b)(2)(ii)(A)(*6*) of this section where the following conditions apply. For collateral associated with a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, a Board-regulated institution must use a holding period of twenty business days. If a netting set contains one or more trades involving illiquid collateral or a derivative contract that cannot be easily replaced, a Board-regulated institution must use a holding period of twenty business days.

(*ii*) Notwithstanding paragraph (b)(2)(ii)(A)(*1*) or (*3*) or (b)(2)(ii)(A)(*5*)(*i*) of this section, for collateral associated with a derivative contract that is subject to an outstanding dispute over variation margin, the holding period is twice the amount provide under paragraph (b)(2)(ii)(A)(*1*) or (*3*) or (b)(2)(ii)(A)(*5*)(*i*) of this section.

(*6*) A Board-regulated institution must adjust the standard supervisory haircuts upward, pursuant to the adjustments provided in paragraphs (b)(2)(ii)(A)(*4*) and (*5*) of this section, using the following formula:

$$H_A = H_S \sqrt{\frac{T_M}{T_S}}$$

Where:

TM equals a holding period of longer than 10 business days for eligible margin loans and derivative contracts or longer than 5 business days for repo-style transactions;

Hs equals the standard supervisory haircut; and

Ts equals 10 business days for eligible margin loans and derivative contracts or 5 business days for repo-style transactions.

(*7*) If the instrument a Board-regulated institution has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral, the Board-regulated

institution must use a 25.0 percent haircut for market price volatility (Hs).

* * * * *

(c) *EAD for derivative contracts*—(1) *Options for determining EAD.* A Board-regulated institution must determine the EAD for a derivative contract using the standardized approach for counterparty credit risk (SA–CCR) under paragraph (c)(5) of this section or using the internal models methodology described in paragraph (d) of this section. If a Board-regulated institution elects to use SA–CCR for one or more derivative contracts, the exposure amount determined under SA–CCR is the EAD for the derivative contract or derivatives contracts. A Board-regulation institution must use the same methodology to calculate the exposure amount for all its derivative contracts and may change its election only with prior approval of the Board.

(2) *Definitions.* For purposes of this paragraph (c), the following definitions apply:

(i) Except as otherwise provided in paragraph (c) of this section, the *end date* means the last date of the period referenced by an interest rate or credit derivative contract or, if the derivative contract references another instrument, by the underlying instrument.

(ii) Except as otherwise provided in paragraph (c) of this section, the *start date* means the first date of the period referenced by an interest rate or credit derivative contract or, if the derivative contract references the value of another instrument, by underlying instrument.

(iii) *Hedging set* means:

(A) With respect interest rate derivative contracts, all such contracts within a netting set that reference the same reference currency;

(B) With respect to exchange rate derivative contracts, all such contracts within a netting set that reference the same currency pair;

(C) With respect to credit derivative contract, all such contracts within a netting set;

(D) With respect to equity derivative contracts, all such contracts within a netting set;

(E) With respect to a commodity derivative contract, all such contracts within a netting set that reference one of the following commodity classes: Energy, metal, agricultural, or other commodities;

(F) With respect to basis derivative contracts, all such contracts within a netting set that reference the same pair of risk factors and are denominated in the same currency; or

(G) With respect to volatility derivative contracts, all such contracts within a netting set that reference one of interest rate, exchange rate, credit, equity, or commodity risk factors, separated according to the requirements under paragraphs (c)(2)(iii)(A) through (E) of this section.

(H) If the risk of a derivative contract materially depends on more than one of interest rate, exchange rate, credit, equity, or commodity risk factors, the Board may require a Board-regulated institution to include the derivative contract in each appropriate hedging set under paragraphs (c)(1)(iii)(A) through (E) of this section.

* * * * *

(5) *Exposure amount.* The exposure amount of a netting set, as calculated under paragraph (c) of this section, is equal to 1.4 multiplied by the sum of the replacement cost of the netting set, as calculated under paragraph (c)(6) of this section, and the potential future exposure of the netting set, as calculated under paragraph (c)(7) of this section, except that, notwithstanding the requirements of this paragraph (c)(5):

(i) The exposure amount of a netting set subject to a variation margin agreement, excluding a netting set that is subject to a variation margin agreement under which the counterparty to the variation margin agreement is not required to post variation margin, is equal to the lesser of the exposure amount of the netting set and the exposure amount of the netting set calculated as if the netting set were not subject to a variation margin agreement; and

(ii) The exposure amount of a netting set that consists of only sold options in which the premiums have been fully paid and that are not subject to a variation margin agreement is zero.

(6) *Replacement cost of a netting set*—(i) *Netting set subject to a variation margin agreement under which the counterparty must post variation margin.* The replacement cost of a netting set subject to a variation margin agreement, excluding a netting set that is subject to a variation margin agreement under which the counterparty is not required to post variation margin, is the greater of:

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the sum of the net independent collateral amount and the variation margin amount applicable to such derivative contracts;

(B) The sum of the variation margin threshold and the minimum transfer amount applicable to the derivative contracts within the netting set less the net independent collateral amount applicable to such derivative contracts; or

(C) Zero.

(ii) *Netting sets not subject to a variation margin agreement under which the counterparty must post variation margin.* The replacement cost of a netting set that is not subject to a variation margin agreement under which the counterparty must post variation margin to the Board-regulated institution is the greater of:

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the net independent collateral amount and variation margin amount applicable to such derivative contracts; or

(B) Zero.

(iii) *Multiple netting sets subject to a single variation margin agreement.* Notwithstanding paragraphs (c)(6)(i) and (ii) of this section, the replacement cost for multiple netting sets subject to a single variation margin agreement must be calculated according to paragraph (c)(10)(i) of this section.

(iv) *Multiple netting sets subject to multiple variation margin agreements or a hybrid netting set.* Notwithstanding paragraphs (c)(6)(i) and (ii) of this section, the replacement cost for a netting set subject to multiple variation margin agreements or a hybrid netting set must be calculated according to paragraph (c)(11)(i) of this section.

(7) *Potential future exposure of a netting set.* The potential future exposure of a netting set is the product of the PFE multiplier and the aggregated amount.

(i) *PFE multiplier.* The PFE multiplier is calculated according to the following formula:

$$PFE\ multiplier = min\left\{1; 0.05 + 0.95 * e^{\left(\frac{V-C}{1.9*A}\right)}\right\}$$

Where:

V is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set;

C is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting set; and

A is the aggregated amount of the netting set.

(ii) *Aggregated amount.* The aggregated amount is the sum of all hedging set amounts, as calculated under paragraph (c)(8) of this section, within a netting set.

(iii) *Multiple netting sets subject to a single variation margin agreement.* Notwithstanding paragraphs (c)(7)(i) and (ii) of this section and when calculating the PFE amount for purposes of total leverage exposure under § 217.10(c)(4)(ii)(B), the potential future exposure for multiple netting sets subject to a single variation margin agreement must be calculated according to paragraph (c)(10)(ii) of this section.

(iv) *Multiple netting sets subject to multiple variation margin agreements or a hybrid netting set.* Notwithstanding paragraphs (c)(7)(i) and (ii) of this section and when calculating the PFE amount for purposes of total leverage exposure under § 217.10(c)(4)(ii)(B), the potential future exposure for a netting set subject to multiple variation margin agreements or a hybrid netting set must be calculated according to paragraph (c)(11)(ii) of this section.

(8) *Hedging set amount*—(i) *Interest rate derivative contracts.* To calculate the hedging set amount of an interest rate derivative contract hedging set, a Board-regulated institution may use either of the formulas provided in paragraphs (c)(8)(i)(A) and (B) of this section:

(A) *Formula 1.*

$$Hedging\ set\ amount =$$

$$[(AddOn_{TB1}^{IR})^2 + (AddOn_{TB2}^{IR})^2 + (AddOn_{TB3}^{IR})^2 + 1.4 * AddOn_{TB1}^{IR} *$$

$$AddOn_{TB2}^{IR} + 1.4 * AddOn_{TB2}^{IR} * AddOn_{TB3}^{IR} + 0.6 * AddOn_{TB1}^{IR} * AddOn_{TB3}^{IR})]^{\frac{1}{2}};$$

or

(B) *Formula 2.*

$$Hedging\ set\ amount = |AddOn_{TB1}^{IR}| + |AddOn_{TB2}^{IR}| + |AddOn_{TB3}^{IR}|.$$

Where in paragraphs (c)(8)(i)(A) and (B) of this section:

$AddOn_{TB1}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of less than one year from the present date;

$AddOn_{TB2}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of one to five years from the present date; and

$AddOn_{TB3}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of more than five years from the present date.

(ii) *Exchange rate derivative contracts.* For an exchange rate derivative contract hedging set, the hedging set amount equals the absolute value of the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set.

(iii) *Credit derivative contracts and equity derivative contracts.* The hedging set amount of a credit derivative contract hedging set or equity derivative contract hedging set within a netting set is calculated according to the following formula:

$$Hedging\ set\ amount = \left[\left(\sum_{k=1}^{K} \rho_k * AddOn(Ref_k)\right)^2 + \sum_{k=1}^{K}(1-(\rho_k)^2) * (AddOn(Ref_k))^2\right]^{\frac{1}{2}}$$

Where:

k is each reference entity within the hedging set.

K is the number of reference entities within the hedging set.

AddOn(*Ref*$_k$) equals the sum of the adjusted derivative contract amounts, as determined under paragraph (c)(9) of this section, for all derivative contracts within the hedging set that reference reference entity *k*.

ρ_k equals the applicable supervisory correlation factor, as provided in Table 2 to this section.

(iv) *Commodity derivative contracts.* The hedging set amount of a commodity derivative contract hedging set within a netting set is calculated according to the following formula:

$$Hedging\ set\ amount = \left[\left(\rho * \sum_{k=1}^{K} AddOn(Type_k)\right)^2 + (1-(\rho)^2) * \sum_{k=1}^{K}(AddOn(Type_k))^2\right]^{\frac{1}{2}}$$

Where:

k is each commodity type within the hedging set.

K is the number of commodity types within the hedging set.

AddOn(*Type*$_k$) equals the sum of the adjusted derivative contract amounts, as determined under paragraph (c)(9) of this section, for all derivative contracts within the hedging set that reference reference commodity type *k*.

ρ equals the applicable supervisory correlation factor, as provided in Table 2 to this section.

(v) *Basis derivative contracts and volatility derivative contracts.* Notwithstanding paragraphs (c)(8)(i) through (iv) of this section, a Board-regulated institution must calculate a separate hedging set amount for each basis derivative contract hedging set and each volatility derivative contract hedging set. A Board-regulated institution must calculate such hedging set amounts using one of the formulas under paragraphs (c)(8)(i) through (iv) that corresponds to the primary risk factor of the hedging set being calculated.

(9) *Adjusted derivative contract amount*—(i) *Summary.* To calculate the adjusted derivative contract amount of a derivative contract, a Board-regulated institution must determine the adjusted notional amount of derivative contract, pursuant to paragraph (c)(9)(ii) of this section, and multiply the adjusted notional amount by each of the supervisory delta adjustment, pursuant to paragraph (c)(9)(iii) of this section, the maturity factor, pursuant to paragraph (c)(9)(iv) of this section, and the applicable supervisory factor, as provided in Table 2 to this section.

(ii) *Adjusted notional amount.* (A)(*1*) For an interest rate derivative contract or a credit derivative contract, the adjusted notional amount equals the product of the notional amount of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation, and the supervisory duration, as calculated by the following formula:

$$\text{Supervisory duration} = max\left\{\frac{e^{-0.05*\left(\frac{S}{250}\right)} - e^{-0.05*\left(\frac{E}{250}\right)}}{0.05}, 0.04\right\}$$

Where:

S is the number of business days from the present day until the start date of the derivative contract, or zero if the start date has already passed; and

E is the number of business days from the present day until the end date of the derivative contract.

(*2*) For purposes of paragraph (c)(9)(ii)(A)(*1*) of this section:

(*i*) For an interest rate derivative contract or credit derivative contract that is a variable notional swap, the notional amount is equal to the time-weighted average of the contractual notional amounts of such a swap over the remaining life of the swap; and

(*ii*) For an interest rate derivative contract or a credit derivative contract that is a leveraged swap, in which the notional amount of all legs of the derivative contract are divided by a factor and all rates of the derivative contract are multiplied by the same factor, the notional amount is equal to the notional amount of an equivalent unleveraged swap.

(B)(*1*) For an exchange rate derivative contract, the adjusted notional amount is the notional amount of the non-U.S.

denominated currency leg of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation. If both legs of the exchange rate derivative contract are denominated in currencies other than U.S. dollars, the adjusted notional amount of the derivative contract is the largest leg of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation.

(*2*) Notwithstanding paragraph (c)(9)(i)(B)(*1*) of this section, for an exchange rate derivative contract with multiple exchanges of principal, the Board-regulated institution must set the adjusted notional amount of the derivative contract equal to the notional amount of the derivative contract multiplied by the number of exchanges of principal under the derivative contract.

(C)(*1*) For an equity derivative contract or a commodity derivative contract, the adjusted notional amount is the product of the fair value of one unit of the reference instrument underlying the derivative contract and the number of such units referenced by the derivative contract.

(*2*) Notwithstanding paragraph (c)(9)(i)(C)(*1*) of this section, when calculating the adjusted notional amount for an equity derivative contract or a commodity derivative contract that is a volatility derivative contract, the Board-regulated institution must replace the unit price with the underlying volatility referenced by the volatility derivative contract and replace the number of units with the notional amount of the volatility derivative contract.

(iii) *Supervisory delta adjustments.* (A) For a derivative contract that is not an option contract or collateralized debt obligation tranche, the supervisory delta adjustment is 1 if the fair value of the derivative contract increases when the value of the primary risk factor increases and −1 if the fair value of the derivative contract decreases when the value of the primary risk factor increases;

(B)(*1*) For a derivative contract that is an option contract, the supervisory delta adjustment is determined by the following formulas, as applicable:

Table 3 to §217.132--Supervisory Delta Adjustment for Options Contracts

	Bought	Sold
Call Options	$\Phi\left(\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$-\Phi\left(\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$
Put Options	$-\Phi\left(-\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$\Phi\left(-\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$

(*2*) As used in the formulas in Table 3 to this section:

(*i*) Φ is the standard normal cumulative distribution function;

(*ii*) P equals the current fair value of the instrument or risk factor, as applicable, underlying the option;

(*iii*) K equals the strike price of the option;

(*iv*) T equals the number of business days until the latest contractual exercise date of the option;

(*v*) λ equals zero for all derivative contracts except interest rate options for the currencies where interest rates have negative values. The same value of λ must be used for all interest rate options that are denominated in the same currency. To determine the value of λ for a given currency, a Board-regulated institution must find the lowest value L of P and K of all interest rate options in a given currency that the Board-regulated institution has with all counterparties. Then, λ is set according to this formula: $\lambda = \max\{-L + 0.1\%, 0\}$ and

(*vi*) σ equals the supervisory option volatility, as provided in Table 2 to this section.

(C)(*1*) For a derivative contract that is a collateralized debt obligation tranche, the supervisory delta adjustment is determined by the following formula:

$$\text{Supervisory delta adjustment} = \frac{15}{(1+14*A)*(1+14*D)}$$

(*2*) As used in the formula in paragraph (c)(9)(iii)(C)(*1*) of this section:

(*i*) A is the attachment point, which equals the ratio of the notional amounts of all underlying exposures that are subordinated to the Board-regulated institution's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one; [30]

(*ii*) D is the detachment point, which equals one minus the ratio of the notional amounts of all underlying exposures that are senior to the Board-regulated institution's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one; and

(*iii*) The resulting amount is designated with a positive sign if the collateralized debt obligation tranche was purchased by the Board-regulated institution and is designated with a

[30] In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the Board-regulated institution's exposure. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n–1) notional amounts of the underlying exposures are subordinated to the Board-regulated institution's exposure.

negative sign if the collateralized debt obligation tranche was sold by the Board-regulated institution.

(iv) *Maturity factor.* (A)(*1*) The maturity factor of a derivative contract that is subject to a variation margin agreement, excluding derivative contracts that are subject to a variation margin agreement under which the counterparty is not required to post variation margin, is determined by the following formula:

$$\text{Maturity factor} = \frac{3}{2}\sqrt{\frac{MPOR}{250}}$$

Where MPOR refers to the period from the most recent exchange of collateral covering a netting set of derivative contracts with a defaulting counterparty until the derivative contracts are closed out and the resulting market risk is re-hedged.

(*2*) Notwithstanding paragraph (c)(9)(iv)(A)(*1*) of this section:

(*i*) For a derivative contract that is not a cleared transaction, MPOR cannot be less than ten business days plus the periodicity of re-margining expressed in business days minus one business day;

(*ii*) For a derivative contract that is a cleared transaction, MPOR cannot be less than five business days plus the periodicity of re-margining expressed in business days minus one business day; and

(*iii*) For a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, MPOR cannot be less than twenty business days.

(*3*) Notwithstanding paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section, for a derivative contract subject to an outstanding dispute over variation margin, the applicable floor is twice the amount provided in (c)(9)(iv)(A)(*1*) and (*2*) of this section.

(B) The maturity factor of a derivative contract that is not subject to a variation margin agreement, or derivative contracts under which the counterparty is not required to post variation margin, is determined by the following formula:

$$\text{Maturity factor} = \sqrt{\frac{\min\{M;250\}}{250}}$$

Where M equals the greater of 10 business days and the remaining maturity of the contract, as measured in business days.

(C) For purposes of paragraph (c)(9)(iv) of this section, derivative contracts with daily settlement are treated as derivative contracts not subject to a variation margin agreement and daily settlement does not change the end date of the period referenced by the derivative contract.

(v) *Derivative contract as multiple effective derivative contracts.* A Board-regulated institution must separate a derivative contract into separate derivative contracts, according to the following rules:

(A) For an option where the counterparty pays a predetermined amount if the value of the underlying asset is above or below the strike price and nothing otherwise (binary option), the option must be treated as two separate options. For purposes of paragraph (c)(9)(iii)(B) of this section, a binary option with strike K must be represented as the combination of one bought European option and one sold European option of the same type as the original option (put or call) with the strikes set equal to 0.95*K and 1.05*K so that the payoff of the binary option is reproduced exactly outside the region between the two strikes. The absolute value of the sum of the adjusted derivative contract amounts of the bought and sold options is capped at the payoff amount of the binary option.

(B) For a derivative contract that can be represented as a combination of standard option payoffs (such as collar, butterfly spread, calendar spread, straddle, and strangle), each standard option component must be treated as a separate derivative contract.

(C) For a derivative contract that includes multiple-payment options, (such as interest rate caps and floors) each payment option may be represented as a combination of effective single-payment options (such as interest rate caplets and floorlets).

(10) *Multiple netting sets subject to a single variation margin agreement*—(i) *Calculating replacement cost.* Notwithstanding paragraph (c)(6) of this section, a Board-regulated institution shall assign a single replacement cost to multiple netting sets that are subject to a single variation margin agreement under which the counterparty must post variation margin, calculated according to the following formula:

$$\textit{Replacement Cost} = \max\{\Sigma_{NS} max\{V_{NS}; 0\} - max\{C_{MA}; 0\}; 0\} + max\{\Sigma_{NS} min\{V_{NS}; 0\} - \min\{C_{MA} 0\}; 0\}$$

Where:

NS is each netting set subject to the variation margin agreement MA;

V_{NS} is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set NS; and

C_{MA} is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting sets subject to the single variation margin agreement.

(ii) *Calculating potential future exposure.* Notwithstanding paragraph (c)(5) of this section, a Board-regulated institution shall assign a single potential future exposure to multiple netting sets that are subject to a single variation margin agreement under which the counterparty must post variation margin equal to the sum of the potential future exposure of each such netting set, each calculated according to paragraph (c)(7) of this section as if such nettings sets were not subject to a variation margin agreement.

(11) *Netting set subject to multiple variation margin agreements or a hybrid netting set*—(i) *Calculating replacement cost.* To calculate replacement cost for either a netting set subject to multiple variation margin agreements under which the counterparty to each variation margin agreement must post variation margin, or a netting set composed of at least one derivative contract subject to variation margin agreement under which the counterparty must post variation margin and at least one derivative contract that is not subject to such a variation margin

agreement, the calculation for replacement cost is provided under paragraph (c)(6)(ii) of this section, except that the variation margin threshold equals the sum of the variation margin thresholds of all variation margin agreements within the netting set and the minimum transfer amount equals the sum of the minimum transfer amounts of all the variation margin agreements within the netting set.

(ii) *Calculating potential future exposure.* (A) To calculate potential future exposure for a netting set subject to multiple variation margin agreements under which the counterparty to each variation margin agreement must post variation margin, or a netting set composed of at least one derivative contract subject to variation margin agreement under which the counterparty to the derivative contract must post variation margin and at least one derivative contract that is not subject to such a variation margin agreement, a Board-regulated institution must divide the netting set into sub-netting sets and calculate the aggregated amount for each sub-netting set. The aggregated amount for the netting set is calculated as the sum of the aggregated amounts for the sub-netting sets. The multiplier is calculated for the entire netting set.

(B) For purposes of paragraph (c)(11)(ii)(A) of this section, the netting set must be divided into sub-netting sets as follows:

(*1*) All derivative contracts within the netting set that are not subject to a variation margin agreement or that are subject to a variation margin agreement under which the counterparty is not required to post variation margin form a single sub-netting set. The aggregated amount for this sub-netting set is calculated as if the netting set is not subject to a variation margin agreement.

(*2*) All derivative contracts within the netting set that are subject to variation margin agreements in which the counterparty must post variation margin and that share the same value of the MPOR form a single sub-netting set. The aggregated amount for this sub-netting set is calculated as if the netting set is subject to a variation margin agreement, using the MPOR value shared by the derivative contracts within the netting set.

(12) *Treatment of cleared transactions.* (i) A Board-regulated institution must apply the adjustments in paragraph (c)(12)(iii) of this section to the calculation of exposure amount under this paragraph (c) for a netting set that is composed solely of one or more cleared transactions.

(ii) A Board-regulated institution that is a clearing member must apply the adjustments in paragraph (c)(12)(iii) of this section to the calculation of exposure amount under this paragraph (c) for a netting set that is composed solely of one or more exposures, each of which are exposures of the Board-regulated institution to its clearing member client where the Board-regulated institution is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the Board-regulated institution provides a guarantee to the CCP on the performance of the client.

(iii)(A) For purposes of calculating the maturity factor under paragraph (c)(9)(iv)(B) of this section, MPOR may not be less than 10 business days;

(B) For purposes of calculating the maturity factor under paragraph (c)(9)(iv)(B) of this section, the minimum MPOR under paragraph (c)(9)(iv)(A)(*3*) of this section does not apply if there are no outstanding disputed trades in the netting set, there is no illiquid collateral in the netting set, and there are no exotic derivative contracts in the netting set; and

(C) For purposes of calculating the maturity factor under paragraphs (c)(9)(iv)(A) and (B) of this section, if the CCP collects and holds variation margin and the variation margin is not bankruptcy remote from the CCP, M_i may not exceed 250 business days.

TABLE 2 TO § 217.132—SUPERVISORY OPTION VOLATILITY, SUPERVISORY CORRELATION PARAMETERS, AND SUPERVISORY FACTORS FOR DERIVATIVE CONTRACTS

Asset class	Subclass	Supervisory option volatility (%)	Supervisory correlation factor (%)	Supervisory factor [1] (%)
Interest rate	N/A	50	N/A	0.50
Exchange rate	N/A	15	N/A	4.0
Credit, single name	Investment grade	100	50	0.5
	Speculative grade	100	50	1.3
	Sub-speculative grade	100	50	6.0
Credit, index	Investment Grade	80	80	0.38
	Speculative Grade	80	80	1.06
Equity, single name	N/A	120	50	32
Equity, index	N/A	75	80	20
Commodity	Energy	150	40	40
	Metals	70	40	18
	Agricultural	70	40	18
	Other	70	40	18

[1] The applicable supervisory factor for basis derivative contract hedging sets is equal to one-half of the supervisory factor provided in this Table 2, and the applicable supervisory factor for volatility derivative contract hedging sets is equal to 5 times the supervisory factor provided in this Table 2.

* * * * *

■ 23. Section 217.133 is amended by revising paragraphs (a), (b)(1) through (3), (b)(4)(i), (c)(1) through (3), (c)(4)(i), and (d) to read as follows:

§ 217.133 Cleared transactions.

(a) *General requirements*—(1) *Clearing member clients.* A Board-regulated institution that is a clearing member client must use the methodologies described in paragraph (b) of this section to calculate risk-weighted assets for a cleared transaction.

(2) *Clearing members.* A Board-regulated institution that is a clearing member must use the methodologies described in paragraph (c) of this section to calculate its risk-weighted assets for a cleared transaction and

paragraph (d) of this section to calculate its risk-weighted assets for its default fund contribution to a CCP.

(b) * * *

(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a Board-regulated institution that is a clearing member client must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (b)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (b)(3) of this section.

(ii) A clearing member client Board-regulated institution's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* (i) For a cleared transaction that is a derivative contract or a netting set of derivative contracts, trade exposure amount equals the EAD for the derivative contract or netting set of derivative contracts calculated using the methodology used to calculate EAD for derivative contracts set forth in § 217.132(c) or (d), plus the fair value of the collateral posted by the clearing member client Board-regulated institution and held by the CCP or a clearing member in a manner that is not bankruptcy remote. When the Board-regulated institution calculates EAD for the cleared transaction using the methodology in § 217.132(d), EAD equals $EAD_{unstressed}$.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD for the repo-style transaction calculated using the methodology set forth in § 217.132(b)(2) or (3) or (d), plus the fair value of the collateral posted by the clearing member client Board-regulated institution and held by the CCP or a clearing member in a manner that is not bankruptcy remote. When the Board-regulated institution calculates EAD for the cleared transaction under § 217.132(d), EAD equals $EAD_{unstressed}$.

(3) *Cleared transaction risk weights.* (i) For a cleared transaction with a QCCP, a clearing member client Board-regulated institution must apply a risk weight of:

(A) 2 percent if the collateral posted by the Board-regulated institution to the QCCP or clearing member is subject to an arrangement that prevents any loss to the clearing member client Board-regulated institution due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and the clearing member client Board-regulated institution has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from an event of default or from liquidation, insolvency or receivership proceedings) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding and enforceable under the law of the relevant jurisdictions.

(B) 4 percent, if the requirements of paragraph (b)(3)(i)(A) of this section are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client Board-regulated institution must apply the risk weight applicable to the CCP under § 217.32.

(4) * * *

(i) Notwithstanding any other requirement of this section, collateral posted by a clearing member client Board-regulated institution that is held by a custodian (in its capacity as a custodian) in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

* * * * *

(c) * * *

(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a clearing member Board-regulated institution must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (c)(2) of this section by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (c)(3) of this section.

(ii) A clearing member Board-regulated institution's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* A clearing member Board-regulated institution must calculate its trade exposure amount for a cleared transaction as follows:

(i) For a cleared transaction that is a derivative contract or a netting set of derivative contracts, trade exposure amount equals the EAD calculated using the methodology used to calculate EAD for derivative contracts set forth in § 217.132(c) or (d), plus the fair value of the collateral posted by the clearing member Board-regulated institution and held by the CCP in a manner that is not bankruptcy remote. When the clearing member Board-regulated institution calculates EAD for the cleared transaction using the methodology in § 217.132(d), EAD equals $EAD_{unstressed}$.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD calculated under § 217.132(b)(2) or (3) or (d), plus the fair value of the collateral posted by the clearing member Board-regulated institution and held by the CCP in a manner that is not bankruptcy remote. When the clearing member Board-regulated institution calculates EAD for the cleared transaction under § 217.132(d), EAD equals $EAD_{unstressed}$.

(3) *Cleared transaction risk weights.* (i) A clearing member Board-regulated institution must apply a risk weight of 2 percent to the trade exposure amount for a cleared transaction with a QCCP.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member Board-regulated institution must apply the risk weight applicable to the CCP according to § 217.32.

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member Board-regulated institution may apply a risk weight of zero percent to the trade exposure amount for a cleared transaction with a QCCP where the clearing member Board-regulated institution is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 217.3(a), and the clearing member Board-regulated institution is not obligated to reimburse the clearing member client in the event of the QCCP default.

(4) * * *

(i) Notwithstanding any other requirement of this section, collateral posted by a clearing member client Board-regulated institution that is held by a custodian (in its capacity as a custodian) in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

* * * * *

(d) *Default fund contributions*—(1) *General requirement.* A clearing member Board-regulated institution must determine the risk-weighted asset amount for a default fund contribution to a CCP at least quarterly, or more frequently if, in the opinion of the Board-regulated institution or the Board,

there is a material change in the financial condition of the CCP.

(2) *Risk-weighted asset amount for default fund contributions to nonqualifying CCPs.* A clearing member Board-regulated institution's risk-weighted asset amount for default fund contributions to CCPs that are not QCCPs equals the sum of such default fund contributions multiplied by 1,250 percent, or an amount determined by the Board, based on factors such as size, structure and membership characteristics of the CCP and riskiness of its transactions, in cases where such default fund contributions may be unlimited.

(3) *Risk-weighted asset amount for default fund contributions to QCCPs.* A clearing member Board-regulated institution's risk-weighted asset amount for default fund contributions to QCCPs equals the sum of its capital requirement, K_{CM} for each QCCP, as calculated under the methodology set forth in paragraph (e)(4) of this section.

(i) EAD must be calculated separately for each clearing member's sub-client accounts and sub-house account (*i.e.,* for the clearing member's propriety activities). If the clearing member's collateral and its client's collateral are held in the same default fund contribution account, then the EAD of that account is the sum of the EAD for the client-related transactions within the account and the EAD of the house-related transactions within the account. For purposes of determining such EADs, the independent collateral of the clearing member and its client must be allocated in proportion to the respective total amount of independent collateral posted by the clearing member to the QCCP.

(ii) If any account or sub-account contains both derivative contracts and repo-style transactions, the EAD of that account is the sum of the EAD for the derivative contracts within the account and the EAD of the repo-style transactions within the account. If independent collateral is held for an account containing both derivative contracts and repo-style transactions, then such collateral must be allocated to the derivative contracts and repo-style transactions in proportion to the respective product specific exposure amounts, calculated, excluding the effects of collateral, according to § 217.132(b) for repo-style transactions and to § 217.132(c)(5) for derivative contracts.

(4) *Risk-weighted asset amount for default fund contributions to a QCCP.* A clearing member Board regulated institution's capital requirement for its default fund contribution to a QCCP (K_{CM}) is equal to:

$$K_{CM} = \max\{K_{CCP} * \left(\frac{DF^{pref}}{DF_{CCP}+DF^{pref}_{CCPCM}}\right); 0.16\ percent * DF^{pref}\}$$

Where:

K_{CCP} is the hypothetical capital requirement of the QCCP, as determined under paragraph (d)(5) of this section;

DF^{pref} is the prefunded default fund contribution of the clearing member Board-regulated institution to the QCCP;

DF_{CCP} is the QCCP's own prefunded amount that are contributed to the default waterfall and are junior or pari passu with prefunded default fund contributions of clearing members of the CCP; and

DF^{pref}_{CM} is the total prefunded default fund contributions from clearing members of the QCCP to the QCCP.

(5) *Hypothetical capital requirement of a QCCP.* Where a QCCP has provided its K_{CCP}, a Board-regulated institution must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph (d)(5), unless the Board-regulated institution determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP. The hypothetical capital requirement of a QCCP (K_{CCP}), as determined by the Board-regulated institution, is equal to:

$$K_{CCP} = \Sigma_{CMi}\ EAD_i * 1.6\ percent$$

Where:

CM_i is each clearing member of the QCCP; and

EAD_i is the exposure amount of each clearing member of the QCCP to the QCCP, as determined under paragraph (d)(6) of this section.

(6) *EAD of a clearing member Board-regulated institution to a QCCP.* (i) The EAD of a clearing member Board-regulated institution to a QCCP is equal to the sum of the EAD for derivative contracts determined under paragraph (d)(6)(ii) of this section and the EAD for repo-style transactions determined under paragraph (d)(6)(iii) of this section.

(ii) With respect to any derivative contracts between the Board-regulated institution and the CCP that are cleared transactions and any guarantees that the Board-regulated institution has provided to the CCP with respect to performance of a clearing member client on a derivative contract, the EAD is equal to the sum of:

(A) The exposure amount for all such derivative contracts and guarantees of derivative contracts calculated under SA–CCR in § 217.132(c) using a value of 10 business days for purposes of § 217.132(c)(9)(iv)(B);

(B) The value of all collateral held by the CCP posted by the clearing member Board-regulated institution or a clearing member client of the Board-regulated institution in connection with a derivative contract for which the Board-regulated institution has provided a guarantee to the CCP; and

(C) The amount of the prefunded default fund contribution of the Board-regulated institution to the CCP.

(iii) With respect to any repo-style transactions between the Board-regulated institution and the CCP that are cleared transactions, EAD is equal to:

$$EAD = \max\{EBRM - IM - DF; 0\}$$

Where:

EBRM is the sum of the exposure amounts of each repo-style transaction between the Board-regulated institution and the CCP as determined under § 217.132(b)(2) and without recognition of any collateral securing the repo-style transactions;

IM is the initial margin collateral posted by the Board-regulated institution to the CCP with respect to the repo-style transactions; and

DF is the prefunded default fund contribution of the Board-regulation institution to the CCP.

■ 24. Section 217.300 is amended by adding paragraph (g) to read as follows:

§ 217.300 Transitions.

* * * * *

(g) *SA–CCR.* After giving prior notice to the Board, an advanced approaches Board-regulated institution may use CEM rather than SA–CCR to determine the exposure amount for purposes of § 217.34 and the EAD for purposes of § 217.132 for its derivative contracts until July 1, 2020. On July 1, 2020, and thereafter, an advanced approaches Board-regulated institution must use SA–CCR for purposes of § 217.34 and must use either SA–CCR or IMM for purposes of § 217.132. Once an advanced approaches Board-regulated institution has begun to use SA–CCR, the advanced approaches Board-regulated institution may not change to use CEM.

12 CFR Part 324

Federal Deposit Insurance Corporation

For the reasons forth out in the preamble, 12 CFR part 324 is proposed to be amended as set forth below.

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

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

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

■ 26. Section 324.2 is amended by:

■ a. Adding the definition of ''Basis derivative contract'' in alphabetical order;

■ b. Revising paragraph (2) of the definition of ''Financial collateral;''

■ c. Adding the definitions of ''Independent collateral,'' ''Minimum transfer amount,'' and ''Net independent collateral amount'' in alphabetical order.

■ d. Revising the definition of ''Netting set;'' and

■ e. Adding the definitions of ''Speculative grade,'' ''Sub-speculative grade,'' ''Variation margin,'' ''Variation margin agreement,'' ''Variation margin amount,'' ''Variation margin threshold,'' and ''Volatility derivative contract'' in alphabetical order.

The additions and revisions read as follows:

§ 324.2 Definitions.

* * * * *

Basis derivative contract means a non-foreign-exchange derivative contract (*i.e.,* the contract is denominated in a single currency) in which the cash flows of the derivative contract depend on the difference between two risk factors that are attributable solely to one of the following derivative asset classes: Interest rate, credit, equity, or commodity.

* * * * *

Financial collateral * * *

(2) In which the FDIC-supervised institution has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP).

* * * * *

Independent collateral means financial collateral, other than variation margin that is subject to a collateral agreement, or in which a FDIC-supervised institution has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; notwithstanding the prior security interest of any custodial agent or any prior security interest granted to a CCP in connection with collateral posted to that CCP), and the amount of which does not change directly in response to the value of the derivative contract or contracts that the financial collateral secures.

* * * * *

Minimum transfer amount means the smallest amount of variation margin that may be transferred between counterparties to a netting set.

* * * * *

Net independent collateral amount means the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under § 324.132(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to a FDIC-supervised institution less the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under § 324.132(b)(2)(ii), as applicable, posted by the FDIC-supervised institution to the counterparty, excluding such amounts held in a bankruptcy remote manner, or posted to a QCCP and held in conformance with the operational requirements in § 324.3.

Netting set means either one derivative contract between a FDIC-supervised institution and a single counterparty, or a group of derivative contracts between a FDIC-supervised institution and a single counterparty, that are subject to a qualifying master netting agreement.

* * * * *

Speculative grade means the reference entity has adequate capacity to meet financial commitments in the near term, but is vulnerable to adverse economic

conditions, such that should economic conditions deteriorate, the reference entity would present an elevated default risk.

* * * * *

Sub-speculative grade means the reference entity depends on favorable economic conditions to meet its financial commitments, such that should such economic conditions deteriorate the reference entity likely would default on its financial commitments.

* * * * *

Variation margin means financial collateral that is subject to a collateral agreement provided by one party to its counterparty to meet the performance of the first party's obligations under one or more transactions between the parties as a result of a change in value of such obligations since the last time such financial collateral was provided.

Variation margin agreement means an agreement to collect or post variation margin.

Variation margin amount means the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under § 324.132(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to a FDIC-supervised institution less the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under § 324.132(b)(2)(ii), as applicable, posted by the FDIC-supervised institution to the counterparty.

Variation margin threshold means the amount of credit exposure of a FDIC-supervised institution to its counterparty that, if exceeded, would require the counterparty to post variation margin to the FDIC-supervised institution.

Volatility derivative contract means a derivative contract in which the payoff of the derivative contract explicitly depends on a measure of the volatility of an underlying risk factor to the derivative contract.

* * * * *

■ 27. Section 324.10 is amended by revising paragraphs (c)(4)(ii)(A) through (C) to read as follows:

§ 324.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) The balance sheet carrying value of all the FDIC-supervised institution's on-balance sheet assets, *plus* the value of securities sold under a repurchase transaction or a securities lending transaction that qualifies for sales treatment under U.S. GAAP, *less* amounts deducted from tier 1 capital under § 324.22(a), (c), and (d), *less* the value of securities received in security-for-security repo-style transactions, where the FDIC-supervised institution acts as a securities lender and includes the securities received in its on-balance sheet assets but has not sold or re-hypothecated the securities received, and *less* the fair value of any derivative contracts;

(B) The PFE for each netting set (including cleared transactions except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the FDIC-supervised institution, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under U.S. GAAP), as determined under § 324.132(c)(7), in which the term C in § 324.132(c)(7)(i)(B) equals zero, multiplied by 1.4;

(C) The sum of:

(*1*)(*i*) 1.4 multiplied by the replacement cost of each derivative contract or single product netting set of derivative contracts to which the FDIC-supervised institution is a counterparty, calculated according to the following formula:

$$\text{Replacement Cost} = \max\{V - CVM_r + CVM_p; 0\}$$

Where:

V equals the fair value for each derivative contract or each single-product netting set of derivative contracts (including a cleared transaction except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the FDIC-supervised institution, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under U.S. GAAP);

CVM_r equals the amount of cash collateral received from a counterparty to a derivative contract and that satisfies the conditions in paragraphs (c)(4)(ii)(C)(*3*) through (*7*); and

CVM_p equals the amount of cash collateral that is posted to a counterparty to a derivative contract and that has not off-set the fair value of the derivative contract and that satisfies the conditions in paragraphs (c)(4)(ii)(C)(*3*) through (*7*) of this section; and

(*ii*) Notwithstanding paragraph (c)(4)(ii)(C)(*1*)(*i*) of this section, where multiple netting sets are subject to a single variation margin agreement, a FDIC-supervised institution must apply the formula for replacement cost provided in § 324.132(c)(10), in which the term may only include cash collateral that satisfies the conditions in paragraphs (c)(4)(ii)(C)(*3*) through (*7*) of this section;

(*2*) The amount of cash collateral that is received from a counterparty to a derivative contract that has off-set the fair value of a derivative contract and that does not satisfy the conditions in paragraphs (c)(4)(ii)(C)(*3*) through (*7*) of this section;

(*3*) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated (by law, regulation or an agreement with the counterparty);

(*4*) Variation margin is calculated and transferred on a daily basis based on the fair value of the derivative contract;

(*5*) The variation margin transferred under the derivative contract or the governing rules for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contracts, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(*6*) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph, currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement and the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(*7*) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction, and the qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

* * * * *

■ 28. Section 324.32 is amended by revising paragraph (f) to read as follows:

§ 324.32 General risk weights.

* * * * *

(f) *Corporate exposures.* (1) A FDIC-supervised institution must assign a 100 percent risk weight to all its corporate exposures, except as provided in paragraph (f)(2) of this section.

(2) A FDIC-supervised institution must assign a 2 percent risk weight to an exposure to a QCCP arising from the FDIC-supervised institution posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 324.35(b)(3)(i)(A) and a 4 percent risk weight to an exposure to a QCCP arising from the FDIC-supervised institution posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 324.35(b)(3)(i)(B).

(3) A FDIC-supervised institution must assign a 2 percent risk weight to an exposure to a QCCP arising from the FDIC-supervised institution posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 324.35(c)(3)(i).

* * * * *

■ 29. Section 324.34 is revised to read as follows:

§ 324.34 Derivative contracts.

(a) *Exposure amount for derivative contracts*—(1) *FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution.* (i) A FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution must use the current exposure methodology (CEM) described in paragraph (b) of this section to calculate the exposure amount for all its OTC derivative contracts, unless the FDIC-supervised institution makes the election provided in paragraph (a)(1)(ii) of this section.

(ii) A FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution may elect to calculate the exposure amount for all its OTC derivative contracts under the standardized approach for counterparty credit risk (SA–CCR) in § 324.132(c), rather than calculating the exposure amount for all its derivative contracts using the CEM. A FDIC-supervised institution that elects under this paragraph (a)(1)(ii) to calculate the exposure amount for its OTC derivative contracts under the SA–CCR must apply the treatment of cleared transactions under § 324.133 to its derivative contracts that are cleared transactions, rather than applying § 324.35. A FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution must use the same methodology to calculate the exposure amount for all its derivative contracts and may change its election only with prior approval of the FDIC.

(2) *Advanced approaches FDIC-supervised institution.* An advanced approaches FDIC-supervised institution must calculate the exposure amount for all its derivative contracts using the SA–CCR in § 324.132(c). An advanced approaches FDIC-supervised institution must apply the treatment of cleared transactions under § 324.133 to its derivative contracts that are cleared transactions.

(b) *Current exposure methodology exposure amount*—(1) *Single OTC derivative contract.* Except as modified by paragraph (c) of this section, the exposure amount for a single OTC derivative contract that is not subject to a qualifying master netting agreement is equal to the sum of the FDIC-supervised institution's current credit exposure and potential future credit exposure (PFE) on the OTC derivative contract.

(i) *Current credit exposure.* The current credit exposure for a single OTC derivative contract is the greater of the fair value of the OTC derivative contract or zero.

(ii) *PFE.* (A) The PFE for a single OTC derivative contract, including an OTC derivative contract with a negative fair value, is calculated by multiplying the notional principal amount of the OTC derivative contract by the appropriate conversion factor in Table 1 to of this section.

(B) For purposes of calculating either the PFE under this paragraph (b) or the gross PFE under paragraph (b)(2) of this section for exchange rate contracts and other similar contracts in which the notional principal amount is equivalent to the cash flows, notional principal amount is the net receipts to each party falling due on each value date in each currency.

(C) For an OTC derivative contract that does not fall within one of the specified categories in Table 1 to this section, the PFE must be calculated using the appropriate ''other'' conversion factor.

(D) A FDIC-supervised institution must use an OTC derivative contract's effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the OTC derivative contract) rather than the apparent or stated notional principal amount in calculating PFE.

(E) The PFE of the protection provider of a credit derivative is capped at the net present value of the amount of unpaid premiums.

TABLE 1 TO § 324.34—CONVERSION FACTOR MATRIX FOR DERIVATIVE CONTRACTS [1]

Remaining maturity [2]	Interest rate	Foreign exchange rate and gold	Credit (investment grade reference asset) [3]	Credit (non-investment-grade reference asset)	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Greater than one year and less than or equal to five years	0.005	0.05	0.05	0.10	0.08	0.07	0.12
Greater than five years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

[1] For a derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3] A FDIC-supervised institution must use the column labeled ''Credit (investment-grade reference asset)'' for a credit derivative whose reference asset is an outstanding unsecured long-term debt security without credit enhancement that is investment grade. A FDIC-supervised institution must use the column labeled ''Credit (non-investment-grade reference asset)'' for all other credit derivatives.

(2) *Multiple OTC derivative contracts subject to a qualifying master netting agreement.* Except as modified by paragraph (c) of this section, the exposure amount for multiple OTC derivative contracts subject to a qualifying master netting agreement is equal to the sum of the net current credit exposure and the adjusted sum of the PFE amounts for all OTC derivative contracts subject to the qualifying master netting agreement.

(i) *Net current credit exposure.* The net current credit exposure is the greater of the net sum of all positive and negative fair values of the individual OTC derivative contracts subject to the qualifying master netting agreement or zero.

(ii) *Adjusted sum of the PFE amounts.* The adjusted sum of the PFE amounts,

Anet, is calculated as Anet = (0.4 × Agross) + (0.6 × NGR × Agross), where:

(A) Agross = the gross PFE (that is, the sum of the PFE amounts as determined under paragraph (b)(1)(ii) of this section for each individual derivative contract subject to the qualifying master netting agreement); and

(B) Net-to-gross Ratio (NGR) = the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph (b)(1)(i) of this section) of all individual derivative contracts subject to the qualifying master netting agreement.

(c) *Recognition of credit risk mitigation of collateralized OTC derivative contracts.* (1) A FDIC-supervised institution using the CEM under paragraph (b) of this section may recognize the credit risk mitigation benefits of financial collateral that secures an OTC derivative contract or multiple OTC derivative contracts subject to a qualifying master netting agreement (netting set) by using the simple approach in § 324.37(b).

(2) As an alternative to the simple approach, a FDIC-supervised institution using the CEM under paragraph (b) of this section may recognize the credit risk mitigation benefits of financial collateral that secures such a contract or netting set if the financial collateral is marked-to-fair value on a daily basis and subject to a daily margin maintenance requirement by applying a risk weight to the uncollateralized portion of the exposure, after adjusting the exposure amount calculated under paragraph (b)(1) or (2) of this section using the collateral haircut approach in § 324.37(c). The FDIC-supervised institution must substitute the exposure amount calculated under paragraph (b)(1) or (2) of this section for ΣE in the equation in § 324.37(c)(2).

(d) *Counterparty credit risk for credit derivatives*—(1) *Protection purchasers.* A FDIC-supervised institution that purchases a credit derivative that is recognized under § 324.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F of this part is not required to compute a separate counterparty credit risk capital requirement under § 324.32 provided that the FDIC-supervised institution does so consistently for all such credit derivatives. The FDIC-supervised institution must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A FDIC-supervised institution that is the protection provider under a credit derivative must treat the credit derivative as an exposure to the underlying reference asset. The FDIC-supervised institution is not required to compute a counterparty credit risk capital requirement for the credit derivative under § 324.32, provided that this treatment is applied consistently for all such credit derivatives. The FDIC-supervised institution must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (d)(2) apply to all relevant counterparties for risk-based capital purposes unless the FDIC-supervised institution is treating the credit derivative as a covered position under subpart F of this part, in which case the FDIC-supervised institution must compute a supplemental counterparty credit risk capital requirement under this section.

(e) *Counterparty credit risk for equity derivatives.* (1) A FDIC-supervised institution must treat an equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the equity derivative contract under §§ 324.51 through 324.53 (unless the FDIC-supervised institution is treating the contract as a covered position under subpart F of this part).

(2) In addition, the FDIC-supervised institution must also calculate a risk-based capital requirement for the counterparty credit risk of an equity derivative contract under this section if the FDIC-supervised institution is treating the contract as a covered position under subpart F of this part.

(3) If the FDIC-supervised institution risk weights the contract under the Simple Risk-Weight Approach (SRWA) in § 324.52, the FDIC-supervised institution may choose not to hold risk-based capital against the counterparty credit risk of the equity derivative contract, as long as it does so for all such contracts. Where the equity derivative contracts are subject to a qualified master netting agreement, a FDIC-supervised institution using the SRWA must either include all or exclude all of the contracts from any measure used to determine counterparty credit risk exposure.

(f) *Clearing member FDIC-supervised institution's exposure amount.* The exposure amount of a clearing member FDIC-supervised institution using the CEM under paragraph (b) of this section for an OTC derivative contract or netting set of OTC derivative contracts where the FDIC-supervised institution is either acting as a financial intermediary and enters into an offsetting transaction with a QCCP or where the FDIC-supervised institution provides a guarantee to the QCCP on the performance of the client equals the exposure amount calculated according to paragraph (b)(1) or (2) of this section multiplied by the scaling factor 0.71. If the FDIC-supervised institution determines that a longer period is appropriate, the FDIC-supervised institution must use a larger scaling factor to adjust for a longer holding period as follows:

$$\text{Scaling factor} = \sqrt{\frac{H}{10}}$$

Where H = the holding period greater than five days. Additionally, the FDIC may require the FDIC-supervised institution to set a longer holding period if the FDIC determines that a longer period is appropriate due to the nature, structure, or characteristics of the transaction or is commensurate with the risks associated with the transaction.

■ 30. Section 324.35 is amended by adding paragraph (a)(3), revising paragraph (b)(4)(i), and adding paragraph (c)(3)(iii) to read as follows:

§ 324.35 Cleared transactions.

(a) * * *

(3) *Alternate requirements.* Notwithstanding any other provision of this section, an advanced approaches FDIC-supervised institution or a FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution and that has elected to use SA–CCR under § 324.34(a)(1) must apply § 324.133 to its derivative contracts that are cleared transactions rather than this section § 324.35.

(b) * * *

(4) * * *

(i) Notwithstanding any other requirements in this section, collateral posted by a clearing member client FDIC-supervised institution that is held by a custodian (in its capacity as custodian) in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

* * * * *

(c) * * *

(3) * * *

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member FDIC-supervised institution may apply a risk weight of

zero percent to the trade exposure amount for a cleared transaction with a CCP where the clearing member FDIC-supervised institution is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 324.3(a), and the clearing member FDIC-supervised institution is not obligated to reimburse the clearing member client in the event of the CCP default.

* * * * *

■ 31. Section 324.37 is amended by revising paragraph (c)(3)(iii) to read as follows:

§ 324.37 Collateralized transactions.

* * * * *

(c) * * *

(3) * * *

(iii) For repo-style transactions and cleared transactions, a FDIC-supervised institution may multiply the standard supervisory haircuts provided in paragraphs (c)(3)(i) and (ii) of this section by the square root of ½ (which equals 0.707107).

* * * * *

§§ 324.134, 324.202, and 324.210 [Amended]

■ 32. For each section listed in the following table, the footnote number listed in the ''Old footnote number'' column is redesignated as the footnote number listed in the ''New footnote number'' column as follows:

Section	Old footnote No.	New footnote No.
324.134(d)(3)	30	31
324.202, paragraph (1) introductory text of the definition of ''Covered position''	31	32
324.202, paragraph (1)(i) of the definition of ''Covered position''	32	33
324.210(e)(1)	33	34

■ 33. Section 324.132 is amended by:

■ a. Revising paragraphs (b)(2)(ii)(A)(*3*) through (*5*);

■ b. Adding paragraphs (b)(2)(ii)(A)(*6*) and (*7*);

■ c. Revising paragraphs (c) heading and (c)(1) and (2) and (5) through (8);

■ d. Adding paragraphs (c)(9) through (12);

■ e. Removing ''Table 3 to § 324.132'' and adding in its place ''Table 4 to this section'' in paragraphs (e)(5)(i)(A) and (H); and

■ f. Redesignating Table 3 to § 324.132 as Table 4 to § 324.132.

The revisions and additions read as follows:

§ 324.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) * * *

(*3*) For repo-style transactions and cleared transactions, a FDIC-supervised institution may multiply the supervisory haircuts provided in paragraphs (b)(2)(ii)(A)(*1*) and (*2*) of this section by the square root of ½ (which equals 0.707107).

(*4*) A FDIC-supervised institution must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days (for eligible margin loans) or five business days (for repo-style transactions), using the formula provide in paragraph (b)(2)(ii)(A)(*6*) of this section where the following conditions apply. If the number of trades in a netting set exceeds 5,000 at any time during a quarter, a FDIC-supervised institution must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days for the following quarter (except when a FDIC-supervised institution is calculating EAD for a cleared transaction under § 324.133). If a netting set contains one or more trades involving illiquid collateral, a FDIC-supervised institution must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the FDIC-supervised institution must adjust the supervisory haircuts upward for that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set.

(*5*)(*i*) A FDIC-supervised institution must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days for collateral associated derivative contracts that are not cleared transactions using the formula provided in paragraph (b)(2)(ii)(A)(*6*) of this section where the following conditions apply. For collateral associated with a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, a FDIC-supervised institution must use a holding period of twenty business days. If a netting set contains one or more trades involving illiquid collateral or a derivative contract that cannot be easily replaced, a FDIC-supervised institution must use a holding period of twenty business days.

(*ii*) Notwithstanding paragraph (b)(2)(ii)(A)(*1*) or (*3*) or (b)(2)(ii)(A)(*5*)(*i*) of this section, for collateral associated with a derivative contract that is subject to an outstanding dispute over variation margin, the holding period is twice the amount provide under paragraph (b)(2)(ii)(A)(*1*) or (*3*) or (b)(2)(ii)(A)(*5*)(*i*) of this section.

(*6*) A FDIC-supervised institution must adjust the standard supervisory haircuts upward, pursuant to the adjustments provided in paragraphs (b)(2)(ii)(A)(*4*) and (*5*) of this section, using the following formula:

$$H_A = H_S \sqrt{\frac{T_M}{T_S}}$$

Where:

TM equals a holding period of longer than 10 business days for eligible margin loans and derivative contracts or longer than 5 business days for repo-style transactions;

Hs equals the standard supervisory haircut; and

Ts equals 10 business days for eligible margin loans and derivative contracts or 5 business days for repo-style transactions.

(*7*) If the instrument a FDIC-supervised institution has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral, the FDIC-supervised institution must use a 25.0 percent haircut for market price volatility (Hs).

* * * * *

(c) *EAD for derivative contracts*—(1) *Options for determining EAD.* A FDIC-supervised institution must determine the EAD for a derivative contract using SA–CCR under paragraph (c)(5) of this section or using the internal models methodology described in paragraph (d) of this section. If a FDIC-supervised institution elects to use SA–CCR for one

or more derivative contracts, the exposure amount determined under SA–CCR is the EAD for the derivative contract or derivatives contracts. A FDIC-supervised institution must use the same methodology to calculate the exposure amount for all its derivative contracts and may change its election only with prior approval of the FDIC.

(2) *Definitions.* For purposes of this paragraph (c), the following definitions apply:

(i) Except as otherwise provided in paragraph (c) of this section, the *end date* means the last date of the period referenced by an interest rate or credit derivative contract or, if the derivative contract references another instrument, by the underlying instrument.

(ii) Except as otherwise provided in paragraph (c) of this section, the *start date* means the first date of the period referenced by an interest rate or credit derivative contract or, if the derivative contract references the value of another instrument, by underlying instrument.

(iii) *Hedging set* means:

(A) With respect interest rate derivative contracts, all such contracts within a netting set that reference the same reference currency;

(B) With respect to exchange rate derivative contracts, all such contracts within a netting set that reference the same currency pair;

(C) With respect to credit derivative contract, all such contracts within a netting set;

(D) With respect to equity derivative contracts, all such contracts within a netting set;

(E) With respect to a commodity derivative contract, all such contracts within a netting set that reference one of the following commodity classes: Energy, metal, agricultural, or other commodities;

(F) With respect to basis derivative contracts, all such contracts within a netting set that reference the same pair of risk factors and are denominated in the same currency; or

(G) With respect to volatility derivative contracts, all such contracts within a netting set that reference one of interest rate, exchange rate, credit, equity, or commodity risk factors, separated according to the requirements under paragraphs (c)(2)(iii)(A) through (E) of this section.

(H) If the risk of a derivative contract materially depends on more than one of interest rate, exchange rate, credit, equity, or commodity risk factors, the FDIC may require a FDIC-supervised institution to include the derivative contract in each appropriate hedging set under paragraph (c)(2)(iii)(A) through (E) of this section.

* * * * *

(5) *Exposure amount.* The exposure amount of a netting set, as calculated under paragraph (c) of this section, is equal to 1.4 multiplied by the sum of the replacement cost of the netting set, as calculated under paragraph (c)(6) of this section, and the potential future exposure of the netting set, as calculated under paragraph (c)(7) of this section, except that, notwithstanding the requirements of this paragraph (c)(5):

(i) The exposure amount of a netting set subject to a variation margin agreement, excluding a netting set that is subject to a variation margin agreement under which the counterparty to the variation margin agreement is not required to post variation margin, is equal to the lesser of the exposure amount of the netting set and the exposure amount of the netting set calculated as if the netting set were not subject to a variation margin agreement; and

(ii) The exposure amount of a netting set that consists of only sold options in which the premiums have been fully paid and that are not subject to a variation margin agreement is zero.

(6) *Replacement cost of a netting set*—(i) *Netting set subject to a variation margin agreement under which the counterparty must post variation margin.* The replacement cost of a netting set subject to a variation margin agreement, excluding a netting set that is subject to a variation margin agreement under which the counterparty is not required to post variation margin, is the greater of:

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the sum of the net independent collateral amount and the variation margin amount applicable to such derivative contracts;

(B) The sum of the variation margin threshold and the minimum transfer amount applicable to the derivative contracts within the netting set less the net independent collateral amount applicable to such derivative contracts; or

(C) Zero.

(ii) *Netting sets not subject to a variation margin agreement under which the counterparty must post variation margin.* The replacement cost of a netting set that is not subject to a variation margin agreement under which the counterparty must post variation margin to the FDIC-supervised institution is the greater of:

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the net independent collateral amount and variation margin amount applicable to such derivative contracts; or

(B) Zero.

(iii) *Multiple netting sets subject to a single variation margin agreement.* Notwithstanding paragraphs (c)(6)(i) and (ii) of this section, the replacement cost for multiple netting sets subject to a single variation margin agreement must be calculated according to paragraph (c)(10)(i) of this section.

(iv) *Multiple netting sets subject to multiple variation margin agreements or a hybrid netting set.* Notwithstanding paragraphs (c)(6)(i) and (ii) of this section, the replacement cost for a netting set subject to multiple variation margin agreements or a hybrid netting set must be calculated according to paragraph (c)(11)(i) of this section.

(7) *Potential future exposure of a netting set.* The potential future exposure of a netting set is the product of the PFE multiplier and the aggregated amount.

(i) *PFE multiplier.* The PFE multiplier is calculated according to the following formula:

$$PFE\ multiplier = min\left\{1; 0.05 + 0.95 * e^{\left(\frac{V-C}{1.9*A}\right)}\right\}$$

Where:

V is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set;

C is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting set; and

A is the aggregated amount of the netting set.

(ii) *Aggregated amount.* The aggregated amount is the sum of all hedging set amounts, as calculated under paragraph (c)(8) of this section, within a netting set.

(iii) *Multiple netting sets subject to a single variation margin agreement.* Notwithstanding paragraphs (c)(7)(i) and (ii) of this section and when calculating the PFE amount for purposes of total leverage exposure under § 324.10(c)(4)(ii)(B), the potential future exposure for multiple netting sets subject to a single variation margin agreement must be calculated according to paragraph (c)(10)(ii) of this section.

(iv) *Multiple netting sets subject to multiple variation margin agreements or a hybrid netting set.* Notwithstanding paragraphs (c)(7)(i) and (ii) of this section and when calculating the PFE amount for purposes of total leverage exposure under section 324.10(c)(4)(ii)(B), the potential future exposure for a netting set subject to multiple variation margin agreements or a hybrid netting set must be calculated according to paragraph (c)(11)(ii) of this section.

(8) *Hedging set amount*—(i) *Interest rate derivative contracts.* To calculate the hedging set amount of an interest rate derivative contract hedging set, a FDIC-supervised institution may use either of the formulas provided in paragraphs (c)(8)(i)(A) and (B) of this section:

(A) *Formula 1.*

$$Hedging\ set\ amount =$$

$$[(AddOn_{TB1}^{IR})^2 + (AddOn_{TB2}^{IR})^2 + (AddOn_{TB3}^{IR})^2 + 1.4 * AddOn_{TB1}^{IR} *$$

$$AddOn_{TB2}^{IR} + 1.4 * AddOn_{TB2}^{IR} * AddOn_{TB3}^{IR} + 0.6 * AddOn_{TB1}^{IR} * AddOn_{TB3}^{IR})]^{\frac{1}{2}};$$

or

(B) *Formula 2.*

$$Hedging\ set\ amount = |AddOn_{TB1}^{IR}| + |AddOn_{TB2}^{IR}| + |AddOn_{TB3}^{IR}|.$$

Where in paragraphs (c)(8)(i)(A) and (B) of this section:

$AddOn_{TB1}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of less than one year from the present date;

$AddOn_{TB2}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of one to five years from the present date; and

$AddOn_{TB3}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of more than five years from the present date.

(ii) *Exchange rate derivative contracts.* For an exchange rate derivative contract hedging set, the hedging set amount equals the absolute value of the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set.

(iii) *Credit derivative contracts and equity derivative contracts.* The hedging set amount of a credit derivative contract hedging set or equity derivative contract hedging set within a netting set is calculated according to the following formula:

$$Hedging\ set\ amount = \left[\left(\sum_{k=1}^{K} \rho_k * AddOn(Ref_k)\right)^2 + \sum_{k=1}^{K}(1 - (\rho_k)^2) * (AddOn(Ref_k))^2\right]^{\frac{1}{2}}$$

Where:

k is each reference entity within the hedging set.

K is the number of reference entities within the hedging set.

$AddOn(Ref_k)$ equals the sum of the adjusted derivative contract amounts, as determined under paragraph (c)(9) of this section, for all derivative contracts within the hedging set that reference reference entity k; and

ρ_k equals the applicable supervisory correlation factor, as provided in Table 2 to this section.

(iv) *Commodity derivative contracts.* The hedging set amount of a commodity derivative contract hedging set within a netting set is calculated according to the following formula:

$$Hedging\ set\ amount = \left[\left(\rho * \sum_{k=1}^{K} AddOn(Type_k)\right)^2 + (1 - (\rho)^2) * \sum_{k=1}^{K}(AddOn(Type_k))^2\right]^{\frac{1}{2}}$$

Where:

k is each commodity type within the hedging set.

K is the number of commodity types within the hedging set.

$AddOn(Type_k)$ equals the sum of the adjusted derivative contract amounts, as determined under paragraph (c)(9) of this section, for all derivative contracts within the hedging set that reference commodity type k.

ρ equals the applicable supervisory correlation factor, as provided in Table 2 to this section.

(v) *Basis derivative contracts and volatility derivative contracts.* Notwithstanding paragraphs (c)(8)(i) through (iv) of this section, a FDIC-supervised institution must calculate a separate hedging set amount for each basis derivative contract hedging set and each volatility derivative contract hedging set. A FDIC-supervised institution must calculate such hedging set amounts using one of the formulas under paragraphs (c)(8)(i) through (iv) that corresponds to the primary risk factor of the hedging set being calculated.

(9) *Adjusted derivative contract amount*—(i) *Summary.* To calculate the adjusted derivative contract amount of a derivative contract, a FDIC-supervised institution must determine the adjusted notional amount of derivative contract, pursuant to paragraph (c)(9)(ii) of this section, and multiply the adjusted notional amount by each of the supervisory delta adjustment, pursuant to paragraph (c)(9)(iii) of this section, the maturity factor, pursuant to paragraph (c)(9)(iv) of this section, and the applicable supervisory factor, as provided in Table 2 to this section.

(ii) *Adjusted notional amount.* (A)(*1*) For an interest rate derivative contract or a credit derivative contract, the adjusted notional amount equals the product of the notional amount of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation, and the supervisory duration, as calculated by the following formula:

$$\text{Supervisory duration} = max\left\{\frac{e^{-0.05*\left(\frac{S}{250}\right)} - e^{-0.05*\left(\frac{E}{250}\right)}}{0.05}, 0.04\right\}$$

Where:

S is the number of business days from the present day until the start date of the derivative contract, or zero if the start date has already passed; and

E is the number of business days from the present day until the end date of the derivative contract.

(*2*) For purposes of paragraph (c)(9)(ii)(A)(*1*) of this section:

(*i*) For an interest rate derivative contract or credit derivative contract that is a variable notional swap, the notional amount is equal to the time-weighted average of the contractual notional amounts of such a swap over the remaining life of the swap; and

(*ii*) For an interest rate derivative contract or a credit derivative contract that is a leveraged swap, in which the notional amount of all legs of the derivative contract are divided by a factor and all rates of the derivative contract are multiplied by the same factor, the notional amount is equal to the notional amount of an equivalent unleveraged swap.

(B)(*1*) For an exchange rate derivative contract, the adjusted notional amount is the notional amount of the non-U.S. denominated currency leg of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation. If both legs of the exchange rate derivative contract are denominated in currencies other than U.S. dollars, the adjusted notional amount of the derivative contract is the largest leg of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation.

(*2*) Notwithstanding paragraph (c)(9)(i)(B)(*1*) of this section, for an exchange rate derivative contract with multiple exchanges of principal, the FDIC-supervised institution must set the adjusted notional amount of the derivative contract equal to the notional

amount of the derivative contract multiplied by the number of exchanges of principal under the derivative contract.

(C)(*1*) For an equity derivative contract or a commodity derivative contract, the adjusted notional amount is the product of the fair value of one unit of the reference instrument underlying the derivative contract and the number of such units referenced by the derivative contract.

(*2*) Notwithstanding paragraph (c)(9)(i)(C)(*1*) of this section, when calculating the adjusted notional amount for an equity derivative contract or a commodity derivative contract that is a volatility derivative contract, the FDIC-supervised institution must replace the unit price with the underlying volatility referenced by the volatility derivative contract and replace the number of units with the notional amount of the volatility derivative contract.

(iii) *Supervisory delta adjustments.* (A) For a derivative contract that is not an option contract or collateralized debt obligation tranche, the supervisory delta adjustment is 1 if the fair value of the derivative contract increases when the value of the primary risk factor increases and −1 if the fair value of the derivative contract decreases when the value of the primary risk factor increases;

(B)(*1*) For a derivative contract that is an option contract, the supervisory delta adjustment is determined by the following formulas, as applicable:

Table 3 to §324.132--Supervisory Delta Adjustment for Options Contracts

	Bought	Sold
Call Options	$\Phi\left(\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$-\Phi\left(\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$
Put Options	$-\Phi\left(-\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$\Phi\left(-\frac{\ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$

(*2*) As used in the formulas in Table 3 to this section:

(*i*) φ is the standard normal cumulative distribution function;

(*ii*) P equals the current fair value of the instrument or risk factor, as applicable, underlying the option;

(*iii*) K equals the strike price of the option;

(*iv*) T equals the number of business days until the latest contractual exercise date of the option;

(*v*) λ equals zero for all derivative contracts except interest rate options for the currencies where interest rates have negative values. The same value of λ must be used for all interest rate options that are denominated in the same currency. To determine the value of λ for a given currency, a FDIC-supervised institution must find the lowest value L of P and K of all interest rate options in a given currency that the FDIC-supervised institution has with all counterparties. Then, λ is set according to this formula: $\lambda = max\{-L + 0.1\%, 0\}$; and

(*vi*) σ equals the supervisory option volatility, as provided in Table 2 to this section; and

(C)(*1*) For a derivative contract that is a collateralized debt obligation tranche, the supervisory delta adjustment is determined by the following formula:

$$\text{Supervisory delta adjustment} = \frac{15}{(1+14*A)*(1+14*D)}$$

(*2*) As used in the formula in paragraph (c)(9)(iii)(C)(*1*) of this section:

(*i*) A is the attachment point, which equals the ratio of the notional amounts of all underlying exposures that are subordinated to the FDIC-supervised institution's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one; [30]

(*ii*) D is the detachment point, which equals one minus the ratio of the notional amounts of all underlying exposures that are senior to the FDIC-supervised institution's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one; and

(*iii*) The resulting amount is designated with a positive sign if the collateralized debt obligation tranche was purchased by the FDIC-supervised institution and is designated with a negative sign if the collateralized debt obligation tranche was sold by the FDIC-supervised institution.

(iv) *Maturity factor.* (A)(*1*) The maturity factor of a derivative contract that is subject to a variation margin agreement, excluding derivative contracts that are subject to a variation margin agreement under which the counterparty is not required to post variation margin, is determined by the following formula:

[30] In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the FDIC-supervised institution's exposure. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n–1) notional amounts of the underlying exposures are subordinated to the FDIC-supervised institution's exposure.

$$\text{Maturity factor} = \frac{3}{2}\sqrt{\frac{MPOR}{250}}$$

Where MPOR refers to the period from the most recent exchange of collateral covering a netting set of derivative contracts with a defaulting counterparty until the derivative contracts are closed out and the resulting market risk is re-hedged.

(*2*) Notwithstanding paragraph (c)(9)(iv)(A)(*1*) of this section:

(*i*) For a derivative contract that is not a cleared transaction, MPOR cannot be less than ten business days plus the periodicity of re-margining expressed in business days minus one business day;

(*ii*) For a derivative contract that is a cleared transaction, MPOR cannot be less than five business days plus the periodicity of re-margining expressed in business days minus one business day; and

(*iii*) For a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, MPOR cannot be less than twenty business days.

(*3*) Notwithstanding paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section, for a derivative contract subject to an outstanding dispute over variation margin, the applicable floor is twice the amount provided in (c)(9)(iv)(A)(*1*) and (*2*) of this section.

(B) The maturity factor of a derivative contract that is not subject to a variation margin agreement, or derivative contracts under which the counterparty is not required to post variation margin, is determined by the following formula:

$$\text{Maturity factor} = \sqrt{\frac{\min\{M;250\}}{250}}$$

Where M equals the greater of 10 business days and the remaining maturity of the contract, as measured in business days.

(C) For purposes of paragraph (c)(9)(iv) of this section, derivative contracts with daily settlement are treated as derivative contracts not subject to a variation margin agreement and daily settlement does not change the end date of the period referenced by the derivative contract.

(v) *Derivative contract as multiple effective derivative contracts.* A FDIC-supervised institution must separate a derivative contract into separate derivative contracts, according to the following rules:

(A) For an option where the counterparty pays a predetermined amount if the value of the underlying asset is above or below the strike price and nothing otherwise (binary option), the option must be treated as two separate options. For purposes of paragraph (c)(9)(iii)(B) of this section, a binary option with strike K must be represented as the combination of one bought European option and one sold European option of the same type as the original option (put or call) with the strikes set equal to 0.95*K and 1.05*K so that the payoff of the binary option is reproduced exactly outside the region between the two strikes. The absolute value of the sum of the adjusted derivative contract amounts of the bought and sold options is capped at the payoff amount of the binary option.

(B) For a derivative contract that can be represented as a combination of standard option payoffs (such as collar, butterfly spread, calendar spread, straddle, and strangle), each standard option component must be treated as a separate derivative contract.

(C) For a derivative contract that includes multiple-payment options, (such as interest rate caps and floors) each payment option may be represented as a combination of effective single-payment options (such as interest rate caplets and floorlets).

(10) *Multiple netting sets subject to a single variation margin agreement*—(i) *Calculating replacement cost.* Notwithstanding paragraph (c)(6) of this section, a FDIC-supervised institution shall assign a single replacement cost to multiple netting sets that are subject to a single variation margin agreement under which the counterparty must post variation margin, calculated according to the following formula:

$$\textit{Replacement Cost} = max\{\Sigma_{NS} max\{V_{NS}; 0\} - max\{C_{MA}; 0\}; 0\} + max\{\Sigma_{NS} min\{V_{NS}; 0\} - min\{C_{MA}; 0\}; 0\}$$

Where:

NS is each netting set subject to the variation margin agreement MA;

V_{NS} is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set NS;

C_{MA} is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting sets subject to the single variation margin agreement.

(ii) *Calculating potential future exposure.* Notwithstanding paragraph (c)(5) of this section, a FDIC-supervised institution shall assign a single potential future exposure to multiple netting sets that are subject to a single variation margin agreement under which the counterparty must post variation margin equal to the sum of the potential future exposure of each such netting set, each calculated according to paragraph (c)(7) of this section as if such nettings sets were not subject to a variation margin agreement.

(11) *Netting set subject to multiple variation margin agreements or a hybrid netting set*—(i) *Calculating replacement cost.* To calculate replacement cost for either a netting set subject to multiple variation margin agreements under which the counterparty to each variation margin agreement must post variation margin, or a netting set composed of at least one derivative contract subject to variation margin agreement under which the counterparty must post variation margin and at least one derivative contract that is not subject to such a variation margin agreement, the calculation for replacement cost is provided under paragraph (c)(6)(ii) of this section, except that the variation margin threshold equals the sum of the variation margin thresholds of all variation margin agreements within the netting set and the minimum transfer amount equals the sum of the minimum transfer amounts of all the variation margin agreements within the netting set.

(ii) *Calculating potential future exposure.* (A) To calculate potential future exposure for a netting set subject to multiple variation margin agreements under which the counterparty to each variation margin agreement must post variation margin, or a netting set composed of at least one derivative

contract subject to variation margin agreement under which the counterparty to the derivative contract must post variation margin and at least one derivative contract that is not subject to such a variation margin agreement, a FDIC-supervised institution must divide the netting set into sub-netting sets and calculate the aggregated amount for each sub-netting set. The aggregated amount for the netting set is calculated as the sum of the aggregated amounts for the sub-netting sets. The multiplier is calculated for the entire netting set.

(B) For purposes of paragraph (c)(11)(ii)(A) of this section, the netting set must be divided into sub-netting sets as follows:

(*1*) All derivative contracts within the netting set that are not subject to a variation margin agreement or that are subject to a variation margin agreement under which the counterparty is not required to post variation margin form a single sub-netting set. The aggregated amount for this sub-netting set is calculated as if the netting set is not subject to a variation margin agreement.

(*2*) All derivative contracts within the netting set that are subject to variation margin agreements in which the counterparty must post variation margin and that share the same value of the MPOR form a single sub-netting set. The aggregated amount for this sub-netting set is calculated as if the netting set is subject to a variation margin agreement, using the MPOR value shared by the derivative contracts within the netting set.

(12) *Treatment of cleared transactions.* (i) A FDIC-supervised institution must apply the adjustments in paragraph (c)(12)(iii) of this section to the calculation of exposure amount under this paragraph (c) for a netting set that is composed solely of one or more cleared transactions.

(ii) A FDIC-supervised institution that is a clearing member must apply the adjustments in paragraph (c)(12)(iii) of this section to the calculation of exposure amount under this paragraph (c) for a netting set that is composed solely of one or more exposures, each of which are exposures of the FDIC-supervised institution to its clearing member client where the FDIC-supervised institution is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the FDIC-supervised institution provides a guarantee to the CCP on the performance of the client.

(iii)(A) For purposes of calculating the maturity factor under paragraph (c)(9)(iv)(B) of this section, MPOR may not be less than 10 business days;

(B) For purposes of calculating the maturity factor under paragraph (c)(9)(iv)(B) of this section, the minimum MPOR under paragraph (c)(9)(iv)(A)(*3*) of this section does not apply if there are no outstanding disputed trades in the netting set, there is no illiquid collateral in the netting set, and there are no exotic derivative contracts in the netting set; and

(C) For purposes of calculating the maturity factor under paragraphs (c)(9)(iv)(A) and (B) of this section, if the CCP collects and holds variation margin and the variation margin is not bankruptcy remote from the CCP, M_i may not exceed 250 business days.

TABLE 2 TO § 324.132—SUPERVISORY OPTION VOLATILITY, SUPERVISORY CORRELATION PARAMETERS, AND SUPERVISORY FACTORS FOR DERIVATIVE CONTRACTS

Asset class	Subclass	Supervisory option volatility (%)	Supervisory correlation factor (%)	Supervisory factor [1] (%)
Interest rate	N/A	50	N/A	0.50
Exchange rate	N/A	15	N/A	4.0
Credit, single name	Investment grade	100	50	0.5
	Speculative grade	100	50	1.3
	Sub-speculative grade	100	50	6.0
Credit, index	Investment Grade	80	80	0.38
	Speculative Grade	80	80	1.06
Equity, single name	N/A	120	50	32
Equity, index	N/A	75	80	20
Commodity	Energy	150	40	40
	Metals	70	40	18
	Agricultural	70	40	18
	Other	70	40	18

[1] The applicable supervisory factor for basis derivative contract hedging sets is equal to one-half of the supervisory factor provided in this Table 2, and the applicable supervisory factor for volatility derivative contract hedging sets is equal to 5 times the supervisory factor provided in this Table 2.

* * * * *

■ 34. Section 324.133 amended by revising paragraphs (a), (b)(1) through (3), (b)(4)(i), (c)(1) through (3), (c)(4)(i), and (d) to read as follows:

§ 324.133 Cleared transactions.

(a) *General requirements*—(1) *Clearing member clients.* A FDIC-supervised institution that is a clearing member client must use the methodologies described in paragraph (b) of this section to calculate risk-weighted assets for a cleared transaction.

(2) *Clearing members.* A FDIC-supervised institution that is a clearing member must use the methodologies described in paragraph (c) of this section to calculate its risk-weighted assets for a cleared transaction and paragraph (d) of this section to calculate its risk-weighted assets for its default fund contribution to a CCP.

(b) * * *

(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a FDIC-supervised institution that is a clearing member client must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (b)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (b)(3) of this section.

(ii) A clearing member client FDIC-supervised institution's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* (i) For a cleared transaction that is a derivative

contract or a netting set of derivative contracts, trade exposure amount equals the EAD for the derivative contract or netting set of derivative contracts calculated using the methodology used to calculate EAD for derivative contracts set forth in § 324.132(c) or (d), plus the fair value of the collateral posted by the clearing member client FDIC-supervised institution and held by the CCP or a clearing member in a manner that is not bankruptcy remote. When the FDIC-supervised institution calculates EAD for the cleared transaction using the methodology in § 324.132(d), EAD equals $EAD_{unstressed}$.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD for the repo-style transaction calculated using the methodology set forth in § 324.132(b)(2) or (3) or (d), plus the fair value of the collateral posted by the clearing member client FDIC-supervised institution and held by the CCP or a clearing member in a manner that is not bankruptcy remote. When the FDIC-supervised institution calculates EAD for the cleared transaction under § 324.132(d), EAD equals $EAD_{unstressed}$.

(3) *Cleared transaction risk weights.* (i) For a cleared transaction with a QCCP, a clearing member client FDIC-supervised institution must apply a risk weight of:

(A) 2 percent if the collateral posted by the FDIC-supervised institution to the QCCP or clearing member is subject to an arrangement that prevents any loss to the clearing member client FDIC-supervised institution due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and the clearing member client FDIC-supervised institution has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from an event of default or from liquidation, insolvency or receivership proceedings) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding and enforceable under the law of the relevant jurisdictions.

(B) 4 percent, if the requirements of paragraph (b)(3)(i)(A) of this section are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client FDIC-supervised institution must apply the risk weight applicable to the CCP under § 324.32.

(4) * * *

(i) Notwithstanding any other requirement of this section, collateral posted by a clearing member client FDIC-supervised institution that is held by a custodian (in its capacity as a custodian) in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

* * * * *

(c) * * *

(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a clearing member FDIC-supervised institution must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (c)(2) of this section by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (c)(3) of this section.

(ii) A clearing member FDIC-supervised institution's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount.* A clearing member FDIC-supervised institution must calculate its trade exposure amount for a cleared transaction as follows:

(i) For a cleared transaction that is a derivative contract or a netting set of derivative contracts, trade exposure amount equals the EAD calculated using the methodology used to calculate EAD for derivative contracts set forth in § 324.132(c) or (d), plus the fair value of the collateral posted by the clearing member FDIC-supervised institution and held by the CCP in a manner that is not bankruptcy remote. When the clearing member FDIC-supervised institution calculates EAD for the cleared transaction using the methodology in § 324.132(d), EAD equals $EAD_{unstressed}$.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD calculated under § 324.132(b)(2) or (3) or (d), plus the fair value of the collateral posted by the clearing member FDIC-supervised institution and held by the CCP in a manner that is not bankruptcy remote. When the clearing member FDIC-supervised institution calculates EAD for the cleared transaction under § 324.132(d), EAD equals $EAD_{unstressed}$.

(3) *Cleared transaction risk weights.* (i) A clearing member FDIC-supervised institution must apply a risk weight of 2 percent to the trade exposure amount for a cleared transaction with a QCCP.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member FDIC-supervised institution must apply the risk weight applicable to the CCP according to § 324.32.

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member FDIC-supervised institution may apply a risk weight of zero percent to the trade exposure amount for a cleared transaction with a QCCP where the clearing member FDIC-supervised institution is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 324.3(a), and the clearing member FDIC-supervised institution is not obligated to reimburse the clearing member client in the event of the QCCP default.

(4) * * *

(i) Notwithstanding any other requirement of this section, collateral posted by a clearing member client FDIC-supervised institution that is held by a custodian (in its capacity as a custodian) in a manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

* * * * *

(d) *Default fund contributions*—(1) *General requirement.* A clearing member FDIC-supervised institution must determine the risk-weighted asset amount for a default fund contribution to a CCP at least quarterly, or more frequently if, in the opinion of the FDIC-supervised institution or the FDIC, there is a material change in the financial condition of the CCP.

(2) *Risk-weighted asset amount for default fund contributions to nonqualifying CCPs.* A clearing member FDIC-supervised institution's risk-weighted asset amount for default fund contributions to CCPs that are not QCCPs equals the sum of such default fund contributions multiplied by 1,250 percent, or an amount determined by the FDIC, based on factors such as size, structure and membership characteristics of the CCP and riskiness of its transactions, in cases where such default fund contributions may be unlimited.

(3) *Risk-weighted asset amount for default fund contributions to QCCPs.* A clearing member FDIC-supervised institution's risk-weighted asset amount for default fund contributions to QCCPs equals the sum of its capital

requirement, K_{CM} for each QCCP, as calculated under the methodology set forth in paragraph (e)(4) of this section.

(i) EAD must be calculated separately for each clearing member's sub-client accounts and sub-house account (*i.e.,* for the clearing member's propriety activities). If the clearing member's collateral and its client's collateral are held in the same default fund contribution account, then the EAD of that account is the sum of the EAD for the client-related transactions within the account and the EAD of the house-related transactions within the account. For purposes of determining such EADs, the independent collateral of the clearing member and its client must be allocated in proportion to the respective total amount of independent collateral posted by the clearing member to the QCCP.

(ii) If any account or sub-account contains both derivative contracts and repo-style transactions, the EAD of that account is the sum of the EAD for the derivative contracts within the account and the EAD of the repo-style transactions within the account. If independent collateral is held for an account containing both derivative contracts and repo-style transactions, then such collateral must be allocated to the derivative contracts and repo-style transactions in proportion to the respective product specific exposure amounts, calculated, excluding the effects of collateral, according to § 324.132(b) for repo-style transactions and to § 324.132(c)(5) for derivative contracts.

(4) *Risk-weighted asset amount for default fund contributions to a QCCP.* A clearing member FDIC-supervised institution's capital requirement for its default fund contribution to a QCCP (K_{CM}) is equal to:

$$K_{CM} = \max\{K_{CCP} * \left(\frac{DF^{pref}}{DF_{CCP}+DF^{pref}_{CCPCM}}\right); 0.16\ percent * DF^{pref}\}$$

Where:

K_{CCP} is the hypothetical capital requirement of the QCCP, as determined under paragraph (d)(5) of this section;

DF^{pref} is the prefunded default fund contribution of the clearing member FDIC-supervised institution to the QCCP;

DF_{CCP} is the QCCP's own prefunded amount that are contributed to the default waterfall and are junior or pari passu with prefunded default fund contributions of clearing members of the CCP; and

DF^{pref}_{CM} is the total prefunded default fund contributions from clearing members of the QCCP to the QCCP.

(5) *Hypothetical capital requirement of a QCCP.* Where a QCCP has provided its K_{CCP}, a FDIC-supervised institution must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph (d)(5), unless the FDIC-supervised institution determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP. The hypothetical capital requirement of a QCCP (K_{CCP}), as determined by the FDIC-supervised institution, is equal to:

$K_{CCP} = \Sigma_{CM_i} EAD_i * 1.6\ percent$

Where:

CM_i is each clearing member of the QCCP; and

EAD_i is the exposure amount of each clearing member of the QCCP to the QCCP, as determined under paragraph (d)(6) of this section.

(6) *EAD of a clearing member FDIC-supervised institution to a QCCP.* (i) The EAD of a clearing member FDIC-supervised institution to a QCCP is equal to the sum of the EAD for derivative contracts determined under paragraph (d)(6)(ii) of this section and the EAD for repo-style transactions determined under paragraph (d)(6)(iii) of this section.

(ii) With respect to any derivative contracts between the FDIC-supervised institution and the CCP that are cleared transactions and any guarantees that the FDIC-supervised institution has provided to the CCP with respect to performance of a clearing member client on a derivative contract, the EAD is equal to the sum of:

(A) The exposure amount for all such derivative contracts and guarantees of derivative contracts calculated under SA–CCR in § 324.132(c) using a value of

10 business days for purposes of § 324.132(c)(9)(iv)(B);

(B) The value of all collateral held by the CCP posted by the clearing member FDIC-supervised institution or a clearing member client of the FDIC-supervised institution in connection with a derivative contract for which the FDIC-supervised institution has provided a guarantee to the CCP; and

(C) The amount of the prefunded default fund contribution of the FDIC-supervised institution to the CCP.

(iii) With respect to any repo-style transactions between the FDIC-supervised institution and the CCP that are cleared transactions, EAD is equal to:

$$EAD = \max\{EBRM - IM - DF; 0\}$$

Where:

EBRM is the sum of the exposure amounts of each repo-style transaction between the FDIC-supervised institution and the CCP as determined under § 324.132(b)(2) and without recognition of any collateral securing the repo-style transactions;

IM is the initial margin collateral posted by the FDIC-supervised institution to the CCP with respect to the repo-style transactions; and

DF is the prefunded default fund contribution of the FDIC-supervised institution to the CCP.

■ 35. Section 324.300 is amended by adding paragraph (f) to read as follows:

§ 324.300 Transitions.

* * * * *

(f) *SA–CCR.* After giving prior notice to the FDIC, an advanced approaches FDIC-supervised institution may use CEM rather than SA–CCR to determine the exposure amount for purposes of § 324.34 and the EAD for purposes of § 324.132 for its derivative contracts until July 1, 2020. On July 1, 2020, and thereafter, an advanced approaches FDIC-supervised institution must use SA–CCR for purposes of § 324.34 and must use either SA–CCR or IMM for purposes of § 324.132. Once an advanced approaches FDIC-supervised institution has begun to use SA–CCR, the advanced approaches FDIC-supervised institution may not change to use CEM.

Dated: November 7, 2018.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 6, 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. 2018–24924 Filed 12–14–18; 8:45 am]

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

Reader Aids

Federal Register

Vol. 83, No. 241

Monday, December 17, 2018

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

62241–62448 3
62449–62688 4
62689–63040 6
63041–63382 7
63383–63558 10
63559–63774 11
63775–64022 12
64023–64222 13
64223–64432 14
64433–64728 17

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9828 62683
9829 62685
9830 63039
9831 63771
9832 64021
Executive Orders:
13852 62687
Administrative Orders:
Memorandums:
Memorandum of November 5, 2018 62679

5 CFR

211 63041
531 63042

6 CFR

Ch. I 63775

7 CFR

12 63046
210 63775
215 63775
220 63775
226 63775
457 63383
927 62449
Proposed Rules:
927 64294
956 64296
3565 64488

8 CFR

Proposed Rules:
214 62406

9 CFR

93 64223
317 63052
381 63052

10 CFR

72 63794
Proposed Rules:
72 63814

11 CFR

Proposed Rules:
100 62282
112 62283

12 CFR

252 64023
1271 63054
Proposed Rules:
3 64659
32 64659
34 63110
217 64659
225 63110
229 63431
323 63110
324 64659
1030 63431
Ch. X 64036

13 CFR

Proposed Rules:
121 62516
124 62516
125 62516
126 62516
127 62516
129 62516

14 CFR

25 62689
39 .....62690, 62694, 62697, 62701, 63389, 63392, 63394, 63397, 63400, 63559,63561, 63565, 63799, 64225, 64228, 64230, 64233, 64433, 64435, 64438, 64441
71 .....62451, 62453, 63402, 63403, 63405, 63406, 63407, 63409, 63567, 64239, 64241, 64242, 64244, 64245, 64247, 64248, 64249, 64250, 64252
91 63410
95 64253
97 .....62703, 62705
Proposed Rules:
39 .....62736, 62738, 62741, 63444, 63594, 63596, 63598
71 .....63447, 63449, 63601, 63603, 64490, 64491
93 63817

15 CFR

902 64257
Proposed Rules:
744 64299

16 CFR

1210 62241
Proposed Rules:
681 63604

17 CFR

230 64180
239 62454
242 64180
249 64180
270 64180
274 62454
Proposed Rules:
160 63450

18 CFR

284 62242

20 CFR

401 63415
404 62455
411 62455
416 62455

Proposed Rules:

404 64493
416 64493
655 ....63430, 63456

21 CFR

74 64443
216 63569
860 64443

Proposed Rules:

73 64045
314 64299
600 63817
601 64299
860 63127

22 CFR

Proposed Rules:

147 64046

24 CFR

203 64269

Proposed Rules:

51 63457

26 CFR

1 64458

Proposed Rules:

1 63200

27 CFR

9 ....62707, 64272, 64274, 64276

Proposed Rules:

9 ....62743, 62750, 63824, 64047, 64495

29 CFR

4022 64280
4044 ....63802, 64280

Proposed Rules:

Ch. I 64053
1910 63745

32 CFR

199 63574
701 62249

33 CFR

100 62249
117 ....62250, 64023, 64024
165 ....62251, 62253, 62256, 62258, 62259, 62710, 63059, 63416, 63578, 63804
334 64024

Proposed Rules:

334 64053

37 CFR

6 62711
201 63061
203 63061
210 63061
380 63418
387 62714

38 CFR

36 64459

39 CFR

111 63578

40 CFR

9 ....62463, 63066
16 62716
51 62998
52 ....62262, 62464, 62466, 62468, 62470, 62719, 62720, 63579, 64026, 64282, 64285, 64470, 64472
68 62268
70 64285
80 63703
81 62269
180 ....62475, 62479, 62486, 62489, 62724, 62730, 64027
261 64289
300 ....63067, 63068
721 ....62463, 63066

Proposed Rules:

9 63460
16 62757
26 62760
52 ....62532, 62771, 62774, 63607, 64055, 64056, 64495, 64497
55 62283
131 64059
147 62536
271 63461
300 63146
721 63460

42 CFR

Proposed Rules:

405 62778
423 62778

44 CFR

64 ....62494, 64030

45 CFR

153 63419
156 62496
2551 64635
2552 64635
2553 64635

Proposed Rules:

160 64302
164 64302

46 CFR

545 64478

Proposed Rules:

515 64502

47 CFR

0 63073
1 63076
20 63098
36 63581
87 63806
96 63076

Proposed Rules:

15 64506

48 CFR

212 62498
217 ....62501, 62502
225 62498
252 ....62498, 62502

Proposed Rules:

19 62540
52 62540
208 62550
212 62550
213 62550
215 62550
216 62550
217 62550
219 62554
234 62550
237 62550

49 CFR

270 63106
383 62503
384 62503
390 62505
655 63812

50 CFR

300 62732
622 ....62508, 62735, 63813, 64032, 64480
635 62512
648 ....64257, 64481, 64482
660 ....62269, 63587, 63970, 64293
665 63428
679 ....62514, 64034

Proposed Rules:

17 62778
217 64078
622 62555
679 ....62794, 62815

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List December 13, 2018

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.